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Judiciary Committee
February 14, 2007

[LB20 LB221 LB225 LB564 LB566 LB567]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 14, 2007, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB225, LB564, LB566, LB567, LB20, and LB221. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Vickie McDonald; Amanda McGill; Dwite Pedersen; Pete Pirsch; and DiAnna Schimek. Senators absent: None. []

SENATOR LATHROP: Have your attention, please, just for a minute. We're going to get started here, don't know if we even can yet, but we should. We'll be getting started here in just a few moments and, before we do that, let me explain kind of how we function here. We have a lot of people, a lot of bills, and first of all our Chair is Senator Brad Ashford. He will be along shortly. He's not here right now. He'll be joining us in a minute. I am the Vice Chair so I'm going to kind of tell you how it's going to be. The rules aren't going to be any different than usual. Many of you have testified here before; some of you haven't, so I'll tell you how we do it. We start out with the senator who is going to introduce the bill. We have Senator Mines here, who will start us up. He will be allowed an opportunity to introduce the bill and to field questions from people on the committee. After he testifies, proponents of his measure will need to fill out a sheet, and hand it to our pages, indicating who you are so that we can keep track of who's testified and who hasn't. When your turn comes up, please, if you're a proponent and we're getting down to just a few, move yourself up to the front row so that we don't have to wait for you to climb over a bunch of people and get up here. When you get here, we have a timing system. We have to do that. If everybody here was allowed to talk as much as they wanted to then we'd be here till 11:00 tonight. So you will see you'll start out with a green light. You can speak during the green light. When the light turns yellow, it's right in this little box in front of Senator Mines, that means you have one minute. When it turns red, try to finish your sentence, wrap up your thought, but it's...we...please don't make us be rude and say stop right where you're at. But please observe the red light when we get to the red light and this will go much smoother. Do we have other rules that I didn't talk about? Oh, cell phones, if you have cell phones, turn them off or put them in the vibrate position so that we're not interrupted by that process. And with that, I think we'll start on our first bill today, which is Senator Mines', and LB20. [LB20]

SENATOR MINES: Thank you, Mr. Vice Chair, members of the committee. For the record, my name is Mick Mines, M-i-n-e-s. I represent the 18th Legislative District and I am here today to introduce LB20 to you. LB20 was brought forward last year. It was LB1113, 1-1-1-3, and this is going to amend a portion of what we did last year. Let me explain what we did last year. By the way, this bill was in Natural Resources last year and it's now referred to Judiciary, so here we are. Here's what happened in Bennington, Nebraska. Bennington has a lake that was created. It was a public-private partnership between a developer and the natural resource district, Papio-Missouri NRD, as a

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drainage or watershed area, as well as to create an environment where you...where we have houses around the lake. That lake has...I think you could call it limited access to the public because it's a private development, and the contention of last year's LB1113 was if we're going to use public monies, which would be NRD creating...investing in this and creating a dam site, then the public should also have access to that facility just as the private homeowners do around the lake. So we went through that process and all we were saying is the public should have the same right to access any facility, whether it's a lake or a park, in this case it's lakes, as anyone else because you've used public dollars to do that. I fully support public-private partnerships. They work. They work very well. And we went through great discussion last year to come to terms with language that would accommodate other types of public-private partnerships. You see out in other parts of the state there are dams that are created that are not intended for homes to be around. They're just simply dam sites to help control water flow, and we had no intention of allowing the public to access those kinds of dam sites. So what we did, we established a rate last year that said if the public invests, let's just say it's a \$10 million project, if the public investment is 20 percent of that development cost then there shall be fair and equal access to the public to the facility. We arrived at the 20 percent out in the lobby when we were...it was toward the end of session. It was, believe it or not, a contentious issue. We had a group of folks around and I literally picked the number 20 percent of the project out of the air. We went forward and got the bill and this language in place. Upon further reflection and just evaluating what's going on, I think the 20 percent number is too high. I think it places too great a burden on the public to be that heavy a participant, so this bill is simply asking that we adjust that percent from 20 percent down to 5 percent of the cost of a public-private partnership. So this amends Section 2-3290.1, and it requires a natural resource district to grant to the public a right to access its projects for recreational use when the portion of the project cost paid by the natural resource district with public funds exceeds 5 percent of the total. And the bill cleans up the section of law that was changed by LB1113 last year in Section 18-1755. There was some duplicative language that needed to be cleaned up. With that, I will close, entertain any questions, and look forward to your approval of LB20. [LB20]

SENATOR LATHROP: Okay. Did you say you want to waive closing in the end, or do you want to stick around? [LB20]

SENATOR MINES: No, I'm sorry, I'm not closing. Excuse me. I will entertain questions. [LB20]

SENATOR LATHROP: All right. And does anybody on the committee have questions for Senator Mines? Senator Pirsch. [LB20]

SENATOR PIRSCH: Thank you very much, and thank you, Senator Mines. Do you anticipate how many people testifying on (inaudible)? I'm wondering whether or not I should ask you this particular question or if there might not be somebody who's

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following you that would be better suited. [LB20]

SENATOR MINES: No, I'd be glad to answer your question. [LB20]

SENATOR PIRSCH: What was the total cost, just to give me an example, in the Bennington (inaudible). What was the total cost of the project altogether, the... [LB20]

SENATOR MINES: I don't know the Bennington cost. [LB20]

SENATOR PIRSCH: Okay. [LB20]

SENATOR MINES: No, I'm sorry. [LB20]

SENATOR PIRSCH: Is it a... [LB20]

SENATOR MINES: Multimillion dollar project. [LB20]

SENATOR PIRSCH: Yeah. Now you've lowered it to 5 percent. What is that based upon, that number, the 5 percent that you kind of, after reflection, is more appropriate? [LB20]

SENATOR MINES: How did we pick 5 percent? [LB20]

SENATOR PIRSCH: Yeah. [LB20]

SENATOR MINES: It...well, it's higher than 4 percent. (Laughter) And last year, as we were evaluating, it's hard to find a number because we haven't done this before. But if you look at the cost of some of the new projects that are proposed, particularly in the Papio-Missouri NRD area, large population, additional recreation is needed so you're going to create some pretty large facilities. Some in my county of Washington--and that's not why I bring this, it's just...this was a fairness, I thought, a fairness issue as opposed to trying to saddle a developer with additional fees--but you're talking developments that could be in the \$50 million range and, frankly, for the public to be in on a project that size and have to contribute \$10 million or more just seemed a little bit over the top. So we brought it down to 5 percent. [LB20]

SENATOR PIRSCH: Okay. And what is, if you can just give me an example through this existing project, the type of access that is being proposed or would be accommodated? [LB20]

SENATOR MINES: In the Bennington facility? [LB20]

SENATOR PIRSCH: Yeah. [LB20]

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SENATOR MINES: There is... [LB20]

SENATOR PIRSCH: Because it's a very big lake, right? What's (inaudible)? [LB20]

SENATOR MINES: Yeah, it's...and it's a beautiful place. [LB20]

SENATOR PIRSCH: Yeah. [LB20]

SENATOR MINES: And I think it accomplishes what the NRD wanted to accomplish. The development is in receivership, or was, so I mean they're not selling all the lots they'd like to sell. However, the access is like a little boat ramp, excuse me, a dock where, I mean, there is no access but this little dock thing. Now there will be an argument that there was set aside some wetlands in addition to the project, which is, I think, a wonderful idea, but public doesn't have...you're not going to go out on wetlands and, as a public park, and just hang out in the wetlands. All this says is if you're going to have...create a facility that has recreation and use public dollars to do that, the public should have fair and reasonable access. [LB20]

SENATOR PIRSCH: Okay. Thank you. [LB20]

SENATOR MINES: Thanks. [LB20]

SENATOR LATHROP: I have a...anybody else, questions? I have a couple for you just briefly. Are there any other projects that will be affected besides the lake in Bennington? [LB20]

SENATOR MINES: Not yet... [LB20]

SENATOR LATHROP: Okay. [LB20]

SENATOR MINES: ...that I'm aware of. [LB20]

SENATOR LATHROP: And the one we're talking about is where they pulled the water out of the creek and brought it up to the top of the hill and they dump it into the lake, and they're building big houses around it. [LB20]

SENATOR MINES: Big houses, yes. [LB20]

SENATOR LATHROP: Okay. And this already went through. Did it meet the 20 percent threshold? [LB20]

SENATOR MINES: Did that lake? [LB20]

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SENATOR LATHROP: Yes. [LB20]

SENATOR MINES: No. This was created after the lake was built, so it didn't really affect that project. It will affect projects in the future. [LB20]

SENATOR LATHROP: And I didn't see the bill that went through last year. [LB20]

SENATOR MINES: Right. [LB20]

SENATOR LATHROP: Does it affect Bennington Lake? [LB20]

SENATOR MINES: No. [LB20]

SENATOR LATHROP: So we're not, no matter what we do today, we're not... [LB20]

SENATOR MINES: No, it's not retroactive, no. [LB20]

SENATOR LATHROP: ...allowing access for that. It's just projects that are built into the future with the cooperation of the two. [LB20]

SENATOR MINES: Yeah. [LB20]

SENATOR LATHROP: Okay. That's all I have. Any other questions? [LB20]

SENATOR MINES: I will close, by the way. [LB20]

SENATOR LATHROP: Okay. Thank you. How many proponents do we have for this bill, those in favor? Okay. Come on up. Thank you. [LB20]

CURT BROMM: (Exhibits 1, 2, 3, 4) Thank you, Vice Chair Lathrop and members of the committee. My name is Curt Bromm, C-u-r-t, last name B-r-o-m-m, and I am a registered lobbyist for the Papio Valley Preservation Association. And you might say, what is that, and that is a fairly large group of approximately 400 landowners in the Washington County, Douglas County area, but also there are members from other parts of the state as well. They organized themselves a couple of years ago, primarily because they were very concerned about--Senator Mines explained it very well--and about public dollars getting involved in public projects, which is fine, but then in partnership with private developers severely limiting the public access for the use of the facilities. And it just didn't feel quite right, plus, they were concerned about the use of eminent domain, which a public entity can use, and then subsequently involve a private party after the property is acquired and limit again the public access. So that's kind of the premise and the underpinnings of why that group came together. This particular bill

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my client does support. They feel that there should be public access whenever there is a significant amount of public money involved in the project and that should not be cut off entirely just because there happens to be a private partner. We're not here to dispel all private-public partnerships by any means, but to try to advocate for some public access. And I was here when the 20 percent was arrived at and it was not founded in any great science, but it was a compromise figure. And I'm here to say that the people I represent feel that 5 percent is a better number than 20 percent. If I could indulge the committee, I won't take hardly any more time, but I would like to have the page, if they would, please, distribute, and you'll have to circulate these around. These are pictures at the Bennington dam site that depict the situation with respect to public access, and how the development has built up around the lake but there are huge signs restricting public access, and that's just to make a point of what we're dealing with here in that particular area. So with that, I will certainly try to answer any questions. There may be people...did someone else raise their hand that they were testifying? [LB20]

SENATOR LATHROP: Think it was you. [LB20]

CURT BROMM: It's me, so take your best shot, I guess. [LB20]

SENATOR LATHROP: (Laugh) Well, we'll find out. [LB20]

CURT BROMM: Okay. Thank you. [LB20]

SENATOR LATHROP: Does anybody have questions for Mr. Bromm? I don't either. [LB20]

CURT BROMM: Thank you. [LB20]

SENATOR LATHROP: Forgive me for not recognizing you. It's been many years. [LB20]

CURT BROMM: That's quite all right. Thank you. [LB20]

SENATOR LATHROP: Yeah. Good to see you. [LB20]

CURT BROMM: You bet. Thank you for your time. [LB20]

SENATOR LATHROP: Thanks for coming down. [LB20]

SENATOR LATHROP: Are there opponents to this measure? Okay. Come on up. I neglected to mention when you come up you'll have to spell your name for the record so that we have it, in addition to filling out a sheet and providing that to the page. Thanks. [LB20]

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MARLIN PETERMANN: (Exhibits 5, 6, 7, 8) Mr. Chairman, members of the committee, my name is Marlin Petermann, that's M-a-r-l-i-n P-e-t-e-r-m-a-n-n. I'm the assistant manager of the Pappio-Missouri River Natural Resources District in Omaha, and I am testifying in opposition to this bill today on behalf of the Nebraska Association of Resource Districts. We...I might start by saying that we certainly are not opposed to public recreation at lakes and dam sites. In fact, it maybe is a little question in our mind whether we would come forward in neutrality or opposition on this bill, but I would like to, I guess at this point, maybe address some of the facts and questions that were asked here about this particular project at Bennington. The district has, for a long time...and I've handed out some maps to you and some facts, a fact sheet that you can maybe look at here about that project that includes comments, as well as costs, and then there are some maps attached. And maybe looking at the one big map that has a number of dam sites, to locate, those of you who are not familiar with the property, the one that shows, yes, the legal counsel has that map there that shows a number of the...those are actually the proposed Corps of Engineers' flood control sites in the Pappio Watershed and Bennington is about in the middle of the page and there's an area there called Bennington Lake Dam Site 6, located just west of Bennington is where the location of this site is. And then there's another map that shows the actual project. Map site shows the development and the lake, and on this map I guess I might point out that there are a number of features involved in this project. It certainly was a public-private partnership that involved the NRD as a public entity, involved an SID which is a public entity, and a private developer. The project involved constructing a flood control dam site and that's been of particular interest and value to the NRD. Our major mission, one of the major missions of NRDs across the state, is flood control. In the eastern part of the state, that is our primary mission. We spend 40 percent of our budget on flood control each year, and so that has been something that we have been striving to do and storage through reservoirs has been one that the board has felt is an important aspect of flood control, as well as many other things, such as flood plain regulations, buyouts of properties in the flood plain, channelization, levees and that sort of thing. This particular project...I see the red light. I guess I'm complete. [LB20]

SENATOR LATHROP: Apparently we have a rule that if you're from 300 miles or more away you get a couple extra minutes, but otherwise you don't. [LB20]

MARLIN PETERMANN: Okay. I'm sorry. [LB20]

SENATOR LATHROP: You've completed your thought, for the most part. Your testimony is, is that there's important partnerships with the NRDs and private companies. [LB20]

MARLIN PETERMANN: Well, I would like to just say,... [LB20]

SENATOR LATHROP: Take just a couple more seconds. [LB20]

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MARLIN PETERMANN: ...if I could, the...I think at the 20 percent rule, you know, we certainly see that there's a very important part of putting recreation facilities, and probably all the dam sites you see on these maps we really look at putting in recreation facilities on these. This was a particular case where flood control was our major objective and in order to get that we thought we needed to...we don't have enough public money to do the work that's necessary. If we were going to...we put \$3 million into this project. If we would have built and had to build a recreation facility here like we have at a number of...where our office is at Chalco Hills or Walnut Creek down by Papillion, we would probably have spent \$15 million to \$20 million, which is a very significant public investment. There is public access here. We feel there were about \$10 million worth of public facilities that provide public access through walking trails, a very nice lake that's very heavily used for fishing, a fishing pier that's heavily used, and a number of amenities here that for our \$3 million we got \$10 million worth of land and facilities, and we have...do have public access at a number of locations. You just can't put a boat on this lake, but... [LB20]

SENATOR LATHROP: Okay. Well, thank you very much. Any questions? Senator McDonald. [LB20]

SENATOR McDONALD: I'm looking at this map. Now are these housing lots? Is that what I'm looking at? [LB20]

MARLIN PETERMANN: Yes, you are. There are about 300 lots and it's about a 300-acre lake. [LB20]

SENATOR McDONALD: And you cannot boat on this lake. So there's no docks at these houses? They don't have a dock (inaudible)? [LB20]

MARLIN PETERMANN: No, the individuals can boat. [LB20]

SENATOR McDONALD: Can boat. [LB20]

MARLIN PETERMANN: The homeowners can put their own boat on the lake, and that was the agreement, that for the minimal amount of NRD investment that was kind of the arrangement in this particular case, that with that minimal investment he wanted to receive more benefit for those lots and, therefore, it would be just access by those homeowners in this case. [LB20]

SENATOR McDONALD: Who did the homeowners buy the lots from? [LB20]

MARLIN PETERMANN: They bought it from Horgan Development. [LB20]

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SENATOR McDONALD: From the development company. [LB20]

MARLIN PETERMANN: The developer, yes. [LB20]

SENATOR McDONALD: And the company bought the land from...? [LB20]

MARLIN PETERMANN: The company bought the land from the farmers. [LB20]

SENATOR McDONALD: From the farmers. So then they... [LB20]

MARLIN PETERMANN: Yes, so the NRD does not own any land out there where the lake is. The developer owns all the land where the lake is, and now the SID does actually. [LB20]

SENATOR McDONALD: Thank you. [LB20]

SENATOR LATHROP: Go ahead, Senator Pedersen. [LB20]

SENATOR PEDERSEN: What is the average cost that these homeowners are paying for this property and the type of houses they're building on them? [LB20]

MARLIN PETERMANN: My understanding is that the cost of the homes or the lots were based on running feet of lake frontage, and they were...is it...\$1,000 a running foot. So if you had a 100-foot lot, it was \$100,000. And the homes out there are high-end homes and that was the developer's intent in this case, and he felt he could do that, is my understanding, and I don't know development, but he could do that because of the private access. [LB20]

SENATOR PEDERSEN: Now you said...telling Senator McDonald that these...they can have recreation the lakes but the public can't. [LB20]

MARLIN PETERMANN: In this particular case, that's right. [LB20]

SENATOR PEDERSEN: And there's public dollars involved in building it. [LB20]

MARLIN PETERMANN: Yes, public dollars for flood control, and we got all the flood control plus another \$10 million worth of public improvements. [LB20]

SENATOR PEDERSEN: It doesn't add up. Thank you. [LB20]

MARLIN PETERMANN: Thank you. [LB20]

SENATOR LATHROP: Senator McDonald. [LB20]

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SENATOR McDONALD: Do the rights come with being a property owner, or do they have to pay an association fee on an annual basis to be able to use all of the amenities that come with it? [LB20]

MARLIN PETERMANN: On the main lake, I really don't know what they...if they have an association fee they have to pay. I would guess they would, but I'm not sure of that. On our recreation lake, which is the lake to the west there, there, of course, are no fees involved with that at all. It's open to the public. [LB20]

SENATOR McDONALD: But there's no homes around that. [LB20]

MARLIN PETERMANN: No, there are no homes around that. That's got a trail around it. [LB20]

SENATOR McDONALD: And you say that there might be some association fees. Where does that money go to, to keep up...what would that money be spent for? [LB20]

MARLIN PETERMANN: I suppose to keep up the lake, the roads, the...they may...they may use that fund to help pay for I heard pumping into the lake mentioned, which is an interesting aspect that the NRD had nothing to be involved with. If you'd like me to explain that, I'd be glad to do that. [LB20]

SENATOR McDONALD: (Inaudible). [LB20]

SENATOR LATHROP: Senator Pedersen. [LB20]

SENATOR PEDERSEN: I have one other question, sir. [LB20]

MARLIN PETERMANN: Yes. [LB20]

SENATOR PEDERSEN: The not letting the public on there would be one thing, but they...did you...was there any condemnation that had to go on to build that project? [LB20]

MARLIN PETERMANN: Senator, no, there was not, and that's one of the real values that we see in these public-private partnerships in that the landowners are working with the developers, as they do everywhere in the whole metro area, and negotiating with them for the land. And so the NRD isn't out there acquiring land or having to potentially use condemnation, although we do that very, very rarely. And so we see that. [LB20]

SENATOR PEDERSEN: And you do have the right to use condemnation. [LB20]

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MARLIN PETERMANN: Yes, the NRDs do, much as cities, counties, and school districts do. [LB20]

SENATOR PEDERSEN: Thank you. [LB20]

SENATOR LATHROP: Any other questions? [LB20]

SENATOR PIRSCH: I'll just ask you briefly,... [LB20]

SENATOR LATHROP: Senator Pirsch. [LB20]

SENATOR PIRSCH: ...in your opinion, how helpful is this particular project in controlling flood and flooding problems then on the...it's on the Big Papillion, is that right? Yeah. [LB20]

MARLIN PETERMANN: Yes, flood control on the Big Papillion. Each of the dam sites in and of themselves is not a large amount, probably in the 1 to 3 percent range. [LB20]

SENATOR PIRSCH: I'm sorry, could you say... [LB20]

MARLIN PETERMANN: But if you had...1 to 3 percent reduction. But if you have 20 of them, then you have a 60 percent reduction, and so that becomes significant. So each site, in and of itself, does not maybe necessarily seem significant, but it is. [LB20]

SENATOR PIRSCH: Thank you. [LB20]

SENATOR LATHROP: Senator McDonald. [LB20]

SENATOR McDONALD: I'm sorry, I didn't hear. Did you say they use, the NRDs, use condemnation to take the land from the farmers? [LB20]

MARLIN PETERMANN: No, we did not, Senator. [LB20]

SENATOR McDONALD: They did not. [LB20]

MARLIN PETERMANN: No. [LB20]

SENATOR McDONALD: And the farmers were willingly selling the land to the NRD. [LB20]

MARLIN PETERMANN: They sold the land to the developer, and then that's why the public-private partnership has worked so well, because the developers buy the land much as they do for any subdivision, any development, and negotiate and work with the

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landowner, pay development prices, and then we work with the developer to implement the project. [LB20]

SENATOR McDONALD: Thank you. [LB20]

SENATOR LATHROP: Okay. No other questions. Thank you for coming down. [LB20]

MARLIN PETERMANN: Thank you very much. [LB20]

SENATOR LATHROP: Any other opponents? Do you wish to close? Oh, neutral? Okay, no neutral. Come on back up here. (Laugh) [LB20]

SENATOR MINES: Mr. Vice Chair, members of the committee, and just let me refer to Mr. Petermann's testimony and that a public-private partnership is absolutely a wonderful concept and it works throughout the state. This bill doesn't question that. It doesn't address that. We are merely looking at the amount that the public investment has to be before we have an assurance that they have equal access to the facility. And that didn't happen at the Bennington Lake, and that's merely an example. I don't mean to condemn; just pointing that as an example. And Mr. Petermann has shown you proposed projects that may or may not happen in the future using a public-private partnership, and I think that's wonderful, too, as long as condemnation isn't used. Although in the instance that you're looking at in Washington County, certainly condemnation can be used if you have one unwilling seller, if you have one farmer in the whole area that...and condemnation can be used in the name of flood control. And actually you're creating a recreational area and you're creating housing so that profits can be made by the developer. And I'm not opposed to profits. I'm opposed to people being kept out of facilities that have been created with public monies. And those public monies are currently 20 percent of the project and I'm suggesting that should be lowered to 5 percent of the project. That's all we're doing. With that, thank you. [LB20]

SENATOR LATHROP: Very good. Senator Pedersen. [LB20]

SENATOR PEDERSEN: Thank you. Mick, the last testifier was opposed to this bill. On the project at Bennington, obviously they didn't have to go out and acquire any land through condemnation, but they've got some other projects, big projects, on the drawing board. You were... [LB20]

SENATOR MINES: Yeah, that's right. [LB20]

SENATOR PEDERSEN: Yeah. And this would affect them type of projects. Is that right? [LB20]

SENATOR MINES: It certainly could, Senator. [LB20]

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SENATOR PEDERSEN: And whether it's a partnership of public and private or not, there's a lot of people in Washington County that are very worried and upset and feel they've been hassled around about this. Is that true? [LB20]

SENATOR MINES: That is true. [LB20]

SENATOR PEDERSEN: Okay. So there is a need for something like this, or at least a very close look at what's going on. [LB20]

SENATOR MINES: Yeah. And again, if I might, Senator, statute is in place to allow the public access, but I feel the threshold that we picked out of the air, 20 percent, is far too high. Just...if I'd said 5 percent last year, it would be at 5 today, and that was my error. [LB20]

SENATOR PEDERSEN: I'll agree with you. [LB20]

SENATOR MINES: Yeah. [LB20]

SENATOR PEDERSEN: Thank you. [LB20]

SENATOR MINES: Thank you. [LB20]

SENATOR LATHROP: Okay. That's it. Thanks. [LB20]

SENATOR MINES: Thank you. [LB20]

SENATOR ASHFORD: Okay, LB567, is that next here? Senator Loudon is here. Welcome. [LB567]

SENATOR LATHROP: Senator Ashford, we didn't talk about any special rules since we're doing three rec liability bills. If you want to have the witnesses address all of them at once (inaudible). [LB567]

SENATOR ASHFORD: That would be great. [LB567]

SENATOR LATHROP: Just a thought. [LB567]

SENATOR ASHFORD: We have three separate introducers, though. [LB567]

SENATOR LATHROP: Pardon me? [LB567]

SENATOR ASHFORD: We'll have three separate introducers. [LB567]

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SENATOR LATHROP: Yeah. We do. So everybody doesn't have to get up three times. [LB567]

SENATOR ASHFORD: Good idea. Before you start, Senator, could I just make a...we have three recreational liability bills coming up and I would ask that the testifiers, proponents, opponents, address, if they wish, if they plan on testifying on all three bills, that they address all three bills when they get up and to testify on any of these bills so that we can do it with one...one testimony. So if someone is going to testify on Senator Louden's bill, if they want to address the other two recreational liability bills, they may do so at that time, or I'd prefer that they do so at that time. [LB567]

SENATOR SCHIMEK: Mr. Chairman, does that mean you're going to hear all of them first? [LB567]

SENATOR ASHFORD: We're going to hear all...well, I think...I think what we'll do is we'll go ahead and let Senator Louden open and then we'll have the testifiers that wish to testify, but they could also comment on the other bills at that time. [LB567]

SENATOR SCHIMEK: Okay, but this first one he's got, is that a... [LB567]

SENATOR ASHFORD: Is that what you want to do? Yeah. [LB567]

SENATOR LATHROP: They're all three proposed changes to the Recreational Liability Act, to bring in political subdivisions. [LB567]

SENATOR ASHFORD: It's all under the same political subdivision act. [LB567]

SENATOR SCHIMEK: Okay. I've got the wrong...sorry, I've got the wrong file here. It was misleading me. [LB567]

SENATOR ASHFORD: That's okay. It was a good question, though. [LB567]

SENATOR SCHIMEK: Thank you. [LB567]

SENATOR ASHFORD: Proceed, Senator Louden. [LB567]

SENATOR LOUDEN: Thank you. Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is LeRoy Louden, and that's spelled L-o-u-d-e-n, and I represent the 49th Legislative District. LB567 is intended to encourage private landowners to open their property for recreational use as a means of stimulating agritourism or ecotourism in Nebraska. Some farmers and ranchers in Nebraska would like to augment their primary livelihood through the recreational use of their land. The

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state's demographics continue to change and economic activity becomes ever more critical to the rural areas of the state. Rural people are becoming aware that urbanites are willing to pay for outdoor recreation on private land. Activities such as hiking, fishing, hunting, using all-terrain vehicle trails, dirt bike facilities, and bird watching may allow rural landowners to supplement their income; however, the cost of liability insurance is sometimes so high that it would exceed any income that might be derived from any...an outdoor recreation business. Consequently, landowners do not develop the economic potential of their property and that is why I've introduced LB567. If liability can be limited, it is likely that liability insurance costs would decrease. LB567 does not limit in any way any liability which otherwise exists for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity, or for injury suffered. With that, I would be happy to answer any questions. Thank you. [LB567]

SENATOR ASHFORD: Any questions of Senator Louden? Yes. [LB567]

SENATOR CHAMBERS: Senator Louden, what change does this make in the law that exists now? [LB567]

SENATOR LOUDEN: It takes out the part where it says charge means the amount of money asked in return for an invitation to enter upon their land, is the major change of it, and of course on the other part in the law that it describes for willful malicious failure to enter, and that is all left in the law, but it says for an injury suffered in any case where the landowner of land charges a person or persons who enter or go on the land. [LB567]

SENATOR CHAMBERS: So you want them to be able to charge people but not have liability? [LB567]

SENATOR LOUDEN: The liability wouldn't be any different than if they didn't charge. [LB567]

SENATOR CHAMBERS: I have to think about it, but at least you've shown me a distinction. Thank you, Senator Louden. [LB567]

SENATOR ASHFORD: Thank you, Senator. Any other questions of Senator Louden? Thank you, Senator. [LB567]

SENATOR LOUDEN: Okay. Now do you want me to open on my other one, or do we... [LB567 LB566]

SENATOR ASHFORD: Would you do that? That would be great. [LB566]

SENATOR LOUDEN: Okay. We'll give you another shot here. Good afternoon again,

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Senator Ashford, members of the Judiciary Committee. My name is LeRoy Louden and I represent the 49th Legislative District and my last name is spelled L-o-u-d-e-n. LB566 is intended to provide limited liability immunity to owners of public land. The bill defines "owner" as a state, its agencies, the University of Nebraska, state colleges, community colleges, and public subdivisions. Aside from this definition, the language of LB566 is essentially the same language currently in statute at Sections 37-729 and Sections 37-731 to Section 37-736 known as the Recreation Liability Act. As you know, in September 2006 the Nebraska Supreme Court held in Bronsen v. Dawes County that the limited immunity afforded to owners of land by the Recreation Liability Act was intended to apply only to private landowners, not to governmental entities. Prior to this decision, the act was considered to apply to governmental entities. Following the decision, cities closed some of their recreational facilities because they no longer had the limited immunity that they thought they had. I represent a rural part of the state with many small towns. These communities hold numerous festivals and celebrations each year. Those events enhance community spirit and unity, but they also are good for tourism. The people who come to town spend money at motels, restaurants and other local businesses. When I saw how the Bronsen decision affected some city's public recreational facilities, I became concerned that it might have a similar negative effect on local festivals. If communities do not hold these events, out of fear of liability exposure, the local communities will suffer, so I have introduced LB566 to put back what towns and other public entities thought they had for the past several decades under the existing statutes. I hope that the committee will advance LB566, and I'd be happy to try to answer any questions. Thank you. [LB566]

SENATOR ASHFORD: Any questions of Senator Louden? Yeah. [LB566]

SENATOR CHAMBERS: Senator Louden, are others going to testify on your bills? [LB566]

SENATOR LOUDEN: I think so, yes. [LB566]

SENATOR CHAMBERS: Then I will hold my questions. Thank you. [LB566]

SENATOR LOUDEN: Okay. [LB566]

SENATOR ASHFORD: Yes, Senator Schimek. [LB566]

SENATOR SCHIMEK: Thank you, Mr. Chairman. Senator Louden, I'm looking at Section 3 of your bill, and Section 5 of your bill, and I'm not certain how they go together. I haven't digested this all yet. But Section 3 says, subject to Section 5 of this act, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purpose. And then

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Section 5 talks about willful or malicious failure, etcetera, as much as in the public liability act that we just...that we just talked about. So what does Section 3 mean exactly? Is that referring to the public entity? [LB566]

SENATOR LOUDEN: Well, my understanding, when it goes...and, of course, I'm not a lawyer because we rely on the Bill Drafters and legal section to do this, but it...they owe no duty and care to keep the premises any safer, I guess, than what would ordinarily be done, and it's more or less up to the person going there, that they have to recognize that there's probably some danger to whatever they're doing. I think that goes with the case where...in Dawes County up there where it was out on the lawn to the...of the courthouse where a lady turned her ankle. And I mean it...and this is, my understanding, the legal way to address that; that if you're going to walk out there on that property that there probably could be a dangerous condition out there and you have to realize that. Now that's a cowboy's answer, but it isn't a lawyer's answer. [LB566]

SENATOR SCHIMEK: Well, and I don't know that I'd understand a lawyer's answer so that's okay, but I'm not sure I understand the cowboy's answer either. But maybe some others will explore this as we go along here. So thank you. [LB566]

SENATOR LOUDEN: I appreciate that. [LB566]

SENATOR ASHFORD: Thank you, Senator Louden. And I think we'll stick with this. If you have any comments on Senator Louden's bills, or if you have a comment on, even though Senator Friend has not introduced his bill, on his bill, we'd ask you to make your comments on that as well, just to keep it going, so...but we don't need Senator Friend first. We'll go ahead and have you close then if you wish to, Senator Louden, after the testifiers... [LB566]

SENATOR LOUDEN: Okay, I'll... [LB566]

SENATOR ASHFORD: ...before Senator Friend. [LB566]

SENATOR LOUDEN: I may close. Otherwise, I will decide later if it's...if you... [LB566]

SENATOR ASHFORD: Thank you, Senator Louden. Thank you. [LB566]

SENATOR LOUDEN: Thank you. [LB566]

SENATOR ASHFORD: All right. On these three bills, proponents? [LB566 LB567 LB564]

LARRY ROSE: Members of the committee, my name is Larry Rose, R-o-s-e, and I live at 8309 Carriage Hill Court in Lincoln, and I'm a drugstore cowboy, Senator Schimek,

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and I'm testifying here in support of all three of these measures. I'm a trail rider and I gave the page pictures of some of the trails that I've ridden on in Nebraska. These are all Nebraska photographs. And I'm really adamant about not trying to impair private landowners' abilities to invite us trail riders to ride on their property, and also on the public areas that do provide trails. Most of the landowners have a sign, whatever you want to call it, statements that they will not hold them liable in case we're injured on their property. And Senator Loudon talked about agritourism. I'm one of those that buy gas, I go to these towns. There's probably as many horse trail riders in Nebraska as there are attorneys and...(laughter) [LB566 LB567 LB564]

SENATOR ASHFORD: That would be a stretch. [LB566 LB567 LB564]

LARRY ROSE: Yes. And we don't cause near as much trouble. (Laughter) [LB566 LB567 LB564]

SENATOR LATHROP: This guy is a comedian. [LB566 LB567 LB564]

SENATOR ASHFORD: I'm...yeah. [LB566 LB567 LB564]

LARRY ROSE: So... [LB566 LB567 LB564]

SENATOR ASHFORD: Keep going. This is good. [LB566 LB567 LB564]

LARRY ROSE: I... [LB566 LB567 LB564]

SENATOR ASHFORD: You can talk about the last two bills, too, if you want to. [LB566 LB567 LB564]

LARRY ROSE: Yeah. (Laugh) But anyhow, I, you know, I'm just an individual and I was aware that this was coming forward and I just wanted to come down and let you know how I feel. [LB566 LB567 LB564]

SENATOR ASHFORD: Thank you for your comments. [LB566 LB567 LB564]

LARRY ROSE: And that's...oh, one more question. I'm sorry. One more item. In Section 3 of I think all of these bills the wording, it says recreational purposes include but not limited to any combination of hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, water sports. We'd like to have horseback riding included in that. (Laughter) If you have any questions, please don't ask. [LB566 LB567 LB564]

SENATOR ASHFORD: Thanks. Thanks for coming over. We appreciate it and we'll look at the pictures and let me... [LB566 LB567 LB564]

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LARRY ROSE: I'd like those back. [LB566 LB567 LB564]

SENATOR ASHFORD: You get them back. [LB566 LB567 LB564]

LARRY ROSE: Okay. [LB566 LB567 LB564]

SENATOR ASHFORD: Not right away, but you get them back. Let me ask how many people want to testify on these recreational liability bills? Proponents, how about proponents? And opponents? Okay, great, that's fine. Come on over. [LB566 LB567 LB564]

ROGER FOSTER: (Exhibit 30) My name is Roger Foster, F-o-s-t-e-r. Thank you, Chairman Ashford, members of the committee. It may surprise some of you that I am here testifying as a proponent. I dropped a packet off to everybody on the committee. After I looked at the bill, I guess the premise of it I'm in favor of, but there is, on the checklist of when to testify, they didn't have wishy-washy, so I went as a proponent because for the most part the bill I'm in favor of. The part that I have a problem with and I think should be struck from the bill is the part where buildings and structures are included, and let me explain why. Last year's legislative session Senator Combs introduced some legislation asking for the last date to be posted on buildings of the last time they were inspected and also asking for a number where they could be reached if there was a problem. The bill never made it out of committee, but what was done is an interim study by the Legislature and what came out of that study was that there are some real problems with buildings and structures and, along with that committee, the licensed architects and engineers, the League of Municipalities, there's an informational piece that will go out to municipalities and will go out to all licensed architects and engineers that have a list of guidelines and checkpoints that they can look at when they inspect their buildings and structures. I think of building and structures as included in this bill the way it is. You're encouraging them to not do inspections, which is what the work we've done has tried to accomplish, is inspections and repairs, you know, in an efficient manner so that they do the regular inspection, they fix it before it becomes a hazard. Along with my family, we started the...it's called The Alexa Check. Back on May 19, 2004, my daughter Alexa was killed in a bathroom in Crete, Nebraska, when a cinder block wall fell on her. It was basically another child bumped into it, it fell over onto Alexa and killed her. Well, after having the bathroom inspected, there was...there was some walls with similar problems that were fixed. There was walls in there similar to the one that fell on Alexa that hadn't been fixed. And I feel if this is removed from the bill you'll encourage inspections, you'll encourage them to do things when they find problems with facilities, buildings and structures, whether it be bleachers, whether it be bathrooms, whether it be locker rooms. I guess I would like to see something that promotes safety, and not only safety. If this legislation, if this is taken from the legislation, I think you give the directors and the public entities some teeth when they go

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in to budget time at their local governments to get money for maintenance. Everybody wants to pass a bond to build a brand new park, but nobody wants to put the money up for maintenance, and I think with this legislation they will know that if this is not included in the legislation that they will have to fix problems when they find them in an efficient manner or they're going to be held accountable and I think that will give them a level of safety. And I think that public entities do owe a level of safety when it comes to facilities. It is realistic for them to inspect facilities on a regular time frame, in my opinion. And I'll accept any questions. [LB566 LB567 LB564]

SENATOR ASHFORD: Thanks, Mr. Foster. Any questions of Mr. Foster? Thank...yes, Senator Chambers. [LB566 LB567 LB564]

SENATOR CHAMBERS: You used the word "expectation" and I think that's very important, because that means you are looking to this public entity to make sure that a place you, as a member of the public, are invited to come to will not harm you if you exercise due care. [LB566 LB567 LB564]

ROGER FOSTER: Right. [LB566 LB567 LB564]

SENATOR CHAMBERS: But what this can result in is them knowing that there's a problem and ignoring it. And even though they have not given the public reason to believe that public entities are their enemies, not their protectors, not their friends, but they stand a better chance of being harmed or even killed by going to this public entity than in ordinary circumstances. So if I understand you correctly, I said that for the purposes of context, it is your view that as long as this reference to "structures" remains in place things that have happened that resulted in the tragedy you described could happen again. [LB566 LB567 LB564]

ROGER FOSTER: Right. [LB566 LB567 LB564]

SENATOR CHAMBERS: But the difference would be now that we know that such a thing can happen, because it did, and knowing that we still chose, as a Legislature, not to do anything to prevent it or put pressure on those entities to prevent it. [LB566 LB567 LB564]

ROGER FOSTER: And I don't want to take up any more time, I know there's a lot of people, but to address... [LB566 LB567 LB564]

SENATOR CHAMBERS: No, I asked the question. Answer. [LB566 LB567 LB564]

ROGER FOSTER: Okay. [LB566 LB567 LB564]

SENATOR CHAMBERS: Take the time you need to answer. [LB566 LB567 LB564]

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ROGER FOSTER: Okay. Senator Louden said earlier there was circumstance that people should notice there are dangers. I don't think when some of these things were looked at that you thought about young kids that may not have the know-how to look at an obvious danger, or people who are blind or people who are mentally disabled or physically disabled when they enter a building or structure may not have the capacity to notice an obvious danger. And I think that's where...I think that's where there is a certain amount of expecting this from the public when they enter those facilities. [LB566 LB567 LB564]

SENATOR CHAMBERS: One other question: When you sat in that chair, you didn't expect it to collapse and you wind up sprawled on the floor, did you? [LB566 LB567 LB564]

ROGER FOSTER: No. [LB566 LB567 LB564]

SENATOR CHAMBERS: I want some people who are going to come later to think about that, because I'm going to have some different kinds of questions to ask them. But thank you. [LB566 LB567 LB564]

ROGER FOSTER: Thank you. [LB566 LB567 LB564]

SENATOR ASHFORD: Thank you, Mr. Foster. Appreciate it. Senator Friend, we're going...I know this is a little bit catawampus, but we're going to have you come over anyway and talk about your bill, because all the people here are going to talk about all three. [LB566 LB567 LB564]

SENATOR FRIEND: What was the term you just used? [LB566 LB567 LB564]

SENATOR ASHFORD: Catawampus. That's Westside, learned that at Westside High School. (Laughter) It's the only thing I learned there, Senator Chambers, but... [LB566 LB567 LB564]

SENATOR LATHROP: Please don't start that. [LB566 LB567 LB564]

SENATOR PEDERSEN: Don't start that. [LB566 LB567 LB564]

SENATOR CHAMBERS: I won't take the bait. [LB566 LB567 LB564]

SENATOR ASHFORD: I just wanted to change the subject. No, go ahead, Senator Friend. [LB566 LB567 LB564]

SENATOR FRIEND: Thank you, Chairman Ashford and members of the Judiciary

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Committee. My name is Mike Friend, last name spelled F-r-i-e-n-d. I represent northwest Omaha, District 10 in the Nebraska Legislature. Thank you for the forum. Members of the Judiciary Committee, in September of 2006 the Nebraska Supreme Court, in the case of Bronsen v. Dawes County, expressly overruled more than a quarter century of precedent. It declared that the Recreational Liability Act did not provide to governmental entities the limited immunity that it provided to private landowners who made their land available free of charge to the public for recreational purposes. As a result, the state and its political subdivisions are now liable for damages for accidents occurring on public lands caused by simple negligence. Believing that they were protected by the Recreational Liability Act, the state and many of its political subdivisions have opened thousands of acres of public land for hunting, fishing, swimming, hiking, biking, and numerous other types of recreational and leisure activities, and now they find themselves open to what some would consider significant legal and financial vulnerability. If action is not taken to change the law, the state and its political subdivisions will be forced in many ways to close or severely limit the access to their lands, or severely limit the scope and range of activities permitted on those public lands. This has already happened in some parts of the state with regard to sled runs and skate parks, hunting, and trail activities. With the advent of warmer weather and a lot more outside activity, the subdivisions will have to restrict even more activities to limit the exposure to those lawsuits. The purpose of this legislation is to return the law to the status as it was previously understood by many and as we relied upon it, and to restore the limited immunity standard for publicly owned lands made available for recreational purposes. All this bill really does is it changes the definition of owner under the Recreational Liability Act to include the state of Nebraska, a state agency and any political subdivision of the state, bringing them clearly under the terms of the act. A few closing observations, I guess, or initial observations; I'm not making a closing. If we...I feel this. I think if we don't act, private landowners will have in some ways more tort protection under the law than our governmental subdivisions. I think we have to make a policy decision whether that should be the case or not. While people are demanding more and more leisure and recreational opportunities, our cities and counties will be forced to cut back, probably be forced to cut back--I think that that's probably an argument that's going to occur here today--on those opportunities while spending more for insurance and risk management. For over 25 years, the political subdivisions have relied more or less on this presumed protection under the RLA, and the citizens have come to expect more recreational opportunities than they can now afford to provide. In their opinion in Bronsen, the court did not find that the state or its political subdivision had done anything wrong, necessarily. They weren't trying to remedy some particular injustice. They simply said that until now the courts have been reading the statute incorrectly and all we're trying to do is more or less amend the statute so it reads as I think we had understood it. Simply put, I was approached to deal with this issue and I hope the Judiciary Committee, with, you know, obviously with the help of others here, will realize that we maybe come up with a little bit of problem identification, as I like to call it, that there is a legitimate problem. With that, I would be happy to answer any

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questions I could possibly answer for this committee. [LB564]

SENATOR ASHFORD: Any questions of Senator Friend? [LB564]

SENATOR LATHROP: Maybe just one or two. [LB564]

SENATOR ASHFORD: Senator Lathrop. [LB564]

SENATOR LATHROP: Oh, I'm sorry. Did you have some? [LB564]

SENATOR ASHFORD: Go ahead, Senator Lathrop. [LB564]

SENATOR LATHROP: Believe me. Okay. [LB564]

SENATOR ASHFORD: These are tough calls, but I go with Senator Lathrop. [LB564]

SENATOR LATHROP: All right. We'll start out. Yeah. Senator Friend, if we were to amend the Recreational Liability Act to include the state and the political subdivisions, is it your intention then that somebody that makes a visit to the courthouse doesn't have the protection of the general tort law? [LB564]

SENATOR FRIEND: No, that would not be my intent. [LB564]

SENATOR LATHROP: And so when the other functions of government, besides those in which we involve ourselves in recreational activities, or provide recreational facilities, the standards of tort law would prevail as far as you're concerned. [LB564]

SENATOR FRIEND: It's a good question. I guess that was my intent. I think that...and it's also my understanding of the various readings that I've made here is that would be the case. The intent would be carried out. [LB564]

SENATOR LATHROP: Okay. And the...your intent with the amendment that you're making to the Recreational Liability Act would be to extend to playgrounds and state parks and places like that the protections afforded to private landowners who open their property up for no fee to hunters and fishermen and people like that. [LB564]

SENATOR FRIEND: Correct. [LB564]

SENATOR LATHROP: That's all I have for now. [LB564]

SENATOR ASHFORD: Thank you, Senator Lathrop. Senator Chambers. [LB564]

SENATOR CHAMBERS: Well, Senator Friend, if somebody went to any of the parks

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operated by Game and Parks and paid an entry fee, then they would not have that exemption from liability, would they? Is that your intent? [LB564]

SENATOR FRIEND: I don't know. I don't know, Senator Chambers. I don't know the answer to that because there might be other express statutory authority that does give them. I mean I... [LB564]

SENATOR CHAMBERS: Or do you think they should be liable? If they're going to charge a fee for you to come in, do you think the state should be able to charge somebody money to come to an unsafe condition or circumstances and not be liable to that person? [LB564]

SENATOR FRIEND: My answer to that would be I don't believe that, in Bronsen, that that was...I mean I don't want to be unresponsive to your answer. [LB564]

SENATOR CHAMBERS: That's all right. [LB564]

SENATOR FRIEND: What...I guess I don't exactly know how to respond to that because I don't know how they would be treated right now. [LB564]

SENATOR CHAMBERS: That's why I'm asking you... [LB564]

SENATOR FRIEND: Is that a legitimate answer? [LB564]

SENATOR CHAMBERS: ...what would your intention be. We're starting, in a sense, from ground zero, but not really because the court has told us what the circumstances are now. But these bills are coming in here telling us that the court, in saying that the law had been misread all of this time and should now be read correctly, we're being told let the law now go to a situation where the law was being misread because that's good. Don't bother about unraveling that. Here's what I want to ask you. Do you think that if the state is going to charge a person a fee to enter state lands that person is entitled to believe that he or she will be safe, that due care is exercised by the state to be sure that no hazard is there that will harm one of these persons who has paid money to enter that land? [LB564]

SENATOR FRIEND: Well, I think that there should be...I should have, as well as my family or whoever I brought to that particular state park, a pretty good understanding of a lot of the things that I'm dealing with, but I also think...so, yeah, I think that there should be some protection and not a blanket, you know, immunity, if you will. I mean but at the same time is that really...I don't know that we're enhancing that. I guess that I would let you hash some of that out. I don't know that we're changing anything in regard to that standard of care. [LB564]

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SENATOR CHAMBERS: I was just seeking your view. That's all that I would have at this time. Thank you. [LB564]

SENATOR FRIEND: Yeah. [LB564]

SENATOR ASHFORD: Thank you, Senator Friend. [LB564]

SENATOR FRIEND: I hope that wasn't too unresponsive. I don't... [LB564]

SENATOR CHAMBERS: It was absolutely unresponsive, but I'm going to let you go because (laughter) there will be some lawyers up here and I'm going to... [LB564]

SENATOR FRIEND: Wouldn't be the first time I was unresponsive. [LB564]

SENATOR CHAMBERS: That's the most responsive answer you've given me. (Laughter) [LB564]

SENATOR ASHFORD: Well, you have another shot at it, Senator Friend, later if you want. Thank you, Senator Friend. [LB564]

SENATOR FRIEND: Thank you. [LB564]

SENATOR ASHFORD: Okay, we're back to proponents of all three bills. Mr. Kratz. [LB564 LB566 LB567]

PAUL KRATZ: (Exhibit 9) Good afternoon. My name is Paul Kratz. I'm the...it's K-r-a-t-z. I'm the city attorney for Omaha. What's being passed out to you right now is a resolution from the city of Omaha supporting the two bills that are before you for...let's see, LB566 and LB564. I would like to thank both Mr. Loudon and Mr. Friend for introducing...oh, Senators Loudon and Friend for introducing the bills. Briefly, I'd like to describe to the committee some of the various recreational activities that we currently have in Omaha. Presently, we have 214 parks within the city of Omaha. On those parks obviously there are a number of playgrounds. We have sledding. We have a skateboard park. We have a BMX track. We have an off-road bike track, dog park, a number of ball fields, baseball and football, soccer, rugby. We do have docks. We have tennis. Obviously, we have swimming pools, water playgrounds, and we have trails. In fact, we have, within the metropolitan area, we have about 80 miles worth of trails that people use on a daily basis. The city is supporting the bills for several reasons. One that Mister...Senator Friend had mentioned is that originally when the Political Subdivision Tort Claims Act was introduced, that was an effort to put the political subdivisions on the same level as private citizens. With this decision, that has essentially changed that. Now the political subdivisions are in a worse position than private citizens. A private citizen who has recreational activity on his or her property would be protected. Under the decision, it is

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not...the city is not. These bills, again, are asking you to put that back in order. Secondly, as a result of the decision, and if one of these bills is not passed, the city is going to have to take a look at the allocation of the resources. Certainly, as litigation becomes more, as insurance rates go up, I think you'll see that the cities with the finite number of dollars will start to shift those dollars from recreational activities to risk prevention, essentially, and for...to cover judgments. Currently, the cities are in a position where we can provide, at least under the old law, can provide some extreme activities, such as the skateboard parks. With the change, I don't think you're going to see that, and certainly no private entity will do that. The result is essentially you're going to see a reallocation of resources. The public expects a number of activities, recreational activities, and those activities will not be provided to the same extent they have been before. And finally, I would just like to mention that this Legislature has accepted, for the past 25 years or so, the decisions by the Supreme Court of...that the political subdivisions are covered under the Recreational Liability Act. Again, these bills are simply an effort to reaffirm that position. [LB564 LB566]

SENATOR ASHFORD: Senator Chambers. [LB564 LB566]

SENATOR CHAMBERS: Mr. Kratz, are you a lawyer? [LB564 LB566]

PAUL KRATZ: Yes, sir. [LB564 LB566]

SENATOR CHAMBERS: How long have you been a lawyer? [LB564 LB566]

PAUL KRATZ: Thirty-one years. [LB564 LB566]

SENATOR CHAMBERS: And where did you take... [LB564 LB566]

PAUL KRATZ: Thirty-two years. [LB564 LB566]

SENATOR CHAMBERS: How many? [LB564 LB566]

PAUL KRATZ: Thirty-two years. [LB564 LB566]

SENATOR CHAMBERS: Okay. Where did you take your degree? [LB564 LB566]

PAUL KRATZ: University of Nebraska at Lincoln. [LB564 LB566]

SENATOR CHAMBERS: Is it still an accredited law school? [LB564 LB566]

KRATZ: Yes, sir, it is. [LB564 LB566]

SENATOR CHAMBERS: A lawyer takes the case of his or her client and represents that

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client zealously,... [LB564 LB566]

PAUL KRATZ: Yes, sir. [LB564 LB566]

SENATOR CHAMBERS: ...if he or she is to be ethical. [LB564 LB566]

PAUL KRATZ: Yes. [LB564 LB566]

SENATOR CHAMBERS: You're here to represent the city's interests zealously. [LB564 LB566]

PAUL KRATZ: Yes, sir. [LB564 LB566]

SENATOR CHAMBERS: You are telling us...I'll put it as a question. Are there activities...is there land, are there facilities made available by the city on which dangerous activities can take place? [LB564 LB566]

PAUL KRATZ: Well, the obvious one is the skateboard park, certainly the BMX park, motorbike park, the dog parks, and then maybe on a little bit different level would be certainly all the sledding activities in our parks. We have,... [LB564 LB566]

SENATOR CHAMBERS: Okay. [LB564 LB566]

PAUL KRATZ: ...out of 214 parks, we have 58 where sledding occurs. [LB564 LB566]

SENATOR CHAMBERS: Should a public entity provide areas where unsafe activities are going to occur, with the knowledge that these activities are unsafe? [LB564 LB566]

PAUL KRATZ: I guess that presupposes...well, I guess that's not the right way to put it. You need to look at what you consider unsafe. There are obviously different levels of risk. [LB564 LB566]

SENATOR CHAMBERS: Let's say dangerous then. [LB564 LB566]

PAUL KRATZ: I think, again, different levels of danger. Certainly a skateboard park has some element of risk and probably at the higher level; swinging has some risk but at the very lower level. I think the city has to take into consideration where do you want to go along that scale. As I mentioned earlier, there would not be a skateboard park, assuming no private entity would provide a skateboard park because of the liability. The city, under its Recreational Liability Act, is able to and there seems to be a demand for skateboard parks, along with some of the other activities. [LB564 LB566]

SENATOR CHAMBERS: But you would want to be able, as a representative of the city,

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to provide the location where these known dangerous activities can occur, or you used the term "risk," "risky," and when the person is injured that person is on his or her own in terms of trying to be made whole. [LB564 LB566]

PAUL KRATZ: I think as the people, citizens, engage in any recreational activity there is an element of risk, and that is part of the recreational activity. [LB564 LB566]

SENATOR CHAMBERS: Well, you're conceding what I put in my question, what I'm asking you with those things being said and agreed to. Isn't it true that the city is saying that these areas will be provided, knowing that there are risky activities occurring, and if a person is harmed the city does not want to have any responsibility in making that person whole if he or she should be injured? [LB564 LB566]

PAUL KRATZ: I don't think I'd agree with that. [LB564 LB566]

SENATOR CHAMBERS: Well, tell me what you're saying then. [LB564 LB566]

PAUL KRATZ: Okay. Under the prior interpretation of the Recreational Liability Act, the city would be liable if it was willfully and wantonly negligent. [LB564 LB566]

SENATOR CHAMBERS: Let's...let's... [LB564 LB566]

PAUL KRATZ: And... [LB564 LB566]

SENATOR CHAMBERS: ...discuss what that is. [LB564 LB566]

PAUL KRATZ: I figured you'd like to. [LB564 LB566]

SENATOR CHAMBERS: If something is willful, what does that mean the state of mind of the person who does it would be? [LB564 LB566]

PAUL KRATZ: I think when you're looking at the negligence aspect, you're looking at what's the defendant's state of mind--did the defendant know or have knowledge that there was a dangerous situation that the entity allowed to continue? [LB564 LB566]

SENATOR CHAMBERS: Well, if you fail to exercise due care then that means you know that there's something here that you ought to do, but you're not going to do it. And if you fail to do that which you ought to do and somebody is harmed, then you are liable under an ordinary negligence standard. [LB564 LB566]

PAUL KRATZ: That's ordinary negligence, yes, sir. [LB564 LB566]

SENATOR CHAMBERS: Now you want to go beyond that. You know that it's

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dangerous. You know that if a person is unaware of that and is harmed, you don't have liability in that situation. [LB564 LB566]

PAUL KRATZ: What I'm suggesting is if we have an ordinary negligence standard you are going to see fewer activities. You're going to see cities allowing fewer activities, recreational activities, because of that particular standard, because of likely... [LB564 LB566]

SENATOR CHAMBERS: Wouldn't that be wholesome for society to require its public entities to exercise due care? Or you're telling us we should take an affirmative stand and say you don't have to exercise due care; we're not requiring you to do that? Let me go to something else, because I don't want to badger you or argue, because others will be here.. [LB564 LB566]

PAUL KRATZ: That's fine. [LB564 LB566]

SENATOR CHAMBERS: ...that I can ask the same question. But I do want you to tell me about willful and wanton. If I'm a property owner, I can have on my property what the law describes as an attractive nuisance, isn't that true? And somebody can be hurt on my property without me having saying come on my property. And if there's the attractive nuisance and the person is hurt, I'm liable, isn't that true? [LB564 LB566]

PAUL KRATZ: That's correct. [LB564 LB566]

SENATOR CHAMBERS: Would you tell, for those of us who don't know what it is, what an attractive nuisance is. [LB564 LB566]

PAUL KRATZ: I think an example that's used a lot in law schools is a swimming pool, an unguarded swimming pool where kids tend to want to play. That's attractive to them so they go, and without a fence around it, it can become a nuisance and can become dangerous. [LB564 LB566]

SENATOR CHAMBERS: And society, through its lawmakers, have taken...or through interpretations by the court, has taken the position that I owe a duty of care to people that I don't even want on my property, that I have not invited on my property, that I don't expect to come on my property. But the law is going to say, because of this that I have on my property, it can be expected that somebody might come and be harmed by that. Now the city is not liable for an attractive nuisance right now, is it? [LB564 LB566]

PAUL KRATZ: I think the distinction, and you're kind of getting to it, is that there's a difference between private owners, private landowners, and cities. Cities, I wouldn't say have an obligation, but part of what people expect of a city is to provide recreational activities for the betterment of the citizens. [LB564 LB566]

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SENATOR CHAMBERS: Well, if this law were now passed I would still be liable if there's an attractive nuisance on my property. Would the city be liable for what would be an attractive nuisance if that land were privately owned, or would it not be liable? [LB564 LB566]

PAUL KRATZ: Under the law as it is today, the city would be liable for any ordinary negligence if somebody gets hurt. [LB564 LB566]

SENATOR CHAMBERS: But they're not worse off than the private owner because I'm still under the burden of the attractive nuisance. [LB564 LB566]

PAUL KRATZ: No, under the...see, again, you're confusing some of the issues. Under the existing law, private owners can allow people to come onto their property, I mean, to hunt or to do whatever and to engage in recreational activities, and not be liable. Currently, the cities would be liable... [LB564 LB566]

SENATOR CHAMBERS: That's why I use this... [LB564 LB566]

PAUL KRATZ: ...under an ordinary negligence standard. [LB564 LB566]

SENATOR CHAMBERS: That's why I put the wild card in. There is no invitation, no expectation, but I'm still liable. Tell me about willful. How is willful different from ordinary negligence? [LB564 LB566]

PAUL KRATZ: Willful is...again, it goes back to knowledge. If you have knowledge of a dangerous situation or a situation that can harm people and you allow that to continue, that's a willful action. Under ordinary negligence, you can certainly a lot of times act properly and take standard care and still become liable if there's an accident. [LB564 LB566]

SENATOR CHAMBERS: Well, if you exercise due care under the circumstances, you're not going to be liable, but... [LB564 LB566]

PAUL KRATZ: That's up to the court, but you're right. [LB564 LB566]

SENATOR CHAMBERS: Exactly. [LB564 LB566]

PAUL KRATZ: And that can vary from jury to jury. [LB564 LB566]

SENATOR CHAMBERS: That's why I was stating what the principle is. And then when the application comes to the facts, the court may go one way or the other. But we're dealing with the principles. [LB564 LB566]

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PAUL KRATZ: Yes. Uh-huh. [LB564 LB566]

SENATOR CHAMBERS: I still don't see the difference between willful and ordinary, so let's go to wanton, which is even a worse level of inappropriate attentiveness. What is wantonness? [LB564 LB566]

PAUL KRATZ: I think it's similar to willful, maybe just a tad bit more (laugh) in that you know something is bad, you allow it to continue, and you do it maybe with the intent that somebody might get hurt. [LB564 LB566]

SENATOR CHAMBERS: Now... [LB564 LB566]

PAUL KRATZ: Now that might be an extreme definition, but... [LB564 LB566]

SENATOR CHAMBERS: ...when we go to malicious, how is malicious different from wanton or willful? [LB564 LB566]

PAUL KRATZ: I'd say it's very similar to wanton. [LB564 LB566]

SENATOR CHAMBERS: Could malice imply some level of intent? [LB564 LB566]

PAUL KRATZ: Intent to harm, sure. [LB564 LB566]

SENATOR CHAMBERS: Because malice indicates a bad motive... [LB564 LB566]

PAUL KRATZ: Uh-huh. [LB564 LB566]

SENATOR CHAMBERS: ...and to have a bad motive you must know something and intend that bad result. They talk about... [LB564 LB566]

PAUL KRATZ: Again, it gets back to knowledge. [LB564 LB566]

SENATOR CHAMBERS: They talk about excusing people unless there is willful or malicious... [LB564 LB566]

PAUL KRATZ: Uh-huh. [LB564 LB566]

SENATOR CHAMBERS: ...frame of mind involved. If you don't get this law you said that there's certain activities the city of Omaha no longer will allow on its property. Is that what I understood you to say? [LB564 LB566]

PAUL KRATZ: I think that's a fair assumption. I'm not sure yet what those are going to

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be, certainly skateboard parks, BMX parks and maybe some others. [LB564 LB566]

SENATOR CHAMBERS: And how would that hurt society as a whole? [LB564 LB566]

PAUL KRATZ: Well, for example, with the skateboard parks, and you'll hear some of this testimony later on, is that for awhile there we had skateboarders all over the city of Omaha, downtown and in businesses skateboarding. [LB564 LB566]

SENATOR CHAMBERS: But how would... [LB564 LB566]

PAUL KRATZ: Okay. [LB564 LB566]

SENATOR CHAMBERS: ...doing away with it on city property help society as a whole? [LB564 LB566]

PAUL KRATZ: Because those skateboarders will go back to the street, so to speak, the sidewalks. By having a place for skateboarders to go, they're off the street, they're not destroying private property and they're in a confined...not..."confined" is not the right word, but in a location where they can engage in the activity. [LB564 LB566]

SENATOR CHAMBERS: Does the city of Omaha provide those facilities for any group of youngsters wherever they live, even if they happen to be poor and can't afford skateboards, so that they'll have a place to go? Or are these provided for the kids of maybe the affluent people, those who live in certain neighborhoods, those who can afford these, and so you then provide places for them, don't you? [LB564 LB566]

PAUL KRATZ: We have...well, we have one skateboard park in Omaha at this point. We have plans for another one in the northwest part of Omaha. [LB564 LB566]

SENATOR CHAMBERS: I mean something other than...where? [LB564 LB566]

PAUL KRATZ: Northwest part of Omaha. [LB564 LB566]

SENATOR CHAMBERS: Where's the current one? [LB564 LB566]

PAUL KRATZ: Current one is at Roberts Park at... [LB564 LB566]

SENATOR CHAMBERS: Where's Roberts Park? [LB564 LB566]

PAUL KRATZ: ...75th and Center Street. [LB564 LB566]

SENATOR CHAMBERS: Do you have any east of 75th Street? [LB564 LB566]

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PAUL KRATZ: Again, the one in northwest, I'm not sure where that was going to be. I think around... [LB564 LB566]

SENATOR CHAMBERS: I thought you said around 80th or something? [LB564 LB566]

PAUL KRATZ: No, I thought somewhere...I shouldn't say. It's going to be in the northwest part of town. [LB564 LB566]

SENATOR CHAMBERS: Are there people who live east of 72nd as far as the city of Omaha is concerned? [LB564 LB566]

PAUL KRATZ: Sure. Of course there are, and we provide a number of activities and parks, any and all parts of Omaha. [LB564 LB566]

SENATOR CHAMBERS: But not a discrete activity like skateboarding, right? [LB564 LB566]

PAUL KRATZ: Skateboarding is just provided (inaudible), provided one location. [LB564 LB566]

SENATOR CHAMBERS: And all that's going to be west of 72nd. [LB564 LB566]

PAUL KRATZ: Well, the one that's there now. Again, I'm not sure where the planned one is going to go. [LB564 LB566]

SENATOR CHAMBERS: So most of the people who skateboard, based on the knowledge that the city has of demographics, are west of 72nd. Isn't that true? [LB564 LB566]

PAUL KRATZ: I'm not sure we looked at that. I don't think that was a consideration. I think it... [LB564 LB566]

SENATOR CHAMBERS: Would you build a skateboarding facility where people don't live who are going to skateboard? [LB564 LB566]

PAUL KRATZ: Right now we have the one skateboard park and people from all over, actually, the region come there and skate. [LB564 LB566]

SENATOR CHAMBERS: But why don't you put one east of 72nd? [LB564 LB566]

PAUL KRATZ: Again, I think at the time that decision was made it was an available park and I couldn't tell you the reasons why. That was before my time, but... [LB564 LB566]

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SENATOR CHAMBERS: You said you're planning to build another one. [LB564 LB566]

PAUL KRATZ: We are. [LB564 LB566]

SENATOR CHAMBERS: Are you going to build it east of 72nd? [LB564 LB566]

PAUL KRATZ: I'm not sure of the planned location. I know it's in the northwest quadrant of town. [LB564 LB566]

SENATOR CHAMBERS: Have you advised the city where they ought to build it? [LB564 LB566]

PAUL KRATZ: I don't do that, no. That's for the parks and recreation department. [LB564 LB566]

SENATOR CHAMBERS: Maybe you ought to tell them that somebody thinks you ought to give them some advice because you've just made it...you've put me in a position where I'm going to oppose all these bills and I'm going to dig my heels in, so tell them to start getting 33 votes. [LB564 LB566]

PAUL KRATZ: Okay. [LB564 LB566]

SENATOR ASHFORD: Thank you, Senator Chambers. Anybody else? [LB564 LB566]

SENATOR LATHROP: I do. [LB564 LB566]

SENATOR ASHFORD: Yes, Senator Lathrop. [LB564 LB566]

SENATOR LATHROP: Mr. Kratz, I'd like to visit with you about the activities that you've described and we've seen in the newspaper, subsequent to this decision, that the city has closed hills that people sled on. [LB564 LB566]

PAUL KRATZ: Yes. [LB564 LB566]

SENATOR LATHROP: And there's talk of closing the BMX parks, and then there's talk of closing the skateboarding rinks. Are there any other extreme activities? [LB564 LB566]

PAUL KRATZ: Those are probably the more risky ones at this point. [LB564 LB566]

SENATOR LATHROP: And would... [LB564 LB566]

PAUL KRATZ: But, for example, we have people that fall on trails. That's not as risky as

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some of these other activities, but as they're biking on a trail they'll slip... [LB564 LB566]

SENATOR LATHROP: Okay. [LB564 LB566]

PAUL KRATZ: ...and get injured. [LB564 LB566]

SENATOR LATHROP: The activities that you've described, they involve risk and they involve danger, but not because of anything the city has done other than make the facility available to people who want to engage in that activity. [LB564 LB566]

PAUL KRATZ: It's the activity itself. [LB564 LB566]

SENATOR LATHROP: Okay. And so let's talk about the skateboarding park, since I've seen it before. This is a place where kids can, or people can, go down hills and jump their skateboards and do all those kind of things, and a lot of times when they jump, they can go in the air, fall and break something... [LB564 LB566]

PAUL KRATZ: That's correct. [LB564 LB566]

SENATOR LATHROP: ...like their leg or their arm. [LB564 LB566]

PAUL KRATZ: That's correct. [LB564 LB566]

SENATOR LATHROP: But, as a matter of fact, in those activities, what makes them dangerous is the activity itself and not anything the city has done. [LB564 LB566]

PAUL KRATZ: No. In fact, we try to make as safe as we could skateboard park. [LB564 LB566]

SENATOR LATHROP: All right, and that perhaps is my point, is that you appreciate the tort law encourages people to be safe. [LB564 LB566]

PAUL KRATZ: That's correct, yes. [LB564 LB566]

SENATOR LATHROP: All right, encourages them to repair and fix hazards. [LB564 LB566]

PAUL KRATZ: Yep, which we do. [LB564 LB566]

SENATOR LATHROP: And as a general statement, the city of Omaha doesn't have a problem with the duty to fix, find and fix and repair hazards that can be repaired. [LB564 LB566]

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PAUL KRATZ: In fact, whenever we build any park, any playground or water park, we find national standards, build to those standards, and then attempt to maintain and repair them whenever we're aware of an issue or a problem. [LB564 LB566]

SENATOR LATHROP: Okay. So the concern really isn't with those occasions when the city is negligent or careless, but those occasions when somebody gets hurt participating and having something happen to them that's inherent in that type of an activity. [LB564 LB566]

PAUL KRATZ: Sure. Accidents are going to happen, simply put. [LB564 LB566]

SENATOR LATHROP: So what we're looking for with this bill, and it sounds like you support this as a vehicle, not to let the city off from careless behavior but to get it out from under claims that might follow people getting hurt doing what they call extreme activities. [LB564 LB566]

PAUL KRATZ: That's correct. [LB564 LB566]

SENATOR LATHROP: Okay. Thanks. [LB564 LB566]

PAUL KRATZ: Uh-huh. [LB564 LB566]

SENATOR ASHFORD: Yes, Senator Chambers. [LB564 LB566]

SENATOR CHAMBERS: Mr. Kratz, how long have you been the lawyer for the city of Omaha? [LB564 LB566]

PAUL KRATZ: Eight years, nine years, since 1998. [LB564 LB566]

SENATOR CHAMBERS: Are you aware of the location of Kellom school? [LB564 LB566]

PAUL KRATZ: Yes, generally. [LB564 LB566]

SENATOR CHAMBERS: Are you aware that there used to be a swimming pool right near Kellom school? Kellom school is in north Omaha. Are you aware of that? [LB564 LB566]

PAUL KRATZ: I know that. [LB564 LB566]

SENATOR CHAMBERS: And there's no... [LB564 LB566]

PAUL KRATZ: I don't remember if there was a pool there or not, but I just...I don't have

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knowledge of that. [LB564 LB566]

SENATOR CHAMBERS: They closed it and filled it in. Did there use to be a swimming pool at Miller Park? [LB564 LB566]

PAUL KRATZ: I believe so. [LB564 LB566]

SENATOR CHAMBERS: There's not one there anymore, is there? [LB564 LB566]

PAUL KRATZ: Now we've gone away from some of the pool concept to the swim parks. [LB564 LB566]

SENATOR CHAMBERS: But I'm just...that's not my question. That swimming pool is not there anymore, is it? [LB564 LB566]

PAUL KRATZ: I believe you're correct, it's not. [LB564 LB566]

SENATOR CHAMBERS: There are no swimming pools in north Omaha operated by the city anymore, are there? [LB564 LB566]

PAUL KRATZ: We have a water park or two water parks in north Omaha. [LB564 LB566]

SENATOR CHAMBERS: Is a water park a swimming pool? [LB564 LB566]

PAUL KRATZ: That's...well... [LB564 LB566]

SENATOR CHAMBERS: How deep is the water in a water park? [LB564 LB566]

PAUL KRATZ: It's shallow and... [LB564 LB566]

SENATOR CHAMBERS: Okay, so here's my question, Mr. Kratz. I think you understand English and I think I speak it clearly,... [LB564 LB566]

PAUL KRATZ: Yes, you do. [LB564 LB566]

SENATOR CHAMBERS: ...despite having been educated by OPS. Are there any swimming pools operated by the city of Omaha in north Omaha? [LB564 LB566]

PAUL KRATZ: There are water parks. There...I don't believe there are any swimming pools. [LB564 LB566]

SENATOR CHAMBERS: Are there swimming pools operated by the city of Omaha in

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west Omaha? Does the city of Omaha... [LB564 LB566]

PAUL KRATZ: No, I think the furthest one west is 120th and Center Street, but west of that there are none. [LB564 LB566]

SENATOR CHAMBERS: Is that considered west Omaha? [LB564 LB566]

PAUL KRATZ: Well, at one time. I'm not sure it is anymore as the city grows west. Middle...I'd say it's middle Omaha. [LB564 LB566]

SENATOR CHAMBERS: You don't get...you don't get the direction I'm going, do you? [LB564 LB566]

PAUL KRATZ: I understand where you're going. [LB564 LB566]

SENATOR CHAMBERS: In other words, where black people and poor white people live... [LB564 LB566]

PAUL KRATZ: No, I... [LB564 LB566]

SENATOR CHAMBERS: ...things are not made available there. You have... [LB564 LB566]

PAUL KRATZ: I disagree with you on that. [LB564 LB566]

SENATOR CHAMBERS: ...you've closed the only two swimming pools in the black community. [LB564 LB566]

PAUL KRATZ: And we had a long, I guess, debate on that through the city council and... [LB564 LB566]

SENATOR CHAMBERS: I'm not talking about a debate. [LB564 LB566]

PAUL KRATZ: ...and it was... [LB564 LB566]

SENATOR CHAMBERS: I'm talking about the fact. [LB564 LB566]

PAUL KRATZ: ...and it was decided that water parks... [LB564 LB566]

SENATOR CHAMBERS: The swimming pools are not there, are they? [LB564 LB566]

PAUL KRATZ: Water parks are instead. [LB564 LB566]

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SENATOR CHAMBERS: The swimming pools are not there, are they? [LB564 LB566]

PAUL KRATZ: The swimming pools are not; water parks are. [LB564 LB566]

SENATOR CHAMBERS: Tell me then how many pools you closed where white people lived and put water parks in place? [LB564 LB566]

PAUL KRATZ: I know one that we closed in west Omaha right across from the Western Electric plant on 100 and, golly, 30th and L Street, and that was closed in, covered up, and playground equipment put there. [LB564 LB566]

SENATOR CHAMBERS: How many others? [LB564 LB566]

PAUL KRATZ: Oh, you need to talk to the parks people on that. That's the only one I can remember. [LB564 LB566]

SENATOR CHAMBERS: But there are...there are still swimming pools in the areas where white people live, aren't there? [LB564 LB566]

PAUL KRATZ: There aren't too many. [LB564 LB566]

SENATOR CHAMBERS: There are some though still, aren't they? [LB564 LB566]

PAUL KRATZ: Like I say, the furthest west is... [LB564 LB566]

SENATOR CHAMBERS: See, you know what? You're making my point. People from Omaha cannot even acknowledge forthrightly what the circumstances are, so the unwillingness to be forthright creates the impression that something is being hidden or something does not want to be acknowledged. So I don't have any more questions of you, but I think you get my point,... [LB564 LB566]

PAUL KRATZ: I just think you're being unfair... [LB564 LB566]

SENATOR CHAMBERS: ...and if you don't get it, others in this room do. [LB564 LB566]

PAUL KRATZ: I think you're being unfair to the city of Omaha, Senator. That's all I'll say. [LB564 LB566]

SENATOR CHAMBERS: Well, I don't care what you think about that. You've been unfair to the people and the young people who could go swimming before and they cannot now. [LB564 LB566]

PAUL KRATZ: Yes, they can. [LB564 LB566]

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SENATOR CHAMBERS: So you think I care about you and the city of Omaha? You've got good jobs. Where...do you live east or west of 72nd Street? [LB564 LB566]

PAUL KRATZ: I'm west. [LB564 LB566]

SENATOR CHAMBERS: I don't have anything else to ask you. [LB564 LB566]

PAUL KRATZ: Okay. [LB564 LB566]

SENATOR ASHFORD: Just so I understand, is there a difference, in your mind, between the extreme activities, such as skateboarding, and the normal park activities that traditionally are undertaken by a city? Is there a...as mentioned in the Bronsen case, is there...is there...should there be a different standard of liability when we're dealing with a function that is a standard, traditional function, versus a extreme? [LB564 LB566]

PAUL KRATZ: The issue or problem with that is where you draw that line. You know, I'm not sure. Again, it's kind of a continuum of risk. [LB564 LB566]

SENATOR ASHFORD: I mean there's a...there are a line of cases that talk about the traditional functions of government, such as a part or...there...and versus a skateboarding rink. [LB564 LB566]

PAUL KRATZ: Maybe it's more passive/active type of distinction. [LB564 LB566]

SENATOR ASHFORD: Possibly. Or just something that's...I think more...I think the focus is more on the traditional nature of the function. I mean if a park is a traditional city function, the city...the standard of care in making that park free and clear of, you know, problems for the public is a function, traditional function, of the city, part of the department, of the city departments and so forth and so one. It's something done all the time every day,... [LB564 LB566]

PAUL KRATZ: Uh-huh. [LB564 LB566]

SENATOR ASHFORD: ...has been for 150 years. So is there a difference in applying it, a negligence standard, to something like that versus applying a more extreme...that standard to a more extreme function such as... [LB564 LB566]

PAUL KRATZ: I guess maybe where would you put sledding in that activity in that? [LB564 LB566]

SENATOR ASHFORD: Well, I think that's in the gray area. I mean it's clearly a park

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function. Traditionally, parks have been used for sledding. [LB564 LB566]

PAUL KRATZ: Yeah. Traditionally it is. [LB564 LB566]

SENATOR ASHFORD: And so potentially the standard of care would be less...the standard of care would be greater. I'm sorry. It would be the opposite, and... [LB564 LB566]

PAUL KRATZ: With sledding. [LB564 LB566]

SENATOR ASHFORD: Right. I just...do you see that distinction or is that... [LB564 LB566]

PAUL KRATZ: I'm not sure. Again, I'm not sure where you draw the line. I understand what he's saying and, again, I get to this continuum of risk and... [LB564 LB566]

SENATOR ASHFORD: But...so, and just so I fully understand this, then the city's position is that in all of those functions, whether it's a traditional function such as a park or a...and a...or a skateboard, that the same...you're suggesting that the same standard should apply. [LB564 LB566]

PAUL KRATZ: Yes, I am. [LB564 LB566]

SENATOR ASHFORD: And that's the willful, wanton, reckless standard. [LB564 LB566]

PAUL KRATZ: Yes. [LB564 LB566]

SENATOR ASHFORD: Okay. Thank you. Thanks, Paul. [LB564 LB566]

PAUL KRATZ: Thank you. [LB564 LB566]

SENATOR ASHFORD: Next proponent. [LB564 LB566 LB567]

WES SHEETS: (Exhibits 10, 11) Good afternoon, Senator Ashford, members of the Judiciary Committee. I must state right up front I'm not an attorney, but my name is Wes Sheets. It's spelled S-h-e-e-t-s. I live in northeast Lincoln at 6710 Marcia Lane. I appear before you today to represent the Nebraska Division of the Izaak Walton League, which is a conservation organization made up of 19 chapters between Imperial and Wayne, Nebraska, primarily hunters and fishermen. Fishermen have embraced this organization for over 80 years now, particularly involved with the outdoors. And of course, our concern...oh, I must tell you that we certainly support the conditions of LB564 and LB565. For over 40 years, since the Recreational Liability Act was first established in, I believe, 1964, there seemed to be common understanding by our folks out in the

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country anyway that a person that offered and provided free access for outdoor recreational activities would be relieved of limited liabilities, not to include those more notable malicious and difficult problems. It seems that the recent court decision did remove that opportunity for political subdivisions, and I would note that the University of Nebraska has removed and restricted an outdoor activity of hunting up here at the Mead Research Center in the most recent hunting season. It was a good spot for young people to go and learn out of doors, and again their life understanding the outdoors. At any rate, the Nebraska Division of the "Ikes" would support clarifying that statute and identifying that political subdivisions are covered under the Recreational Liability Act. We, in all fairness to Senator Loudon, we do have concerns about removing the section that provides that landowners could charge and still be provided that limited liability protection. And in fact that, you know, I'm a small entrepreneur and I certainly am expected to provide liability protection insurance. It's a good business practice. I think that should be the case with those landowners. In no way do we want to see landowners reduce their opportunities and reduce the common trust that sportsmen have with those landowners, because it's been a great relationship over a long time. So with that, I guess I would offer to answer any question you might have. I might indicate that to shorten your hearing a bit I did provide a testimonial notice from the Nebraska Council of Sportsmen's Clubs and perhaps you won't have to call Joe Herrod up to explain that. So that went in the box also. [LB564 LB566 LB567]

SENATOR ASHFORD: Thanks, Wes. Any questions of Wes? Thank you, Wes. [LB564 LB566 LB567]

WES SHEETS: Thank you for letting me testify. [LB564 LB566 LB567]

SALLY DANEKAS: (Exhibit 31) Chairperson, member of the committee, my name is Sally Danekas, D-a-n-e-k-a-s. I'm from Milford, Nebraska. I am here today in favor of the Nebraska Recreational Act. I am a firm believer that kids need to be kids. They need to have a place to sled, skateboard, you know, ballparks, all that. I mean as a child myself, I remember sledding down a city street until the cops came and told us we had to leave, so a place for them to sled/skate I think is very important. My objection, and I'll try not to be redundant, is the exception of including building and structures. I feel that if somebody goes to a park...and there's a difference. If somebody is skateboarding and they go up a hill and they fall and they break their leg, to me, there is a difference than if you go into a rest room and a wall falls and breaks your leg. And I feel that private, public, city, state, they should be responsible to have their buildings and their structures safe for the children...or for the Nebraska people. So, I mean, I have more, but some of it's already been spoke about, so if there's any questions, I'd be happy to answer. [LB564 LB566 LB567]

SENATOR ASHFORD: Sally, thank you for your testimony. Do we have...Steve. [LB564 LB566 LB567]

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SENATOR LATHROP: Just briefly. It sounds to me like what you're saying is you want to have the cities keep the parks open that provide these extreme sports or the forum for these extreme sports. [LB564 LB566 LB567]

SALLY DANEKAS: Well, I think the kids are safer in a city park sledding and skating than they are on the streets. [LB564 LB566 LB567]

SENATOR LATHROP: Okay. So what your interest is today is that these remain open, but you'd agree that it's important that the city, or the...or whatever political subdivision we might be talking about, be careful when they can be. [LB564 LB566 LB567]

SALLY DANEKAS: Correct, and I... [LB564 LB566 LB567]

SENATOR LATHROP: If they see a hazard, they should fix it. [LB564 LB566 LB567]

SALLY DANEKAS: Correct. [LB564 LB566 LB567]

SENATOR LATHROP: And what you're suggesting is, is that some things are hazardous even when done carefully and the city shouldn't be sued in those instances. [LB564 LB566 LB567]

SALLY DANEKAS: Correct. [LB564 LB566 LB567]

SENATOR LATHROP: Okay. [LB564 LB566 LB567]

SALLY DANEKAS: And it's one thing if, you know, a sledding hill, you know, all of a sudden a rock works its way up, than a rest room--and I'm going back to a rest room because that was my niece that was killed in Crete--and a rest room that is inspected or gone into, you know, several times a week to check for toilet paper, napkins, whatever, you know, versus a hill that, you know, they might grade once a year or twice a year, whatever. So I think there's certain aspects of the bill that are great, because kids need to be kids. You can't say they can't do this, they can't do this. They're going to do it anyway. So if there's a fairly safe place for them to go is one thing versus going into a public building/structure and getting hurt because it's not maintained. [LB564 LB566 LB567]

SENATOR LATHROP: Okay. [LB564 LB566 LB567]

SALLY DANEKAS: Okay? Anybody else? [LB564 LB566 LB567]

SENATOR ASHFORD: Thanks, Sally. Yes, Senator Chambers. [LB564 LB566 LB567]

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SALLY DANEKAS: Yes. [LB564 LB566 LB567]

SENATOR CHAMBERS: When you say kids, do you mean all kids or certain kids who live in certain areas of the city? [LB564 LB566 LB567]

SALLY DANEKAS: All. All kids. All kids should have a safe place to play. [LB564 LB566 LB567]

SENATOR CHAMBERS: Okay. Thank you. [LB564 LB566 LB567]

SENATOR ASHFORD: Thank you. [LB564 LB566 LB567]

SALLY DANEKAS: Thank you very much. [LB564 LB566 LB567]

SENATOR ASHFORD: Thank you. [LB564 LB566 LB567]

JO DEE ADELUNG: (Exhibit 12) Good afternoon, Chairman Ashford and Judiciary Committee members. My name is Jo Dee Adelung, spelled J-o D-e-e A-d-e-l-u-n-g. I am the president of the League of Nebraska Municipalities and I am the mayor of Nebraska City. The League of Municipalities represents the interests of 531 cities and villages across the state. Virtually every municipality has playground equipment and recreational facilities that are free for public use. There are literally hundreds of public activities that occur in our communities. Because they have received so much attention in relation to the Recreation Liability Act, I would like to speak to you today about a specific free public-use facility in our communities, skateboard parks. The International Association of Skateboard Companies reports that there are over 12 million skateboarders in the United States. Skateboarding is an activity that can be accessible to everyone and the demographics of skateboarding show that it appeals to all ages and income levels. Skate parks can be a remedy to the decades long clash between law enforcement and the skateboarders, and skaters are increasingly being banned from public areas. In Nebraska City, we have a city ordinance prohibiting skateboarding on sidewalks in our downtown area. In 2003 the U.S. Consumer Protect Safety Commission found that skateboarding is safer than baseball...excuse me, than basketball, football, and bicycling. The commission warns the more serious skateboard injuries that end up resulting in hospitalization typically involve a crash with a motor vehicle. Skateboarding is safest on surfaces of a well-designed skate park. Skateboarders in Nebraska City raised the funds necessary to construct a \$150,000 professional skate park in Steinhart Park. No tax dollars were budgeted for this project. They completed grant applications to foundations and to the Game and Parks Commission, and they sold a lot of hot dogs. The kids gained invaluable experience working with the city council and city staff. They came to council meetings, formed committees, had community meetings, made presentations, and worked with a company that built their skateboard park. We thought this story had a happy ending. The skateboarders were in a safe place--Steinhart Park,

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well lighted, very visible, on brand new, professional quality equipment. They were out of the streets and off the sidewalks in Nebraska City. The 2006 Nebraska Supreme Court decision changed all that. With only one summer of use, our new skate park now has locks on the gates, and the same kids who worked so hard to raise the money to build it are now prohibited from using it. The lesson our kids have learned is that even if you do everything the right way for the right reasons for all students and all children in our community, government can still come along and take it all away. I met with the skateboarders at the high school last Friday. As a result of that meeting, over a dozen kids wanted to come with me to attend today's hearing. I only had room for three, and they are with me here today representing their fellow skateboarders. I asked the rest of the kids to supply me with some testimony in their own words and I will just do them briefly. Zach Larson (phonetic) e-mailed me comments that include the following quote: I come from a family where obesity is hereditary and one of the ways to stop that is physical exercise, like skateboarding. How am I supposed to do that without the help of public parks? I suppose I will have to get a membership to a gym or join some sort of class that costs money. I don't believe losing weight should cost any money. Kids today don't care about activities unless they're fun and one of the ways to make exercise fun is by having a jungle gym or slides that kids can run up, down and around. I'm 15 and I still use parks to have fun. They are a place where you can express yourself, which is one of skateboarding's main goals, hang out with your friends, and have fun without using drugs or alcohol, end of quote. Scotty Campbell (phonetic) said, quote: I think the skate park should be reopened so that teens will not ride down main street and get their boards taken away by the police. It gives teens and others something to do, plus kids know where their parent...parents know where their kids are. I have also to submit a petition that was signed by a number of kids at the high school, 117. I want to thank Senator Flood (sic) for introducing LB564. I'm here to support LB564 and LB566, and I hope that you will support that as well and get...place local and state governments back under the protection of the Recreation Liability Act. [LB564 LB566]

SENATOR ASHFORD: Any questions? Senator... [LB564 LB566]

SENATOR LATHROP: Oh, Senator Schimek has got one. Maybe... [LB564 LB566]

SENATOR ASHFORD: Oh, Senator Schimek. Yes, Senator Schimek. [LB564 LB566]

SENATOR SCHIMEK: Thank you, Mr. Chairman. [LB564 LB566]

SENATOR ASHFORD: I really have to start looking both...to both sides. [LB564 LB566]

SENATOR SCHIMEK: Thank you for being with us, Madam Mayor. [LB564 LB566]

JO DEE ADELUNG: You're welcome. You're welcome. [LB564 LB566]

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SENATOR SCHIMEK: Steinhart Park is a city owned park. Is that correct? [LB564 LB566]

JO DEE ADELUNG: Yes, ma'am. [LB564 LB566]

SENATOR SCHIMEK: And the skateboard was built with private funds, but it was...the skateboard facility was built with private funds, but it would still be under the purview of the city. [LB564 LB566]

JO DEE ADELUNG: Absolutely. It is in a publicly owned park. Nebraska City has 300 acres of parks. When the kids came to us for the idea of building a skate park, we just didn't have the tax dollars to do it, so they went out and did the fund-raising. The city had some in-kind things. We helped lay the concrete. We put the fence up. We... [LB564 LB566]

SENATOR SCHIMEK: Okay. I... [LB564 LB566]

JO DEE ADELUNG: But it is in the public park so... [LB564 LB566]

SENATOR SCHIMEK: That's all I needed to know... [LB564 LB566]

JO DEE ADELUNG: Okay. [LB564 LB566]

SENATOR SCHIMEK: ...because I'm thinking about the situation in Crete and in that situation the public facility that the little Foster girl was in was built by a private organization, and I don't know if it had ever been inspected. And I'm thinking that under those circumstances the city probably should have had some responsibility. They...the parents were told that they didn't because of the Recreation Liability Act, and things apparently changed with the Supreme Court decision. But there's such a fine line here, I understand that, and I don't know how it should be...how the line should be legally drawn. But I don't think cities should be absolved from all responsibility. So how do you...how do you address that in the case of your skate park? [LB564 LB566]

JO DEE ADELUNG: You bring up a really good point, and one of the things that was really important to us as a municipality is that a professional skate park company built our park. We have relied in the past, for many years, parents helped build playground equipment from scratch in schools and in parks, and I've known communities where parents got together and just kind of built a makeshift skateboard park. It was very important to us that a professional company was hired to make up the plans and to bring in professional equipment, so in our opinion that was one of the things that we did to help with that risk. [LB564 LB566]

SENATOR SCHIMEK: So why are you nervous about this and why are you locking up

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the skateboard park? [LB564 LB566]

JO DEE ADELUNG: Because it is a free activity for kids. We do not charge for the kids to skate there, and in order for us to have coverage we would have to have CPR-certified attendants there. We would have to open it in the morning, like a swimming pool. We would have to charge entrance and treat it as such, because right now we don't know, for example, if during the day a rock shows up at the skateboard park and we don't check it on an hourly basis by any way, shape, or form. It's free to the public and that's why we are so concerned. And for us to now be able to find insurance to cover a skateboard park, from what we're understanding, may be close to impossible because so...almost...I think all the other states are covered. [LB564 LB566]

SENATOR SCHIMEK: So you didn't have insurance before this Supreme Court decision? [LB564 LB566]

JO DEE ADELUNG: We relied on the fact that we would be under the Recreation Liability Act when we built this park. [LB564 LB566]

SENATOR SCHIMEK: Okay. [LB564 LB566]

JO DEE ADELUNG: It was with that in mind, and we did our research to make sure that we would be, or we would not have built it and our kids would still be in the streets and on the sidewalks, and it's...that's a dangerous situation. [LB564 LB566]

SENATOR SCHIMEK: Thank you. [LB564 LB566]

JO DEE ADELUNG: You're welcome. [LB564 LB566]

SENATOR ASHFORD: Any other questions of the mayor? [LB564 LB566]

SENATOR CHAMBERS: If a child is hurt and the parents don't have insurance--and I don't know if everybody in Nebraska City is rich but there are cities where people live who don't have much money--what becomes of that injured child as far as payment of medical bills and maybe care if the child is going to need ongoing medical care? In Nebraska City, what would become of such a child? [LB564 LB566]

JO DEE ADELUNG: Senator Chambers, I guess I don't know the answer to that. What was most important to me as mayor of our community is that all kids have a safe place to go that is frequented by the police department, because they really want to get to know these kids and to be supportive of kids. It's well lighted. It's safe. It's free. It's for everyone. [LB564 LB566]

SENATOR CHAMBERS: I understand all that, but my duty goes beyond that. People

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don't want to look at what becomes of the child who is injured, but I must look at that. And when the only thing I hear from people who support these bills are, well, we don't check it all the time, it's here for all of them, they're not on the streets, but nobody wants to say what will become of the child who is hurt. There are parents who will say, we like this, until that parent's child becomes a quadriplegic. Then that parent is the one. See, I get calls from people all over this state and they want me to have an answer for them. They've gone to their city. Some of them are even referred to me by lawyers and they're told there's nothing here; maybe Chambers can put pressure on...then they'll mention some agency. So if we're going to start out knowing that these are dangerous activities, knowing that children can be seriously hurt, but at the same time looking the other way and say, if they're hurt that's tough, they assume the risk, let adults assume the risk, not children. So I ask you again... [LB564 LB566]

JO DEE ADELUNG: And...and... [LB564 LB566]

SENATOR CHAMBERS: ...and if you have no different answer I'm not going to... [LB564 LB566]

JO DEE ADELUNG: No, I...actually, I almost, if it's and permissible to ask a question in return, we do have some children that live in apartments, downtown Nebraska City, that do not have an area where they can skateboard safely, and they were on the streets and in on the sidewalks. As the mayor of our community, it was more important to me to provide a place for those children, and those are probably the children that you're talking about,... [LB564 LB566]

SENATOR CHAMBERS: Well, if they get hurt. [LB564 LB566]

JO DEE ADELUNG: ...that don't have any insurance. If they got hit by a car while they were in... [LB564 LB566]

SENATOR CHAMBERS: We're past that now. We're at your skateboard park and you don't want to be responsible for what happens to the children there. So I'm saying you now have the facility where these children are invited and encouraged to go, and if they're hurt, the city still doesn't want any responsibility to help make those children whole. Isn't that where we will be if you get your way with these bills? [LB564 LB566]

JO DEE ADELUNG: Unfortunately, financially, I don't think we can take that responsibility or we would not be able to have many of the facilities that we have that are free and available to all children. [LB564 LB566]

SENATOR CHAMBERS: Can you see where our points of view differ? And I'm looking at a responsibility I think the city should have, and you think they shouldn't. So that makes our points of view different, wouldn't you agree? [LB564 LB566]

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JO DEE ADELUNG: I agree. [LB564 LB566]

SENATOR CHAMBERS: Okay. Thank you. [LB564 LB566]

JO DEE ADELUNG: You're welcome. [LB564 LB566]

SENATOR ASHFORD: Any other questions? Senator Pirsch. [LB564 LB566]

SENATOR PIRSCH: Could you tell me again what is your title or what organization are you with? [LB564 LB566]

JO DEE ADELUNG: I'm president of the Nebraska League of Municipalities; in addition to that, mayor of Nebraska City. [LB564 LB566]

SENATOR PIRSCH: Oh, great. Right. I apologize for having to ask you that. [LB564 LB566]

JO DEE ADELUNG: That's fine. I was talking really quickly because I knew I only had three short minutes. (Laugh) [LB564 LB566]

SENATOR PIRSCH: Yeah. And I might not have you comment. I'll put it out there. There may be others who testify after you, but...and perhaps I'd be interested on more of a statewide basis than located to municipality or local government, but just having an understanding, and if you know I'd appreciate an answer. Can we quantify the...either have an understanding of how many serious cases are happening statewide and what the monetary, in terms of personal injury accidents? I guess I'm looking to quantify either the...I'd like to know the number of injuries sustained and the type of places that we're thinking about switching. [LB564 LB566]

JO DEE ADELUNG: Oh, that's interesting, and I don't know whether or not somebody may be addressing that. Just for the record, I have a daughter that was very, very active when she was seven years old, did all kinds of activities, and actually jumped out of a swing and broke her arm. So I think, you know, that kind of... [LB564 LB566]

SENATOR PIRSCH: Yeah. [LB564 LB566]

JO DEE ADELUNG: ...put it all in perspective for me, all the things I made her wear a helmet to do and all the safety apparatus I required her to wear. But it is possible that somebody else may have some information. [LB564 LB566]

SENATOR PIRSCH: Sure. Okay. Well, thank you so much. [LB564 LB566]

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JO DEE ADELUNG: You're very welcome. [LB564 LB566]

SENATOR ASHFORD: Could I just ask a question? How much did it cost to build this park? [LB564 LB566]

JO DEE ADELUNG: A hundred and fifty thousand dollars, and really this was considered to be phase one. [LB564 LB566]

SENATOR ASHFORD: And... [LB564 LB566]

JO DEE ADELUNG: Good professional equipment is expensive and, again, that is what we insisted on. [LB564 LB566]

SENATOR ASHFORD: Okay. I'm just trying...I appreciate, and I understand what you're saying and all the effort that it...but I'm not done yet. [LB564 LB566]

JO DEE ADELUNG: Okay. [LB564 LB566]

SENATOR ASHFORD: If there's \$100...and the city purchased that or provided the funds by having these various activities to raise the \$150,000? Is that how you funded it, or how did you? [LB564 LB566]

JO DEE ADELUNG: No, the skateboarders themselves did all of the fund-raising. [LB564 LB566]

SENATOR ASHFORD: Right. [LB564 LB566]

JO DEE ADELUNG: They wrote the grants. We provided them the space in our public park, in-kind things such as laying the concrete, helping put up the fence, worked with the utilities with getting the light poles up, but essentially the kids did that and I believe it took them at least a couple of years, almost three years I think to do that. [LB564 LB566]

SENATOR ASHFORD: So the city didn't come up with \$150,000. [LB564 LB566]

JO DEE ADELUNG: No, sir. [LB564 LB566]

SENATOR ASHFORD: Is this park, was this park supervised? [LB564 LB566]

JO DEE ADELUNG: No, it is not supervised. [LB564 LB566]

SENATOR ASHFORD: Okay. How often was it open? [LB564 LB566]

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JO DEE ADELUNG: It is open as long as our parks are open, and they are open, I believe, like at...from, like, 6:00 a.m. until, I believe, 11:00 or so at night. And it is well lighted. As a matter of fact, it's right next to...we have a horseshoe area... [LB564 LB566]

SENATOR ASHFORD: Okay. [LB564 LB566]

JO DEE ADELUNG: ...and, you know, lots of other activities going on. [LB564 LB566]

SENATOR ASHFORD: Well, these are all good. I mean, Nebraska City is a wonderful place and I love to go there so you've got a great town, but... [LB564 LB566]

JO DEE ADELUNG: Thank you. [LB564 LB566]

SENATOR ASHFORD: ...what I'm trying to get at this is really a risk management issue, it seems to me. I mean you've created something that's good for kids and your...that's your belief and it probably is. But you do have a responsibility to make sure, it seems to me, that it's safe. [LB564 LB566]

JO DEE ADELUNG: Yes. Yes. [LB564 LB566]

SENATOR ASHFORD: And one way to make sure it's safe is to limit the time. I mean, how many skateboarders are there at 6:00 in the morning? And is it open 12 months out of the year or...? [LB564 LB566]

JO DEE ADELUNG: The parks are actually considered... [LB564 LB566]

SENATOR ASHFORD: I know the parks are open all the time, but... [LB564 LB566]

JO DEE ADELUNG: Yeah, and it is right in the park on main street. It's on Central Avenue, so kids can be there whenever they want to be. [LB564 LB566]

SENATOR ASHFORD: But is...but is there a way that it could be opened only during times of the day when it was most used, after school, during the summer during daylight hours, or even in early? I mean you could stop at 9:00 at night during the summer or whatever. Are there ways you can control the access? Would it be reasonable in your mind to limit the use to times when children would be most...most likely to use it? [LB564 LB566]

JO DEE ADELUNG: I think we would receive complaints because it's right next to the tennis courts and the basketball courts where kids are shooting hoops. Why would kids not be able to be on skateboards and yet be able to play tennis, do horseshoes? [LB564 LB566]

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SENATOR ASHFORD: Well, here's my point. [LB564 LB566]

JO DEE ADELUNG: Okay. [LB564 LB566]

SENATOR ASHFORD: Okay, here's my point. [LB564 LB566]

JO DEE ADELUNG: I'm sorry. Maybe I didn't understand. [LB564 LB566]

SENATOR ASHFORD: No, no, your answering it very...I'm not objecting to your answers. I'm just trying to...I think my view is that there is a difference between a skateboard park and a tennis court, or even a park generally, or even sledding, to some degree. There's a difference. And in this case there was a purchase made and the kids and the community got together, they raised the \$150,000. The city assumed the responsibility of this place for the benefit of the children. That's all great. But it seems to me that, in my mind, that there's an added...once you do that, once you assume that responsibility, you need to think about what the risks involved are. And if we know...we know when those children are playing there, we know when they're most likely to be there, I mean it would seem to me that you could provide some sort of supervision during that time, even though there would be a cost involved in that, even though there would be a cost involved in that. Because those are the kinds of decisions as a...and I know you make a lot of tough decisions as mayor and I'm not trying to belittle what you're saying at all, but it seems to me that you could, as a service--you didn't build it, the citizens built it, they raised the money--that you could provide supervision during reasonable times and still allow those children to play there, which would reduce the risk because you'll have a supervisory person there. Does that make sense at all? I mean there's a little cost involved, but it can't be a big cost. [LB564 LB566]

JO DEE ADELUNG: Well, actually it would be a big cost because, in essence then, we would have to run it as if it were a private company. Kids would be required to...I mean we would be required to staff it and maintain it like a... [LB564 LB566]

SENATOR ASHFORD: Well, just some supervision, someone watching. If a child is injured on that...at that place and there's nothing wrong anywhere, there's no negligence, the child just fell and there's no supervision, children fall when they skateboard. I mean, right? [LB564 LB566]

JO DEE ADELUNG: Sure. They do. Yes, they do. Yes. [LB564 LB566]

SENATOR ASHFORD: Okay. And there's no one there to supervise the children so the child could be injured and the medical help might take a longer time getting there because there's not a supervisor there with a telephone to call for help. All I'm getting at is I think when we try to develop a standard of negligence or a standard of care,

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especially in areas where there's an extreme risk, like a skateboard park, that I believe there are things the city could do to minimize their risk. And if the city did things such as provide supervision that we could, in effect, take that into...this is my view, it may not be anybody else's view on this committee, but we could take that into consideration when we develop a standard of negligence. If the city assumes some responsibility by having someone there, then I think we could reflect that in the law. But when you have a policy that simply opens a dangerous...an attractive nuisance, if you will, a dangerous facility to...open to the public without that supervision, I think you multiply your risk tremendously even though you're doing it for the right reasons. Okay? So...and I...and that's where I'm at in this thing. And I don't know what standard we put in here, but I do know that if the city is going to do this, I think they have to go further. They have to take another step. They can't buy insurance apparently to cover this, or that's what you're telling me, or the insurance would be too great, so you got to go to the next step. That's where I'm at on this. And I appreciate...I'm sorry I gave you...give you a speech. [LB564 LB566]

JO DEE ADELUNG: No. And if I could just make one quick... [LB564 LB566]

SENATOR ASHFORD: Okay. [LB564 LB566]

JO DEE ADELUNG: ...comment, again, with all due respect, we dredged out Steinhart pond and now it is an absolutely beautiful pond and it is stocked with terrific fish and we have a handicapped accessible fishing dock. I am more concerned about kids falling into that pond, which is further...much further away from downtown and the main street where our kids skateboard, because it's right there on Central Avenue where there's a lot of activity. So again, I'm here just talking about skateboard parks, but there are so many other things in our 300 acres. Falling in the pond and with no one being around to see that happen concerns me much greater than kids on the park. [LB564 LB566]

SENATOR ASHFORD: And what I'm...and I...I appreciate your concern. I know you're concerned generally, and I'm not suggesting you're not. I disagree. I think a skateboard park is inherently dangerous. I think it...that it requires a degree of supervision that a pond does not, but that's just me. But I know you've got...I don't have to be mayor, so that's good. [LB564 LB566]

JO DEE ADELUNG: (Laugh) I appreciate...well, I... [LB564 LB566]

SENATOR ASHFORD: Do you have a fire department? [LB564 LB566]

JO DEE ADELUNG: We do have a volunteer fire department. (Laugh) [LB564 LB566]

SENATOR ASHFORD: Good. Volunteer. Okay, good for you. [LB564 LB566]

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JO DEE ADELUNG: Thank heavens, yes. [LB564 LB566]

SENATOR ASHFORD: Thank you, Mayor. [LB564 LB566]

JO DEE ADELUNG: Yes. Yes. [LB564 LB566]

SENATOR ASHFORD: Go ahead. [LB564 LB566]

SENATOR LATHROP: I do have a few questions. [LB564 LB566]

JO DEE ADELUNG: Senator. [LB564 LB566]

SENATOR LATHROP: The...you said that when you built the skate park you had professional designers come in. [LB564 LB566]

ADELUNG: Yes. Yes. [LB564 LB566]

SENATOR LATHROP: And it was built to the highest standards... [LB564 LB566]

JO DEE ADELUNG: Yes. [LB564 LB566]

SENATOR LATHROP: ...and with the best concrete available,... [LB564 LB566]

JO DEE ADELUNG: Yes. [LB564 LB566]

SENATOR LATHROP: ...no cracks in it. It is as safe as one of these things can get. [LB564 LB566]

JO DEE ADELUNG: Absolutely. [LB564 LB566]

SENATOR LATHROP: Has anybody ever got hurt there? [LB564 LB566]

JO DEE ADELUNG: Oh, yes. [LB564 LB566]

SENATOR LATHROP: Okay. Has the city ever been sued? [LB564 LB566]

JO DEE ADELUNG: No, sir, we haven't. [LB564 LB566]

SENATOR LATHROP: Okay. Now tell me, if you can tell me, what the city did wrong that contributed to that person's injury, and we'll take any one of the kids that have broken a leg out there, and it happens, right, or their wrist. Tell me what the city has done that is careless that contributed to that injury. [LB564 LB566]

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JO DEE ADELUNG: Not a thing. [LB564 LB566]

SENATOR LATHROP: Okay. And so right now they're being held to a careless standard, which they didn't do, right? [LB564 LB566]

JO DEE ADELUNG: Yes. [LB564 LB566]

SENATOR LATHROP: No carelessness. [LB564 LB566]

JO DEE ADELUNG: Yes. [LB564 LB566]

SENATOR LATHROP: And what you're asking us to do, so that you can open the park back up, is to make the standard a willful, wanton standard, but no one is even able to show that you guys have done anything careless. [LB564 LB566]

JO DEE ADELUNG: That is correct. That is correct. [LB564 LB566]

SENATOR LATHROP: So we want the cities to be safe. [LB564 LB566]

JO DEE ADELUNG: Yes. [LB566 LB564]

SENATOR LATHROP: And you agree that it's important to maintain the equipment on the playgrounds. [LB564 LB566]

JO DEE ADELUNG: Absolutely. And, sir, we want kids to be safe in Nebraska City not because there's a cloud hanging over us that we might be sued. We want kids to be safe because that's our job and that's what we do. [LB564 LB566]

SENATOR LATHROP: I know, but you shut the park down... [LB564 LB566]

JO DEE ADELUNG: Yes. [LB564 LB566]

SENATOR LATHROP: ...because you were afraid you'd get sued, and you can only be sued, even after this case came down from the Supreme Court, even after you were no longer covered by the Recreation Liability Act, you were sitting out there liable only for careless conduct and you didn't commit any. You hadn't done anything careless. [LB564 LB566]

JO DEE ADELUNG: That's correct. [LB564 LB566]

SENATOR LATHROP: So shutting the skate park down, I mean, you hadn't done anything careless that would get your sued in the first place. [LB564 LB566]

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JO DEE ADELUNG: That's correct. [LB564 LB566]

SENATOR LATHROP: Okay. [LB564 LB566]

JO DEE ADELUNG: Thank you. (Laugh) [LB564 LB566]

SENATOR ASHFORD: Yes, Senator Schimek. [LB564 LB566]

SENATOR SCHIMEK: Yeah, I'm sorry to keep her so long, but... [LB564 LB566]

JO DEE ADELUNG: That's okay. [LB564 LB566]

SENATOR SCHIMEK: ...the other thought that I wanted to inquire about, somebody mentioned swimming pools awhile ago and swimming pools do have supervisors and they do have fences around them, and do you see any difference between a swimming pool and a skateboard park? [LB564 LB566]

JO DEE ADELUNG: The difference, Senator, is that you pay to go swimming and you don't pay to come to this skate park, and that's the difference. [LB564 LB566]

SENATOR SCHIMEK: Okay. [LB564 LB566]

JO DEE ADELUNG: And, however, in Nebraska City we do have some evenings where we have free swimming to make sure that all kids in our community get a chance to experience that, and with this change in the Recreation Liability Act we may have to go back and reconsider that because we do try to open facilities free to all kids and this could absolutely change...change our ability to do that as well. [LB564 LB566]

SENATOR SCHIMEK: Thanks. [LB564 LB566]

SENATOR ASHFORD: Thank you, Mayor. [LB564 LB566]

JO DEE ADELUNG: You're welcome. [LB564 LB566]

SENATOR ASHFORD: Thank you for your candor and... [LB564 LB566 LB567]

COREY KENTER: Good afternoon, Chairman Ashford and committee members. My name is Corey Kenter, spelled C-o-r-e-y K-e-n-t-e-r. A few years ago the skateboarders in Nebraska City were brought together to make one dream become a reality. That dream was to have a place to skate, somewhere that we don't have to worry about getting in trouble. That place was our very own skate park. Whether big or small, we all made our own contributions. I sat outside of the local grocery store selling raffle tickets to gain as much money as we possibly could to help fund our skate park. Three years

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later our skate park was built, and many people came from Iowa, Nebraska, Missouri and other neighboring states. I met many new people and I had an amazing time. However, shortly after, about a year and a half, our park was closed. We had no warnings or anything. I went to skate at the park one day and it was locked up. How can something that we worked for so hard be taken away just like that? That question remains unanswered for me and my friends. Please support LB564 so we can get our skateboard park back open. [LB564]

SENATOR ASHFORD: Okay. Thank you. Thank you for coming down...up, I guess. Any other proponents? Yes, sir, come on up. [LB564 LB566 LB567]

PAUL WIEBELHAUS: Hello. My name is Paul Wiebelhaus, and I am an 8th grader student at Elkhorn Middle School. Closing the skate park will not solve the safety issues, and I feel it will make it worse since the kids who enjoy skating will continue to work in the streets or parking lots or other unsafe places. The skate park at least provided a safe place for kids to skate. It's a place for kids to gather, socialize, and enjoy a sport, and not to be in anyone's way. Thank you for giving me this opportunity to speak to you all. [LB564 LB566 LB567]

SENATOR ASHFORD: Thank you for coming. Thank you very much. Thank you. Any other proponents? [LB564 LB566 LB567]

LYNN JOHNSON: (Exhibits 13, 14, 15, 16) Good afternoon. My name is Lynn Johnson, L-y-n-n J-o-h-n-s-o-n, and I am the parks and recreation director for the city of Lincoln. To begin this afternoon, I'd like to read a letter from Mayor Seng with the city of Lincoln. Dear Senator Ashford and members of the, pardon me, Judiciary Committee: The city of Lincoln supports LB564. The mission of the city of Lincoln Parks and Recreation Department is to enhance the quality of life in our community by offering enriching activities and facilities for all, pardon me, all people in Lincoln. Guided by this mission statement, Lincoln Parks and Recreation manages more than 10 square miles of public park and open space land, 85 playgrounds, 2 skate parks, 2 dog parks, 60 sports fields, and 121 miles of recreation and commuter trails. The recent, pardon me, the recent Nebraska State Supreme Court interpretation that the Nebraska Recreation Liability Act does not apply to public lands causes sincere concerns for outdoor recreation facility managers. We have already seen the impact of this ruling, as public access has been closed to publicly owned recreation facilities in communities across the state. Throughout Nebraska, public investments have been made in outdoor recreation facilities reliant upon limited liability exposure previously afforded under the Nebraska Recreation Liability Act. For example, about \$200,000 of public and private monies have been invested in two new outdoor skate parks, pardon me, skate park facilities in Lincoln in the past five years. The city of Lincoln made the decision to develop the skate parks specifically because we understood the facilities would be covered by the Nebraska Recreation Liability Act. Without the liability protection of Nebraska RLA, the

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city of Lincoln probably would not have constructed these skate park facilities. In addition, we are very concerned that without being covered by the RLA activities such as hiking and biking on trails, sledding, ice skating, dog parks, and general park use could cause the city to restrict these activities and likely greatly increase city costs. We appreciate the introduction of LB564 by Senator Friend and LB566 by Senator Loudon to address liability issues associated with public recreation lands. On behalf of the citizens of Lincoln, I urge the Judiciary Committee's support of LB564. Public state and local recreation lands should have the same standards and protections established for private landowners who allow access to their land for recreation purposes. Approval will assure that Nebraska's children, youth and adults will continue to have access to outdoor recreation facilities and activities that contribute to their fitness and well-being. I also have some additional items here. I have a letter from the Nebraska Recreation and Parks Association, and I would direct your attention to the last page of this and there is a listing of 11 communities who are members of the NeRPA who have either closed facilities or have deferred construction of facilities because of the Nebraska State, pardon me, Supreme Court ruling. It's important to understand that this is not everything across the state. This is just the 11 communities that are NeRPA members. I also have a letter from the Lancaster County Board of, pardon me, Board of Commissioners that supports LB504, pardon me, LB564 and LB566. And perhaps I'll hand this one as well. I have a letter from the Friends of Wilderness Park. This is a private organization that works closely with the city of Lincoln and Lancaster County on the operation of Wilderness Park. I wanted to take just a second to perhaps direct the attention away from skate parks, because skate parks are certainly an issue, but the issue I think that brought this before the State Supreme Court was an issue of an uneven lawn area on a state or, pardon me, on a courthouse lawn. We have over 3,000 acres of mowed lawn within the city of Lincoln. Any one of those lawn areas on a day-to-day basis could have an uneven area on it that somebody could certainly walk across or they could stumble and potentially be injured. I think it's important that we understand that this does not apply just to skate parks. It applies to the broad spectrum of recreation facilities and activities that are available across the state. I did want to also mention that Barb Bettin, who is the CEO of the Lincoln YMCA, intended to be here this afternoon to testify. She was unable to do so because of illness. The YMCA is a significant provider of youth recreation activities within the city. They provide... [LB564 LB566 LB567]

SENATOR CHAMBERS: Excuse me. Don't they designate the YMCA by the color red? Haven't they said that? [LB564 LB566 LB567]

LYNN JOHNSON: Not to my knowledge. [LB564 LB566 LB567]

SENATOR CHAMBERS: Had you noticed the color of that light in front of you? (Laughter) [LB564 LB566 LB567]

LYNN JOHNSON: Oh, that I should stop? I apologize. I'll wrap up very quickly. They

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provide significant recreation opportunities in the community. The sports fields that those games are played on are owned by the YMCA. All of the practice fields, for example, there's 25,000 children who participate in soccer activities in the city, and they practice on open park areas within the city, and that's a concern for us, is a liability associated with those areas. [LB564 LB566 LB567]

SENATOR ASHFORD: Thank you. [LB564 LB566 LB567]

LYNN JOHNSON: And I do apologize. [LB564 LB566 LB567]

SENATOR ASHFORD: Any questions? Senator Chambers. [LB564 LB566 LB567]

SENATOR CHAMBERS: Do you have any idea of the roughly the age of the woman who had been injured and was involved in the case that everybody is discussing? [LB564 LB566 LB567]

LYNN JOHNSON: I understand she was an adult, but beyond that I don't know, Senator Chambers. [LB564 LB566 LB567]

SENATOR CHAMBERS: What facility was she approaching when this incident took place, if you know? [LB564 LB566 LB567]

LYNN JOHNSON: I understand that she was picnicking or sitting at a picnic table perhaps on the courthouse lawn and she walked across the lawn and stumbled. [LB564 LB566 LB567]

SENATOR CHAMBERS: And what was the facility? [LB564 LB566 LB567]

LYNN JOHNSON: It was a courthouse lawn. [LB564 LB566 LB567]

SENATOR CHAMBERS: Would a person be entitled to feel that on the lawn of a courthouse or the courthouse environs they would be safe? Or should they come to the courthouse at their own risk? I know they do that in the courtroom, but that's a different issue. (Laughter) [LB564 LB566 LB567]

LYNN JOHNSON: Well, my perception and, as I said, we manage 3,000 acres of mowed lawn area within the city, I don't think we can expect that all 3,000 acres are level and even. [LB564 LB566 LB567]

SENATOR CHAMBERS: How many miles of street do you have, because you don't...you don't blade them very well. You don't. Lincoln doesn't clean its streets when it snows. I've been coming down here 30...this is my 37th or 38th, my 37th year. Why doesn't Lincoln clean its streets? Are they not liable if somebody has an accident

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because the streets had not been cleared or snow might be piled in the middle of the street? [LB564 LB566 LB567]

LYNN JOHNSON: Unfortunately, I can't address that and I do apologize. That's...snow removal is within the public works department's realm and I can't speak directly to that. I apologize. [LB564 LB566 LB567]

SENATOR CHAMBERS: Should we say that there would be no liability for Lincoln or any city which does not plow its streets when it snows? [LB564 LB566 LB567]

LYNN JOHNSON: I can't address that. I'm sorry. [LB564 LB566 LB567]

SENATOR CHAMBERS: But the city would like us to say that, wouldn't they? Wouldn't they? They'd like to be exempt from liability if a stone fell off the courthouse and hit somebody in the head. They'd like to be immune from liability, wouldn't they? Let me ask it a different way. For what things does the city of Lincoln want to be liable? [LB564 LB566 LB567]

LYNN JOHNSON: That's a good question. I think that the standard is that...is that if we are aware of the hazard or if we are aware of the situation where somebody could be injured, somebody who takes reasonable care in being involved in an activity, if we are aware of that situation, we don't address it, in that case certainly the city is liable and responsible. [LB564 LB566 LB567]

SENATOR CHAMBERS: But the city doesn't want to be liable for anything, does it? [LB564 LB566 LB567]

LYNN JOHNSON: I think "want to" and understand that we are, are perhaps two different things. [LB564 LB566 LB567]

SENATOR CHAMBERS: That's why I want an answer to the question I'm asking you. Are you aware of anything for which the city of Lincoln wants to be liable? Are you aware of anything? [LB564 LB566 LB567]

LYNN JOHNSON: We'd certainly like to avoid liability. [LB564 LB566 LB567]

SENATOR CHAMBERS: So there's nothing they want to be liable for. Isn't that true? [LB564 LB566 LB567]

LYNN JOHNSON: I guess I don't know how to answer that question. I'm sorry. [LB564 LB566 LB567]

SENATOR CHAMBERS: Yes or no. [LB564 LB566 LB567]

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LYNN JOHNSON: I don't...to me it's not a yes or no question. It's we understand that there's liability out there. [LB564 LB566 LB567]

SENATOR CHAMBERS: What did you say your job is? [LB564 LB566 LB567]

LYNN JOHNSON: I'm the parks and recreation director, and we understand that there are inherent risks and liabilities associated with providing public recreation facilities. [LB564 LB566 LB567]

SENATOR CHAMBERS: Is grass green usually? [LB564 LB566 LB567]

LYNN JOHNSON: Normally, except this time of year, yeah. [LB564 LB566 LB567]

SENATOR CHAMBERS: Is snow generally white? [LB564 LB566 LB567]

LYNN JOHNSON: Correct. [LB564 LB566 LB567]

SENATOR CHAMBERS: Does snow fall from above? [LB564 LB566 LB567]

LYNN JOHNSON: Yes. [LB564 LB566 LB567]

SENATOR CHAMBERS: Does grass grow from beneath? [LB564 LB566 LB567]

LYNN JOHNSON: Typically. (Laughter) [LB564 LB566 LB567]

SENATOR CHAMBERS: So you know the difference between (inaudible) generally. Generally you know the difference between some things. [LB564 LB566 LB567]

LYNN JOHNSON: I do. I do. [LB564 LB566 LB567]

SENATOR CHAMBERS: Okay. That's all I have. Thank you. [LB564 LB566 LB567]

LYNN JOHNSON: Thank you. [LB564 LB566 LB567]

SENATOR ASHFORD: Thank you. I'm sorry. Senator McDonald has a question. [LB564 LB566 LB567]

SENATOR McDONALD: Did you pass out this list of towns? [LB564 LB566 LB567]

LYNN JOHNSON: I did, yes. [LB564 LB566 LB567]

SENATOR McDONALD: You might add St. Paul to that list. [LB564 LB566 LB567]

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LYNN JOHNSON: Okay. We will be happy to. And I apologize, the letter that's being distributed is a copy of the letter that I read into the record from Mayor Seng. [LB564 LB566 LB567]

SENATOR ASHFORD: Thank you. [LB564 LB566 LB567]

LYNN JOHNSON: Thank you. [LB564 LB566 LB567]

SENATOR ASHFORD: How many other...where are we in this thing? How many other proponents do we have? Okay. How about opponents? Okay. Very well. And a neutral. Go ahead. [LB564 LB566 LB567]

GLENN JOHNSON: (Exhibit 32) Okay. Senator Ashford, members of the Judiciary Committee, my name is Glenn Johnson, G-l-e-n-n J-o-h-n-s-o-n. I'm the general manager of the Lower Platte South Natural Resources District here in Lincoln. I'm appearing here on behalf of that natural resource district, the Nebraska Association of Resources Districts, all 23 districts, and the Nebraska Water Resources Association in...to offer support on LB564 and LB566. Natural resource districts across the state own and manage nearly 16,000 acres of public land scattered all across the state. They provide public access and recreational use. Most of these areas are multipurpose projects that include recreation as an incidental benefit. For example, (inaudible) built a flood control dam and it includes recreation use, flood control channels, ground water recharge projects, wetland protection and restoration projects, wildlife management areas, river access points, conservation corridors and trails. The majority of these facilities are located in rural areas and have minimal structures or other recreational facilities. The primary recreation uses are hiking, fishing, hunting, bicycling, equestrian, picnicking, camping, nature enjoyment, basically outdoor uses. These NRD areas fill an important niche between the urban parks and the larger state park facilities. They're much more of a local use facility in most cases. These areas were developed and are maintained by the limited NRD staffs and local volunteers, and with only a couple of exceptions all of these areas do not require a fee or permit to use. They're all free to use. Again, the districts are concerned with the potential liability exposure from the public use at these areas without the protection of either the Recreation Liability Act or the public Recreational Liability Act proposed in LB564...or LB566. Some of the activities may need to be curtailed or areas completely closed to public access. We feel this would be a significant loss to the local communities and residents, and actually a waste of the investment of the public funds that went in to develop some of those facilities. We'd urge the committee to support the bills; introduce one or both to the Legislature. We do thank the introducers for the introduction and for the opportunity to testify today. [LB564 LB566 LB567]

SENATOR ASHFORD: Thank you, sir. Any questions? Senator Chambers, go ahead.

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No, that's all right. No, I think you were first. Senator Lathrop, go ahead. I don't want you to...(laugh) [LB564 LB566 LB567]

SENATOR LATHROP: You're with the NRD, is that right? [LB564 LB566 LB567]

GLENN JOHNSON: Right. [LB564 LB566 LB567]

SENATOR LATHROP: And you said that you have lakes or ponds or trails or what is it that the NRD has that people can use? [LB564 LB566 LB567]

GLENN JOHNSON: You mentioned several. Yes, we have lakes that are open for fishing, public access; we have recreation trails, we have open lands that are either wildlife management, open for hunting, for wildlife enjoyment, so...wetlands would be another category, so there's... [LB564 LB566 LB567]

SENATOR LATHROP: Okay. Did you close any of them down after the Supreme Court decision that seemed to precipitate... [LB564 LB566 LB567]

GLENN JOHNSON: To my knowledge, none of those have yet been closed down, no. [LB564 LB566 LB567]

SENATOR LATHROP: Okay. And does the NRD to which you belong or to which you represent today, do they inspect the properties for hazards that might injure people that come onto them? [LB564 LB566 LB567]

GLENN JOHNSON: Certainly, yeah. [LB564 LB566 LB567]

SENATOR LATHROP: Okay. [LB564 LB566 LB567]

GLENN JOHNSON: We have regular inspection. [LB564 LB566 LB567]

SENATOR LATHROP: And if they see something that is a hazard, do they fix it? [LB564 LB566 LB567]

GLENN JOHNSON: Yes. [LB564 LB566 LB567]

SENATOR LATHROP: Okay. Have they...just, again, the witnesses come up here and they talk about how they want to create the standard of willful, wanton before they're liable, and nobody is telling me that they want to change from being careful to careless. Do you follow me? [LB564 LB566 LB567]

GLENN JOHNSON: Correct. [LB564 LB566 LB567]

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SENATOR LATHROP: It sounds like, regardless of what we do here, you're still going to be careful at the NRD, yes? [LB564 LB566 LB567]

GLENN JOHNSON: Yes. [LB564 LB566 LB567]

SENATOR LATHROP: And you're not going to be negligent in the management of your public lands. Is that true? [LB564 LB566 LB567]

GLENN JOHNSON: That's true. [LB564 LB566 LB567]

SENATOR LATHROP: Okay. Thank you. [LB564 LB566 LB567]

SENATOR ASHFORD: Yeah, Senator Chambers, do you... [LB564 LB566 LB567]

SENATOR PIRSCH: Go ahead. [LB564 LB566 LB567]

SENATOR CHAMBERS: Why don't you take Senator Pirsch (inaudible). [LB564 LB566 LB567]

SENATOR PIRSCH: That's all right. [LB564 LB566 LB567]

SENATOR ASHFORD: Why, I... [LB564 LB566 LB567]

SENATOR CHAMBERS: Okay. I will. Okay. Mr. Johnson, your first name you said is Glenn... [LB564 LB566 LB567]

GLENN JOHNSON: Glenn. [LB564 LB566 LB567]

SENATOR CHAMBERS: ...with two Ns. [LB564 LB566 LB567]

GLENN JOHNSON: Yes. [LB564 LB566 LB567]

SENATOR CHAMBERS: Why do you have two when one would serve the purpose? (Laughter) [LB564 LB566 LB567]

GLENN JOHNSON: That would be a question to put to my mother. [LB564 LB566 LB567]

SENATOR CHAMBERS: Then why don't you have two Ns in your last name? [LB564 LB566 LB567]

GLENN JOHNSON: That would be a question to put to my father. (Laughter) [LB564 LB566 LB567]

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SENATOR ASHFORD: Very well said. (Laugh) [LB564 LB566 LB567]

SENATOR CHAMBERS: But actually you do have two Ns in your last name,... [LB564 LB566 LB567]

GLENN JOHNSON: Yes, I do, but not consecutive. [LB564 LB566 LB567]

SENATOR CHAMBERS: ...J-o-h-n-s-o-n. [LB564 LB566 LB567]

GLENN JOHNSON: Not consecutive. [LB564 LB566 LB567]

SENATOR CHAMBERS: So you should have told me, I have two in my last name. But to be somewhat serious now, Senator Lathrop did touch on something and I'm wondering, with all of the attention that has been focused now on the Supreme Court decision and what people are trying to get us to do in raising the standard very high before there's liability, some of these entities that are coming before us are going to relax the amount of care they're showing now and they are going to try to just come below what is willful, and that means this wall still might fall on a child who bumps it and the child will be killed, or a commode could break, or any of a number of things could happen, and these entities, being as savvy as they are, being advised by lawyers and lobbyists, you don't have to spend the money anymore to maintain that you were because we got that sucker of a Legislature to say now, instead of you having to meet the bar at this point, it's up here, so everything below there don't even worry about anymore. In other words, I'm cynical, I'm skeptical, I don't trust them. So if we left the standard where it is right now, that wouldn't hurt what you're going to do at all, would it? [LB564 LB566 LB567]

GLENN JOHNSON: No, it would not change the level of care, the level of inspection that we provide to the properties that we manage. [LB564 LB566 LB567]

SENATOR CHAMBERS: So suppose I want the law to say that if there's negligence then the public entity is liable? And you're not being negligent anyway. You don't have to change a thing, but the public now has assurance that all of these entities must exercise due care. If you do away with the negligence standard, they don't have to exercise due care. They can know that there's a problem here and they don't have to worry about it. They can be careless. And if you won't do that...or can we require that every public entity on every piece of land put a sign explaining that we can be careless, we can maintain facilities where you may be hurt, and we're not going to be responsible for any harm that comes to you. That would be a fair sign, wouldn't it, if it reflects the truth of the situation so that the naive public won't think that because these are their elected or appointed officials that these officials care? Since they don't care, they don't want to be required to care, wouldn't it be fair to at least put a sign that makes that clear

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to the public that due care doesn't have to be shown? [LB564 LB566 LB567]

GLENN JOHNSON: I think the more appropriate sign would be that we provide due care for the facility but certain activities inherently have a level of risk that you voluntarily choose to participate in. If you go hunting on a wildlife management area, wildlife management areas are going to have activities and animals out there, such as a badger, a fox, they live in the hole. They live in holes. You have an inherent risk if you're going on to that property. [LB564 LB566 LB567]

SENATOR CHAMBERS: But I don't care about that. [LB564 LB566 LB567]

GLENN JOHNSON: We're not going to fill the holes and do away with the wildlife management aspect of it. [LB564 LB566 LB567]

SENATOR CHAMBERS: I wouldn't care if a tree fell on a hunter. (Laughter) [LB564 LB566 LB567]

GLENN JOHNSON: Well, a birdwatcher with the binoculars up that's walking along... [LB564 LB566 LB567]

SENATOR CHAMBERS: If you knew there was a unicorn and they didn't know there was a unicorn and a unicorn jumped from behind a tree and speared one, I don't care. That kind of equalizes things. They're out there with these big old guns, killing these little animals, and I care about them? Really, it's not the hunters that I'm looking at. [LB564 LB566 LB567]

GLENN JOHNSON: Certainly. [LB564 LB566 LB567]

SENATOR CHAMBERS: I wish all of them were like Mr. Cheney, but I wish the other one was armed and would reciprocate. (Laughter) But you answered very well and if everybody were exercising the concern that you're talking about here I wouldn't have the worries that I've been expressing thus far. So I applaud you for what you're doing. [LB564 LB566 LB567]

GLENN JOHNSON: Okay. [LB564 LB566 LB567]

SENATOR ASHFORD: Senator Pirsch. [LB564 LB566 LB567]

SENATOR PIRSCH: No, I (inaudible). [LB564 LB566 LB567]

SENATOR LATHROP: Can I just ask one follow-up question? [LB564 LB566 LB567]

SENATOR ASHFORD: Yes. [LB564 LB566 LB567]

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SENATOR LATHROP: And I think maybe you illustrated a point that I've been trying to make, and maybe not very well, and that is it's not negligent conduct that you guys are worried about but liability for inherently risky things. [LB564 LB566 LB567]

GLENN JOHNSON: Certainly. [LB564 LB566 LB567]

SENATOR LATHROP: So the BMX guy who wants to go airborne off a...off some kind of a ramp in a park, the city isn't being careless in that instant, is it? It's somebody just... [LB564 LB566 LB567]

GLENN JOHNSON: Right. [LB564 LB566 LB567]

SENATOR LATHROP: ...deciding they want to do something dangerous. [LB564 LB566 LB567]

GLENN JOHNSON: Uh-huh. That's very true. [LB564 LB566 LB567]

SENATOR LATHROP: Okay. And so... [LB564 LB566 LB567]

GLENN JOHNSON: It's their choice to participate in that act. [LB564 LB566 LB567]

SENATOR LATHROP: And maybe we're getting to the principle that's involved here, and that is the city doesn't have any liability now under an ordinary negligence standard when somebody does something that's dangerous, even when the city has given them a well-constructed, well-designed park. Do you agree with that? [LB564 LB566 LB567]

GLENN JOHNSON: Right. Correct. [LB564 LB566 LB567]

SENATOR LATHROP: Okay. Thanks. [LB564 LB566 LB567]

GLENN JOHNSON: Okay. Thank you. [LB564 LB566 LB567]

SENATOR LATHROP: I appreciate it. [LB564 LB566 LB567]

SENATOR ASHFORD: Thank you. [LB564 LB566 LB567]

GLENN JOHNSON: Okay. [LB564 LB566 LB567]

SENATOR ASHFORD: Hi, John. [LB564 LB566 LB567]

JOHN BONAIUTO: Thank you. Senator Ashford, members of the committee, John Bonaiuto, J-o-h-n B-o-n-a-i-u-t-o, executive director of Nebraska Association of School

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Boards, supporting the bills that you're hearing this afternoon. In representing the public schools across the state and the schools want people to use their playgrounds and their fields and do not want to be closing up any of the facilities for their communities. We like to have people use the high school tracks before or after school, on weekends. And so this issue has raised a level of concern and we're looking for the discussion to occur here and, if something needs to happen, to give us some assistance in providing guidance. We would appreciate that on this issue. With that, I'll conclude my testimony. [LB564 LB566 LB567]

SENATOR ASHFORD: I just have, John, are you covered by any caps on your liability? Do your schools have a limit to how much they can...someone can recover? [LB564 LB566 LB567]

JOHN BONAIUTO: The...I think the way that it works, and a number of our districts have insurance pools and so that I think that... [LB564 LB566 LB567]

SENATOR ASHFORD: Well, is there a legal cap to the... [LB564 LB566 LB567]

JOHN BONAIUTO: I think there's... [LB564 LB566 LB567]

SENATOR ASHFORD: I think there's a legal... [LB564 LB566 LB567]

JOHN BONAIUTO: ...there is, there is, and I'm not sure what that number is. [LB564 LB566 LB567]

SENATOR LATHROP: You're a political subdivision. [LB564 LB566 LB567]

SENATOR ASHFORD: You're a political subdivision,... [LB564 LB566 LB567]

JOHN BONAIUTO: Yes, we are. [LB564 LB566 LB567]

SENATOR ASHFORD: ...so there's a cap to your liability. [LB564 LB566 LB567]

JOHN BONAIUTO: Yes. [LB564 LB566 LB567]

SENATOR ASHFORD: And is this...this, what you're talking about, what we're talking about in this bill, is this a frequent...something that occurs frequently and... [LB564 LB566 LB567]

JOHN BONAIUTO: But, you know, this hasn't been an issue with us and I think what has happened, and you may have touched on earlier with the more extreme activities, but I think that this may become an issue that insurance companies and risk managers will start to look at and say, does the school have additional liability in this area that they

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did not have before? And that's where our question is, is, well, we have higher insurance rates? [LB564 LB564 LB567]

SENATOR ASHFORD: Funny, if a child is injured on the playground or on the facilities on the playground and if those facilities are kept appropriately and if they're supervised by the teachers during the recess period, there really isn't any liability there, is there? I mean someone could claim it, but generally there isn't. [LB564 LB566 LB567]

JOHN BONAIUTO: No. And what we're...I think that what we're more concerned about is the unsupervised times where people are...parents are... [LB564 LB566 LB567]

SENATOR ASHFORD: Okay. So a situation where someone comes on to a playground not during school time and they're... [LB564 LB566 LB567]

JOHN BONAIUTO: Sure. [LB564 LB566 LB567]

SENATOR ASHFORD: Okay. [LB564 LB566 LB567]

JOHN BONAIUTO: Exactly. [LB564 LB566 LB567]

SENATOR ASHFORD: All right. That's... [LB564 LB566 LB567]

JOHN BONAIUTO: Or using the track. A lot of times people like to walk on the track, those... [LB564 LB566 LB567]

SENATOR ASHFORD: It's a fair answer. I appreciate it. Thanks, John. Any other...any other questions? [LB564 LB566 LB567]

JOHN BONAIUTO: Okay. Thank you. [LB564 LB566 LB567]

SENATOR ASHFORD: Yes, sir. [LB564 LB566 LB567]

JASON ALBERS: (Exhibit 33) Good afternoon, Senator Ashford and members of the Judiciary Committee. I am Jason Albers, J-a-s-o-n A-l-b-e-r-s. I have the pleasure of serving as the current president of the Great Plains Trails Network. GPTN is a trails advocacy organization that works closely with the city of Lincoln and the Lower Platte South Natural Resources District in developing hiking, biking, and commuter trails within Lincoln and Lancaster County. Annually GPTN raises private funding of about \$200,000 to assist in funding trail construction projects. To date we have approximately 121 miles of commuter and recreational trails in Lincoln and Lancaster County, with an additional 14 miles to be developed in 2007. Trails are increasingly becoming an important aspect of our transportation system, and are heavily utilized for recreation and fitness activities. A survey conducted on behalf of the city of Lincoln Parks and Recreation Department

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indicates that two-thirds of community residents use trails, resulting in an estimated one million trail visits each year. The operating cost per visit is very low, about 20 cents per visit. Parks and trails are important factors in attracting and retaining young professionals within our community. On behalf of the board of directors of the Great Plains Trails Network, I urge support of the Judiciary Committee for restoring liability protection for public agencies that manage land for recreation use. We are concerned that increasing costs associated with providing liability insurance coverage for public recreation facilities will increase the cost of local government services and may ultimately result in limiting access to important outdoor recreation activities, including trails. Public agencies should have the same responsibilities and protections established for private landowners who make their lands available to the public for recreation activities. I also want to address the notion of possibly closing trails facilities. That brings up another concern in that a lot of our trails are developed with federal transportation enhancement funds under the agreement that they be provided with perpetuity. So with that, I'd address...be happy to answer any questions. [LB564 LB566 LB567]

SENATOR ASHFORD: I just have one. Do you feel there's a difference or do you see a difference between a private landowner opening up his or her land to someone, versus a public entity? Do you feel there's a...should there be a different standard applied to those two kinds of situations? [LB564 LB566 LB567]

JASON ALBERS: I think the concern with public land, trails specifically, is just the volume and the distance covered. I don't know that it's realistic. If you're asking the question of inspection, I don't know if it's realistic to go out and... [LB564 LB566 LB567]

SENATOR ASHFORD: No, I'm just wondering is there something in the nature of a private person, the horse example or the horse trail example that was given earlier, where someone goes on a number of pieces of land that are privately owned versus going on land that the public owns. Is there something just in the nature of the ownership that would...that creates a difference, or do you think it's exactly the same thing? [LB564 LB566 LB567]

JASON ALBERS: I guess it seems like it should be about the same coverage. [LB564 LB566 LB567]

SENATOR ASHFORD: So ownership of private versus public doesn't...shouldn't change the standard of... [LB564 LB566 LB567]

JASON ALBERS: I'm not a lawyer. I don't know all... [LB564 LB566 LB567]

SENATOR ASHFORD: No, just your...just your... [LB564 LB566 LB567]

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JASON ALBERS: Yeah, I don't think so. [LB564 LB566 LB567]

SENATOR ASHFORD: ...just your gut answer. Okay, that's helpful. Thank you. Any other? Anything else? Thanks. [LB564 LB566 LB567]

JASON ALBERS: Thank you. [LB564 LB566 LB567]

JOHN GOC: (Exhibit 17) Chairman Ashford, members of the committee, for the record, my name is John Goc. I'm appearing here today as a registered lobbyist on behalf of the League of Municipalities in support of LB564, LB566. I apologize in advance for my bronchitis, but it sometimes leaves me speechless just about the time the questions start, Senator, so if you can anticipate that. I want to come at this in a little bit different direction and, in order to do that, I want to tell you some things which I think is probably common knowledge and some things that maybe you might know, and then I'm going to conclude with some thoughts that maybe you...you know, it'd be nice if you'd keep in mind when you're conducting your deliberations on these bills. The largest single landowner in the United States of America is the United States of America, and it follows that the largest single recreational landowner in the United States of America is the United States of America. And if you get hurt on lands, recreational lands, of the United States of America, you can sue the United States of America, and you sue them under the Federal Tort Claims Act, and the applicable provision would be 28 U.S.C.A. 1346(b), and I'm going to read you two sentences from it because it's important. Says the...a plaintiff can recover damages from the federal government for injury caused by the negligent or wrongful act or omission of any employee of the government while acting within the scope of his office or employment under the circumstances where the United States, if a private person would be liable to the claimant in accordance with the law of the place where the act of omission occurred. Now this tells us a couple things. It tells us if you're going to sue the federal government for an injury which occurred on a federal land, the law of the state in which that injury occurred would apply, and also it would apply as if the federal government was a private person. Now Bronsen did not affect private landowners, their liability standards. And, therefore, Bronsen did not affect the federal government's liability standard for injuries on federal lands owned and operated by the federal government. And what that has resulted in is two standards of liability for recreational type lands injury on, one, for the state and its political subdivisions, and on the other hand for private individuals and the United States of America, which is the largest recreational landowner in the state. In Nebraska, the federal government owns about 800 square miles, it's somewhere of about 500 million acres, and aside from the total federal enclave, such as the federal forests, they make literally thousands of acres available to...for recreational purposes, but they do that through leases, through memos of understanding, through licensures with a lot of state agencies, principally Game and Parks and a lot of municipalities. Lincoln Holmes Park is an example of that. They operate that under licensure for the Corps of Engineers. Now you heard earlier that one of the problems with this bill for municipalities is

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we...and other political subdivisions, that they haven't had the time really to...may I extend my remarks just briefly? [LB564 LB566 LB567]

SENATOR ASHFORD: Well, just sum up, John, and you can... [LB564 LB566 LB567]

JOHN GOC: All right. The other shoe that's going to drop on this is when those leases, those memos of understanding, those licensure agreements, whatever they call it from those various departments and bureaus come due, the local or state agencies that have agreed...entered into those agreements are going to have to take a real hard look at renewing them because of the different liability standard and, you know, that can't add more recreational land to the state. If I may just...I have a handout I would like... [LB564 LB566 LB567]

SENATOR ASHFORD: Okay, we'll take the handout, but I think we better... [LB564 LB566 LB567]

JOHN GOC: All right. Thank you. [LB564 LB566 LB567]

SENATOR ASHFORD: ...we better go to the questions, if we could, John. [LB564 LB566 LB567]

JOHN GOC: All right, fine. Thank you. [LB564 LB566 LB567]

SENATOR ASHFORD: Any questions? Let's just do the handout and we'll go to the next proponent. [LB564 LB566 LB567]

JOHN GOC: All right. Well, what I provided for the committee is a state-by-state listing of the liability standards and the Recreational Liability Acts. [LB564 LB566 LB567]

SENATOR ASHFORD: Okay. That is helpful. Thank you. [LB564 LB566 LB567]

JOHN GOC: Thank you. [LB564 LB566 LB567]

SENATOR LATHROP: Welcome. [LB564 LB566 LB567]

PEGGY NEEMANN: Thank you. Senator Ashford is leaving. Senators, my name is Peggy Neemann. I am president of Friends of the Dog Parks here in Lincoln. We're a nonprofit organization that... [LB564 LB566 LB567]

SENATOR LATHROP: Peggy, could you spell your last name for us? [LB564 LB566 LB567]

PEGGY NEEMANN: Oh, I'm sorry. [LB564 LB566 LB567]

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SENATOR LATHROP: That's all right. [LB564 LB566 LB567]

PEGGY NEEMANN: N-e-e-m-a-n-n. We're...Friends of the Dog Parks is a nonprofit organization that works with Lincoln Parks and Recreation to make improvements at Lincoln's two dog parks: Rockiness Run at Holmes Lake, which is approximately 25 acres; and Oak Creek Run at First and Cornhusker, which is approximately 17 acres. The users of these dog parks feel very fortunate to have both of these parks in Lincoln. Why are they important to Lincoln? Both of the parks being totally fenced are a safe place where we can exercise and socialize our dogs, and it's just as important for the dogs to socialize and exercise their humans, and from personal experience they're a great place to relieve stress after a long day at work. To have to close these two parks in Lincoln would be very upsetting for both the dogs and their humans. Thank you. [LB564 LB566 LB567]

SENATOR LATHROP: Any questions for Ms. Neemann? These parks haven't been closed down now, have they? [LB564 LB566 LB567]

PEGGY NEEMANN: Not yet. [LB564 LB566 LB567]

SENATOR LATHROP: Okay. Very good. Thank you. [LB564 LB566 LB567]

PEGGY NEEMANN: Thank you. [LB564 LB566 LB567]

JON EDWARDS: Good afternoon, senators. I'll be very brief. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s, and I'm with Nebraska Association of County Officials and we're here today in support of LB564 and LB566. And we just believe that the standard that was in place for the last 25 years has served well the state and we support those bills. [LB564 LB566 LB567]

SENATOR LATHROP: Okay. Any questions for Mr. Edwards? Senator Chambers. [LB564 LB566 LB567]

SENATOR CHAMBERS: Mr. Edwards,... [LB564 LB566 LB567]

JON EDWARDS: Yes, sir. [LB564 LB566 LB567]

SENATOR CHAMBERS: ...are you running for President? [LB564 LB566 LB567]

JON EDWARDS: I am not. [LB564 LB566 LB567]

SENATOR CHAMBERS: Why not? [LB564 LB566 LB567]

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JON EDWARDS: Because my name is spelled different. [LB564 LB566 LB567]

SENATOR CHAMBERS: Okay. (Laugh) That's a good reason. Thank you. [LB564 LB566 LB567]

JON EDWARDS: You're welcome. [LB564 LB566 LB567]

CHRIS DIBBERN: (Exhibit 18) Good afternoon, senators. My name is Chris Dibbern, and that's C-h-r-i-s D-i-b-b-e-r-n, and today I'm representing the Nebraska Power Association, a voluntary organization of all the power providers in Nebraska. They are, many of them, political subdivisions, such as OPPD, NPPD, LES, MEAN, and municipalities, public power districts. We have a lot of green spaces around public power, around lakes, power plants, facilities. We provide trails, arboretums, ballparks, open houses, bird viewing areas, and in the brochure that we're passing around I was pleased to see that recreational activities has been highlighted several times in the brochure. Our mission is not for recreational purposes, but low-cost reliable power consistent with sound business practices. We just want to make sure that the use of public property is available for the public, is still available for recreational and for free services. The standard that we saw in the past is something that we're asking back for. LB566 and LB564 are...resubmit that standard, and we thank Senator Friend and Senator Loudon for introducing the bills. Any questions? [LB564 LB566 LB567]

SENATOR LATHROP: We'll see. Anybody have questions for Ms. Dibbern? Pete? No? Okay, thank you very much. Lynn. [LB564 LB566 LB567]

LYNN REX: (Exhibit 21) Senator Lathrop, members of the committee, my name is Lynn Rex, representing the League of Nebraska Municipalities. We do also appreciate Senator Friend and Senator Loudon for introducing these measures. We think it is important to restore the standard that has been in place for over 25 years. We think it's important because public entities of the state have relied on that and they have created facilities and invested public dollars and also, as you heard today, private dollars that have been raised by other groups to provide these types of facilities. And I would just indicate to you again that what this would do would be to restore for us that when you have nonpaid facilities that in fact...or activities, and we're talking about hundreds and hundreds of activities, recreational activities, that are nonpay across the state of Nebraska, hundreds of thousands of acres involved. I'm going to be leaving with you--thank you very much--letters from the Game and Parks Commission, DED, the city of Norfolk, as well as Pheasants Forever and the Wild Turkey Federation, and they...not that they have anything in common necessarily (laughter) but...or Nebraska Wild Turkey Federation, to put that in play, but the city attorney of Norfolk was going to be here today and because of a funeral is unable to be here, but one of the issues that he wanted to raise, Senator Lathrop, I think is one that you had raised, I think perhaps indirectly, with several folks testifying, and that is with a different standard of care--in

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other words, right now we'd be under an ordinary negligence standard--so would we be reducing our standard of care. Senator Chambers, you talked about that issue. I would submit to you, no, but this is about risk management. This is all about risk management. And the generic definition of that is minimizing the adverse effects of accidental loss at the lowest possible cost. What does that mean? That means if you're Nebraska City and the only way that you can insure a skateboard fact at a quarter million dollars deductible and running it like a swimming pool, that means with somebody CPR-trained, having locks, requiring helmets, doing all the things you need to do, you simply don't open the skateboard park. You can't do that financially or otherwise. And why do that, why provide a place where kids could get hurt? Because it is safer to do it there than have them on the streets and the sidewalks. I would also...I'm obsessed with your lights. (Laugh) So what I would suggest to you also is that as you look at all the other activities, being a klutz as I am, I've had four broken arms when I was a kid; still a klutz, however. Broke my arm at a ice-skating rink in Columbus, Nebraska. The answer wasn't, gosh, we're going to file a claim against the city of Columbus. My dad said, you're a dumb kid, stop doing that already. Playing badminton, doing that, and I can go through my host of other activities that I'm not going to bore you with this afternoon. The point is, what the city of Norfolk letter will point out to you when you read this, the city attorney wanted to just say to you, Senator Lathrop and to the rest of the members of this committee, that when you lower the standard those claims start coming in and the costs of going through, the legal costs for the cities to get the information prepared, and not just the city, Game and Parks, the University of Nebraska, NRDs, counties, schools, because you're talking about the generic playground equipment, there are tremendous costs associated with that. And that's the reason why we want to be placed back under the standard of care that we've been under for the last 25 years, knowingly, when this committee has killed bills because the Attorney General has said you're already under the protection of the act, you don't need those line-items, you're already there. Be happy to respond to any questions that you have, and we really do appreciate you taking time this afternoon to listen to this and take into consideration the hundreds of thousands of activities at stake. [LB564 LB566 LB567]

SENATOR LATHROP: Okay. Let's see if there's any questions. None. Thank you, Lynn. [LB564 LB566 LB567]

LYNN REX: That is very sad, because I had so many answers. (Laughter) Thank you. [LB564 LB566 LB567]

SENATOR LATHROP: That's why we didn't ask. (Laugh) [LB564 LB566 LB567]

LYNN REX: I know. That's...I know that. Thank you very much. [LB564 LB566 LB567]

JOEL PEDERSEN: Good afternoon, senators. My name is Joel Pedersen, P-e-d-e-r-s-e-n, just like the senator from the 39th District. I represent the University of

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Nebraska. And you're thinking what does the University of Nebraska have to do with recreational liability. There was an article in the paper just Thursday, February 8, about the UNL land purchase of farmland in Keith County, about 1,280 acres of farmland, and we are doing that for research purposes about irrigation and drought conditions. We are now in a state of concern because our 1,280 acres of farmland will look and appear every bit like the private farmland right next door to it, yet it will be treated differently because they will call my office and I will tell them, don't allow hunting; don't allow anyone on the property; in fact, maybe you should post it, that this is not...no trespassing allowed. The university has an interest in being a good neighbor. We are not in the business of providing recreational services. We don't have a lot of the types of facilities that you've been talking about today, skateboard parks, but we do own a lot of land. We do own a lot of land that we want to encourage people to visit and be a good neighbor, and have them on our property. The real issue is we had a workable standard for 25 years. It's one that I think the Supreme Court implicitly said was okay for private landowners. In that case, that was not an issue. So private landowners have that standard. It is a standard that apparently has not produced a heartbreaking case that any of the senators have been contacted about up till now. So I just don't think that we are at ground zero. We are not at a situation where we're trying to come up with what should be the liability of public landowners. Think we had a workable standard for 25 years. It was well-settled law, as it is well-settled law that it is not in the public interest to provide insurance out of the public dollars. There's lots of case law on that. There's no public interest in providing insurance for private purposes. We don't want to do that with the public fisc. So those two settled laws are questioned directly by the holding in the case. We want to undo that case. That's the rather simple question that LB564 neatly answers, and that's why the university is in support of LB564. [LB564 LB566 LB567]

SENATOR LATHROP: Any questions? Senator Chambers. [LB564 LB566 LB567]

SENATOR CHAMBERS: Mr. Pedersen, if you don't get LB564, the university will comply with the law. Isn't that true? [LB564 LB566 LB567]

JOEL PEDERSEN: That's never been the issue. Assuming the court endorsed the higher standard for private land, I guess it was under the policy decision that that made more land available for recreational use. Our position is that applies to public land too. Instead of spending resources on claims handling, instead of spending resources on lawyers and deciding risk management issues, the public policy decision was make that land available and tell people you can use it at your own risk. [LB564 LB566 LB567]

SENATOR CHAMBERS: But if it's not then the university is going to continue to function, you will retain that land, you will conduct your experimentation or your research just as planned. Isn't that true? [LB564 LB566 LB567]

JOEL PEDERSEN: We have already closed some facilities. [LB564 LB566 LB567]

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SENATOR CHAMBERS: Okay. [LB564 LB566 LB567]

JOEL PEDERSEN: The Mead site, for example, is closed to recreational activities right now. [LB564 LB566 LB567]

SENATOR CHAMBERS: So none of the responsibilities that university has as a university will be in any way affected if we don't pass these bills. [LB564 LB566 LB567]

JOEL PEDERSEN: Well, again, I guess that's a policy question. If you want to make land available for recreation... [LB564 LB566 LB567]

SENATOR CHAMBERS: Let me not take you through all that. What is the function and purpose of the university? [LB564 LB566 LB567]

JOEL PEDERSEN: Well,... [LB564 LB566 LB567]

SENATOR CHAMBERS: Is it to educate? [LB564 LB566 LB567]

JOEL PEDERSEN: We own land. That's the reason we're here today. We're a public landowner. [LB564 LB566 LB567]

SENATOR CHAMBERS: Is the purpose of the university to educate students? [LB564 LB566 LB567]

JOEL PEDERSEN: Yes, we are... [LB564 LB566 LB567]

SENATOR CHAMBERS: ...to have faculty members who do research, who... [LB564 LB566 LB567]

JOEL PEDERSEN: ...constitutionally authorized to establish a university and all... [LB564 LB566 LB567]

SENATOR CHAMBERS: There's nothing that talks about you providing recreation in the law, or is there? [LB564 LB566 LB567]

JOEL PEDERSEN: Not that I'm aware of. [LB564 LB566 LB567]

SENATOR CHAMBERS: Okay, so that's not a duty of the university, is it? [LB564 LB566 LB567]

JOEL PEDERSEN: Well, I'm sure our students would object if I tell them they can't do flag football, but... [LB564 LB566 LB567]

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SENATOR CHAMBERS: That's not a duty, though, of the university, is it? What law requires... [LB564 LB566 LB567]

JOEL PEDERSEN: There's a lot of intramural activities that go on. [LB564 LB566 LB567]

SENATOR CHAMBERS: What law requires the University of Nebraska to have a football team? [LB564 LB566 LB567]

JOEL PEDERSEN: None that I'm aware of. [LB564 LB566 LB567]

SENATOR CHAMBERS: Why did the university oppose my attempt to get them to pay the players? [LB564 LB566 LB567]

JOEL PEDERSEN: That I'm not aware of. [LB564 LB566 LB567]

SENATOR CHAMBERS: That's all I would have. Thank you, Mr. Pedersen. [LB564 LB566 LB567]

SENATOR LATHROP: I have a few questions for you. What did you say your role was with the university? [LB564 LB566 LB567]

JOEL PEDERSEN: I'm an associate general counsel. I work for Dick Wood. [LB564 LB566 LB567]

SENATOR LATHROP: You work for who? [LB564 LB566 LB567]

JOEL PEDERSEN: Dick Wood. [LB564 LB566 LB567]

SENATOR LATHROP: So you are one of the lawyers over at the university. [LB564 LB566 LB567]

JOEL PEDERSEN: I am indeed. [LB564 LB566 LB567]

SENATOR LATHROP: And would Dick Wood be general counsel at the university? [LB564 LB566 LB567]

JOEL PEDERSEN: Yes, he is. [LB564 LB566 LB567]

SENATOR LATHROP: That's his role. And so you are in the university's law firm, so to speak. [LB564 LB566 LB567]

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JOEL PEDERSEN: In-house counsel for the university, that's correct. [LB564 LB566 LB567]

SENATOR LATHROP: Okay. Whose idea was it to tell the people that we had to shut down the Mead facility to hunting? [LB564 LB566 LB567]

JOEL PEDERSEN: Well, I think it was a combination. UNL risk management office looked at it, I think central administration looked at it, and our office looked at it. [LB564 LB566 LB567]

SENATOR LATHROP: Okay. So they got legal advice to shut down the Mead facility to hunters? [LB564 LB566 LB567]

JOEL PEDERSEN: I'm sure we were involved, yes. [LB564 LB566 LB567]

SENATOR LATHROP: Okay. What was the...before this case came down from the Supreme Court, you understood the standard to be a willful, wanton standard. Is that right? [LB564 LB566 LB567]

JOEL PEDERSEN: That's right, but I've been a government attorney for a long time. I've never had that issue come up, that that's the advice of government attorneys, to be willful and wanton, or just under that, not once. [LB564 LB566 LB567]

SENATOR LATHROP: Maybe if you could answer my question we could get to the people that are waiting in line to talk, okay? [LB564 LB566 LB567]

JOEL PEDERSEN: Very well. [LB564 LB566 LB567]

SENATOR LATHROP: Okay. Let's start with the standard before was willful and wanton, and after the case was decided by the Supreme Court it became an ordinary negligence, which would be failure to conduct oneself in a safe way. Would you agree, in a shorthand manner, that would be a definition of negligence or ordinary negligence? [LB564 LB566 LB567]

JOEL PEDERSEN: Ordinary negligence, yes, it's a due care standard. [LB564 LB566 LB567]

SENATOR LATHROP: Okay. What were you doing at the Mead Plant that was willful, wanton, or more than ordinary negligence, that made you have to shut it down when the standard by which you'd be measured was changed? [LB564 LB566 LB567]

JOEL PEDERSEN: It's the ability to tell people who enter that property they're doing so at their own risk. We felt that that case ended our ability to do that. [LB564 LB566 LB567]

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LB567]

SENATOR LATHROP: But even with this, they don't enter at their own risk. They're still subject to the willful, wanton conduct of the property owner. Would you agree with that? [LB564 LB566 LB567]

JOEL PEDERSEN: Well, I agree there's an esoteric issue there. I don't know how that broke down in the case law. You know, the reality of it is governments are risk-averse. I think they are that way because they're concerned about taxpayer dollars. [LB564 LB566 LB567]

SENATOR LATHROP: I am confident that everybody who comes before the committee is interested in getting immunity or some level of immunity, and what I'm looking in the next question I have for you, if you have an answer, is whether or not you're familiar with any circumstance in which a political subdivision has been held not responsible for an activity in a recreational setting where they would have been found liable for ordinary negligence. [LB564 LB566 LB567]

JOEL PEDERSEN: It's hard to answer because I don't know about claims that were never brought. But I certainly know that legal counsel opinions aren't controlling and people still make claims, and a lot of times that's beneficial. That's part of the process. [LB564 LB566 LB567]

SENATOR LATHROP: If you change the standard to the Recreational Liability Act standard, which is willful, wanton, and you go back to where you thought you were, that won't stop claims, will it? [LB564 LB566 LB567]

JOEL PEDERSEN: No, and that's not the goal. [LB564 LB566 LB567]

SENATOR LATHROP: Well, you've talked about administration and the time you spend dealing with lawyers and claimants and claims. The goal is to sort out those cases where government has been careless from those where it hasn't been careless. Wouldn't you agree? [LB564 LB566 LB567]

JOEL PEDERSEN: I think the Recreational Liability Act is concerned with opening land for recreational uses. [LB564 LB566 LB567]

SENATOR LATHROP: That's...that is really...that was the point of the Recreational Liability Act, was to get farmers to open up and ranchers to open up their land so that hunters could come. [LB564 LB566 LB567]

JOEL PEDERSEN: And for 25 years it applied to the public landowner as well. [LB564 LB566 LB567]

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SENATOR LATHROP: But they were going to keep their land open anyway, weren't they? [LB564 LB566 LB567]

JOEL PEDERSEN: Obviously not. We've started to close things, as the university. We may continue to do that, and we're going to spend money to close things. [LB564 LB566 LB567]

SENATOR LATHROP: The act...the act does not apply to someone who is coming to a public place for other than a recreational purpose. [LB564 LB566 LB567]

JOEL PEDERSEN: Or where there's a charge involved, like the swimming pool example. [LB564 LB566 LB567]

SENATOR LATHROP: Or where there's a charge. So you can have a student at the university walk through the common grounds and if he's on his way to...if he's on his...if he's going to go to that common area and play touch football then we have one standard, but if he's crossing it to go to a class which he's paid for we're going to have a different standard, aren't we? [LB564 LB566 LB567]

JOEL PEDERSEN: Again, assuming that this bill was designed to answer the perfect standard of care, I don't think it was. I think it was just to undo the case and to get us back where public landowners are being treated the same as private landowners. [LB564 LB566 LB567]

SENATOR LATHROP: I appreciate that, but I'm trying to point out an inconsistency or see if you agree with me. If a person goes in a building for a recreational purpose, which could be viewing an archeological...some kind of an archeological or historical thing, which is a recreational purpose, if they go in for that purpose and they don't pay money, then there's one standard. But if they go into the building to see the business manager, then they're subject to...the government would be subject to an ordinary care standard. Would you agree? [LB564 LB566 LB567]

JOEL PEDERSEN: I agree, and that's the same puzzle the Bronsen case raised, that the kindergartner coming to visit this building would be treated differently than me coming to the... [LB564 LB566 LB567]

SENATOR LATHROP: Depending upon his purpose. [LB564 LB566 LB567]

JOEL PEDERSEN: Yeah. [LB564 LB566 LB567]

SENATOR LATHROP: Exactly. [LB564 LB566 LB567]

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JOEL PEDERSEN: It is a use-base distinction and has been for 25 years or more. [LB564 LB566 LB567]

SENATOR LATHROP: Okay. Thank you very much for your answers. [LB564 LB566 LB567]

JOEL PEDERSEN: Yep. [LB564 LB566 LB567]

SENATOR LATHROP: Any other questions? Okay. Are there any other proponents? Terrific. We have opponents to these three bills. Maren. [LB564 LB566 LB567]

MAREN CHALOUPKA: (Exhibit 22) Members of the committee, my name is Maren Lynn Chaloupka. I got up and hit the road from Scottsbluff at 5:00 this morning to come here. [LB564 LB566 LB567]

SENATOR CHAMBERS: Would you spell your name, please, for the record? [LB564 LB566 LB567]

MAREN CHALOUPKA: I'm sorry. Yes, I'm sorry. First name is M-a-r-e-n, last name is C-h-a-l-o-u-p-k-a. And there's been a lot of discussion by people who have testified earlier about the case of Bronsen v. Dawes County. Carolyn Bronsen is my client and I was the lawyer involved in that case. I don't know much about a lot of things but I know an awful lot about that case. And I came here to testify in support of her and people who have been in her shoes, and to testify on behalf of people who do not know that right now their rights are on the line; who don't know that. Now we have heard today about the little girl, about Alexa, who was killed in the city park in Crete when the defective wall had fallen on her. Well, LB564 and LB566 would make it impossible for there to be any accountability. The city in that case would be able to walk away. And with respect to her family, the system has to be open to everyone or to no one. It's not a matter of building and structures versus something else. Either the system has to be open to everyone and we have to let it work the way that it works with judges, with discovery, with the way that it works, or it has to be open to no one. Now I want to raise a point that no one else has talked about, at least not in this way. A lot of the proponents of this legislation have said, well, you can still sue the city or the county if it's willful or malicious. No one has really talked about what that means. Senator Chambers had asked some questions about it, but I don't know many answers came up. Well, let me tell you what happened in Carolyn Bronsen's case. The groundskeeper at Dawes County knew, and she testified in her deposition that she knew, that there was a hole in the ground right where Carolyn Bronsen stepped and broke her ankle. She knew the hole was deep enough for her to put her entire foot, a person to put their entire foot inside. This wasn't a little depression. And the groundskeeper knew it was there before the day that Carolyn Bronsen fell. In fact, the groundskeeper testified that she had helped to fill it at one point but she just hadn't gotten around to filling it enough, and she

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hadn't marked it, and she hadn't done anything to finish that off. So I argued to the Court of Appeals, that's willful and malicious, isn't it? She made a choice. It's willful. She knew it was there. She decided to not go finish it off. Court of Appeals said, no. Typically the way the courts interpret willful and malicious is intending to harm someone. Now here's the kicker. If you show that the city or the county intended to harm somebody, if you prove that this case falls within willful or malicious, then under the Nebraska Political Subdivisions Tort Claims Act, Section 13-910, subsection (7), you're out of court, and the reason why is that intentional torts are barred. You may not sue a city or a county or a school or anyone that's governmental for an intentional act, such as an assault or an intent to harm somebody. So there's the trap of this legislation. If you prove that the way that you were hurt or the way that your daughter was killed was, in fact, willful or malicious, you've just talked yourself right out of any form of accountability and, once again, the city gets to walk away and not answer to anybody. I want to say some...I'm out of time. [LB564 LB566 LB567]

SENATOR CHAMBERS: Let me ask you a question. Ms. Chaloupka,... [LB564 LB566 LB567]

MAREN CHALOUPKA: Yes. [LB564 LB566 LB567]

SENATOR CHAMBERS: ...the language in this bill, LB566, is malicious. That word is in here. [LB564 LB566 LB567]

MAREN CHALOUPKA: Yes. [LB564 LB566 LB567]

SENATOR CHAMBERS: And that's what I was trying to get that other gentleman to talk about, and I was suggesting that malice implies intent. The next step would have been where you took us. If it is intentional then what did you say happens? [LB564 LB566 LB567]

MAREN CHALOUPKA: If you show that the acts that caused the injury were intentional then the governmental unit is immune from liability under a different statute, again, under the Nebraska Political Subdivisions Tort Claims Act. That immunizes any government from any intentional act by any governmental employee. [LB564 LB566 LB567]

SENATOR CHAMBERS: So, as far as liability, it would be better for the guilty employee to say, I intended that. [LB564 LB566 LB567]

MAREN CHALOUPKA: Exactly. [LB564 LB566 LB567]

SENATOR CHAMBERS: To say that it was malicious... [LB564 LB566 LB567]

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MAREN CHALOUPKA: Exactly. [LB564 LB566 LB567]

SENATOR CHAMBERS: ...and then they're home free, since all they seem to be interested in is liability. [LB564 LB566 LB567]

MAREN CHALOUPKA: Exactly. Exactly. And those are the protections that government gets. For someone who is injured, they have to go up...I think the impression is that all you have to do to win a lawsuit is file it and wait for a check, but if you're suing government, that is one of the hardest ways to get someone to be accountable for an injury, no matter how innocent you are. For example, they have the Recreational Liability Act which, if this is passed, any intentional act they cannot be held accountable for. Any discretionary act the government cannot be held accountable for. And then even if you get that far, if your injuries are worth more than \$1 million, all liability is capped, no matter how much your medical bills are, no matter how much your loss of income is. And so this legislation just gives one more layer of protection no matter how negligent government is and no matter how innocent the victim is. I haven't heard anyone yet, other than...other than Senator Chambers and Senator Lathrop and some of the other questions from the senators who are saying, what about the victims? Who is giving any protection to the victims? I came here early this morning and maybe that's why I'm getting emotional now because someone needs to stand up for the victims, so... [LB564 LB566 LB567]

SENATOR LATHROP: We know it's a long ways from Scottsbluff. Hang on just a second because I think we have a question for you. Senator Schimek. [LB564 LB566 LB567]

MAREN CHALOUPKA: Yes. [LB564 LB566 LB567]

SENATOR SCHIMEK: Well, my only question was if she had enough time to tell us what she wanted to tell us. There are only a few opponents. There were many proponents. She came clear from Scottsbluff and so I was going to suggest that if she needed some more time that maybe she should get it. But maybe she got it all said. [LB564 LB566 LB567]

MAREN CHALOUPKA: I could say a little more if there were leave from the Vice Chair. [LB564 LB566 LB567]

SENATOR LATHROP: It's the 300-mile rule. [LB564 LB566 LB567]

MAREN CHALOUPKA: Okay. [LB564 LB566 LB567]

SENATOR LATHROP: Although we may live to regret ever saying that. [LB564 LB566 LB567]

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MAREN CHALOUPKA: I'll try to make I think two more points, one on LB564 and LB566, those bills combined. What I've handed out to the senators is a table showing the amount of premium charged and received by the League Association of Risk Management, which insures many Nebraska cities, and then the amount that they've actually paid out. We haven't heard any hard evidence today from any of the proponents of this legislation that they must shut down these skate parks or that they must shut down the hunting areas or anything like that because of these lawsuits or because the insurers are really going broke. I did some research with the Department of Insurance and found that the amount of premium charged by LARM is four times what they've paid out in terms of claims, so that's point number one. This is...the sky is not falling. The sky is not falling and there is not an emergency and it would behoove the cities to perhaps ask their insurers why are they saying that the sky is falling when it's not. My other point would be on LB567, which is a really alarming bill and one that I think runs smack into the right to a jury trial in the constitution. Under LB567, even if you pay to get in, even if you've given someone money in exchange for being able to go in and recreate with your family, no matter how guilty they are and no matter how innocent you are, you may not sue them to say, pay for my medical bills, pay for my lost child. I would call LB567 the fair game act, because that's what a Nebraska family is. Example: Suppose you take your family to the zoo and suppose that the zookeeper got distracted, maybe was thinking about something else, and left the cage to the tiger cage unlocked. Tiger cage gets...tiger gets out, eats the wage earner for the father, or the father or the mother for the family, and that family is at that point out of luck; nothing they can do about it because LB567 would give that zoo and that tiger keeper a free pass. At day camp, suppose you send your child to a day camp and suppose the day camp hires a pedophile, someone they know or should know is a child molester. The child molester molests your child and you come to my office and say, I need, you know, I need somebody to pay for counseling for my child; we need help. I'm going to have to tell them, I'm sorry, but you're going to need to go to Senator Loudon and ask him to pay for those...for those counseling charges. You're going to need to ask him to pay for your quadraplegic life care plan. You're going to need to ask the cosponsors of this legislation to help you out for the rest of your life because these bills became law and apparently people...it was the will of the people if that's what happened. Have I ranted enough? [LB564 LB566 LB567]

SENATOR LATHROP: I think you have, but we appreciate it too. It's good to have somebody here who understands the opinion and what it does and doesn't do. And I don't know if I'm chairing this now or... [LB564 LB566 LB567]

SENATOR ASHFORD: You can chair, yeah. You're... [LB564 LB566 LB567]

SENATOR LATHROP: Okay. (Laugh) Are there any other questions? This is just for one witness. Senator Pirsch. [LB564 LB566 LB567]

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SENATOR PIRSCH: Yeah, I just have one question. You had mentioned...well, we've received a handout that seems to indicate that in generally most of the other jurisdictions, the other states, that there's a willful or malicious standard required. Are you familiar with other jurisdictions or how the application of this kind of discussion we're having in other jurisdictions? [LB564 LB566 LB567]

MAREN CHALOUPKA: My...most of my familiarity with the case law is in this state and how our appellate courts and district courts have interpreted willful and malicious. I...and I know that...I am aware that the Political Subdivision Tort Claims Act in Nebraska is based off our State Tort Claims Act, which in turn is based off the Federal Tort Claims Act, which then is a model for most states, and so most states have this exception that bars suing government for intentional torts. I don't know if it's possible in any state to...I think the same trap would probably exist in most states, unless Nebraska's Supreme Court has an extremely novel interpretation of willful and malicious. [LB564 LB566 LB567]

SENATOR PIRSCH: Well, and that's what I'm getting at, is their...the Supreme Court's interpretation is that, to your knowledge, and I think you've answered that you're not aware if other states kind of have that same type of interpretation that our Supreme Court does, correct? [LB564 LB566 LB567]

MAREN CHALOUPKA: I'm not aware. [LB564 LB566 LB567]

SENATOR PIRSCH: Thanks so much. [LB564 LB566 LB567]

SENATOR LATHROP: Any other? Okay. Thanks. [LB564 LB566 LB567]

MAREN CHALOUPKA: Thank you for the opportunity to come here. [LB564 LB566 LB567]

SENATOR ASHFORD: How many opponents, other opponents, do we have? And we have one neutral; another opponent and one neutral. Okay. [LB564 LB566 LB567]

ROBERT MOODIE: (Exhibit 23) Senator Ashford, members of the committee, my name is Robert R. Moodie, M-o-o-d-i-e. I'm testifying on behalf of the Nebraska Association of Trial Attorneys in opposition to LB564, LB566, and LB567 for most of the reasons that were already reviewed in Ms. Chaloupka's testimony. I was heartened to see all the testimony from public officials indicating that they wish to be held on the same footing as private landowners. I will look back a year from now when there is legislation to eliminate the Political Subdivisions Tort Claims Act and be happy to hear all that testimony again, because the fact of the matter is that under the Political Subdivisions Tort Claims Act political subdivisions have many advantages the private landowners do

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not have. There is very strict requirements on filing the claim, a very short limitation on filing the claim. There are limitations on jury trials and there are caps, hard dollar caps. [LB564 LB566 LB567]

SENATOR ASHFORD: And I guess that's what I was asking and you picked it up. That was the question I was trying to get at was isn't there a difference. [LB564 LB566 LB567]

ROBERT MOODIE: Absolutely. There is absolutely a difference. [LB564 LB566 LB567]

SENATOR ASHFORD: Yeah. [LB564 LB566 LB567]

ROBERT MOODIE: The purpose of the Recreation Liability Act was to encourage private landowners to open up their lands, thereby providing a substitute for these benefits at public expense. Private landowners were under no expectation or obligation to open their land to public use. Our states, our cities, and other political subdivisions, on the other hand, do operate under an expectation and obligation to provide land for recreational uses by our citizens. It's one of the reasons they exist. We could say to a certain extent that they're in the business of providing recreational lands. They accumulate revenue specifically for that purpose by levying taxes. By including the state of Nebraska and political subdivisions in this act, we would be saying that the citizens are asking for these public recreational facilities, that they be provided, but they are in no way insisting that the imposition of any standard of care or concern for public safety, and I submit that that action would be ill-advised and against the public interest. Very briefly, on LB...it hasn't gotten a lot of conversation, but on LB567 I understand that the...it's the private landowner who wants to make his land available for hunting and fishing that has prompted that bill, but that bill goes well beyond the private landowner, the hunter and the fisher. If some miracle occurred and Peony Park were reopened in Omaha, it would mean that...in adopting LB567 would mean that the wealthy developers who reopen that facility would have absolutely no obligation to maintain any interest in public safety. And certainly that can't be what this body is interested in doing. The pamphlet I passed out I haven't discussed. It's a scholarly article by some economists at the University of Connecticut that discuss the economic efficiencies of applying immunity and they...their summary is that the economic efficiencies only exist with undeveloped land, whether public or private, and that any developed land should be...should not be immune from liability whether a charge is assessed or not. [LB564 LB566 LB567]

SENATOR ASHFORD: Thanks, Mr. Moodie. Any questions of Mr. Moodie? I...just so I clarify one thing in my mind very quickly, because this has gone on a long time, Senator Chambers had some, I thought, good questions on the attractive nuisance doctrine and I'm noticing here in Indiana that is one of the states, there's not very many of them, but one state that has a reasonable care standard. You don't have to look at anything, but it

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says attractive nuisance doctrine still applies. I suspect what that...what...is there a difference? I'm trying to think about it for a second. In an attractive nuisance situation is there...there's not a different...difference in liability standard normally. Is it still... [LB564 LB566 LB567]

ROBERT MOODIE: Well, you're asking me to go back to law school and remember some things, but I don't think, no. [LB564 LB566 LB567]

SENATOR ASHFORD: It's the same standard of care, isn't it? Okay. All right. That's what I was... [LB564 LB566 LB567]

ROBERT MOODIE: Now I did do a little bit of research on surrounding states with the issue of recreation liability, states contiguous to Nebraska, and most of them have a similar Recreation Liability Act. I did note that the state of Iowa has specifically excluded political subdivisions from inclusion in that act, at least by virtue of the specific reading of the statute that I looked at earlier. [LB564 LB566 LB567]

SENATOR ASHFORD: Well, it says in Iowa it's willful or malicious failure to guard or warn, so maybe what they've done is they've just...they've limited it, limited the situation to guarding or warning as opposed... [LB564 LB566 LB567]

ROBERT MOODIE: Well, what they've done is adopted the same standard that exists for private landowners under Nebraska, but have specifically said it does not apply to political subdivisions. [LB564 LB566 LB567]

SENATOR ASHFORD: Okay. All right. Thanks. [LB564 LB566 LB567]

JOSEPH VACCA: Mr. Chairman, members of the committee, my name is Joseph Vacca, that's J-o-s-e-p-h V-a-c-c-a. For my many sins, I have been an attorney in practice for almost 30 years. (Laughter) I am here representing no one other than myself and, in fact, I came down here to testify on another bill, which I hope you will still allow me to talk about later. I have sat through the discussion on LB564, as I have heard it, and bearing in mind my oath of office as an attorney to support the constitution of this state, I feel compelled to come out in opposition to this bill because I fail to see why the cities and municipalities and other governmental entities of this state should not be held to the same standard of ordinary care that I, as a private landowner, am held to. That's my testimony on this bill. If you have any questions, I would be glad to answer them if I can. [LB564 LB566 LB567]

SENATOR ASHFORD: Thank...any questions? Thanks for coming down. I believe we're to the neutral. [LB564 LB566 LB567]

RICH BRINGELSON: My name is Rich Bringelson. Live at Doniphan, Nebraska. My

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name is spelled R-i-c-h, last name B-r-i-n-g-e-l-s-o-n. Chairman Ashford, I know that this is a hazardous time to be before a committee. I expect everybody to head for the door. I've had the benefit of 25 years working in the public sector, 15 years of a time or two, which I got a call from Senator Chambers advising me of some things I needed to clean up and he was right. I appreciate his counsel and advice at times; sometimes not, but most of the time yes. I've spent the last ten years running a public facility, interested in salting snow, keeping sidewalks clean so senior citizens wouldn't fall down. I have two questions to bring as a private person. I don't have legal counsel, I'm not a lobbyist, never been to law school. One is, and it comes from my family has a 55-year history of a public partner relationship with a state agency and public (inaudible) public land. The issue is, what's the relationship between the public...if you're in a public-private relationship, what's my exposure as a private citizen; what's my responsibility? The second is that, as I thought about this and having been through the risk management issue, I see risk management not as somebody in a room (inaudible) statistics or somebody avoiding liability. I see risk management of keeping a safe environment. How do we build a public policy or public perception of the public's role in that? One idea I have for your consideration, is there some way of using the state risk manager to accumulate complaints? As a private citizen, it's kind of intimidating. I'm intimidated by working with public agencies who have legal counsel, have legal agents, you know, they have a whole staff, and I'm sitting out there kind of swinging in the breeze and not having, you know...and so I'm kind of anxious about even testifying, exposing myself in this environment. But I think that there's some way we could build up a system of notification of the individuals having concerns. Is there some way of public become involved in the process of checking things? We don't have enough public employees to check all the places that probably need to be checked. There's a big move right now to expanding public access. Who's responsible for maintaining the land, maintaining the areas in that kind of situation? In closing, I would like to be able to share my topography, my environment, with the public, but the only way I could do it now is pay for it out of my own pocket. I can't charge anything for it, and I don't understand the intricacies of the LB567 and how that might work. But at this point, I think I'd have to go to...I'd probably avoid doing it because it's just too complex and too much exposure. Any questions? [LB564 LB566 LB567]

SENATOR ASHFORD: Thank you. Any questions? Thank you very much. That... [LB564 LB566 LB567]

RICH BRINGELSON: Thank you. [LB564 LB566 LB567]

SENATOR ASHFORD: That concludes the hearing on the three bills. Move to LB...I'm sorry. Do we have closing. Senator Friend waives closing. LB225, I believe, is next. Is that right? And Senator Friend again. Good. [LB564 LB566 LB567 LB225]

SENATOR FRIEND: Hello again, Chairman Ashford, and I have been monitoring the

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festivities. Excellent work by the committee once again. Once again, my name is Mike Friend, it's F-r-i-e-n-d, and I represent northwest Omaha, District 10 in the Nebraska Legislature. LB225 was brought to me, the idea was brought to me by a constituent, Mr. Joseph Vacca. He actually testified on the last bill, or the last set of bills, against me, which was interesting, but I think he's going to come in, in proponent fashion on this one. That's my guess. This bill does two things, or is proposing to do two things. A bill doesn't propose anything. I am proposing to put a bill forward that will accomplish two things: First, to require that judgment creditors to file a written satisfaction of a judgment within a reasonable time of receiving payment or settlement in full; and second, to enable parties to civil litigation, or their attorneys, when they file any motion or other document which currently requires an affidavit executed before a notary public to replace the jurat--am I pronouncing that correctly--the portion of an affidavit which the notary is concerned, at their option, with a statement that the document is signed under the penalties of perjury as provided in the laws of this state. While fairness and good practice require that a judgment creditor file a satisfaction of judgment when it is paid or satisfied, there are many cases where this does not happen, it's my understanding. This is exacerbated when a judgment in one court is transcribed to another court for the purpose of enforcing the judgment. The proposed language in this bill, which happens to be modeled after an Iowa statute, would help avoid the complications that arise for consumers who credit reports will not reflect that their judgments have been paid when there is no official record of the satisfaction. The second part of the legislation also is modeled after an Iowa statute which permits but does not require the use of the "under the penalty of perjury" statement as an alternative to the use of a notary public. The volume of documents requiring the use of a notary public and their cost have become a significant issue in the civil process, and the passage of this bill would ease that burden and help streamline the process. As I said, I...obviously, we have folks that work in an environment on the committee. A bill like this would affect, you know, not only your business but the work that you do in a lot of different ways. Mr. Vacca, I think, would be happy to address some of the reasons that he contacted me with this legislation. As you all know, I am not an attorney, but when he proposed it to me, it sounded fairly logical. Then of course I started getting phone calls and everything else and I said, logic, throw it out the window. I don't really know anymore. But the point is, I think, that should be of interest to the committee and I think what Mr. Vacca would have to say would be as well. So thank you. [LB225]

SENATOR ASHFORD: Any questions of Senator Friend? I mean, it does seem logical, Senator Friend, but we'll hear more. We'll hear more, more things. [LB225]

SENATOR FRIEND: You will hear more, I think. Thank you. [LB225]

SENATOR ASHFORD: Thank you. Mr. Vacca. [LB225]

JOSEPH VACCA: Thank you, Mr. Chairman. Senator Friend, first, I want to apologize

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on the record for opposing your earlier bill without notice to you. (Laugh) [LB225]

SENATOR ASHFORD: That's not necessary in this environment, Mr. Vacca. You can go...you can go back forth all day long if you want to. [LB225]

JOSEPH VACCA: My mother raised me to be polite, sir. (Laugh) Mr. Chairman, ladies and gentlemen of the committee, I am now here again. My name is Joseph Vacca, J-o-s-e-p-h, last name V-a-c-c-a. As I have mentioned, for my many sins, I have been an attorney in private practice for approximately 30 years. It's a practice in which I do, I'm not unsorry to say, collection work. Most of my work is done in the county courts. It involves a large quantity of civil cases. I have become aware over the number of years that I have done this, that very many times a judgment is paid but not satisfied. I am licensed to practice in Iowa as well, and Iowa, as the Senator pointed out, has a nice statute that requires a judgment credit to, in fact, satisfy a judgment when it has been paid, and provides a penalty if the judgment credit doesn't do that within 30 days of being asked to do that. This is particularly important in Nebraska because, unlike Iowa, in order to enforce a judgment in another county in Nebraska it has to be transcribed into that county, so you can...and I have many cases where I have multiple. A judgment in Douglas County transcribed in maybe two or three other counties, and all of those judgments need to be satisfied when it's paid. And I'm not even going to tell you that I have been perfect in this, because I have not been and I even now still catch occasional cases where it should have been satisfied. I certainly feel that we should have an obligation to do that. Currently, there is nothing in the law that says we should do that. That's my comments on the first section. The second portion, I had a conversation with Mr. Ron Moravec of the Secretary of State's Office who was concerned that adopting the "under penalty of perjury" instead of a notary would undermine the position of a notary, and that isn't my intention. It may be too widely drawn in the legislation as you see it, but the notary's charge for each affidavit is \$2, which has to be absorbed, in this case, by the party or the attorney, because it's not chargeable as costs. In almost any civil case you will find at least four or five different affidavits signed by the party or the attorney. This is a burden not only on us attorneys who are good guys, we'd like to think, but I also see a fair number of pro se litigants in the county courts and they have to run around, jumping through the same hoops we do, getting their pleadings in fact rejected by the clerk's office because they don't have them notarized and then they have to find a notary. It seems to me that it would be a very good idea to allow both parties and their attorneys to sign these documents under penalty of perjury and let it go at that. The Secretary of State's representative's objection was perhaps there's a question of identity and the notary is supposed to check identity. That's true, but nobody checks the identity of the person who files a lawsuit. If you go down to the county court and file a lawsuit, if you've got \$42 and a complaint, they take it. They don't ask you...to see your driver's license. So it seems to me...that my time is out. Are there any questions. [LB225]

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SENATOR ASHFORD: Oh, I think...I think you've explained it well, Mr. Vacca. Do we have any questions of Mr. Vacca? Thank you, sir. [LB225]

JOSEPH VACCA: Thank you, gentlemen, ma'am. [LB225]

SENATOR ASHFORD: There probably aren't any opponents to this, are there? [LB225]

JOSEPH VACCA: That's comforting. [LB225]

SENATOR ASHFORD: Mr. Mueller. [LB225]

WILLIAM MUELLER: (Exhibit 24) Mr. Chairman, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association. I've also been asked to hand out a letter from the Nebraska Title...from the Nebraska land (sic) Title Association. Our concern with LB225 is contained on page 2, line 7, where the failure to file the satisfaction of judgment, once requested to do so, would be a Class IV misdemeanor. Interestingly, when we looked at this bill and when I went back and looked at the statutes, I did not find a section of statute that describes this satisfaction of judgment pleading, although this is commonly prepared, it's commonly filed. There is reference in one statute to what a clerk should do once a satisfaction of judgment has been filed. We certainly do not object to recognizing in statute this pleading. Our concern is making the failure to file this a Class V misdemeanor. If a penalty was necessary, I think that the reasonable attorney fees and costs would be reasonable, and because of that we do oppose LB225, as written. [LB225]

SENATOR ASHFORD: Thanks, Bill. Any questions? Thank you. [LB225]

WILLIAM MUELLER: Thank you. [LB225]

SENATOR ASHFORD: Any other opponents? [LB225]

RONALD MORAVEC: Good afternoon, Senator Ashford, members of the Judiciary Committee. My name is Ron Moravec, R-o-n M-o-r-a-v-e-c. I am chief deputy Secretary of State appearing here this afternoon in regards to LB225 and expressing opposition to Section 2 of the bill, as it's presently written. It's our opinion that Section 1 is not within the realm of the duties or the obligations of the Secretary of State, so we express no comments concerning that, but it appears to us that Section 2 continues on with what Section 1 is trying to do. Again, the merits of Section 1 we are not here to debate, but allowing a person to satisfy a judgment by saying that under penalty of perjury it's true and correct and it's been satisfied, again, that's for others to decide. But when we carry this over to Section 2 and look at subsection (2) of Section 2, the certification, if you will, that the bill is espousing is that I certify under penalty of perjury and pursuant to the

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laws of the state of Nebraska that the preceding is true and correct. Now under perjury, as it's defined in criminal statute, that refers to a sworn oath in an official proceeding. Section 2 does not go there. Section 2 applies to anything. There are several state agencies, among them the Secretary of State's Office, the election division, that there are statutorily required forms which provide "subscribed and sworn to before me." The Banking Department also has many forms that statutorily they are required to use these forms which say "subscribed and sworn to before me." Now "subscribed and sworn to before me" is not the same thing as I saying I certify under penalty of perjury. Again, perjury is defined in a criminal proceeding as requiring an oath, and there is no oath prescribed in this. And it's just our belief that Section 2 would really downplay the significance of appearing before a notary public, which is another step in ensuring that the document that's being prepared and signed is accurate and that the person that's signing it is the person that they say they are. As the previous indicated, Mr. Vacca, there is a question of identity of someone that signs "I certify under penalty of perjury and pursuant to the laws of Nebraska." Is that the same person? Thank you. [LB225]

SENATOR ASHFORD: Thank you, Ron. Thank you. Yes, Senator Chambers. [LB225]

SENATOR CHAMBERS: Mr. Moravec, I don't think that having something notarized establishes that it's accurate. It just means that the person who stood in front of the notary said, I'm this person, and all the notary acknowledges is that the person standing before me signed this with this name. But the notary doesn't know if that person is who he or she says he or she is. I've had many things notarized and they don't ask me for identification. [LB225]

RON MORAVEC: Well, unfortunately, that may...you may be...you are correct, Senator, but that's not the way the notary law is written. It is...it's a requirement that I, as a notary, if I'm notarizing your document and your signature, I either know you personally or you present me some identification that establishes you to be who you are... [LB225]

SENATOR CHAMBERS: Well, I know of... [LB225]

RON MORAVEC: ...prior to your signing. [LB225]

SENATOR CHAMBERS: Oh, excuse me. I know of situations where individuals have signed names, a name which was not theirs. So would that mean that person presented identification that would indicate that, okay, I'm going to sign the name Mr. X. I'm really Mr. B. Now Mr. B...and does that mean that this notary is going to accept identification that does not show that I am who I say I am? Or does the notary just take my word for it, that I'm who I say I am, and then will stamp it? [LB225]

RON MORAVEC: Again, if the notary does not personally know you, they should not take your word that you are Mr. B or Mr. X,... [LB225]

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SENATOR CHAMBERS: Okay. [LB225]

RON MORAVEC: ...and require you to produce that identification or say, sorry, Mr. B, I cannot notarize your document. [LB225]

SENATOR CHAMBERS: And if a notary doesn't do that, what is the penalty on the notary, if any? [LB225]

RON MORAVEC: Possible penalty, it would be administrative, it would be potentially a suspension by the secretary to revocation of the Notary Commission. [LB225]

SENATOR CHAMBERS: Okay. [LB225]

RON MORAVEC: And if I may, of course a notary is required to have a \$15,000 bond posted, so there is additional protection for you, if you have been wronged by this notary, against the notary's bond. [LB225]

SENATOR CHAMBERS: Okay. [LB225]

RON MORAVEC: Thank you. [LB225]

SENATOR ASHFORD: Thank you. Any other testifiers on this bill? Senator Friend. [LB225]

SENATOR FRIEND: Thank you. Only to say thanks. I know it's been a long day because I... [LB225]

SENATOR CHAMBERS: Are you testifying for, against, or neutral? [LB225]

SENATOR FRIEND: ...I've been...I don't know. (Laughter) [LB225]

SENATOR CHAMBERS: Oh, okay. [LB225]

SENATOR FRIEND: It's been a long day for me, too, even though I haven't...I remember these long days. Section 1 we have...I think we've identified a problem. I think we'd obviously be happy to address that problem if the committee would like us, or if the committee would like to address it. Section 2, I don't know. I guess my point is I'd love to work with the committee. Mr. Vacca has obviously pointed out that he would like to as well. If you see a problem as well, you know, maybe it's something that you could help with as well, as a committee. So that's all I'd really have. [LB225]

SENATOR ASHFORD: Thank you, Senator Friend. [LB225]

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SENATOR FRIEND: Sure. [LB225]

SENATOR ASHFORD: Senator Lathrop. [LB221]

SENATOR LATHROP: This shouldn't take any more than a half hour. (Laughter)
[LB221]

SENATOR ASHFORD: Okay. [LB221]

SENATOR LATHROP: Hello. I'm Steve Lathrop, that's L-a-t-h-r-o-p. I represent District 12. I'm here today to introduce LB221. In 19...in, pardon me, 2006 the Legislature passed LB1113, which removed the requirement that Social Security numbers be included in certain court pleadings. The reason for deleting this type of personal information from the court pleading is to protect against identity theft. LB221 amends Nebraska statute to provide that only the year of birth of a child can be contained in certain court pleadings. The current language in statute provides that the date of birth be included in certain court pleadings. As the courts of Nebraska begin to make court documents available electronically, it will become more important to ensure that as little personal information as is necessary is contained in court pleadings, which are accessible to the public. With that, I'd ask you to advance LB221 to General File, and I'll waive closing. [LB221]

SENATOR ASHFORD: Any testimony on this? Oh. Mr. Mueller. [LB221]

WILLIAM MUELLER: (Exhibit 25) Mr. Chairman, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association in support of LB221. As Senator Lathrop told you in his opening, this bill is the second installment in the ongoing effort to take personal information out of court documents. The page is handing to you a petition that was filed by the Nebraska State Bar Association last May asking that the Nebraska Supreme Court adopt a rule regarding redaction of personal information in court pleadings. The court reviewed that and actually brought to our attention the statutes that you have before you as needing to be amended before the court could adopt a rule telling lawyers and litigants to remove certain personal information from pleadings. The bill that you have before you, LB221, although it is 12 pages in length, we are only amending three sections of statute where Senator Lathrop advised you we are striking "date of birth" and we're putting in "year of birth," and that's on page 2, line 11; page 4, line 21; page 11, line 17. As we have court records available electronically, keeping personal information out of these court pleadings becomes more and more important, personal information like dates of birth, home addresses, Social Security numbers, financial account numbers. That is what we are seeking with this bill. We would ask you to advance it. Be happy to answer any questions you may have. [LB221]

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SENATOR ASHFORD: Thanks, Bill. Any questions? Seems pretty straightforward. Thank you. [LB221]

WILLIAM MUELLER: Thank you. [LB221]

SENATOR ASHFORD: Mr. Vacca, are you a proponent or... [LB221]

JOSEPH VACCA: I would like to be a proponent on this, if I may. [LB221]

SENATOR ASHFORD: You may. [LB221]

JOSEPH VACCA: Mr. Chairman, ladies and gentlemen, Joseph Vacca, J-o-s-e-p-h V-a-c-c-a. The reason I would join as a proponent in this, coming from my perspective, doing a lot of collection work, I am very familiar with the workings of the credit reporting system and I am...assure you that one of the greatest concerns that anybody has in the collection area is the preservation of identities from identity theft, and I think this closes a very important loophole that there is there. I would note, as I've mentioned before, I am licensed in Iowa and I can tell you that Iowa has for some time adopted the use of a confidential form that you have to fill out when you file, but that does not become part of the public record, that contains the additional identifying information, such as a Social Security number and a date of birth, so that if there is a true question as to identity you can go...under a judge's order, you can actually get to that. But that is not released to the public. So I would strongly support this legislation and I am confident that the other collection attorneys whom I know and the Nebraska Collection Association, whom I'm affiliated with, would also support it. Thank you. [LB221]

SENATOR ASHFORD: Thank you, Mr. Vacca. Thank you. And that...anyone else? I don't...no? Okay. (Laugh) Okay, that... (See also Exhibits 26, 27, 28, 29) [LB221]

JOSEPH VACCA: Mr. Chairman, this has been left here? [LB221]

SENATOR ASHFORD: Has it? Oh my. Well,... [LB221]

SENATOR LATHROP: Somebody probably hurt on public lands. Oh, I thought it was a cast. [LB221]

SENATOR MCGILL: Oh. (Laugh) [LB221]

SENATOR ASHFORD: Yeah, I didn't know what it was. It's a purse. Well, we'll... [LB221]

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Disposition of Bills:

LB20 - Held in committee.
LB221 - Advanced to General File.
LB225 - Held in committee.
LB564 - Advanced to General File, as amended.
LB566 - Held in committee.
LB567 - Held in committee.

Chairperson

Committee Clerk