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Floor Debate
February 14, 2007

[LB12 LB25 LB67 LB74 LB211A LB211 LB296 LB307 LB379 LB380 LB383 LB395
LB398 LR29 LR30 LR31]

SENATOR LANGEMEIER PRESIDING []

SENATOR LANGEMEIER: Good morning, ladies and gentlemen. Welcome to the George Norris Legislative Chamber for this, the twenty-ninth day of the One Hundredth Legislature, First Session. Our chaplain for the day is Senator Carol Hudkins. Please rise. []

SENATOR HUDKINS: (Payers offered.) []

SENATOR LANGEMEIER: Thank you, Senator Hudkins. I call to order the twenty-ninth day of the One Hundredth Legislature, First Session. Senators, please record your presence. Mr. Clerk, please record. []

CLERK: I have a quorum present, Mr. President. []

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Are there any corrections for the Journal? []

CLERK: (Read corrections, Legislative Journal page 573.) []

SENATOR LANGEMEIER: Thank you. Are there any messages, reports, or announcements? []

CLERK: Mr. President, your Committee on Health and Human Services reports LB398 to General File, that report offered by Senator Johnson, as Chair. And that's all that I have. (Legislative Journal page 573.) [LB398]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. I'd like to wish everybody here a happy Valentine's Day. We'll now proceed to the first item on the agenda. Mr. Clerk, LB211A. We're going to go back a step. Mr. Clerk, confirmation report. []

CLERK: Mr. President, Senator Aguilar, as chair of the Government, Military and Veterans Affairs, appoints on the appointment of Keith Deiml to the State Emergency Response Commission. (Legislative Journal page 545.) []

SENATOR LANGEMEIER: Thank you very much, Mr. Clerk. Senator Aguilar, you're recognized to open on the confirmation report. []

SENATOR AGUILAR: Thank you very much, Senator Langemeier. We had a hearing and listened to an interview with Keith Deiml of Papillion, Nebraska. He's a first-time

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appointment to the Emergency Response Commission. And quite honestly, the committee and I all agreed that this is probably one of the most qualified individuals ever to apply for that position. He was a faculty member at the Metropolitan Community College for 28 years, and then he moved into the area of hazardous chemical education and became qualified at the hazardous material operations level. From hazardous chemicals, he's moved into other areas, eventually covering the entire emergency management area. And in the spring quarter of 2004, he began teaching classes in emergency management. Just a really great individual, and he showed up and made a good accounting of himself. And we're pleased to recommend him for this position. []

SENATOR LANGEMEIER: Thank you, Senator Aguilar. You've heard the opening on the confirmation report. The floor is open for discussion. Seeing no lights on, Senator Aguilar, you're recognized to close on the report. Senator Aguilar waives closing. You've heard the closing to the adoption of the report offered by the Government, Military and Veterans Affairs Committee. All those in favor vote yea; all those opposed vote nay. Have all those who wished to vote have done so? Record, Mr. Clerk. []

CLERK: (Record vote, Legislative Journal pages 573-574.) 31 ayes, 0 nays, Mr. President, on the adoption of the confirmation report. []

SENATOR LANGEMEIER: The report is adopted. Mr. Clerk, next item on the agenda, General File, LB211A. [LB211A]

CLERK: LB211A, by Senator Cornett. (Read title.) [LB211A]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Cornett, you're recognized to open on LB211A. [LB211A]

SENATOR CORNETT: Good morning, Mr. President, members of the body. LB211A is the appropriation bill to provide additional money to fund the pay raises to the Commission of Industrial Relations judges under LB211. It would place an additional \$35,546 into the commission's budget for fiscal year '07-08, and another \$35,546 into their budget for fiscal year '08-09. As I mentioned in the discussion on LB211 on General File, there is some confusion as how the daily equivalent would be calculated, and I intend to offer an amendment on Select that will clarify the daily equivalent, that will be based on a 260-day year. The A bill has been based on the daily equivalent of a county judge's annual salary with a 260-day work year. The judges would be paid \$439.08 per day of work under this calculation. I would ask for your support of the A bill. Thank you very much. [LB211A LB211]

SENATOR LANGEMEIER: Thank you, Senator Cornett. The floor is open for discussion on LB211A. Seeing no one wishing to speak to that, Senator Cornett, you're recognized for closing. Senator Cornett waives closing. You've heard the closing on the

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advancement of LB211A to E&R Initial. All those in favor vote yea; all those opposed vote nay. Have all those that wish to vote on LB211A done so? Record, Mr. Clerk. [LB211A]

CLERK: 33 ayes, 0 nays, Mr. President, on the advancement of LB211A. [LB211A]

SENATOR LANGEMEIER: Thank you. The bill does advance. (Doctor of the day introduced.) Mr. Clerk, next item on the agenda, LB395. [LB211A LB395]

CLERK: Mr. President, LB395, a bill introduced by Senator Johnson and others. (Read title.) The bill was discussed yesterday, Mr. President. At that time, the committee amendments were offered. A division was requested and granted. The Legislature was discussing the first component, specifically FA15, of the committee amendments. And when the body adjourned yesterday morning, pending to that was an amendment from Senator Johnson, FA21, which was offered as an amendment to committee amendment FA15. (Legislative Journal page 568.) [LB395]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Johnson,...is Senator Johnson in the body? I would offer Senator Johnson a few minutes to reintroduce the amendment, but I don't see him. Senator Gay, as Vice Chair of the committee, would you have interest in a short, brief opening on the FA21? [LB395]

SENATOR GAY: Yeah, thank you, Mr. President. On FA15, this was the employees...the committee made an amendment to allow for small business employees, small...homeowners, small businesses, to allow that smoking could allow...occur in their home during nonworking hours. So as...but as they are a public place during the day when people are actively working, there would be no smoking allowed, but you could smoke when people went on home. Other than that, I think...and this was broken up. Retail tobacco outlet, back to that, would be specialty stores, cigar-related places that primarily sell tobacco products, where a person could come in and they had a room you could, you know, test a certain set of cigars or something like that, but you could not have a liquor establishment with it. And one thing, on the incidental products, that meant if somebody was selling a...cigars or smoke-related products, pipes, whatever, and they had incidental other products, they had, like cigar cutters, anything like that, we just wanted to make sure that was encompassed in the bill, as well, that they could sell incidental items. But their primary purpose would have to be tobacco-related. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Gay. Mr. Clerk, you have a priority motion? [LB395]

CLERK: I do, Mr. President. Senator Chambers would move to bracket LB395 until February 21. [LB395]

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SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Chambers, you are recognized to open on your bracket motion. [LB395]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, (speaking slowly) I am going to withdraw this motion after I have made a few points. You know why I do it that way? I had a motion like this on another bill, and a long discussion developed on that motion. If you want to talk about this particular motion, I can't stop you. But I'm telling you what my intentions are. And after I've had my opportunity to say what I intend to say, I'm going to withdraw the motion. If there are intervening speakers, I will have to wait until they finish speaking, have the opportunity to speak again, and then withdraw it. I believe with my opening and one or two opportunities, maybe just one, I can say what I have to say. That is not to impede debate, because I believe in full-fledged, ongoing debate, even when it's of the type that occurred yesterday. And that's what brings me to this position. It was not very edifying. It was like the kind of discussions that occur on a street corner or in a tavern, where people are making all of these unnuanced statements, drawing broad conclusions, and suggesting that if the state exercises its police powers, which is what happens when a law is passed that sees to the general welfare and health of society, people start talking about ice skating. Well, they can talk about anything they want to. But you need, when you're a lawmaker, in my view, to develop the ability to think in a nuanced way. I have five fingers on this hand. Each one is different. Because my thumb is opposable does not mean that every one of my fingers is, even though all of them are a part of the hand. So when a person stands on the floor and says, personal rights are involved, whose personal rights? You all see this differently from the way I do. I believe when you're engaging in social intercourse--I didn't say "sexual"--social intercourse, you should not be rude, you should not be inconsiderate, you should not be uncivil. It's not against the law to spit in front of somebody. It's not against the law to cough. It's not against the law to sneeze. But how many of you would cough on somebody? How many of you would sneeze on somebody? How many of you would hark and spit in a restaurant? You're not violating a law. There are some things that are considered rude and uncivil. And when you have what people often deem a nasty habit, which is not just nasty, but detrimental to other people's health, and you say the one who is inflicting that on somebody else has greater rights than the person who is the inflicttee, then your standards are not the same as mine. And I don't think they're the same as most people in civilized society. What is happening here is a demonstration of the power of the tobacco lobby and the tobacco industry. They have been shown and documented to have lied, to have deliberately withheld information from the public as to the devastatingly harmful consequences of their products. Memos have been produced which convict, in the way that the "Bible" says would happen to a person: By your words you shall be justified; by your words you shall be condemned. And the tobacco industry was condemned by its own words. And we have people on this floor talking about the right of these people, who are rude, who are uncivil, to blow their health-harming smoke on other people.

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Others are being harmed by this. If you're not infected with a disease, your coughing is not going to harm me. And by the way, some people say it's because I am so virtuous, but I call it something else. I am so mean that I don't catch diseases that other people catch. A few months ago, I had walking pneumonia, I had bird flu, I had rhinovirus, I had several other ailments, and all that I had in the way of symptoms was a cough. It would have killed anybody else. I am prohibited by hospitals from walking through wards where people are seriously ill, because my meanness kills bacteria, kills viruses, and what would become of the hospital's money-making capacity if somebody like that walked among their sick people? The Legislature is to be composed of people who make laws. As far as people who think that banning smoking in the way this bill would do is going to result in banning skating or boxing or fighting or anything else, need to get a grip. We deal with issues as they come up. If a situation develops where skating is shown to be harmful to the public, we debate it at that time. When you're in the bar, you can say any old crazy, irresponsible thing, because nobody pays attention to you anyway. And your colleagues and those lobbyists who put you all on your hobbyhorse and get you running won't tell you how foolish they make you look. Who wants to be uncivil? On this floor, I'm considered to be uncivil, because I won't roll over and let people walk on me. I don't kowtow to the lobbyists, the Governor, or anybody else. And when foolish, juvenile things are said on this floor, I'm going to deal with them. It's not like a professor trying to keep the fragile psyches of delicate students from shattering, like Humpty Dumpty when he fell off the wall. Everybody who comes here is supposed to be girded and ready for battle, and if they're not, they ought to be quiet until they find out what's going on. But if they stick their head above this line, the top might get chopped off, and that's a part of learning. I'm not going to be standing up here in these nonsensical debates that have been going on, wasting my time. But I do watch, and I listen, and I'm highly amused. And I've had subject for several rhymes about some of my colleagues, but I don't want to squelch anybody. The ability to enjoy and be entertained will be gone. They'll start thinking in a nuanced manner, and then they might begin to have a bit of effectiveness, and people might begin to listen to them. But as long as they stand up here with these broadsides and say, by God, somebody's got a personal right to blow smoke on somebody else, so what if it gives them cancer, so what if it gives them emphysema, these smokers have right, it's right there in the constitution, in the constitution. And you say, well, where in the constitution? Well, read it and you'll find it. They don't read the constitution. They don't care about the constitution. They don't care about what we do as lawmakers, but I do, and I care about the Legislature as an institution. But everybody on this floor has the right to express his or her view as he or she sees fit. That's why I always say, if a community wants to send a mule skinner here to represent them, they have that right. They know what it is they want in a representative, and if the mule skinner is the one, they send a mule skinner. [LB395]

SENATOR CORNETT PRESIDING [LB395]

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SENATOR CORNETT: One minute. [LB395]

SENATOR CHAMBERS: If it's somebody who cannot make two statements together and they make sense, that's what they want. They knew what they were sending here. But I'm going to deal with the kind of things that they say on the floor, to try to show that they're worthless, that they lack merit, that there is a trivialization of the process. But brothers and sisters, that is the process. That is the nature of the process. Senator White said people have a right to be stupid. Well, you know, senators have that right multiplied by ten. They were elected, and if they're stupid, they were elected on the basis of being stupid, and if they showed intelligence, they would be going against what their constituents sent them here to do. Thank you, Madam President. [LB395]

SENATOR CORNETT: Time. Thank you very much. The floor is now open for debate on the bracket motion. Seeing a number of lights on, Senator White, you're recognized to open. Following: Fischer and Chambers. [LB395]

SENATOR WHITE: Thank you, Madam President. Yesterday, I was worshipping at the coffee urn, and I came back onto the floor, and Senator Chambers, with the light of a leprechaun in his eyes, said, it is a pleasure to see a professional attorney, a member of the bar, a man who is admitted, though not necessarily welcome, to practice in every court in this fine state, to be skewered, skewered by a member of the lay profession. And I was transfixed by it. I was...as a really esteemed senator once said, years ago, in debate, it was as though I was hit in the head with an oil-soaked two-by-four. And when I recovered a moment, I was just stunned. I felt like I was pinned to the wall like a butterfly on a little boy's collection, by the fact that Oliver Wendell Holmes was quoted to me, the great Justice Holmes, by one of my esteemed colleagues. And may I ask, Madam President, will Senator Aguilar please rise and yield to a question? [LB395]

SENATOR CORNETT: Senator Aguilar, will you respond to a question? [LB395]

SENATOR AGUILAR: Of course I will. [LB395]

SENATOR WHITE: Senator Aguilar, I am in awe. You quoted Justice Holmes with regards to uttering the word "fire" in a crowded theater, to explain the limits of individual's right. Is that correct? [LB395]

SENATOR AGUILAR: I believe I did. [LB395]

SENATOR WHITE: And I am a great admirer of Justice Holmes. This case, however, involves offense not to the ears, but to the nose. May I, first of all, in tribute, say touche and bravo, but also offer an amendment to your bon mot? [LB395]

SENATOR AGUILAR: That is your privilege. [LB395]

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SENATOR WHITE: I would suggest that the better equitable maxim is, one's freedom to swing one's arms wildly ends at the beginning of my nose, since this is a case of offending one's sense of smell and not one's ears. Would you accept that friendly amendment? [LB395]

SENATOR AGUILAR: Yes, I will. [LB395]

SENATOR WHITE: Okay. I don't know if Justice Holmes said it, but he should have if he didn't. (Laughter) Thank you, Senator. I do want to rise to talk about the bracket amendment, only in the sense of, some work just can't be put off. And it will be a day of heavy lifting, and it will be a day about this. And Senator Chambers raises an issue. He says, what right does anyone have to blow smoke on me? And I would tell you, no one has the right to blow smoke on you. But I would say, the person that owns the establishment has the right to determine if people are welcome in it who choose to smoke. And I would submit to you, that is a constitutionally protected right. It is a property right. It is a right of long standing. And I would submit to Senator Chambers that the drafters of the bills of amendment, our Bill of Rights, specifically said, just because we didn't enumerate it in the constitution doesn't mean it's not there. And so one right that I would submit is constitutional, and that is the right of a businessperson to run and order their own affairs in their own place of residence. And Senator Chambers is right. No one has a right to blow smoke on him. But he surely can exercise his rights with his feet and bypass a business that allows smoking. And if this bill is so popular, if, as my esteemed friend Senator Pankonin said, this is politically right, people want it, surely the marketplace will respond far faster than even we can, and those businesspeople who find that the vast majority of Nebraskans despise smoking and smokers will change their rules and allow smoking in that place. Also... [LB395]

SENATOR CORNETT: ...there's another right, Senator, and that is the right to be free from a search or a seizure of your premises, unless upon probable cause and on a warrant issued by a neutral and detached magistrate. Senator Chambers did not mention that this bill allows warrantless searches, and that offends the constitution. Thank you, Madam President. [LB395]

SENATOR CORNETT: Thank you, Mr. White. Senator Fischer, you're recognized to speak. [LB395]

SENATOR FISCHER: Thank you, Madam President and members of the body. First of all, I would like to wish you all a very happy Valentine's Day, and I send regards from my hometown, the city of Valentine, Nebraska, which is the "Heart City of Nebraska." I also have treats here on my desk, which I only have on Valentine's Day, so I hope you will come back and have some, and we probably could talk a little bit then, too. Thank you, Senator Johnson. Senator Johnson and I have been discussing this bill, as I'm sure

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many of you have, too. And both of us would like this discussion to continue, and we would like it to continue throughout the session this morning. And so Senator Johnson joins me in encouraging you to hit your buttons and stand up and talk, and we will talk all morning on this. So I will...I hope you will do so. As to Senator Chambers' bracket motion--which I understand he plans to withdraw, but I still need to use up my time here--I appreciate the bracket motion. I do believe this is a serious issue. We need to address it. Some of us have a different focus on this than perhaps some of our colleagues do, and we need to bring those points forward during this debate. As you know from yesterday, I'm a strong supporter of local decision making. I don't believe we need this state mandate. We already allow in Nebraska...or, we do not allow in Nebraska smoking in public buildings. You can't smoke at a school. We all see the signs that say, drug-free zone. We don't allow smoking on school property. We don't allow smoking in county courthouses. We don't allow smoking in the Nebraska football stadium, or in the Devaney Center. And we don't allow smoking in this building that we're in right now, the State Capitol Building. But please remember, these are public buildings. These are not private businesses; these are public buildings. Yesterday, Senator Howard had an amendment up that almost passed, and that amendment dealt with placing foster children in a home where there are smokers. She wanted to ban that. She wanted that practice to end. That amendment did not pass. In my opinion, foster children are the responsibility of the state of Nebraska. The state does not allow smoking in public buildings, but yet we're going to put foster children in homes where there's smoking allowed. I'm surprised the amendment didn't pass. And many of you that support this ban did not support that amendment, and you spoke against it. Foster children are the responsibility of this state. We protect a public building, we protect people doing business in a public building from secondhand smoke. We protect them when they go to their county courthouse to do business. We protect students in schools, because we don't allow smoking in public buildings. But we're not going to protect foster children, that are the responsibility of this state, from being placed in a private home with foster parents that smoke. But yet, under this bill, under LB395, we are saying that a private business that is owned by a private property owner... [LB395]

SENATOR CORNETT: One minute. [LB395]

SENATOR FISCHER: ...who is conducting the business that they have set up, have to ban smoking, because the state is going to tell them to. They're going to have to ban smoking in their restaurant, because heaven...you know, we're going to have children in there, we're going to have people that don't want smoking, so it has to be banned. But yet we're saying foster children, who are the responsibility of this state, can be placed in homes where we have smokers. I don't understand the thought process on that. Thank you, Madam President. [LB395]

SENATOR CORNETT: Thank you, Senator Fischer. Senator Chambers, you are recognized to speak, followed by Senator Aguilar and Senator Karpisek. [LB395]

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SENATOR CHAMBERS: Thank you. Madam President, let me show you all how civil I am. I brought a lawsuit to stop paying a chaplain and to stop having prayers in this Legislature, and publishing his prayers. Those prayers cannot be published. The court said, if you're foolish enough, you can pay him. And I had offered an amendment saying we should give him 30 pieces of silver, because he's selling out what Christ talked about: Freely you have received; freely give. So you're going to pay a guy to come and pray over you? And it doesn't do any good anyway. They got rid of a hired chaplain. Now senators can go up there and stumble and fumble their way through. And you know what gets me? And I'm coming to a point about civility. When a prayer is read, they're not reading it to God. The "Bibble" said, your Father knows what you have need of before you even ask him. So to whom are they reading? To whom are they posturing? They are praying to human beings. They have elevated people above God. Jesus even told you, don't be walking around in public saying these prayers like the hypocrites do. Go in your closet, and he who sees and hears in secret will reward you openly. That's why you don't get any rewards. That's why you're full of trouble, whining, complaining, stress, heart attacks, ulcers. I don't get any of that. Not because I pray in the closet, but I don't even care about that kind of stuff. It doesn't work for you, and you say you believe it. You know what is very tragic? When people come to me for help, because they've gone to their minister, they've gone...I even have people referred to me by judges and state officials who can't help them. And then that poor person is going to tell me, I'll pray for you. And the thing that jumps up in my mind, but I don't say it to them: Your prayers don't help you; how are they going to help me? I'm the one you're coming to for help. But let me tell you this. I don't have to stay out of this Chamber when you all have you all's religious ceremony I can come in here. I can sit, I can sing, I can do anything I want to, and I'm not out of order, because the Legislature is not in session. But you know what I do, in trying to be civil and showing regard for that which I don't even believe in? I simply stay out of here. But I could come and sit. Now, should I do that? You all would be looking and grumbling. I'm going to show you what you'd do. Yet you think this blowing smoke in people's face is all right. Being uncivil, being unrude (sic), being gross, being insensitive, and harming people's health you think is a personal right of theirs. I'm foregoing an absolute right that I have as a representative to be in this Chamber whenever it's open, and nobody can keep me out, but I stay out. Do I have higher standards than the rest of you, who pray every morning? Do I have greater respect for you all, who have no respect for me and the ones I represent? Am I the example, the paradigm that should be imitated, instead of the one who should be excoriated and condemned? You put the thing together. You do the math, as they say. You connect the dots. You will never see me cough on you. You will not see me sneeze on you. You will not see me spit in front of you. You will see me showing you all the respect and consideration I can. Then I listen on this floor to people who talk about other things that are lofty and noble, but they don't understand what being civil, what ordinary courtesy is. Then they want to get a bill that talks about kids bullying each other. Where do they learn? They learn by watching you all. They listen to you. You tell

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them, don't do this, and you do it. And the "Bible" again gets you. Thou who sayest, don't steal, do you steal? Thou who sayest, don't lie, do you lie? [LB395]

SENATOR CORNETT: One minute. [LB395]

SENATOR CHAMBERS: It's all there in the "Bible." And you all claim to believe it. And you know what your Jesus said? You acknowledge him your mouth, but your heart is far from him. Those of you who think you're going to heaven, he said, not all of you who say, Lord, Lord, are going to go to heaven. You ain't even going to make it. You're going to be on that broad way. (Singing) They say the neon lights are bright on Broadway. And you know why that broad way is lit up? Because you're going to be burning. Now, you believe in a religion that's going to put people in hell and burn them forever? Well, if that's true, you're going to light up that broad way which takes you to hell, as the "Bible" said. Broad is the way that leads to destruction, and many there be that find it. The way to righteousness is narrow; few there be that find it. And I feel so lonely. Thank you, Madam President. [LB395]

SENATOR CORNETT: Thank you, Senator Chambers. Senator Aguilar, you are recognized to speak. [LB395]

SENATOR AGUILAR: Thank you, Senator Cornett. I appreciate that. I just want to touch on a couple things this morning. One of them, Senator White keeps going back to the constitution, but I would point out to you that there are 15 states in our great country that have this smoking...workplace smoking ban in place right now, and they have never been successfully constitutionally challenged. So that should tell you something about that particular issue. The other thing I want to discuss a little bit about is the 22 fresh new minds we have in the body this year, 22 fresh new ideas. That's probably one of the main reasons--that, and the fact of the Attorney...or, the head doc of the country's reality allotment, that we actually have proof that there is damage by secondhand smoke. I mean, that is reality. That's what that's all about. But anyway, getting back to these 22 fresh new minds, I can't help but wonder, and I wondered aloud at a meeting this morning, that...how many of those 22 people that joined this illustrious body this year were out on the campaign trail promising they will do everything they can to cut spending in the Legislature, to cut spending? Now, we all know that the three greatest expenditures: education, incarceration, medication; the biggest growing one, of course, medication. We have an opportunity here to cut that significantly. Millions and millions of dollars could be saved by the enactment of this legislation. So I guess what I'm saying is, you have to go back to your constituents and say, well, you know, the argument was framed around the constitution, and I believed that, so we really didn't want to save that much money, we didn't really want to cut spending that much. As always, Senator Chambers--and I think he's civil, by the way--as always, he frames the discussion where it needs to be framed. He talks about the things that need to be discussed, better than anyone else on this floor could ever do or ever hope to do. And for that reason, I'm

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going to yield the rest of my time to him. [LB395]

SENATOR CORNETT: Thank you, Senator Aguilar. Senator Chambers. [LB395]

SENATOR CHAMBERS: How much time, Madam President? [LB395]

SENATOR CORNETT: Two minutes and 33 seconds. [LB395]

SENATOR CHAMBERS: Thank you. Madam President, I enjoy listening to Senator White. He makes very good points, and he makes them in a very effective manner. But that doesn't mean that he is always correct in his application of constitutional provisions. Many people will read the constitution and quote it. But the dispute arises when time comes to apply it to a specific situation. Courts have a term for that. They say, this case is fact-specific, meaning that there are unique circumstances here, and the decision handed down is not an expression of the general law that covers everything in this particular area where the conflict is occurring, but in this narrow little corner where you have this particular set of facts. Now, whenever you have this set of facts, you can expect this decision to be forthcoming. Senator White applies the brush too broadly. He takes in things that should not be encompassed therein. Disputes and debates between people such as myself and my esteemed colleague should help sharpen the issue. [LB395]

SENATOR CORNETT: One minute. [LB395]

SENATOR CHAMBERS: But if you want to be correct, you need to listen to me. I will not mislead you. Oh, I can prove it. You all wouldn't have your expenses if I had followed various Attorneys General who had said we can't get expenses. But I don't listen to them, and you got them. I said that David Hergert could be impeached. We were told he couldn't be. The former Chair of the Judiciary Committee said he can't be, and others on this floor said he can't be. But he was. I have a track record. Does that mean that everything I say is correct? Not necessarily. But you can count on me believing what I say, at the time I say it, to be true and correct. I don't want to mislead you. If I do and you find out I misled you,... [LB395]

SENATOR CORNETT: Time. [LB395]

SENATOR CHAMBERS: ...you're going to leave that position anyway. Thank you, Madam President and Senator Aguilar. [LB395]

SENATOR CORNETT: Senator Karpisek, you are recognized to speak. [LB395]

SENATOR KARPISEK: Thank you, Madam President, members of the body. I just want to stand up and say I agree, Senator Chambers, that no one should spit on each other,

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blow smoke in each other's faces, do any of those nasty things that you talked about. And I will try to talk more fluently and better today. I was chastised yesterday. But I do apologize. I'm not a goat skinner or mule skinner; I'm a deer skinner. And yes, they did send me here, so even though I don't speak very eloquently, I think that I can get my point across, and I also was voted in. So I will let you know what I think, and we can agree to disagree, I'm sure. My point is, again, the people that own these businesses, if you don't want to come into my business because it smells like wood smoke, it smells like fresh meat, don't come in. That's what I do. And if you don't want to come in because I let my customers smoke in my establishment while they're picking out their meat--although they're probably not supposed to, because the state tells us that--don't come in either. I can obviously get along without that business. And if I can't, my bad. One of my good friends, Randy (phonetic), across the street in the establishment that I frequent, is not a smoker, doesn't like smoking, used to teach at a parochial school. But he understands that that is where his money comes from, and he's in business to make money. I know another friend of ours said, well, if you would ban smoking in there, I'd come in there. Randy said, well, I guess I won't be seeing you then. The point of that is, it is his business to do with how he wants. If he wants to smear feces on the floor, I suppose he can. If you don't like that, don't go in there. If you don't like to be spit on, don't go to places where they spit on people. Senator Chambers, I haven't been coming into the Chamber much either in the mornings to hear the prayer, but mainly because I've been downstairs talking to constituents, talking to other people. I've heard you say that you're fairly slow. I would challenge you that (laugh) you are light years ahead of me, sir. So I do need to take my time, think things through. And maybe in my simple mind is why I cannot get past this, that this is a right of the business owner and their hard work and blood, sweat, and tears. And if I don't want that...maybe I'm really missing out. Maybe I could be a millionaire and this job could just be a sideline for me, instead of a money-maker, I guess. But it is, for me. And again, I will voice my opinion, right or wrong, and if my constituents really disagree, they will...you will not see me here in four years. I don't believe that's why they sent me here, was to sit down and shut up because maybe I'm not very eloquent or I don't believe the same ways as some of the other senators. That's why we're America. We can stand up and say what we want to. No, we can't spit at each other and hit each other, like I said yesterday, kicking, biting, scratching, those things. But I believe that we can stand up and voice our opinion and not be chastised because of it. With that, I would like to yield the rest of my time to Senator Fischer. Thank you, Madam President. [LB395]

SENATOR CORNETT: Thank you, Senator Karpisek. Senator Fischer, you're recognized. [LB395]

SENATOR FISCHER: Thank you, Madam President and members. Could you tell much time I have, please? [LB395]

SENATOR CORNETT: One minute. [LB395]

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SENATOR FISCHER: With one minute, I don't think I'm going to get into a lengthy discussion. I would ask Senator Chambers to yield to a question, please. [LB395]

SENATOR CHAMBERS: Yes. [LB395]

SENATOR FISCHER: Senator Chambers, did I hear you correctly that you wanted to withdraw this bracket motion? [LB395]

SENATOR CHAMBERS: That was my original intent. But since all they want to do is talk, they can talk on this as well as anything else. [LB395]

SENATOR FISCHER: I would yield my time that Senator Karpisek yielded to me to you, Senator Chambers. Can I do that? [LB395]

SENATOR CHAMBERS: Do I have time to wish Senator...how much time do I have, Madam President? [LB395]

SENATOR CORNETT: Twenty-one seconds. [LB395]

SENATOR CHAMBERS: That's long enough to wish Senator Fischer a happy Valentine's Day. And I presume that your wish of a happy Valentines Day was expansive enough to include me. I'm very flattered. And fortunately, my complexion prevents me from showing the amount of maybe embarrassment that I feel as a result. Thank you. [LB395]

SENATOR CORNETT: Thank you, Senator Chambers. Senator Pankonin, you're recognized to speak. [LB395]

SENATOR PANKONIN: Thank you, Madam President, members of the body. As I said through the discussion yesterday, I made some observations, and I must start by saying this issue cuts a little close, it's a little emotional for me. So I need to tell you that story real quickly. As I think most of you know, my father died relatively early, at age 56--I'm 55 now--and my mother died shortly after that. And I want to tell you the story about that. My father was a World War II combat veteran, started smoking then, was a very heavy smoker. As his phrase was, they couldn't hardly make them fast enough. And it was three, four packs a day, and a lot of times he had--I worked with him--he had two going because he had one started. And he died early because of that. But what was probably a little tougher for me was taking my mother to the oncologist--and she was kind of a health nut--but having her ask the doctor, why did I get this cancer, and the question being, were you ever exposed to secondhand smoke? And we all were, to a lot of it. And my father was a great dad, and you know, we just didn't know those things then. So that...I need to preface that with those comments. And I enjoyed the discussion

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about personal business rights. And I think Senator White, as we've talked, had some valid concerns about the bill that I'd sure be open to improving it. And we also heard talk about the economics of tobacco taxes and economic activity. Also, we heard the other side about the cost of healthcare associated with smoking. Senator Carlson I thought had some very good comments about personal responsibility, and I appreciated all of the debate. I just want to talk about a couple of these issues, first of all, on the healthcare costs. Even though tobacco is a source of income, and it will continue to be because people will continue to smoke, we're talking really about secondhand smoke here. My view is that the financial costs of the healthcare-related costs, both currently and over the long term, are very much higher than the income side of the equation. The financial ledger is not even. Smoking costs much higher for the state and for us as individuals. On the personal responsibility, sometimes we need a nudge. Last Thursday, I had a young man tell me, who was 32 years of age--his name was Brian (phonetic)--he said, the smoking ban in Lincoln has really helped me. I said, well, how has that been, Brian, if you're a smoker? He says, well, it's gotten so tough that I only smoke two or three cigarettes a day, versus two or three packs. And his quote was, help me help myself. And I know Senator Carlson, as a coach, a lot of times had to nudge young athletes for not only on-field performance, but off-the-field values. And I know he was the type of person that would do that. So I want to give you three reasons why I support LB395 and why I'm against the bracket motion. Number one is because it is the right thing to do for public health. I heard people in this body say they hated smoking, they knew it was bad. If this law would help prevent illness and death to thousands of Nebraskans who are affected by secondhand smoke, it is a worthwhile purpose. Plus, it might be another reason that helps smokers quit. The second reason is that this law could very well have a positive effect on the state's and individuals' healthcare costs long-term. Secondhand smoke and smoking is a major expensive health risk that could be helped by LB395. The third reason is that this bill, if properly written, is the smart thing to do politically. Yesterday, I was very impressed when Senator McDonald said she had changed her mind on this issue. I talked to her about it, and her answer was, I changed my mind because a majority of my district has changed their opinion. In my opinion,... [LB395]

SENATOR CORNETT: One minute. [LB395]

SENATOR PANKONIN: ...Senator McDonald is a smart politician to realize this. Here's how I look at it. We heard that there are approximately 80 percent nonsmokers to 20 percent smokers. Do the voting math, Senators. Seventy years ago, everybody knew that Franklin Delano Roosevelt smoked cigarettes. It was accepted politically. And he died at age 64 from heart disease. In 2007, Barack Obama is trying to quit smoking because he is going to run for President and it is viewed as such a political liability for his campaign. If you plan to represent the majority of your citizens, i.e., voters, or plan to run again for this or another office, I submit to you that in most legislative districts it will be politically smart to support this concept and be voting for it on this floor. In my view,

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let us work together to improve this bill and do what is right and do what a solid majority of Nebraska citizens want us to do, which is to pass a statewide secondhand smoking protection law. Thank you. [LB395]

SENATOR CORNETT: Thank you, Senator Pankonin. Senator Johnson, you are recognized to speak, followed by Senator Wallman and White. [LB395]

SENATOR JOHNSON: Thank you, Madam President. I thought we'd just talk a few...about a few of the things that were kind of left undone yesterday. One of the things is, of course, the question of the foster care that Senator Fischer brought up. As many people on this floor said, that we need to do something to improve foster care in Nebraska. It is an embarrassment. One of the things that we hope to do--and we took a giant step about ten days ago--is to reorganize Health and Human Services Department, hopefully, with this passage of this, that we will put people in a responsible position where they can be looked at directly and be accountable. This is the...I think, the kind of good government changes that we all wish to make. Certainly, this reorganization bill is not perfect. And perhaps we can make it better before we bring it to completion. But let's talk just a bit about Senator Howard's bill yesterday. One of the questions that many of us had is this, is that, do the foster care people, these parents, do they smoke at the same rate as the rest of the population? Well, they probably do. We all have friends that smoke, and some of them smoke very significantly. I've been in on autopsies where people have died of cancer of the lung, and the pathologist would be smoking. So you know, what we're dealing here is with addictions, and so on. So why would foster parents be any different? Now, none of us want these children to go in that foster home area, but there was some question whether, by diminishing the pool of foster parents by 25 percent, which is about the percentage of us that smoke, would we then diminish the good foster parents who happen to smoke and replace them with less than good foster parents that didn't smoke? So that was kind of the argument back and forth at that time. And you know, yesterday and again this morning, Senator Karpisek...Senator Karpisek, could I ask you a question, please? Are you a member of the Agriculture Committee? [LB395]

SENATOR KARPISEK: Yes, I am. [LB395]

SENATOR JOHNSON: Who is your Chairman? [LB395]

SENATOR KARPISEK: Senator Erdman. [LB395]

SENATOR JOHNSON: Is Senator Erdman known as a relatively conservative or a relatively liberal in his political persuasion? [LB395]

SENATOR KARPISEK: He seems pretty conservative. [LB395]

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SENATOR JOHNSON: Well, I would agree. And very frankly, I like the good senator on a personal matter. But...and I happen to like you, as well. [LB395]

SENATOR KARPISEK: Well, thank you. I like you, sir. [LB395]

SENATOR JOHNSON: But, we are... [LB395]

SENATOR KARPISEK: It's Valentine's Day. [LB395]

SENATOR JOHNSON: We are about to go on Final Reading on an agricultural bill, LB74, that I understand that you voted on in committee, and brought to us. Senator Erdman's name is only one on the bill. [LB395 LB74]

SPEAKER FLOOD PRESIDING [LB395]

SPEAKER FLOOD: One minute. [LB395]

SENATOR JOHNSON: And what it is, is 20 pages of regulations regarding meat markets, other types of food. Let me read you a few of the questions. At any rate, in here they actually have...give you and your employees instructions of even how to wash your hands. [LB395]

SENATOR KARPISEK: Correct. [LB395]

SENATOR JOHNSON: Isn't this big government? [LB395]

SENATOR KARPISEK: It's a matter of food safety for myself, not to contaminate my foods to get someone sick, the things that I produce. [LB395]

SPEAKER FLOOD: Time. [LB395]

SENATOR JOHNSON: Thank you, sir. [LB395]

SPEAKER FLOOD: The Chair now recognizes Senator...Mr. Clerk, items for the record? [LB395]

CLERK: Mr. President, thank you. Business and Labor will have an Executive Session right now in Room 2022. Business and Labor, right now, 2022. Your Committee on Enrollment and Review reports LB211A to Select File. Banking, Commerce and Insurance Committee, chaired by Senator Pahls, reports LB379, LB380, and LB383 to General File. New resolutions: LR29 and LR30, offered by Senator Christensen. Those two will be laid over. Senator Stuthman offers LR31. That as well will be laid over. And I have a series of hearing notices from the Appropriations Committee, signed by Senator

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Heidemann as the Chair. That's all that I had, Mr. President. (Legislative Journal pages 574-578.) [LB211A LB379 LB380 LB383 LR29 LR30 LR31]

SPEAKER FLOOD: Thank you, Mr. Clerk. The Chair will now recognize Senator Wallman, followed by Senator Harms, Hudkins, Fischer, Carlson, Chambers, Aguilar, and others. Senator Wallman, you may begin. We will pass over Senator Wallman, citing his absence. Senator Harms, you are recognized. [LB395]

SENATOR HARMS: Thank you, Mr. President and colleagues. Senator Fischer, would you yield, please? [LB395]

SPEAKER FLOOD: Senator Fischer, will you yield to a question from Senator Harms? [LB395]

SENATOR FISCHER: Certainly, Mr. President. [LB395]

SENATOR HARMS: Senator Fischer, earlier in your discussion, you listed a number of places that we no longer allow smoking to occur. Would you list those again, please? [LB395]

SENATOR FISCHER: I believe I said public schools have the drug-free zones, county courthouses, Nebraska football stadium and Devaney Center, State Capitol Building. I believe those were some of them, Senator. [LB395]

SENATOR HARMS: Thank you. Senator Fischer, and why did we do that? [LB395]

SENATOR FISCHER: Because those are public buildings. [LB395]

SENATOR HARMS: But why did we change that...why did we create that law, Senator Fischer? [LB395]

SENATOR FISCHER: I wasn't here when the discussion took place, Senator Harms, but I would imagine the discussion was that those are buildings that people need to go into in order to conduct public affairs. [LB395]

SENATOR HARMS: But why? Why would they create a law to prohibit you from smoking in public...in those public facilities. [LB395]

SENATOR FISCHER: For health reasons... [LB395]

SENATOR HARMS: Thank you. [LB395]

SENATOR FISCHER: ...with the secondhand smoke, Senator. But those are public

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buildings. [LB395]

SENATOR HARMS: Thank you very much, Senator. The point I'm making here is that smoking does kill. I've experienced it in my family. Have you ever watched anyone die of emphysema? My father died of that, because he was in the restaurant business, and because every morning you could go in there at 6:00 in the morning and you'd see a haze of smoke. And we didn't know that that would kill at that time. The point here is that smoking is harmful. We know that it is harmful, and we know that smoking cigarettes...people become addicted. I have talked to people that have struggled to try to quit from smoking. They can't quit. And you know what's going to happen to them? They're going to die. They're going to get emphysema. They're going to get cancer. They're going to have all other kinds of issues here. And here we stand here and we debate and we argue. I'm talking that when we look at our teenagers, what are we...kind of a message are we sending to them? The increase in smoking in teenagers continues. It's on the rise. And it's not appropriate. It's not appropriate for us, knowing that this is a danger to our health, to continue to allow it. Whether it be in a private business or not, we have a responsibility here to protect the employees. We have a responsibility to protect the customers. I'm here to tell you, if someone is smoking in a bar...or, can't smoke in a bar, they're going to go outdoors and smoke for a few minutes, just like they do on a college campus that's nonsmoke, and they come right back in and finish whatever they're doing. My point here is, folks, that this is harmful. It's not appropriate, whether it's private or not private. We know that it does cause a problem for health. And I would urge you to support this bill. [LB395]

SPEAKER FLOOD: Thank you, Senator Harms. The Chair recognizes Senator Hudkins. [LB395]

SENATOR HUDKINS: Thank you, Mr. President and members of the body. I feel like the young ladies on Hee Haw this morning, who have said, I don't repeat gossip, so listen closely the first time. I don't smoke. In the early years of my life when those habits may be formed, I simply couldn't afford to smoke. I'm older now, and I still can't afford to smoke. It's a little bit like setting fire to a rolled-up \$20 bill, or maybe even two \$20 bills. Lincoln has enacted a smoking ban, but the people did it. It wasn't a mandate set out by the city council. At the time the ban was voted on, bar owners didn't want it, because customers...they were afraid customers would go to other towns, Waverly or Malcolm, for example, where the smoking was still allowed. You know, and that's what...exactly what happened. Now bar owners want a statewide ban. They call it leveling the playing field. I call it, follow the money. We're being told that smoking and secondhand smoke is bad and dangerous and unhealthy. Of course it is. We all know that smoking is a health issue. Drinking and then driving is also a health issue. Obesity is a health issue. Not getting required inoculations, as long as they don't contain thimerosal, is a health issue. Not having health screenings is a health issue. But the last time I checked, smoking is a legal activity. Senator Johnson said that we all have a right to be stupid. We all have a

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choice of whether we smoke or not. I was rather surprised, though, that the language was deleted in the bill about not being able to smoke within so many feet of the door of a business. The public has to walk through this haze when they enter the business. And unless you can hold your breath, you're still going to be breathing secondhand smoke. Isn't this a bit hypocritical? Before the Lincoln ban took place, restaurants had nonsmoking areas. This was about as effective as having a "nonpeeing" section in a public swimming pool. But businesses do have a choice of whether or not to allow smoking. How many times have we griped about a federal mandate that forces states to do something? How many times have we heard from our schools, fussing about state mandates? How is this any different? Banning smoking statewide is a mandate. Bars and businesses want us to do it. That way, they can blame us when their customers can't smoke. I had a restaurant-bar establishment in my district come to me and say, please put in a statewide ban; that way, I don't have to do it. As Senator Johnson said, we all have a right to be stupid. I don't feel, though, that we need to legislate against stupidity. Now I have emptied my feeble mind, but I have voiced my opinion, and I believe that's what we're here to do. [LB395]

SPEAKER FLOOD: One minute. [LB395]

SENATOR HUDKINS: Thank you, Mr. President. [LB395]

SPEAKER FLOOD: Thank you, Senator Hudkins. Senator Fischer, you're recognized. [LB395]

SENATOR FISCHER: Thank you, Mr. Speaker and members of the body. If I may, I'd ask Senator Pankonin if he would yield to questions, please. [LB395]

SPEAKER FLOOD: Senator Pankonin, will you yield to a question from Senator Fischer? [LB395]

SENATOR PANKONIN: Do I have to? (Laughter) [LB395]

SPEAKER FLOOD: It is at your option, Senator. [LB395]

SENATOR PANKONIN: Okay, I will. [LB395]

SENATOR FISCHER: Senator Pankonin, we are friends from many years ago, correct? [LB395]

SENATOR PANKONIN: (Pause) (Laughter) Where is this going? [LB395]

SENATOR FISCHER: Before I attack you, I just wanted the members to know that your wife and I were in college together, and we are friends. But I would question you, when

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you brought up the health costs of smoking. Do you have numbers on those health costs? [LB395]

SENATOR PANKONIN: Well, for example, yesterday Senator Hansen and I heard in the hall that--so, you know, how valid is that?--but that the Union Pacific Railroad figures that smoking-related costs, costs them \$50 million a year. Senator Hansen, isn't that what we heard? So I just think when you compare the income that the state gets...and it will still get a lot of that. As time goes on, I think it will go down, because one of the points I was trying to make is, people have... [LB395]

SENATOR FISCHER: I don't think I want you wasting my time, so, you answered the question. Thank you. [LB395]

SENATOR PANKONIN: Okay. [LB395]

SENATOR FISCHER: Two...last session when we talked about the smoking ban, I had lobbyists come into my office. And I know there are lobbyists that are calling a lot of us out in the Rotunda now, lobbying in favor of this bill. And I had lobbyists come into my office and tell me how much money it would save the state if we would ban smoking. I asked those lobbyists to get me the numbers. I said, my mind is open on this. Get me the numbers. If you can prove to me that we're going to save money in this state, get me the numbers. It's been two years and they haven't come back. Senator Combs would always bring up obesity when we would talk on these matters. I have been told, too, by various health organizations and people in the hallway that the costs...health costs related to obesity are higher than those related to smoking. Are we going to put a scale outside restaurants? Are we going to say, okay, you have to stand on this scale before you walk in, and I'm sorry, Deb, but you're a little heavy today; you can't come in for lunch? The state has no business doing that, and the state has no business mandating a smoking ban on private businesses. We know smoking is bad. We know secondhand smoke is bad. that's why, Senator Harms, we do not allow it in public buildings where people must go to conduct business. But people still have a choice where they're going to go for lunch. And cities still have a choice if they're going to pass a smoking ban. Why are we discussing it at the state level? Senator Pankonin always talked about...or, also talked about, be politically smart. You know, we're politicians. Some of us, if we want to, we're going to run for reelection. So be politically smart. This is what your people want. If we did that on any other issue... [LB395]

SPEAKER FLOOD: One minute. [LB395]

SENATOR FISCHER: ...in this Chamber, we would be chastised by our colleagues for being worried about what's going to happen in a reelection campaign. And we should be chastised, not just by our colleagues, but by our constituents, because we're worried about every vote we make in here on how it's going to play back home, how we're going

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to spin it. That's not why I'm here. I am here, and my constituents know I am here to be honest. I stand for principles. I stand for certain things that I believe are important to this state and important to my district. And those include private property rights, local decision making, letting people make choices and be responsible for them. Thank you, Mr. Speaker. [LB395]

SPEAKER FLOOD: Thank you, Senator Fischer. The Chair will now recognize Senator Carlson, followed by Senator Chambers, Senator Aguilar, Senator Stuthman, Senator Preister, and others. Senator Carlson, you may begin. [LB395]

SENATOR CARLSON: Mr. President, members of the body, I'm going to preface my remarks, first of all, addressing a comment to Senator Chambers. First of all, I believe and I study the Bible. I refer to it as the Bible. I'd appreciate it if you would. I believe what it says. I try and base my behavior on what I learn from it. I believe, based on what it says, then when I die, I know where I'm going, and I look forward to getting there. However, in this month I've developed a real admiration for you, for the way you express yourself. I've come to realize that you operate and you conduct yourself based on principles. So do I. This morning, you spoke about the evil of inflicting something harmful on others, being secondhand smoke. I've heard you talk about the principle of protecting those who can't protect themselves--the children. The worst environment for the damage of smoke on children is in the home. Our laws protect children from severe physical and mental abuse from their parents. Smoke in the home is a serious form of abuse. This is a serious public health problem. What do we do about it? Do we amend LB395 to include the homes where there are children? Senator Fischer had a concern earlier about not passing an amendment to prevent foster parents from smoking. If it's a good decision not to allow foster parents to smoke in their home, is it not also a good decision to not allow parents to smoke in their home? We're responsible to make the best decision for the public good and for public health. So if we're consistent and we're honest, why not include the home? Where do we draw the line in freedom? How far do we go in guarding the public health? Appreciate the opportunity to speak. I yield the balance of my time. [LB395]

SPEAKER FLOOD: Thank you, Senator Carlson. The Chair recognizes the gentleman from the 11th Legislative District in Omaha, our senior member. [LB395]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I like to clean up the little things first, before I get to the big things. You say "to-may-to," I say "to-mah-to," you say "po-tay-to," I say "po-tah-to." But "to-may-to," "to-mah-to," "po-tay-to," "po-tah-to," let's call the whole thing off. You say "Bible," I say "Bibble," and mine is as correct as yours. Members of the Legislature, what Senator Carlson talked about makes a lot of sense. If you're going to define harm to children as child abuse, ban it wherever it occurs. And I challenge you to offer that amendment if that's your belief. I've tried to get amendments--and I had to put them on other bills--to stop people from letting

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children drink liquor at home, and I'd like to stop it in churches, too, because the hypocrisy is being shown to the children. They hear all this talk about, don't do this or don't do that; then it's done at home and in church. That's why children say, I don't listen to these old fogies; they tell me something and they do worse than I do. I see the preacher hitting on young girls. In fact, young girls will go and say how the preacher is trying to hit on her. That means make advances to her. When we were talking, you all were talking about the foster parents, I think it was Senator Erdman who reduced it to an either/or situation, that either the children are going to be in the homes of good foster parents who smoke, or the homes of bad parents who don't smoke. So the conclusion is, if you don't smoke, you're a bad parent; if you're a good parent, you smoke. That's nonsense, and that's the kind of lack of reasoning I'm talking about. But it carries a lot of weight around here, because it has an allure. You need to look through that and disregard it. I'm going to hold up that HHS bill until we finish LB395, because the word that comes first usually is the one that's most important. The first word here is "Health," so I'm going to hold it up. And as thick as that bill is, I can do it. So now, you all want to play hardball? We're going to play hardball. You think the lobby has power? I'm going to show you like I've said before. The "Emperor" Radcliffe doesn't set the agenda in here. He might be able to get senators to do certain things, but as long as I'm on this floor, there's one above the "Emperor." There's a story of Esau and Jacob. And Senator Carlson can tell you this is true. And I'm not going to take too long, because my time will run out. Esau was a man of the field, a hunter, a simple man, something like Senator Karpisek portrays himself. He didn't speak eloquently, but he knew how to make his point. He lived and communed with nature, and made his living among the critters. Here's Jacob. Now, they were twins. But one came out before other. And I'm not going to tell you which one came out first, but I have to, to make the story. One was holding the heel of the other one, and when the first one was pulled out, the other one came, too. He was holding the heel. And one of them was covered all over with red hair, covered from head to toe. Well anyway, under the old Hebrew customs--and that's what they were in those days; not Jews, Hebrews--the son got what was called the birthright if he was older. Jacob's mother liked Jacob more than she liked Esau. Jacob was, as I say, smoother than goose grease. He could slide across the floor without moving his feet. You think Michael Jackson is something when he does the moonwalk? His feet move. Jacob didn't move a muscle, and he could slide all the way across the floor. So one day Esau was out in the field. The "Bibble" has stories that don't make sense to me. This man, who knew how to survive, somehow got out there... [LB395]

SPEAKER FLOOD: One minute. [LB395]

SENATOR CHAMBERS: ...and he was starving because he didn't have what he needed to eat. So the mother had Jacob trick the father into giving the birthright, but Esau had to be taken care of first. So Jacob said, I will give you something to eat, my elder brother, and save your life, if you will give me your birthright. And I'll have to finish it next time. But what Esau was reasoning, probably: If I'm dead, I don't have a birthright

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anyway; if I give him my birthright, at least I have my life, and maybe I can make a life for myself, even without my birthright. Continued next time I speak. Thank you, Mr. President. [LB395]

SPEAKER FLOOD: Thank you, Senator Chambers. That was your third time. Also, coming up here we have Senator Aguilar, Stuthman, Preister, Schimek, Avery, Johnson, Kruse, and Fischer. Senator Aguilar, you are recognized. [LB395]

SENATOR AGUILAR: Thank you, Mr. Speaker and members. I keep saying I'm going to sit down and be quiet and listen to this, but somebody always manages to say something that causes me to respond, Senator Karpisek. (Laugh) When you're talking about restrictions and people that own businesses shouldn't be restricted on what they can do in their own business, you know, I can turn that argument around and say, just because I'm a nonsmoker, I shouldn't be restricted on where I want to go, to what restaurant I want to attend, to what bar I want to attend. I shouldn't be restricted in that. I should have every freedom that anybody else has. I should have that right. And as far as regulations go,...and feces on the floor? Come on. Don't go there. And don't compare wood smoke with the carcinogens that are in tobacco smoke. Not very many people have died of wood smoke inhalation, especially secondhand. Freedom is all about going where you choose, anywhere you want to go. And more restrictions? They don't let restaurants serve tainted food. They regulate that. They don't let bars serve alcohol that people haven't paid taxes on. They regulate that. That's regulation. And that's what this is. You know, we do things that make it better for people when we regulate things like this, and that's what we're hoping to achieve. Senator Hudkins said that smoking is a legal activity. I couldn't agree more. It is, darn it. But so is owning a gun, for some people. But Senator Hudkins, if you take that gun and you shoot Senator Johnson, that's not necessarily a good thing. He's probably going to die. He's going to be just as dead as the poor souls that are infected by secondhand smoke and die of cancer, every bit as dead. Where's the consideration for him? One of the other points I want to make is from something Senator Carlson said. Carlson...Senator Carlson, I really respected your dialogue. You talked about, why don't we make it illegal in the homes? You know what? I'd love to do that. I'd love to be able to do that and protect all the children. But instead, we do things that we can accomplish. We legislate what we have the ability to pass. Legislation is not just a matter of having a good idea and throwing it out there and say, okay, I'm going to get this passed. It's a little different than that. It's all about negotiation. It's all about discussion and dialogue, and getting 25 people to agree, 24 other people to agree with your point. That's what it's about. But yeah, I would really like to make smoking illegal in homes where children are present. I think that's a great idea. The rest of my time to Senator Chambers please. [LB395]

SPEAKER FLOOD: Senator Chambers, Senator Aguilar has yielded you the balance of his time. He has 1 minute and 48 seconds remaining. [LB395]

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SENATOR CHAMBERS: Thank you, Senator Aguilar. Thank you, Mr. President. And I said next time I'd speak, and I knew I'd speak again. But I thank you, Mr. Chair, for reminding me it was my third time. I was telling you about Jacob and Esau. The mother told Jacob, you go give your father this savory stew that he likes, and then you get the birthright. And Jacob said, well, I tricked Esau, but how am I going to trick my old man? His father was blind, Isaac. So she made him a covering of skin to cover him, and made it smell like an animal. The mother, colluding with son to trick the father. So to shorten this whole thing up, when the scheme was unfolding, Esau...Isaac said, come here and let me touch you, and he touched him, and he felt the animal skin. He said, you have the skin of Esau, but you have the voice of Jacob. Your voice is the one uttering these words, but the words come from the lobby. And the ventriloquist, the puppeteer, is Walt Radcliffe, probably. Maybe not. Maybe I'm giving him credit he's not due. But I've been around here a long time, and these arguments being given are old to me. Now, if I had a particular affliction, that would be mine, but I wouldn't try to justify it and put it on everybody else and try thereby to make what I'm doing right. There are people harmed by this secondhand smoke, and it is unconscionable for people to stand on this floor and pretend that it doesn't. Senator Karpisek has a license to operate an establishment. That license is a privilege. It carries certain responsibilities. And the license also carries with it regulation, and the state can and should say... [LB395]

SPEAKER FLOOD: Time. Senator Stuthman, you're recognized. [LB395]

SENATOR STUTHMAN: Thank you, Mr. Speaker and members of the body. First of all, I want to talk a little bit about the issue of public places. You know, we ban smoking in public places, and it's those places where the public goes. The concern that I have is in businesses. What group of people are invited into the business? It's the public. And there is a need for the public to go into these establishments, because they depend on the public for the support and profitability of their business. I want to talk a little bit about an E-mail that I got this morning, and it comes from a local veterinarian, doctor, in my community. And he states, every week I treat animals with secondhand smoke problems. Every week, cats, dogs, that have breathing problems, because they come out of a house that has smoke in it. Also he states in his E-mail that it is time for Nebraska to go smoke-free and step out of the dark ages. I think that's a statement that we should realistically think about. I'm going to listen to the debate this morning, and I will give the balance of my time to Senator Chambers. [LB395]

SENATOR ERDMAN PRESIDING [LB395]

SENATOR ERDMAN: Thank you, Senator Stuthman. Senator Chambers, Senator Stuthman would like to yield you 3 minutes and 30 seconds. [LB395]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Stuthman. Don't cut me off in the middle of a word next time. When the man says "time," a person

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finishes a sentence. You can do it that way if you want to, but if that's the way this game is played, I'm going to play it, and I'm going to show you I can play it better than you. Now, let me get to what it was that I was going to comment on. Senator Karpisek and Senator Fischer have made what they consider to be telling points. Senator Aguilar took care of what Senator Karpisek said. Senator Fischer, tailgating on something Senator Jeanne Combs used to say about obesity, and she said they make you get on a scale before you go in to eat. I've been on some little planes--I call them jitney planes--and they do check the weight of people. And I've seen where after they put a certain number of people on one side and a certain number of people on the other side, a heavy person was not allowed to get on that plane. Now, I saw that happen, and I was on the plane when it happened. I didn't even know they did that. I knew they weighed baggage or things like that. But they were looking at the weight of individual people. And if you all have never seen it, you ride on some of these little...and it was a commercial airplane, you will see. But again, when people have to reach that far to make a point, they have no point. We're talking about secondhand smoke that has been shown to harm people, and the tobacco industry knew it, and the lobby is in here doing the talking and calling the shots. This is the way they've always done it. They make the arrangements, and they can make them. But that bill that I'm going to hold up is LB296. I think that's the name...or the number of that HHS reorganization bill. We may as well drop the pretense now. The first shot, I feel, was fired just a few minutes ago. Sometimes when I'm accommodating, people mistake it for being a fool. You all haven't heard anybody on this floor cut off in the middle of a word when the Chair said time. Well, it happened to me, but it's not going to happen again. It can happen again, but I will deal with it. Nobody here owns me,... [LB395 LB296]

SENATOR ERDMAN: One minute. [LB395]

SENATOR CHAMBERS: ...and nobody here intimidates me, not Walt Radcliffe, not any of these people who carry water for him. And I'm going to deal with the issues the way I think they should be dealt with. And when people stand on this floor and trivialize the harm done by secondhand smoke, I think that's reprehensible. This is not a jesting matter. Senator Pankonin gave an account that others could give. And others who haven't had that experience in their family know that it can happen. And to talk about, this is like obesity or spreading feces on a floor, or he wants to make sausage, or he skins deer, let him do whatever he wants to do, and if he wants to smoke, smoke, smoke himself to death and, if he's got children, blow smoke in their face, let him. But anything I can do on this floor to shield others, I'm going to do it, and that's my job. Why do you think states have what are called police powers? To pass laws to protect the public health and welfare. [LB395]

SENATOR ERDMAN: Time. [LB395]

SENATOR CHAMBERS: I don't care who smokes. [LB395]

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SENATOR ERDMAN: Time, Sen... [LB395]

SENATOR CHAMBERS: But I care about people who don't smoke being harmed. Thank you, Mr. President. [LB395]

SENATOR ERDMAN: Thank you, Senator Chambers. Senator Preister, you're recognized to speak on the bracket motion, followed by Senator Schimek, Senator Avery, and Senator Johnson. Senator Preister. [LB395]

SENATOR PREISTER: Thank you, Honorable President, friends all. I rise in support of LB395. The bracket motion is an opportunity to discuss LB395 so I will skip over the bracket and talk more specifically about my views on the bill itself. I see it as a prevention issue and I believe that Senator Johnson, who is a medical doctor and had a career as a medical doctor, took an oath, and that oath was the Hippocratic oath, and a part of that oath required him to commit to saving lives. Saving lives, preventing death, preventing illness, preventing injury is a part of the medical profession and the profession that Dr. Senator Johnson undertook and was devoted to for years and years, a part of which was served on a Navy ship off the country...in the ocean off the country of Vietnam. And he was there, saving those lives, which I certainly appreciate, and for which, Dr. Johnson, I personally thank you and say welcome home. Aside from that...and we do tend to go on tangential issues sometimes, but I thought that was an important one...prevention is what LB395 is about. Prevention in terms of death and we have heard from Dr. Johnson how many deaths are caused, in Nebraska alone, from secondhand smoke. We've heard from Senator Pankonin a very personal and very emotional story of how it affected his own mother. That touches very close to home. Is that emotional? Certainly it is. But is a reality, it is a fact, and an important one to be a part of this discussion. We're preventing, by keeping secondhand smoke away from people, those kinds of tragic situations, both the death component of it and contracting the cancer itself and the chemotherapy, the treatment itself, and the trauma that that imposes upon the person who has the illness. Prevention is the easiest and most cost-effective thing that we can do. And we, as policy makers, are in the position to be able to exercise that prevention with this bill. It is not only the prevention of the death and the pain and the suffering that we're talking about. That's primary. That's paramount. And that's what any doctor or medical care professional or most any caring person would want to have happen. But in addition to that, we're also preventing the loss of great sums of money. And Senator Johnson passed out, to give some more specific examples of those costs in Nebraska, in addition as Senator Hansen indirectly said and Senator Pankonin said, the Union Pacific estimates \$50 million that smoking cost their organization. That's astounding to me. But in addition to that, on the handout that Senator Johnson gave to us, he lists smoking caused health costs in Nebraska, and as I can read this it says \$537 million--\$537 million that potentially could be saved. Now, as the Health Committee is looking at... [LB395]

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SENATOR ERDMAN: One minute. [LB395]

SENATOR PREISTER: ...the cost in Medicaid and Medicare that the state pays, we're trying to find ways to be able to afford those healthcare costs. This is a savings to the state in dollars, in addition to the other kinds of traumatic savings that we're talking about. We're talking prevention--prevention of death, prevention of ill health, prevention of medical costs, prevention that saves insurance costs. And all of us pay those insurance premiums, like it or not, so the more people are using and taking advantage of that insurance, the more the premiums have to cover those costs, the more that we all pay. Those are all costs. Those are all things that we can prevent. We have the authority and the ability to prevent them. I hope that we do by passing LB395. Thank you, Honorable President. [LB395]

SENATOR ERDMAN: Thank you, Senator Preister. Senator Schimek, you're recognized to speak. [LB395]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. Senator Chambers said awhile ago that he does the little things first and then he does...then he talks about the big things. I'm just going to talk about the little things because as people have talked this morning, different issues have come up along the way. And Senator Preister, you just covered the cost issue very well and I hope people will look at this chart because it's very revealing and it's not just in Nebraska. It's other states, as well. I think what I would like to say at the outset is the fact that this is going to happen sooner or later. We can either do it now or we can do it three years from now or we can do it five years from now, but it is going to happen, I'm convinced. I don't have the figures right in front of me but I think about eight or nine states have already passed such legislation. Senator Johnson is nodding his head. A number of communities across the nation have enacted such laws, and so I think it's just a matter of time. And will we cause serious harm to our communities if we do this? Overall, I don't think so. And when you look at that report that the Tobacco Free Coalition put together here in Lincoln, and it talked about the fact that the air quality in Lincoln establishments, among bars and keno operations that are smoke-free by law, 96 percent cleaner than similar kinds of establishments in Omaha which did not ban smoking in those instances. So I think you've got to recognize that there may be some immediate downside for some of these establishments, but overall most of them go on, do even better than they did before, and we certainly have a healthier atmosphere. I don't think you can compare smoking to obesity because a person who is in a restaurant is not hurting those people around her, like the person who is smoking in the restaurant may be. I don't believe that you can take other health issues and make exactly the same comparisons unless maybe it's drugs and alcohol, and you could certainly make some arguments there, and we have made good arguments there and have done things in law to punish people who drink and drive, for instance. I also agree with Senator Aguilar that we have to do what's realistic. And I

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don't think realistically we can tell people what to do in their homes. However, I'd like to go back to the discussion that we had yesterday and say realistically I think we can say to foster care parents that we don't want you smoking in the home if you're going to have foster children, and we'd like to have that be part of the agreement that you signed. These children in foster care are just a bit different legally than children who are in their own parents' home, and we have a greater responsibility perhaps for those children. So I hope this issue on foster care comes up again because I think it's an issue that we could do something about easily and it fits in with the whole concept of the bill. [LB395]

SENATOR ERDMAN: One minute. [LB395]

SENATOR SCHIMEK: I'm not sure that reorganization is going to be a panacea that we would all like to see. I'm supporting the reorganization bill, but I supported the reorganization bill back in the 1994 or 1995, somewhere back in there, when we reorganized the department, and that certainly didn't turn out to be the panacea. So if we're counting on the reorganization to take care of some of the problems that we have, I don't think reorganization per se will take care of it, and I think we still have a responsibility to do what we can legislatively to help solve some of these problems. Thank you, Mr. President. [LB395]

SENATOR ERDMAN: Thank you, Senator Schimek. Senator Avery, you're recognized to speak on the bracket motion. [LB395]

SENATOR AVERY: Thank you, Mr. President. Yesterday I listened very carefully to the debate and I have listened very carefully today. And I hear repeatedly the same argument that imposing a smoking ban in public places is an infringement on personal liberty. I addressed that yesterday. I must not have been persuasive so I'm going to try again. In a civilized society, individual rights must be exercised within the context of a social agreement among rational people. That social agreement is based upon a balance between personal liberty and collective responsibility. Personal liberty is not absolute. In all civilized societies, limits are placed on personal freedom when doing so promotes the public good. This is our collective responsibility. What I'm saying here is that collective responsibility trumps personal liberty; not the reverse. And that's the argument I've been hearing, that personal liberty trumps collective responsibility. That is not the way civilized societies operate. That is not the way democratic societies operate. One of the most fundamental principles of a free society is that individual freedom is limited when it infringes negatively on the freedom of others. For example, I like to drive cars fast. Many of you probably share that love. But I don't get to do that. My personal freedom does not allow me to get on the highways and drive fast. We have speed limits. Those speed limits are there on our public roadways to provide for the safety of us all. That's what this issue is about. And I submit to you that the personal freedom to smoke in places where smoking will result in pollution that infringes on the rights of others

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ignores our collective responsibility and it allows personal freedom to trump the public good. Smokers do not have the right to create situations in public places that make me an unwilling smoker. I support this legislation because it's good policy, because it contributes to the public health, and because it is in the public interest. Thank you, Mr. President. I yield the remainder of my time to Senator Chambers. [LB395]

SENATOR ERDMAN: Thank you, Senator Avery. Senator Chambers, you have two minutes and 20 seconds. [LB395]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator "Lead Foot." Do you know what people could say about Senator "Lead Foot?" If you are going to drive as fast as you want to go, go to Germany and drive on the autobahn. How silly does that sound? And you know why I say silly? You'd be surprised and maybe you wouldn't, how many white people call my office and write letters and say go back where you came from. Well, that would be in Omaha; that's where I came from. And if they're talking about the old country, we would link arms and all go back to Africa because that's where we all came from. But I get that all the time. They write in the paper. I'll pay a one-way ticket to anywhere you want to go. So when people say that, if you don't want to eat here, don't come. Well, Senator Karpisek may have grown up in a protected parochial environment all his life, but you know what people with my complexion saw in Omaha at the bottom of every menu? We reserve the right to refuse service to whomever we please, and I was the whomever they refused service to. That was during my lifetime in Omaha, Nebraska. There was an establishment right across the street from Creighton University where black students could not eat. And Creighton never took a position to do anything about it. I watched these hypocritical white people, these hypocritical religious people, because they talk as though everybody is treated the way they are, but they know what's in their mind. [LB395]

SENATOR ERDMAN: One minute. [LB395]

SENATOR CHAMBERS: They know these wrongful things are done but they don't want to confront them, but you'll confront them while I'm here. There is a coarsening and a vulgarization of this society going on. Blowing smoke on people and you've got the right to do it. You listen to these idiotic talk shows where they use profanity, vulgarity, then they tell the children but don't you use it. Those are the things that are coarsening your society. Senator Carlson, foul words don't even reside in my brain because when you get upset, of the abundance of the heart, the mouth speak it, huh. So if it's in there, it's going to come out under the right circumstances. I don't even think in those terms, but these Christians do. And this argument that we're hearing against this bill makes no sense to me whatsoever. Thank you, Mr. President. [LB395]

SENATOR ERDMAN: Thank you, Senator Chambers and Senator Avery. Senator Johnson, you're recognized to speak, followed by Senator Kruse, Senator Fischer,

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Senator Hansen, and others. Senator Johnson. [LB395]

SENATOR JOHNSON: Thank you, Mr. President. Members of the Legislature, I just want to touch on a few of the things that we've talked about this morning. One of the things...I guess I better first say where I finished up the last time with our good Senator Karpisek, and that's this, is really what we were trying to point out there is this, is there are already all kinds of regulations that we all abide by whether it's in our business when we go to the restaurant or whatever. Those are there to protect the public's health. What we're talking about here today is protecting the public's health. I challenge anyone in this room to come up with a public health measure that we can do that will improve the health of all citizens of Nebraska more than LB395. Now, one of the things that we have been doing right here this morning is I like Senator Fischer's statement, and what it is, is this: For our freshmen senators, do what's right. I couldn't agree more with Senator Fischer than that. Yes, you were elected by the people in your district but I think it says state senator in front of your title, and I think that's what you ought to be. Do what's right. The other thing that Senator Fischer was curious about were the dollar amounts. We did it on pretty short notice. I can't verify the numbers exactly at this time except that they did, at the bottom of the page they are from what is generally considered a reliable source. And if you look at those numbers, they are absolutely staggering. There's another cost: human cost. It's been estimated that there are 300 people a year that die in Nebraska from secondhand smoke. How many are there that have to go see their physician or go to the hospital every day? That's the kind of human cost and it's very significant. And they are there not of their own volition but because somebody else gave them the problem. It's not like obesity. The food goes in your mouth. The secondhand smoke comes from your neighbor and goes in your nose. One of the other things that we certainly should touch on is this: It's my business and I can have people there that I want. They don't have to work here; they don't have to eat there. Well, I touched on that a little bit in my opening in pointing out that my grandfather didn't have much of a choice when he came from Sweden. He went to the coal mines to earn his living to support his family. What do you think happens in Nebraska? We have the same thing going on here today, and that is the poor amongst us have to take whatever job they can get... [LB395]

SENATOR ERDMAN: One minute. [LB395]

SENATOR JOHNSON: ...and they're going to get the most money that they can so that they can go home and support their families. And for the working mother, that might mean sacrificing her health so that she has enough to pay to take care of her children. So let's remember a few of those things as we're talking. And with that I think I'll return my time to the Chair. Thank you. [LB395]

SENATOR ERDMAN: Thank you, Senator Johnson. And before we proceed with the next speaker, you are receiving cookies courtesy of Senator Langemeier for Valentines' Day, so as you see those coming around, those are from Senator Langemeier. Senator

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Kruse, you're recognized to speak. [LB395]

SENATOR KRUSE: Thank you, Mr. President and colleagues. I am in support of the bill. I have not spoken to it in any way and I thought it was time to note some of the responses that I've had to comments that have been made in the debate. The first one is on prayer. Senator Chambers is trying to guide us in the matter of prayer. I have some thoughts on prayers developed over a lifetime, and would simply note that when we talk about these religious matters we're not of one mind. I strongly believe the Bible. It controls my life but it does not control my life in the same way that somebody else's life is controlled because we have several translations to tend with here. So in terms of prayer, I would see prayer in a public place, which is what this is, as a way to build community; as a way to put our hopes into words. The prayers that we have before us are to help us to focus. God does not need them and I cannot imagine that thought, nor can I imagine that our prayers here change God in any way, nor do they change God in a sickroom. That just doesn't fit into my thought at all. Prayer changes things because it changes us, as we in a congregation come closer together in yearning for full health. And that relates to the subject at hand as I won't have to state. There's also an interesting use of the word "public" in our debate. What's a public place? Well, it's the place to which the public is invited, which is not my living room, but would be my place of business. Senator Karpisek talked about one store in town. Well, he's describing my town. And the business owner there is not in the same point of freedom that somebody else might be because if that business owner decides that smokers can be there, that business owner has decided others cannot be, and so there are persons in that community that are blocked from that resource. They have to go someplace else. The owners...and many an owner would like to remove the smoking from their premises but cannot because it's not a public policy, and they openly say that. So if we do not have a public policy, I would submit that a business owner is not as free as one might say. We have used the term "mandate" several times in this debate in terms of state. Well, it's a mandate in terms of city or town, as far as that goes, if that's the law. I cannot shoot a rabbit in my yard even though it is causing me a tremendous amount of grief. I would cheerfully strangle it if I could catch it, but I would worry about strangling it because the image of Senator Chambers would be looking over my shoulder and wondering why I'm doing that. Well, I'm doing it because I am a free person in this society and a rabbit is not, and therefore I have the right to strangle this rabbit. And some of you are going to say, no, you don't, Lowen. All right. [LB395]

SENATOR ERDMAN: One minute. [LB395]

SENATOR KRUSE: Some have said in earlier debates before the Omaha ban, that I was free to go to any restaurant with my wife for our anniversary dinner by some choice. Well, there was no choice on my district except Burger King, and my wife declared that wasn't a choice. So there is a matter in which my choice is under great stricture. The final comment I would make is about future votes. This is coming, obviously. If it goes to

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a vote of the people, which some suggest would be a good idea, those petitions take no prisoners. That will be a harsh bill. It is not subject to this kind of debate, and wrestling with the issues and nuances of language, they just slap it down and guarantee that the people are going to vote for it. Thank you, Mr. President. [LB395]

SENATOR ERDMAN: Thank you, Senator Kruse. Senator Fischer, you're recognized to speak on the bracket motion. [LB395]

SENATOR FISCHER: Thank you, Mr. President and members. Yesterday I know a lot of us went to a luncheon that was hosted by the League of Municipalities and we had a chance to have lunch with officials, whether they are on city councils, city attorneys, they work for cities, they were at that luncheon. If you pull up on your gadget the committee statement, it shows that the league spoke in support of this bill. I have been told that is not necessarily what did happen. They did step up and support, but it was support for the bill as long as the local option was there for cities; that they could opt out of this. That is not in that bill. Also at that luncheon we heard the president of the League of Municipalities stress to us the importance of local control. And the cities that belong to that organization met after, I believe it was after the lunch, and said they wanted that local control. And issue we really haven't talked about is the cigarette tax. I did file an amendment that is also on your gadget dealing with that. The amendment would insert the language, "The Legislature further declares that since tobacco smoke is so offensive, the state shall no longer accept special privilege tax on cigarettes after effective date of this act." In the Lincoln Journal Star, I think it was this morning's paper, I'm quoting here, they say that we get \$51 million in taxes from tobacco. The state gets \$51 million. This is a special privilege tax. It's in Section 77-2602. That tax is divided up. We have 1 cent that goes to the Nebraska Outdoor Recreation Development Cash Fund. We have 5 cents that goes to the Building Renewal Allocation Fund. We have 7 cents that goes to the Building Renewal Allocation Fund...I mean, it goes on and on. We have money going to a Municipal Infrastructure Redevelopment Fund. Smoking is bad; we know that. But we're not willing to give up the tax, are we. That's 64 cents a pack. We're not willing to give that up. Why don't we ban the sale of cigarettes in the state of Nebraska? Because we're not willing to give up the tax. We have businesses in Lincoln and Omaha that are now against this...or for this bill where they were against it previously because they want a level playing field; because in the cities of Lincoln and Omaha they have banned smoking in certain businesses. I mentioned that yesterday. Senator Hudkins mentioned it today. That deals with money; that doesn't deal with a health issue. We need to be honest about that. We need to be honest about a cigarette tax. Last session Senator Bourne had an amendment up on Senator Thompson's bill to ban smoking that would have taken that cigarette tax away from the city of Lincoln because they had a ban on cigarettes. That was fought because Lincoln wasn't willing to give up the tax that they're getting from cigarettes. I don't get it. I don't understand that. If cigarettes are so bad, ban the sale of cigarettes in the state of Nebraska. [LB395]

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SENATOR CORNETT PRESIDING [LB395]

SENATOR CORNETT: One minute. [LB395]

SENATOR FISCHER: I would hope that maybe some senators from Omaha would address an issue because Senator Johnson said this bill follows the ban that the city of Lincoln has. I don't know how that affects the ban in the city of Omaha and what would happen to the city of Omaha's ban that their city council voted on if this bill is passed. I don't see Senator Lathrop here. I do see Senator White. Any other senators? Nelson, if you...Pirsch, if you would like to speak to that, I'd appreciate it. Because how does passing this bill affect your city and what your city council, your local elected officials decided to do with the smoking ban, how does this affect you? Thank you. [LB395]

SENATOR CORNETT: Thank you, Senator Fischer. That was your third time speaking. Senator Hansen, you are recognized. [LB395]

SENATOR HANSEN: Thank you, Madam President. There is so much love in the body this morning on Valentine's Day. I really appreciate that. I was raised in a home with two smokers. My mom and my dad both smoked. Secondhand smoke was a part of our daily life; didn't know any better about it. But I really think that...I'm certainly not saying that I'm a victim of secondhand smoke but I'm a product or at least an offspring of secondhand smoke, and I think it stunted my growth. (Laughter) We don't know how big I would have got without secondhand smoke. I always thought I'd like to be a sumo wrestler, but I'm not going to make it. Senator White asked yesterday, where do we stop? Where do we stop? Well, when do we stop doing the will of the people? Each of us here in this body represent about 35,000 people. I had a town hall meeting last Saturday and I talked to...there were at least 50 constituents there. Those are the lobbyists that I listen to. So I talked to 50 lobbyists last weekend. I brought up the subject of the statewide smoking ban because it wasn't really a hot topic of conversation. Well, my libertarian friends said, no more government; no more government interference; we want the private marketplace to set the rules and all that. Well, Bob, in the front row, he got up, and he (using sounds of clearing throat and deep voice), I've been a smoker for 40 years and I don't see why we have to worry about secondhand smoke. Well, it sounds like it, Bob. (Laughter) Bob is one of my libertarian friends and he doesn't think that we need to do anything about secondhand smoke. There were at least 70 percent of the people there were in favor of this statewide ban. They knew what it was. They had heard it a year ago, two years ago, however many times we've tried to pass a statewide ban. They've heard that; they've heard the arguments and they were for it, at least 70 percent. I think I have to listen to at least 70 percent of my constituents when I talk about legislation. I'm not worried about getting reelected. I'm here for four years now and that's all I care about. But I do need to do the will of the people--the 35,000 people I represent. And I think it's important that we do that. Senator White asked, where do we stop? I was raised as a scientist, an animal

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scientist, albeit an animal scientist, but I was raised to look at things scientifically. There is an abundance of information, an abundance of research done to show that secondhand smoke is dangerous. I'm sorry, Senator Chambers, I'm not speaking to the bill...or to your bracket motion, but no one else is either, so. I meant to start by saying that. But anyway we...secondhand smoke can't be contained. If a person smoked, ingested the smoke and it never came back out, we wouldn't have an issue. And that's where we draw the line. If Senator White goes out to dinner, and I hope he has beefsteak, but that's secondhand cholesterol, no matter how prime a piece of meat that is, that's not going to affect anybody else. You can't say that about secondhand smoke. A high school girl in attendance Saturday said that, you know, a high school girl--she has good hearing, she has good seeing, she smells well or she smelled good. She smelled both ways. But she had a good olfactory system. (Laughter) And she said that, you know, her parents take her to restaurants and she goes with them because they are paying, I suppose, but she goes to restaurants and she said that similar to what Senator Hudkins said, that having a smoking section in a restaurant is just about as effective as a peeing section in a pool... [LB395]

SENATOR CORNETT: One minute. [LB395]

SENATOR HANSEN: ...because it affects...it just goes...you can't contain the smoke. Senator Mines yesterday said that, you know, when he was talking to the people on television, watching on television and the Internet, well, I would like to also say that we represent 35,000 people each. If this goes to where I think it's going and we vote cloture, Senator Johnson may have the 25 votes that he needs to pass the bill to the next level but he probably doesn't have the 33 votes. Do we know...do you people out there know that are watching on the television and the Internet, do you know what the will of the...that our actions, are we doing the will of the public? We will never know what your senator is voting for if we vote for cloture and this is killed. Thank you. [LB395]

SENATOR CORNETT: Thank you, Senator Hansen. Senator Mines, you are recognized to speak, followed by Senator Karpisek and Aguilar. [LB395]

SENATOR MINES: Thank you, Madam Chair. I would yield my time to the senator directly in front of me, Senator Chambers. [LB395]

SENATOR CORNETT: Senator Chambers, you are recognized to speak. [LB395]

SENATOR CHAMBERS: Thank you, Madam President, thank you, Senator Mines. And it seems that Senator Karpisek has become kind of the poster person for our comments this morning, and I'm going to draw Senator White into this also in order that he can give some assistance if he disagrees with what I say. People talk about property rights. Nobody owns property absolutely in this society. You all know what eminent domain means. When the overall good is at stake, all they've got to do is give you what they call

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a fair price, and they take your property, I don't care what it is. I watched them cut right through the heart of the community where I live to build a highway that white people wanted called the North Freeway. It split that community, destroyed businesses, at least one school, a number of churches, houses, homes of elderly people. And when they lived in those houses, they didn't have a very high value. So they made sure, the big shots, that that property would continue to have a low value so that when they took it, they didn't have to go those people much money, so the amount they got could not purchase them a house anywhere. But here's where they all work together: There were some of these vultures from the real estate industry who came around and said we can work something out. We know you can't pay right now for this house but we will let what you got serve as a down payment and we'll work the rest of it out. Well, you know how that happens. In a very short time they couldn't make the payments that were required and the house was foreclosed on and taken from them, so they didn't have the house that had been taken originally. The one that they had moved into was taken from them. And the white people who ran Omaha and ran that highway through had no concern about where those people went, but I did, and I saw what happened to a lot of them. And that's what happens in this society. So property rights depend to a great extent on who the person is who holds the property. But whoever owns property must understand that there are certain "rights" that hook to that property and whoever holds it, but there is a limit to it. And you cannot use your property in a way that harms somebody else or interferes with their peaceful enjoyment of their property. And that's where there's a lot of discussion about where feedlots and confinement hog feeding operations can be located, because the activity on Mr. A's property, may affect the ability of everybody from C through Z in the alphabet and their property. So there are restrictions and limitations. But I don't think we even need to get into all that for sensible people. But when the lobby is talking, they run all kind of nonsensical things in here. And I'm not going to say the lobby put into Senator Fischer what she said, but she says I don't get it why these cities don't want to give up the tax. She does too get it. She says she doesn't get it why this or that isn't done by Omaha or anyplace else. She does get it. We all know. And I'm one of those who had opposed some of that cigarette tax money going for things other than health. But others on this floor didn't care about that. And it ought to be taxed right out of existence. But Senator Fischer also knows why tobacco and cigarettes are not going to be banned. She knows that. Those are the kind of arguments that a lobbyist will give, and so you've got a lot of new people in there who don't understand anything so that will sound good to them and they'll accept it. And they said, oh, it was said on the floor, just like I read it on the... [LB395]

SENATOR CORNETT: One minute. [LB395]

SENATOR CHAMBERS: ...Internet so it must be true. It's nonsense. Nonsense over here; nonsense over there. I'm going to wind up talking about what my good friend talked about, who said he doesn't know how big he would be if he hadn't been stunted through the secondhand cigarette smoke. I don't know how intelligent or bright I could

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be if my brain hadn't been dulled by lead. I grew up in a community where lead was prominent. I'm a slow reader. I'm sure that I suffer mental and intellectual defects because of being exposed to all that lead. I have no awareness of what I might be able to do, what I might be able to understand if I hadn't been exposed to lead. But I don't run around here saying that lead is on so and so's property so leave it there. I've done all I can to help get that lead taken away. So we do have a responsibility and an obligation to do something about... [LB395]

SENATOR CORNETT: Time. [LB395]

SENATOR CHAMBERS: ...these things that we know are detrimental to the health of the public. Thank you, Madam President. [LB395]

SENATOR CORNETT: Thank you, Senator Chambers. Senator Karpisek, you are recognized. [LB395]

SENATOR KARPISEK: Thank you, Madam President, members. I would just like to go back to a couple things I said, and I realized the feces on the floor probably wasn't the best thing to say. What I'm talking about and since most of you are probably more affluent than I and don't have to do manual labor, is when you butcher an animal or bring it in to a meat locker and you butcher it, yes, you get that on the floor. I'm sorry if you don't like that, and if you don't clean it up and you walk through it and you walk through the front of your store, you get it everywhere. That's what I'm talking about by feces on the floor--not human, spread on purpose. Senator Pankonin is one person that I admire quite a lot, but I am not here to worry about being reelected in four years. I would love to be but I think I need to get up and speak my mind. And if speaking my mind gets me chastised by Senator Chambers and Senator Aguilar and whoever else wants to, fine; I am also no scared. I'm not owned by anyone either except my mother and my wife and my kids. So that's fine. I'm here. I have the same rights, the same 38,000, 35,000 people back home also. I don't know why, when it is that we disagree with you, Senator Chambers, that we do get chastised. This is the first time that I have done that, of course, because, hey, at least I'm getting my name right now out here in the body. Thank you. Maybe this is what it took. But just because I feel differently, I don't feel that I should have to get blasted personally. But if I do, that's fine. I have to stand up for myself. In a protected environment growing up, Senator Chambers, I'm sure that you could just pick up the phone to Wilber, Nebraska, and find out how I grew up. And off the mike, if you would like to discuss that I would be glad to with you. The reason I'm here is because I have stood up for myself since I was small and the things that I have gone through. So until you know that, don't assume just because I'm white that I've had an easy upbringing either. I don't disagree that this will pass sometime down the road. I will die sometime down the road too, but I will not do it until my time, and I'll keep fighting for every last breath, although if I go into these bars they might be wheezy breaths. Again, I know that this is a very emotional, tough subject. I am not

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going to threaten to hold up any other bills. I'm not going to threaten to not like any of you if you disagree with me, but I am here to do what I feel is right and what I said I would do. And if that's what happens, then it happens. I don't like that it is drawing this big line in the sand right now. But again, you have to stand up for what you feel is right, and I will not be intimidated. I will not have the lobby tell me what I will or will not do. If I agree with the lobby, I'm going to use them. If I disagree with them, I won't. Again, when I started this campaign, I had zero PAC dollars in the primary election. Got within 5 percent of a sitting senator. I'm not scared of that either. And if at the end of four years my constituents decide that I blew it and they don't want me here, then I'll go back to my life with my wife and my kids and my smoky meat market, and do that and maybe make some money. But until then I will do what I feel is right and I will voice my opinion and I will take the barbs. I know I'm an easy target. I make myself that way. I do that on purpose because I feel if everyone is picking on me, number one, it's attention, but number two, they are leaving someone else alone. I might not be the duck grease, as we would say in Wilber, instead of the goose grease, and I'm not that smooth, but that's me and I'm not going to change. That's what got me here is being me, being honest, and fighting for what I believe. Thank you, Madam President. [LB395]

SENATOR CORNETT: Thank you, Senator. Senator Aguilar, you are recognized to speak. [LB395]

SENATOR AGUILAR: Thank you, Madam President. Thank you, Senator Karpisek. I, for one, enjoy your participation in this debate and I think you have a lot to add to it. And just one more thing: Your mom called. She said, get off the filibuster. (Laughter) Senator Fischer, I'll address this next comment to you. I want to go on officially on the record: I am willing to give up the cigarette tax. So we can take that out of the argument. I'm on the record. I'm willing to give up that cigarette tax. And the reason I am is because I know how much money the state would save if this bill were to pass. I am a little bit bothered by the statement you keep saying. You keep saying, if cigarettes are so bad--if they're so bad. Let me just say they are, and it's not just me. It's the Surgeon General of the United States. They are bad. So can we qualify that? Can we accept that as a fact? They are bad. They do kill people, even people that don't smoke, from secondhand smoke. I'm not going to take a lot of time but I did want to, while I have the mike, say to Senator Johnson: Senator Johnson, thank you. Thank you for introducing this bill. It was a very brave move on your part. And I also want to thank you for the many lives you've saved as a surgeon. What a contribution to the state of Nebraska. With LB395, you have an opportunity to save a lot more lives than you ever did as a surgeon. And you know what? There are 48 other people in here that can get on that same boat. You can save lives. As Senator Pankonin said, this really is the right thing to do. Help us save some lives. Senator Chambers may have the rest of my time if he so desires. [LB395]

SENATOR CORNETT: Senator Chambers, you have three minutes. [LB395]

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SENATOR CHAMBERS: Thank you, Madam President. Thank you, Senator Aguilar. And Senator Karpisek makes me think of a song: Poor, poor, pitiful me. Oh, everybody is just picking on me. Like Charlie Brown, fee, fee, fi, fi, fo, fo, fum, I smell smoke in the auditorium, Charlie Brown. Then he says he's got the deep voice: Why is everybody always picking on me. Well, if you put yourself in a position to be picked on--don't be cotton if you don't want to be picked. That's what we say. Now, if it gets too hot in the kitchen, go back to the butcher shop. I mean, who made him come here? Nobody. Who is the one who said, if they want to send a mule skinner, let them send him. And then he quickly said, he's a deer skinner. How can he suggest that maybe I'm telling him he shouldn't speak. He gives me good material. I don't want him to be quiet. I want him to stand up here and whine, and people will look at him, and say, wow, that big old strong guy in the suit sure is taking on that little skinny guy in the sweatshirt. Sure told him something. But why is he so worried about what the little guy in the sweatshirt says about him? Good lord. But, see, this is...new people are on a learning curve. They are going to learn. And if they think by putting up a pitiful mouth, I'm not going to respond to what they say, they've got another thing coming. And keep telling me 35,000 or however many people sent you here? No, I bet you can't show me anybody on this floor who got 35,000 votes. So stop saying that. You didn't get 35,000 votes. Nobody did. And I bet your opponent got almost as many votes as you got. For everybody on the floor. I get 80 percent of the vote of those who cast votes because I'm not arrogant and I'm very humble, especially so for one being right so much of the time, Mr. White. A lot of the people in my district may not stay home from the polls because they say Ernie is doing a great job... [LB395]

SENATOR CORNETT: One minute. [LB395]

SENATOR CHAMBERS: ...and we don't need to do anything because he will be there. It could be the opposite. He ain't much, he's all that is out there but I'm not going to even go to the polls and vote. So no matter what the disparity is between what we who win the office get and the person who lost. It doesn't mean necessarily that we are great people. Our record is going to be compiled by what we do here. And when we talk in a foolish way, then that's what we're going to be known for. How long does it take somebody to get tired of hearing Senator White, I'm just a poor country lawyer? You know, it might work the first time but after two or three times it gets old. [LB395]

SENATOR CORNETT: Time. [LB395]

SENATOR CHAMBERS: Thank you, Madam President. [LB395]

SENATOR CORNETT: (Visitors introduced.) Thank you. Senator Stuthman, you are recognized to speak, followed by Senator Wallman and Senator Wightman. [LB395]

SENATOR STUTHMAN: Thank you, Madam Chairman and members of the body. I am

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enjoying this discussion this morning and I think it's very interesting. It is bringing out a lot of issues. The thing that really concerns me is there's a lot of discussion on different health problems, obesity or anything like that, you know. If someone is obese and he is sitting aside of me and eating a lot, it really don't affect me at all. But it is a cost to the state of Nebraska, I will agree with that, but it don't affect me as would secondhand smoke, because secondhand smoke, you know, that does affect the people that are around you and in your surrounding. And I will say, you know, tobacco is a legal product. And if an individual wants to smoke it, that is his right. But the thing about it is, that I'm really concerned about when they exhale the smoke, that it does enter another individual's lungs that is in the close proximity of that individual or where they're at. And that is a concern of mine. I think that is the difference between one problem and another--alcoholism, obesity, or many other things that are a costs to the state. The thing about that I have a concern with and I probably mentioned this before, is a public place. You know, I mentioned that he meat market. You know, that is a public place where the people go in to, and I have a concern there. I just think the main issue that we are trying to debate is the fact that what one person does affects someone else--someone else's health because he can't avoid, you know, not inhaling that smoke. And I'll agree, there are places that I used to go and it's not nearly as bad as it is right now, and maybe that's why I'm so short and got such broad shoulders. There was way too much smoke; I couldn't get taller. But I don't...you know, I don't know. But my family has never smoked. My in-laws, my father-in-law did smoke. And my wife, you know, has some problems with coughing and she claims that it comes from the smoke that she was in when she was a younger person. She's never smoked as long as we've been married and she's never done that, and I really respect that. Our family doesn't smoke. I think the main issue that we've got to decide on is, you know, is this something that what one person can legally do, does it affect someone else. And it does because it's a secondhand smoke. And like the e-mail I had mentioned earlier, in homes that have smoke, small animals get affected by smoke. I'm sure Senator Chambers' little puppy, if there was smoke in his home, would be affected by that smoke. And I'll give the balance of my time to Senator Chambers. [LB395]

SENATOR CORNETT: Senator Chambers, you have 1 minute and 25. [LB395]

SENATOR CHAMBERS: Thank you, Madam President and Senator Stuthman. There wouldn't be any smoke where that little poodle is, and she's Cindy's. People think she's mine because I'm just kind of attached to her and she runs me. I'm her general flunky valet and servant and whatnot. But when...oh, he's gone...Senator Hansen was talking...no, this on Senator Kruse talking about strangling a rabbit. There was a saint called Ah-gus-teen (phonetic)...some people say Ah-gustin (phonetic). And he was trying to explain why people shouldn't harm animals, so he gave this example. He said he believed when he saw a guy kick a little dog, he said, I believe that human beings come back as animals. And the guy laughed. He said, how can you say such a thing? He said, you just proved it. And the guy said, well, how is that? He said, I recognized his

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voice in the yelp he made when you kicked him. And the guy was abashed and he didn't do that kind of thing again. If I saw Senator Kruse strangle a rabbit, that would be the last rabbit he ever strangled, not because the dying gurgle of the rabbit sounded like a friend of his; he wouldn't want to suffer the fate of the rabbit. But Senator Kruse was trying to make a point, and I agree with it. His point was that he cannot discharge a gun in his front yard in the city to kill a rabbit, even if the rabbit is eating his flowers. So there are certain things that just are not allowed, and the state put those requirements... [LB395]

SENATOR CORNETT: Time. [LB395]

SENATOR CHAMBERS: ...in place to protect everybody. Thank you, Madam President. [LB395]

SENATOR CORNETT: Senator Wallman, you are recognized to speak. [LB395]

SENATOR WALLMAN: Thank you, Madam President and members of the body. Isn't that something we're talking about smoke? We've talked about the Bible here. Does it say, thou shalt no smoke, anybody? And, yeah, it's probably not health for us, but it's a freedom of choice. And what does our pledge of allegiance say? One nation under God. Some of us don't believe in God but we say the pledge of allegiance. And it's freedom of choice. And I have a freedom, if Arnie has a bar and everybody is smoking in there, I don't have to go in there. Or if Tom has a bar, you know, I don't have to go in there. If I go out for athletics...yeah, I used to smoke, but my parents never smoked, and they died of cancer. And my grandfather and grandmother, he smoked like the dickens. He never died. Is it something in the environment? We've got to look at our environment. You live close to a power plant, you breath these particles from a coal-fired power plant, you probably are not going to live as long as a smoker. And so it's far beyond smoking, folks. And let's not put another law on the books that our police have to enforce, our local...you know, our bar owners, restaurant owners. And most of my constituents will probably vote for a smoking ban, but let's think about this where we put another law on the books. And I'd yield the rest of my time to Senator White. [LB395]

SENATOR CORNETT: Senator White, you have 3 minutes and 28. [LB395]

SENATOR WHITE: Thank you, Senator Wallman. I wish Senator Hansen was here because I want to address an issue. He says that this does not...since this affects other people, this is a good bill. I know of people who are currently suing concentrated hog farmers, cattle farmers, slaughter houses, who are being made desperately sick from asthma, sinus infections, respiratory diseases of different kinds. Their property values are being driven down. And the defense is, property rights. Freedom to farm. I wish Senator Hansen was here and Senator Stuthman is here because if indeed it's okay to take away the right of a bar owner who made an investment perhaps in a bar, accepting

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certain income streams would be forthcoming, if that bar owner made an investment in air handling so that he could have an environment that nonsmokers might feel comfortable in, if those are taken away because the majority of the people want it, and you may be right, Senator Hansen, the majority of the people may want it, but there are many districts where the majority of the people no longer want livestock. They don't want concentrated livestock. And yet you will probably see me stand up and fight for reasonable property rights for those livestock owners even though they do make other people sick. The constitution exists to protect the minority from the majority. The whole point of a constitution is to thwart the will, that day's will, of the majority of the people. It is to protect individual liberties against the tyranny of the majority. That this is popular means we need to look more carefully at the constitution to see whether or not, in fact, we are throwing away eternal rights for temporary popularity. And I will give you a perfect example. Senator Chambers, you have never stood on this floor and permitted, knowingly, warrantless searches on premises, yet this bill allows that. And you know that's not a property right; that's a liberty right. It does attach to the right to be free on your property. [LB395]

SENATOR CORNETT: One minute. [LB395]

SENATOR WHITE: How can we accept warrantless searches on private property? It is flatly contradicted by the Fourth Amendment. That's an eternal American right and it doesn't depend on the will of the majority. It depends on our commitment to protect the rights of the individual, even if they are unpopular. We need to seriously consider the rights of all, and that means the right to walk past a bar where smoking is allowed, and, Senators Stuthman, Hansen, and other rural senators, I would tell you it is much easier to vote with your feet when you are walking by a bar or restaurant that permits smoking than it is to avoid the smell, the odor, the sickness that can be attendant on concentrated livestock. Are we going to be consistent? Thank you for your attention and you are kind to return the rest of my time to Senator Wallman. [LB395]

SENATOR CORNETT: Senator White, you are out of time. Thank you, Senator Wallman. You are recognized to speak. [LB395]

SENATOR WALLMAN: Madam President, thank you. And I would like to just piggyback on what Senator White says. He is absolutely right. We're...you know, the farmers, we have dust. Some people complaining about dust going across the highway. In your buildings and your hog buildings and your confinement buildings, there's dust, and it causes lung cancer. My uncle died of lung cancer. He was in the hog building all of his life. So are we going to outlaw hogs? Are we going to outlaw cattle? Where are we going? You know, somebody said where are we going? It's pretty scary when we try to tell everybody what's best for them. And that's up to the personal responsibility. It's called personal responsibility, accountability for your own health, your own actions, and where you go to eat or drink. Are we going to outlaw alcohol? Alcohol kills a lot of

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people. Are we going to outlaw alcohol? We just as well outlaw tobacco, alcohol, what else. You know, we can right up and down the line. And I'll yield the rest of my time to Senator White. [LB395]

SENATOR CORNETT: Senator White, you are recognized. You have 3 minutes and 49 seconds. [LB395]

SENATOR WHITE: I ask this body to think about people who made investments in activities that were lawful and legal, even though I abhor them. Smoking, smoking cigars, smoking any kind of cigarettes; I just absolutely am opposed to it. But I rise one more time, thanks to the courtesy of Senator Wallman, to point out they ask what's wrong with this bill. This bill treats addiction, a medical condition, and I will tell you as a person who quit smoking, I will never, ever be able to do it again and I've never done thing this hard in my life. I was deeply addicted to it. Where is our money in the bill to treat addiction? Where are we treating this as the AMA says we should--not outlawing it because that doesn't work with addiction, but treating it. Where is our compassion for the addicted? I am no longer among the addicted. Where is the money for those who are addicted? What are we doing to help the people we profess to care about? The people who are dying firsthand smoke have far higher rates than the general public. Where are we? Thank you. [LB395]

SENATOR CORNETT: Thank you, Senator White. Seeing no further lights, Senator Chambers, you are recognized to close on your bracket. [LB395]

SENATOR CHAMBERS: Thank you, Madam President. And after I speak I will withdraw this motion. Senator White is playing on your emotions and he's not using the brains he was born with or the good training he had in law school except as a person trying to sway the jury when he has no good case. He said, how about those who are victims of firsthand smoke? We're not trying to prohibit anybody from smoking. It's their addiction. They can have it treated as a medical condition. Nobody has said that's not the case. We're talking about people who don't want to be afflicted by somebody else's addiction, becoming addicted through the impingement on their right to fresh air by the addicted person. Being an addiction does not allow you to go rob a bank although somebody might say my addition did it, but that won't wash. I'm sure that you wouldn't have Senator White standing up here saying strip clubs should be able to be built right in the middle of a neighborhood because a lot of people live there who want to go to a strip club and nobody in that neighborhood has the right to say we don't want a strip club here because it's that person's right to have whatever kind of business he wants. I haven't heard Senator White ever stand up and say that the provision that an establishment with a liquor license cannot be within a certain distance of a religious establishment. Well, why are you respecting religion? The constitution says that there should be a division between church and state, yet here we are passing laws saying that churches have a right to not have a liquor establishment within a certain distance.

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So Senator White is saying one thing that has no application here whatsoever. You are supposed to make the connection because he tells you to make it. But there is none; there is a gap. What about his talk of a warrantless search? Senator White, I do a lot of work to improve legislation, but I'm not going to do everybody's work on every bill. If a lawyer sees a provision in a bill that violates a constitutional right, that lawyer or any other member has an obligation to draft an amendment. I'm not going to do it all. There are a lot of things that I see that ought to be changed. More of the tobacco money should go to matters such as education and prevention. the money raised from the tobacco tax ought to go to fight the evil from which the tax is raised. But people in the Legislature have wanted to send it other places, and some of you before you leave here are going to divert it also. So all of those things are irrelevant to this bill. We're not talking about the primary smoker who can continue to smoke. Phil Harris' song could be his theme song and Senator White probably knew it before he stopped: Smoke, smoke, smoke that cigarette, puff, puff, puff, and if you smoke yourself to death, tell St. Peter at the golden gate that I hate to make him wait, but I just got to have another cigarette. If he wants to do it or if he doesn't want to do it, that is his struggle. But he doesn't have a right because he's addicted, to foul the air of other people. Business establishment owners who get a license and a privilege from society at large has to agree to be regulated in the best interest of society. Senator Karpisek, I don't think could take those animals that he slaughters out on the street in front of his establishment and slaughter them there in the public. So there are rules and regulations everywhere and it shouldn't be necessary to give these kind of examples to make the point here. What this bill is doing is legitimate and I would say that if Senator White feels that there is an unconstitutional provision in the bill, offer an amendment. And if he persuades me, then he's got a vote from me without even providing an argument. But he's got to persuade me. Now, my understanding is that people want to allow certain time lapses in order that something can be done by people which they feel needs to be done... [LB395]

SENATOR CORNETT: One minute. [LB395]

SENATOR CHAMBERS: ...in order to give this bill proper consideration. That's what I gathered from the ones that I've talked to. It's not my bill so they can handle it the way they want to. And the Speaker and I are going to discuss tomorrow that HHS bill. Now, if he's as good a Speaker as you all said he was going to be when you put him in that position, he will be able to change my mind. So let us see how he fares. But in keeping with the promise I made, Madam President, I withdraw that motion that's pending. [LB395]

SENATOR CORNETT: Thank you, Senator Chambers. Speaker Flood, you are recognized. [LB395]

SPEAKER FLOOD: Thank you, Madam President. We are going to have a motion filed by Senator Johnson at his request, along with those that he's been working with, and

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this comes after consultation between both sides that have maybe differing opinions on LB395. As we hear the motion and look forward to the adjournment today, I would hope that we could restrain ourselves from hitting our white lights to speak, to give the introducer of LB395 an opportunity to explain his intentions. Thank you, Madam President, and I might add, tomorrow we will be on Select File as foreshadowed by our senior member. Thank you. [LB395]

SENATOR CORNETT: I recognize Mr. Clerk. [LB395]

CLERK: Madam President, Senator Johnson would ask unanimous consent to bracket to LB395 until February 28. [LB395]

SENATOR CORNETT: Are there any objections? I apologize. Senator Johnson, you are recognized to speak. [LB395]

SENATOR JOHNSON: Madam President and members of the Legislature, what a great discussion we've had here this morning. We do have conflicting sides as to the importance of personal rights and personal privileges and we have to balance those against human costs and dollar costs. I hope, if nothing else, that we have cleared up here today is that we have recognized that secondhand smoke is the culprit. It is dangerous and that we must deal with it. The Surgeon General says that best way to deal with it is to get rid of it in the workplace, as well as public places, and that was we cannot injure our fellows. We still have the right to be foolish ourselves. What we've seen here is a discussion of how about if it's my business and my rights, and we've had a good discussion about that. I think we even go so far as to say, what's freedom. We've also had many other sidetracks about the tobacco taxes and things like that. Did we really need to make that a part of the thing, what we've talking about? I couldn't but be struck by one speaker and maybe that person would like to put an amendment forth that we double the cigarette tax so that if smoking does go down, we don't lose the money. But the main thing is this...now, let me touch on one other aspect before I close. Is there a question that Senator White raised about the constitutionality of this. And I have a letter her from a Jeff Soukup who is with the Lancaster County Health Board, referring to their inspection process here in Lincoln and Lancaster County, and would make that available to him. And that it might help clear up some of the unconstitutionality of this bill that we're trying to deal with. So in closure what I would like to do is tell you this, is that Senator Fischer, myself, Senator Aguilar, Senator Stuthman, and the others, we do respect the other person's opinions and we have all agreed to sit down, consider the discussion and the points made here, and see if we can come to a common agreement that will be satisfactory to both parties or both sides of this debate. And so with that, I would yield the rest of my time to Senator Fischer. [LB395]

SENATOR FISCHER: Thank you, Senator Johnson. I would like to thank everybody for the debate we've had on this and I certainly appreciate all the comments made and they

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were very sincere comments from everyone who participated in the debate. I think we had a lot of good points that were brought up. I agree with Senator Johnson; hopefully we can address some of the concerns on both sides of this issue and of course what I see as some problems with the bill and that other senators pointed out as problems with the bill. I do appreciate Senator Johnson's sincerity in this issue and I thank him for bringing it before the body. Thank you. [LB395]

SENATOR CORNETT: Thank you, Senator Fischer. Do I see any objections? If not, so ordered. Mr. Clerk, do you have items for the record? [LB395]

CLERK: I do, Madam President. I have a gubernatorial appointment to the...as director of the Health and Human Services...Director of Services to the Health and Human Services System, a reference report referring that appointment to the standing committee for confirmation hearings; a series of hearing notices from the Judiciary Committee signed by Senator Ashford; a Transportation hearing notice signed by Senator Fischer. (Legislative Journal page 579.) []

Senator Stuthman, an amendment to LB307; Senator Langemeier to LB25. Name adds, Senator Schimek to LB12; Senator Pirsch to LB67. (Legislative Journal page 580.) [LB25 LB12 LB67 LB307]

And Madam President, a priority motion. Senator Mines would move to adjourn until Thursday morning, February 15, at 9:00 o'clock. []

SENATOR CORNETT: All those in favor signify by saying aye. Those opposed. We are adjourned. [LB395]