APPEAL NO. 23-644

IN THE SUPREME COURT OF THE STATE OF NEBRASKA

PLANNED PARENTHOOD OF THE HEARTLAND, INC.
and SARAH TRAXLER, M.D.,
Plaintiffs/Appellants,

v.

MIKE HILGERS in his official capacity as Attorney General for the State of Nebraska; JIM PILLEN, in his official capacity as Governor of the State of Nebraska; DANNETTE SMITH, in her official capacity as Chief Executive Officer of the Nebraska Department of Health and Human Services; CHARITY MENEFEE, in her official capacity as the Director of the Nebraska Department of Health and Human Services Division of Public Health; and TIMOTHY TESMER, in his official capacity as Chief Medical Officer of the Nebraska Department of Health and Human Services,
Defendants/Appellees.

APPEAL FROM THE DISTRICT COURT OF LANCASTER COUNTY

District Court Case No. 23-1820
Honorable Lori Maret

BRIEF OF APPELLANTS
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JURISDICTIONAL STATEMENT

On August 11, 2023, the District Court of Lancaster County entered final judgment for defendants. (T1749). On August 18, 2023, plaintiffs timely appealed and paid the docketing fee. (T1770). This Court has jurisdiction because this is a direct appeal from a final judgment, Neb. Rev. Stat. §§ 25-1911; 25-1912, and involves a state statute's constitutionality, *id.* § 24-1106(2)–(3).

STATEMENT OF THE CASE

A. Nature of the Case

This case involves a constitutional challenge to L.B. 574, a 2023 legislative enactment that bans abortion at twelve weeks of pregnancy and restricts gender-affirming care for minors. The plaintiffs—Planned Parenthood of the Heartland, Inc. (PPH) and Sarah Traxler, M.D, PPH's medical director—are abortion providers in Nebraska. (T949, 952; E1, p. 1, 4). PPH and Dr. Traxler previously provided abortions beyond twelve weeks of pregnancy but were forced to stop doing so when L.B. 574 took effect in May 2023. (T977–78; E2, p. 2–3).

On May 30, 2023, the plaintiffs filed this lawsuit seeking a declaration that L.B. 574 violates the Nebraska Constitution's single-subject requirement for legislative acts. *See* Neb. Const. art. III, § 14. (T14). They also sought temporary and permanent injunctive relief. *Id.*

Defendants filed a motion to dismiss, *see* Neb. Ct. R. Pldg. § 6-1112(b)(1) and (6), and announced their intent to introduce evidence that would convert that motion into one for summary judgment. (T147). Plaintiffs cross-moved for summary judgment. (T212). At a hearing on June 19, 2023, the parties presented evidence pertaining to their respective motions. (14:15–19:24; 43:8–45:20; 48:19–50:2).

B. Issues Tried in the Court Below

1. Whether the plaintiffs have standing to bring their claims.
2. Whether plaintiffs' claims are barred by sovereign immunity or the political question doctrine.

3. Whether the parties' evidentiary submissions are admissible for purposes of summary judgment.
4. Whether L.B. 574 violates the single-subject rule prescribed by article III, § 14, of the Nebraska Constitution.

C. How the Issues Were Decided

On August 11, 2023, the district court granted defendants' motion to dismiss (converted to a motion for summary judgment), and overruled plaintiffs' cross-summary judgment motion. (T1749).

The court announced three conclusions of law: (1) PPH has standing, (2) Dr. Traxler lacks standing; and (3) L.B. 574 does not violate the single-subject rule in article III, § 14. (T1768). In ruling that PPH has standing, the court reasoned that PPH "will lose" what the district court called "business" by virtue of being unable to provide abortion past twelve weeks. (T1756). In ruling that Dr. Traxler lacks standing, the district court acknowledged that she "'oversee[s]' all medical services provided by Planned Parenthood." (T1754). But the court reasoned that Dr. Traxler's affidavits were "unclear" as to whether she was among those "staff" who would "return to . . . providing abortion in Nebraska through 16 weeks, 6 days of pregnancy" but for L.B. 574. (T1758). On the merits, the district court reasoned that L.B. 574 conforms to the single-subject rule because it "has the general object of health care and . . . all parts of the bill relate to health care." (T1764). Neither party below had argued that the subject of L.B. 574 was "health care."

In addition, the district court ruled that defendants were not entitled to sovereign immunity and that this lawsuit does not present a nonjusticiable political question. (T1758–59, 1766–67). The court also sustained the defendants' foundation objections to portions of Dr. Traxler's affidavits, as well as the defendants' hearsay and relevance objections to certain legislative record materials. (T1753).

D. Scope of Appellate Review

An appellate court reviews a grant of summary judgment de novo, viewing the record in the light most favorable to the nonmoving party and drawing all reasonable inferences from the evidence in that party's favor. *Pettit v. Paxton*, 255 Neb. 279, 285 (1998). A statute's constitutionality is a legal question reviewed de novo. *Chase v. Neth*, 269 Neb. 882, 886 (2005). An appellate court generally reviews the district court's determination of "relevancy and admissibility of evidence" for abuse of discretion. *Elbert v. Young*, 312 Neb. 58, 62 (2022). However, it reviews de novo a court's exclusion of evidence as hearsay. *AVG Partners I, LLC v. Genesis Health Clubs of Midwest, LLC*, 307 Neb. 47, 54 (2020).

ASSIGNMENTS OF ERROR

1. The district court erred as a matter of law by ruling that Dr. Traxler lacks standing.

2. The district court erred as a matter of law by ruling that L.B. 574 does not violate the single-subject requirement of article III, § 14, of the Nebraska Constitution.

3. The district court abused its discretion by excluding, on foundation grounds, plaintiffs' Exhibit 1, paragraphs 21–23, 29–35, 38–44, 49–50, 52, 54–59, 62, and 66, and Exhibit 2's incorporation of the excluded paragraphs in Exhibit 1.

4. The district court erred as a matter of law by excluding, on hearsay and relevance grounds, legislative documents in Exhibits 17–24 and 29–35, and by constructively denying plaintiffs' request to take judicial notice of those documents.

5. The district court erred as a matter of law by excluding, on hearsay grounds, the admissions of party-opponent Governor Jim Pillen upon signing L.B. 574.

PROPOSITIONS OF LAW

Justiciability

1. Nebraska courts "are not bound by the strictures of constitutional standing requirements." *Thompson v. Heineman*, 289 Neb. 798, 822 (2015).

2. At a minimum, litigants have standing to challenge the constitutionality of a statute when "it is being or is about to be applied to [their] disadvantage." *State ex rel. Nelson v. Butler*, 145 Neb. 638, 649 (1945).

3. Even under federal standing doctrine, plaintiffs have standing if they intend to engage in conduct "proscribed by a statute, and there exists a credible threat of prosecution thereunder." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014) (internal quotations omitted).

4. Plaintiffs need not "expose [themselves] to liability before" challenging "the constitutionality of a law threatened to be enforced." *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 1289 (2007).

5. A multi-plaintiff case is justiciable "once the court determines that one of the plaintiffs has standing." *Stewart v. Heineman*, 296 Neb. 262, 294–95 (2017).

6. L.B. 574, together with other laws, subjects abortion providers to mandatory license revocation and civil fines of up to $20,000 per abortion, as well as potential penalties for permitting, aiding, or abetting a prohibited abortion. L.B. 574, Neb. Leg., 108th Legis., 1st Sess. §§ 9–10 (Neb. 2023) (codified at Neb. Rev. Stat. §§ 38-192(3), 38-193(3)); Neb. Rev. Stat. §§ 38-182, 38-196(2), 38-198, 71-448(2).

7. Single-subject challenges to legislative enactments are justiciable; this Court has decided such challenges for more than a century. *See, e.g., Weis v. Ashley*, 59 Neb. 494 (1899); *Midwest Popcorn Co. v. Johnson*, 152 Neb. 867 (1950); *Anderson v. Tiemann*, 182 Neb. 393 (1976); *Jaksha v. State*, 241 Neb. 106 (1992).

Merits

8. The single-subject rule for legislative enactments provides that "no bill shall contain more than one subject." Neb. Const., art. III, § 14.

9. "If the meaning is clear, [courts] give a constitutional provision the meaning that laypersons would obviously understand it to convey." *Adams v. State Bd. of Parole*, 293 Neb. 612, 618 (2016).

10. Further construction is appropriate only when "it has been demonstrated that the meaning of the provision is not clear and that construction is necessary." *Id.*

11. Nebraska courts also consider "the evil and mischief attempted to be remedied, the objects sought to be accomplished, and the scope of the remedy its terms imply." *State ex rel. Lemon v. Gale*, 272 Neb. 295, 304 (2006).

12. Legislation enacted in violation of article III, § 14, is "null." *Weis*, 59 Neb at 499.

13. The single-subject rule prevents logrolling and ensures that "each proposed measure . . . stand[s] upon its own merits." *Trumble v. Trumble*, 37 Neb. 340, 344 (1893).

14. In adjudicating single-subject cases, the Court first identifies the challenged provision's "main purpose." *Van Horn v. State*, 46 Neb. 62, 73 (1895).

15. The "main purpose" must be assessed at an appropriate level of specificity; "the rule" is that, while "the constitutional provision does not restrict the legislature in the scope of legislation," it does prohibit legislating two disparate aims under the umbrella of some broad theme. *Id.* at 74.

16. In the "similar context" of the single-subject rule for ballot initiatives, Neb. Const. art. III, § 2, the rule may not be circumvented by selecting a topic "so broad that the rule is evaded as a meaningful constitutional check." *State ex rel. Wagner v. Evnen*, 307 Neb. 142, 153 & n.35 (2021) (citing cases involving legislation).

17. Article III, § 2, expressly incorporates the "limitations" of the single-subject rule for legislative enactments. *See* Neb. Const. art.

III, § 2 ("The constitutional limitations as to the scope and subject matter of statutes enacted by the Legislature shall apply to those enacted by the initiative. Initiative measures shall contain only one subject.").

18. In applying article III, § 14, once the Court identifies an enactment's main purpose, it examines whether each provision in the enactment is "naturally connected with and incidental to" that main purpose. *Midwest Popcorn*, 152 Neb. at 872.

19. If each provision of a legislative enactment is not naturally connected with and incidental to its main purpose, then the enactment violates article III, § 14. *Van Horn*, 46 Neb. at 74; *Gauchat v. Sch. Dist. No. 5 in Nemaha Cnty.*, 101 Neb. 377, 379 (1917); *Midwest Popcorn*, 152 Neb. at 872.

20. In addition, legislative history indicates a single-subject rule violation where the Legislature added a provision that failed to pass "as an independent measure," *State ex rel. Miller v. Bd. of Comm'rs of Lancaster Cnty.*, 17 Neb. 85, 86 (1885) (applying the rule for legislative enactments) (hereinafter "*Lancaster Cnty.*"), or "[a]fter contentious floor debates," *State ex rel. Loontjer v. Gale*, 288 Neb. 973, 980 (2014) (applying rule for constitutional amendments).

Evidence

21. Evidence is relevant when it has any tendency to make the existence of any fact of consequence more or less probable. *State v. Iromuanya*, 272 Neb. 178, 197 (2006). Relevant evidence is admissible unless otherwise excluded by law or rules. Neb. Rev. Stat. § 27-402.

22. Hearsay is an out-of-court statement offered to prove the truth of the matter asserted and is inadmissible unless otherwise specified in the rules of evidence or statutes. Neb. Rev. Stat. §§ 27-801, 27-802.

23. Courts may take judicial notice of legislative materials. *In re 2007 Administration of Appropriations of Waters of Niobrara River*, 288 Neb. 497, 502 (2014); *Day v. Walker*, 124 Neb. 500, 506 (1933).

STATEMENT OF FACTS

L.B. 574 bans abortion at twelve weeks of pregnancy and restricts gender-affirming care for minors. (T991–96; E5, p. 2–7); L.B. 574, Neb. Leg., 108th Leg., Reg. Sess. (Neb. 2023). To accomplish these two objects, L.B. 574 contains two different named acts, with two different titles, two different enforcement schemes, and two different operative dates. *Id.* §§ 1–7, 21, 24. As shown below, the two halves of L.B. 574 originated as separate bills but were cobbled together when one of them stalled. As Governor Jim Pillen succinctly put it when he signed L.B. 574, the law "is simply two things." (T1501; E29, p.1); *see* WOWT, *Live: Gov. Pillen Signs LB574* (May 22, 2023), at https://m.facebook.com/wowt6news/videos/2184710158366002/.

I. L.B. 626: The Stalled Abortion Ban

L.B. 574's abortion ban originated in L.B. 626, a bill introduced in January 2023. (T1041; E12, p. 1); L.B. 626, Neb. Leg., 108th Leg., Reg. Sess. (Neb. 2023). As introduced, L.B. 626 would have banned abortion once upon detection of a "fetal heartbeat," a term defined to prohibit abortion from approximately six weeks of pregnancy, with only narrow exceptions. (T1042–44; E12, p. 2–4); Neb. L.B. 626, §§ 4(2)(b), 4(3)(a)–(c), 3(2)–(3)(a). L.B. 626 stalled on April 27, 2023, when it fell short of the votes necessary to overcome a filibuster. (T1060–61, 1066; E15, p. 1–2; E.16, p. 1); LB626, *Actions*, Neb. Leg., 108th Leg., Reg. Sess. (Neb. 2023); LB 626, Recorded Vote, Neb. Leg., 108th Leg., Reg. Sess. (Neb. 2023).

Neither the text of L.B. 626, nor its sponsor's statement of intent, nor the committee statement concerning the bill, characterized it as a "health care" bill. (T1041–53, 1055–58; E12–13); L.B. 626, *2023 Comm. Statement (Corrected) LB626*, Health & Hum. Servs. Comm., Neb. Leg., 108th Leg., Reg. Sess. (Neb. 2023).

II. The Original L.B. 574: The "Let Them Grow Act"

The original L.B. 574 was introduced in January 2023 and called the "Let Them Grow Act." (T998; E6, p. 2); L.B. 574, *Introduced*, Neb. Leg., 108th Leg., Reg. Sess. (Neb. 2023). Its stated purpose was to

"prohibit the performance of gender altering procedures for individuals under the age of 19, provide for [the] definition of terminology[,] and allow for civil action[s] to be brought against violators of the act." (T1012; E8); Senator Kathleen Kauth, *Introducer's Statement of Intent LB574*, Neb. Leg., 108th Reg. Sess. (Neb. 2023). As introduced, L.B. 574 would have restricted gender-affirming care for minors, including procedures like voice surgery and the reduction of thyroid cartilage (i.e., "Adam's apple"), as well as non-surgical interventions like "puberty-blocking drugs." (T1001–04; E6, p. 5–8); Neb. L.B. 574 Introduced, §§ 4–7. It also would have authorized any minor patient, or their parent or guardian, to sue a "health care practitioner" for providing such care. (T1004; E6, p. 8); Neb. L.B. 574 Introduced, § 7.

After debates in March and April 2023, L.B. 574 received the minimum thirty-three "yes" votes to overcome a filibuster and advance. (T1013; E9, p. 1); L.B. 574, *Recorded Vote*, Neb. Leg., 108th Leg. Reg. Sess. (Neb. Apr. 13, 2023).

III. The Combined L.B. 574: The "Let Them Grow Act" and the "Preborn Child Protection Act"

In May 2023, as L.B. 574 approached its third and final round of debate, and after L.B. 626's abortion ban had stalled, an amendment concerning abortion was introduced to L.B. 574. The abortion amendment specified that it "may be cited as the Preborn Child Protection Act." (T1016–18, 1025–27; E10, p. 2–4; E11, p. 2–4); Amendments to LB 574, AM 1658, Neb. Leg., 108th Leg., Reg. Sess. (Neb. 2023). It resembled L.B. 626, except that it proposed to ban abortion at twelve weeks of pregnancy, not six. (T1026; E.11, p. 3); Neb. A.M. 1658, § 4(2)(b). The "Preborn Child Protection Act" provided for the same narrow exceptions as L.B. 626, as well as identical enforcement through the revocation of medical licenses and civil fines of up to $20,000 per abortion. (T1025–26, 1031–32; E. 11, p. 2–3, 8–9); Neb. A.M. 1658, §§ 3(a), 4(3)(a)–(b), 9–10); *see also* Neb. Rev. Stat. §§ 38-196(2), 38-198.

The Legislature adopted the "Preborn Child Protection Act" amendment to L.B. 574 on May 16, 2023. (T1014; E. 9, p. 2); LB 574,

Recorded Vote, Neb. Leg., 108th Leg. Reg. Sess. (Neb. May 19, 2023). Three days later, L.B. 574 was enacted, and Governor Pillen signed it. (T1015, E. 10, p. 1); LB574, *Actions*, Neb. Leg., 108th Leg., Reg. Sess. (Neb. 2023).

L.B. 574's abortion ban took effect immediately in May 2023. (T996; E5, p. 7). The restrictions on gender-affirming care became operative on October 1, 2023, together with emergency regulations issued by the Chief Medical Officer. (T996; E5, p. 7); 181 Neb. Admin Code, ch. 8, §§ 1–15.

IV. The Challenged Act's Impact on Plaintiffs

PPH and Dr. Traxler filed this lawsuit in May 2023. (T1). PPH is a nonprofit organization with health centers in Lincoln and Omaha, which provide a wide range of services, including abortion. (T952; E1, p. 4). Dr. Traxler is PPH's medical director and a board-certified obstetrician and gynecologist licensed to practice in several states, including Nebraska. (T950; E1, p. 2). Dr. Traxler "oversee[s] all medical services provided by PPH, including abortions." (T953; E1, p. 5). She also "provide[s] medical services, including abortion," at PPH's Omaha and Lincoln health centers. (T949; E1, p. 1).

Before L.B. 574 took effect, PPH provided abortion in Nebraska through sixteen weeks and six days of pregnancy, *id.*, and roughly one-third of those abortions occurred after twelve weeks, (T958; E1, p. 10). To comply with L.B. 574, PPH and its staff now provide abortion only through eleven weeks, six days of pregnancy in Nebraska. (T952, 977; E1, p. 4; E2, p. 2). But for L.B. 574, PPH and its staff would return to providing abortion through sixteen weeks, six days of pregnancy. (T977–78; E2, p. 2–3).

SUMMARY OF THE ARGUMENT

I. This case is justiciable. The district court correctly ruled that PPH has standing, and PPH's standing allows the case to proceed. *Stewart v. Heineman*, 296 Neb. 262, 294–95 (2017). But if the Court reaches the question of Dr. Traxler's standing, it should reverse the district court. Dr. Traxler has provided abortions past twelve weeks of pregnancy and would still do so but for L.B. 574. (T977–78; E2, p. 2–3). Dr. Traxler also oversees PPH's medical services, and her medical license could be at risk if PPH provided abortions prohibited by L.B. 574. (T953; E1, p. 5); Neb. L.B. 574, §§ 9–10. Separately, the district court correctly held that the political question doctrine does not apply here. This Court has decided single-subject cases for over a century. *See, e.g., Weis v. Ashley*, 59 Neb. 494 (1899); *Midwest Popcorn Co. v. Johnson*, 152 Neb. 867 (1950); *Jaksha v. State*, 241 Neb. 106 (1992).

II. For three reasons, the district court's merits holding—that L.B. 574 complies with the single-subject rule for legislative enactments—is incorrect as a matter of law. *First*, the plain text of article III, § 14, of the Nebraska Constitution, which provides that "[n]o bill shall contain more than one subject," flatly prohibits enacting a bill containing both an abortion ban and a restriction on gender-affirming care for minors. Those two halves of L.B. 574 have different titles, different aims, different enforcement schemes, and different operative dates. They plainly "contain more than one subject." *Second*, this Court's cases demonstrate that L.B. 574 is unconstitutional. Those cases caution against defining a bill's subject at a high level of generality, which means L.B. 574 cannot be salvaged just by identifying some category that arguably encompasses both of its halves. *Third*, the single-subject rule's purposes confirm that L.B. 574 is unconstitutional. The rule ensures that each enactment stands on its own merits by prohibiting the Legislature from combining two different bills to facilitate their passage. Yet that is what happened here: the Legislature added an abortion ban to L.B. 574 only after an abortion ban failed as a stand-alone bill.

III. The district court also erroneously excluded some of the

plaintiffs' evidence. First, it abused its discretion by excluding, on foundation grounds, Dr. Traxler's account of the difficulties her patients encounter in seeking abortions. Dr. Traxler is well-situated to describe those facts. Second, the court erred as a matter of law by excluding, as hearsay, Governor Pillen's signing statement and the Legislature's "Unicameral Updates." The signing statement is admissible as a party-opponent's admission, and the Unicameral Updates are legislative materials of which this Court should take judicial notice.

ARGUMENT

I. This case is justiciable.

The district court correctly concluded that this case is justiciable. Where "multiple plaintiffs seek identical injunctive or declaratory relief," the case is justiciable if one plaintiff has standing. *Stewart v. Heineman*, 296 Neb. 262, 294–95 (2017). Because the district court correctly held that PPH has standing, (T1768), this Court need not decide if Dr. Traxler does as well. But if this Court reaches Dr. Traxler's interest in the case, it should reverse the district court's conclusion that Dr. Traxler lacks standing. The district court also correctly ruled that the political question doctrine does not apply here.

A. Both PPH and Dr. Traxler have standing.

Nebraska courts "are not bound by the strictures of constitutional standing requirements." *Thompson v. Heineman*, 289 Neb. 798, 822 (2015). At a minimum, a Nebraska plaintiff has standing to challenge a statute's constitutionality when "it is being or is about to be applied to his disadvantage." *State ex rel. Nelson v. Butler*, 145 Neb. 638, 651 (1945). Even in federal court, plaintiffs need only show a "credible threat of prosecution" under the statute proscribing their intended conduct; they need not "expose [themselves] to liability before bringing suit." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014); *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128–29 (2007). Thus, as the district court explained, "if the force

of Nebraska's laws is brought to bear against a person, then that person has the right to demand that the law be valid under art. III, sec. 14." (T1756). *See, e.g.*, *Anderson v. Tiemann*, 182 Neb. 393, 394 (1967) (deciding single-subject challenge to a tax enactment).

Under these principles, both plaintiffs have standing. PPH has operates licensed facilities in Omaha and Lincoln that previously provided abortions past twelve weeks of pregnancy, and it has reduced abortion services to comply with L.B. 574. (T1767–68). The district court correctly found that these facts constitute injury-in-fact that gives PPH standing to challenge L.B. 574. (T1756; *see also* T967–68; E1, p. 19–20) (testimony regarding reputational injury).

Dr. Traxler has standing, too. Although the district court said it was "unclear" whether Dr. Traxler was among the "staff" who performed abortions past twelve weeks of pregnancy, (T1758), Dr. Traxler included herself among those staff when she attested that, "[b]ut for LB 574, PPH and its staff would return to . . . providing abortion in Nebraska through 16 weeks, 6 days of pregnancy, as *we* did before LB 574." (T977–78; E2, p. 2–3) (emphasis added); (*see also* T954, 956, 959, 965–66; E1, p. 6, 8, 11, 17–18) ("our patients"). In deciding defendants' summary judgment motion, the district court was required to view the record in the light most favorable to Dr. Traxler, and it should have resolved any doubts in favor of finding that she has standing. *Pettit v. Paxton*, 255 Neb. 279, 285 (1998).

Dr. Traxler also has standing by virtue of "oversee[ing] all [PPH] medical services." (T1754). If PPH were to provide an abortion in violation of L.B. 574, Dr. Traxler could face possible investigation and revocation of her medical license for "permitting, aiding, or abetting the commission of any unlawful act." Neb. Rev. Stat. §§ 38-182; 71-448(2). As the district court observed, the prospective loss of licensure is a cognizable injury. (T1757).

B. The political question doctrine does not apply.

The district court correctly rejected defendants' claim that this case presents a nonjusticiable political question. (T1766–67). This Court has adjudicated single-subject cases for more than a century. By

1897, the rule had so "often been before the court" that the Court deemed a general discussion of the rule "unnecessary." *State v. Tibbets*, 52 Neb. 228, 232 (1897). Those cases demonstrate that, when the single-subject rule was adopted, it was contemporaneously understood to be justiciable.

This Court's decision in *Nebraska Coalition for Educational Equity and Adequacy v. Heineman*, 273 Neb. 531 (2007), does not supply a reason to upend more than a century's worth of jurisprudence. *Nebraska Coalition* held that a lawsuit alleging a violation of the "free instruction" clause appearing in article VII, § 1, of the Nebraska Constitution presented a nonjusticiable political question. The Court pointed to several concerns, including: that the courts lacked "judicially discoverable or manageable standards" by which to judge whether education funding was constitutionally adequate; that "[f]iscal policy issues" were best left to the Legislature; and that the judicial branch could not second-guess those fiscal decisions without "deciding what spending issues have priority." *Id.* at 549–57.

Those concerns are absent here. The single-subject rule of article III, § 14, is a limitation on Legislative authority that is well-suited to judicial enforcement. *Weis v. Ashley*, 59 Neb. 494, 497 (1899). Nebraska courts have extensive experience deciding whether a provision contains multiple subjects. *See, e.g.*, *Anderson*, 182 Neb. at 408–09; *Van Horn v. State*, 46 Neb. 62, 74 (1895). And deciding single-subject-rule cases never—not ever—involves second-guessing the wisdom of any policy. It involves counting the number of subjects in a bill.

II. L.B. 574 violates article III, § 14.

By combining an abortion ban with a restriction on gender-affirming care, L.B. 574 violates the single-subject rule in article III, § 14, of the Nebraska Constitution. This Court interprets the constitution using "basic tenets of interpretation." *Adams v. State Bd. of Parole*, 293 Neb. 612, 618 (2016). "If the meaning is clear, [courts] give a constitutional provision the meaning that laypersons would obviously understand it to convey." *Id.* Further construction of the constitutional provision is warranted only if its meaning "is not clear."

Id. Where appropriate, the Court may consider "the evil and mischief attempted to be remedied" by the provision at issue. *State ex rel. Lemon v. Gale*, 272 Neb. 295, 304 (2006). As demonstrated below, each of these approaches—plain text, case law, and purpose—demonstrates that L.B. 574 violates article III, § 14.

A. The plain text of article III, § 14, renders L.B. 574 unconstitutional.

The Nebraska Constitution is unequivocal: "No bill shall contain more than one subject." Neb. Const. art. III, § 14. Those words are not jargon. Understanding them does not require special training. And they render L.B. 574 unconstitutional because it "contain[s] . . . more than one subject."

In fact, it contains two. One is an abortion ban, which is contained in the sections of L.B. 574 entitled the "Preborn Child Protection Act." (T991–92; E5, p. 2–3); Neb. L.B. 574, §§ 1–6. These sections focus solely on abortion by banning the procedure past twelve weeks of pregnancy except in narrow circumstances. (T991; E5, p. 2); Neb. L.B. 574, §§ 4(3)(a)–(c), 3(3)(a). The second subject contained in L.B. 574 is a restriction on gender-affirming care called the "Let Them Grow Act." (T994–96; E5, p. 5–7); Neb. L.B. 574, §§ 14–20. Those sections regulate, for example, surgical procedures like voice surgery and the reduction of thyroid cartilage (i.e., "Adam's apple"), as well as non-surgical hormone therapy. (T994–95, E5, p. 5–6); Neb. L.B. 574, § 16(2)–(10).

L.B. 574 provides two different enforcement mechanisms, and two different operative dates, for its two different subjects. The abortion ban creates new penalties for providers, including mandatory license revocation for physicians and potential civil fines of up to $20,000 per abortion. *See* Neb. Rev. Stat. §§ 38-1,118, 38-196(4), 38-198). It took effect on an emergency basis in May 2023. (T1751). In contrast, the gender-affirming care restriction authorizes enforcement through private civil actions against practitioners who provide minors with procedures and therapies regulated by the restriction. (T996, E5, p. 7); Neb. L.B. 574, § 20. It also establishes a complex rulemaking

regime that delegates certain authorities to the state's Chief Medical Officer, specific only to "Let Them Grow Act." *Id.* § 18(1). The restrictions on gender-affirming care became enforceable in October 2023. *Id.* § 21.

These distinctions between the abortion ban and the gender-affirming care restriction all demonstrate the same thing: that L.B. 574 "contain[s] more than one subject," in violation of article III, § 14's plain text. This conclusion does not require complex constitutional construction. Any layperson would obviously understand, *see Adams*, 293 Neb. at 618–19, that, as the Governor put it, L.B. 574 contains "two things." WOWT, *Live: Gov. Pillen Signs LB574*; (T836).

The district court and defendants have suggested that L.B. 574 contains only one thing: the district court ruled that L.B. 574 is a "health care" bill, while defendants have said it is a bill on "public health and welfare"—a reference to the state's police power. *Beha v. State*, 67 Neb. 27, 33 (1903). Beyond competing with each other, those theories cannot survive the Constitution's plain text.

Laypersons have not described the combined version of L.B. 574 as a bill containing only one subject. Plaintiffs are unaware of any news story saying that L.B. 574 is primarily a "health care" or "public health and welfare" bill. Indeed, had journalists described L.B. 574 that way, they would have misled their audience. *See*, *e.g.*, Aaron Sanderford & Zach Wendling, *Nebraska Merges Abortion, Gender-Affirming Care Measures into Single Bill*, Neb. Exam'r (May 17, 2023 1:17 AM), https://nebraskaexaminer.com/2023/05/17/nebraska-merges-abortion-gender-affirming-care-measures-into-single-bill/; Gina Dvorak & Brian Mastre, *Gov. Pillen Signs Nebraska's 12-week Abortion Ban, Trans Youth Care Ban*, WOWT (May 22, 2023 12:33 PM), https://www.wowt.com/2023/05/22/gov-pillen-sign-nebraskas-12-week-abortion-ban-trans-youth-care-ban/.

Similarly, the Legislature's Unicameral Updates, of which this Court may take judicial notice, *see* Argument Part III, *infra*, do not say "Legislature enacts health care bill." Nor do they say "Legislature enacts public health and welfare bill." *See Bans on gender-altering*

surgery, abortion restrictions approved, Unicameral Update (May 19, 2023), http://update.legislature.ne.gov/?p=34390.

In sum, it is impossible to accurately describe L.B. 574 without mentioning *both* its abortion ban *and* its restriction on gender-affirming care for minors. Under any lay understanding of the constitutional text, L.B. 574 "contain[s] more than one subject."

B. Case law confirms that L.B. 574 violates article III, § 14.

This Court's cases confirm that L.B. 574 violates article III, § 14. Those cases prescribe two steps. First, no matter the single-subject command at issue, the Court identifies the subject, or "main purpose," at a level of specificity that gives the command meaning. *Van Horn*, 46 Neb. at 74; *State ex rel. Wagner v. Evnen*, 307 Neb. 142, 153 & n.35 (2021). Second, applying tests that vary with the single-subject rule at issue, the Court assesses the connection between each provision and the bill's main purpose. In applying the rule for legislative enactments, the Court has deemed the connection sufficient if each provision is "naturally connected with and incidental to" the main purpose. *Midwest Popcorn Co. v. Johnson*, 152 Neb. 867, 872 (1950); *see Gauchat v. Sch. Dist. No. 5 in Nemaha Cnty.*, 101 Neb. 377, 379 (1917); *State ex rel. Hall Cnty. Farm Bureau v. Miller*, 104 Neb. 838, 843 (1920).

L.B. 574 fails that test. For L.B. 574 to have one meaningfully specific subject, its subject would have to be banning abortion or restricting gender-affirming for minors. But neither subject is "naturally connected with and incidental to" the other.

1. The "subject" in a single-subject challenge must be identified at an appropriate level of specificity.

This Court's single-subject cases—whether under article III, § 14, for legislative enactments, or under article III, § 2, for ballot initiatives proposing statutes or constitutional amendments—start by identifying the pertinent subject at a meaningful level of specificity. The main purpose is the pertinent subject. *Van Horn*, 46 Neb. at 73

(1895); *State ex rel. Loontjer v. Gale*, 288 Neb. 973, 980 (2014). If the main purpose is truly one broad subject, then in theory the act can survive "no matter how broad" that true subject might be. *Anderson*, 182 Neb. at 408. But the inevitable availability of a noun encompassing two narrow subjects has never sufficed to transform an impermissible two-subject enactment into a one-subject enactment.

The seminal case on this issue is *Van Horn*. There, the Court described "the rule" to be applied where a bill does not sweep broadly but instead has two disparate parts that can be said to be part of some broader subject:

> We conceive the rule to be that the constitutional provision does not restrict the legislature in the scope of legislation. It does not prohibit comprehensive acts, and, no matter how wide the field of legislation, the subject is single so long as the act has but a single main purpose and object. Thus, we would have no doubt of the power of the legislature, by a single act, to provide a new and complete code of civil procedure. But if the legislature should undertake, in an act whose main purpose should be, for instance, to provide for supersedeas bonds, to also provide for the issuing of original summonses, or the effect of a demurrer, we would have no hesitation in saying that such an act contained more than one subject.

Van Horn, 46 Neb. at 74.

In applying this rule over the years, the Court has struck down enactments that sought to cobble disparate provisions together, while upholding enactments that sought to thoroughly regulate some broad subject. *Compare Lancaster Cnty.*, 17 Neb. at 87 (declaring act "a nullity," where it dealt with school lands and repealed an act that refunded taxes levied on state-owned school lands); *Trumble v. Trumble*, 37 Neb. 340, 345, 348 (1893) (finding "no doubts" a statute was unconstitutional where it contained both "a statute of descents" and "a law attaching new requisites to the validity of a will"), *with Beisner v. Cochran*, 138 Neb. 445, 451 (1940) (allowing "[a]n act

complete in itself which covers the whole subject" to withstand a single-subject challenge); *Anderson*, 182 Neb. at 409 (upholding a comprehensive "Revenue Act" because its "various taxes" were "closely related and germane to each other" and all "administered by the Tax Commissioner"); *Midwest Popcorn*, 152 Neb. at 872 (upholding enactment with provisions incidental to the subject of property appraisal); *Jaksha v. State*, 241 Neb. 106, 131–32 (1992) (upholding enactment including taxes on property, sales, and corporate income, where "[a]ll of the provisions in the bill relate[d] and [we]re germane to the general subject of taxation").

The *Van Horn* rule still stands today. Most recently, this Court warned in *Wagner* that "the single subject requirement may not be circumvented by selecting a topic so broad that the rule is evaded as a meaningful constitutional check." *Wagner*, 307 Neb. at 153. In that case, the Court defined the subject of a ballot initiative "[a]t an appropriate level of specificity" as one "creat[ing] a constitutional right for persons with serious medical conditions to produce and medicinally use an adequate supply of cannabis, subject to a recommendation by a licensed physician or nurse practitioner." *Id.* The subject was not "public health." It was not "health care." It was not even "cannabis."

Finally, this rule aligns with cases in other states. For example, in 2016, the Supreme Court of Oklahoma struck down two legislative enactments relating to abortion under that state's single-subject rule. For each enactment, "[a]though each section relate[d] in some way to abortion, the broad sweep of each section [did] not cure the [bill's] single subject defects." *Burns v. Cline*, 382 P.3d 1048, 1053 (Okla. 2016); *see also Burns v. Cline*, 387 P.3d 348, 355 (Okla. 2016) (same); *Leach v. Com.*, 141 A.3d 426, 434 (Pa. 2016) (invalidating law that created a "cause of action for persons affected by local gun regulations" and defined new "offenses relating to the theft of secondary metal").

More recently, the North Dakota Supreme Court struck down on single-subject grounds a law that, while initially focused on funding that state's Office of Management and Budget, had various other provisions tacked on during the legislative process, such as funding

"the legislative council and office of the governor." *Bd. of Trustees of N.D. Pub. Emps. Ret. Sys. v. N.D. Legislative Assembly*, 2023 ND 185, ¶¶ 24–25 (2023). The court rejected the State's proposed subject of "state government operations" as so general that it "would eviscerate [the state's] single subject rule." *Id.* at ¶ 28. The Court explained that "the [single-subject] rule obviously forbids joining disparate provisions which appear germane only to topics of excessive generality such as 'government' or *'public welfare*.'" *Id.* at ¶ 21 (emphasis added; citation omitted).

Nevertheless, the district court concluded that courts can be "liberal" when identifying the main subject of a legislative enactment, and that any contrary statements in *Wagner* are limited to the single-subject rule for ballot initiatives. (T1766). For three reasons, the district court was incorrect.

First, with or without *Wagner*, the point remains: at the subject-identification step, courts must determine the enactment's specific purpose, instead of just finding some noun encompassing all of the enactment's provisions. *Wagner* is simply the most recent of this Court's cases to say that, but the Court has been saying it for years, including in legislative-enactment cases. *Lancaster Cnty.,* 17 Neb. at 86 (distinguishing between portion of enactment relating to school lands and portion repeal act refunding taxes levied on state-owned school lands); *Trumble*, 37 Neb. at 345 (recognizing that "the affairs of mankind are so interwoven" that any statute could be said "to embrace the whole body of the law," but rejecting such "chainlike" reasoning and striking down a legislative enactment).

The district court seemed to say that these pre-*Wagner* pronouncements appear largely in "dicta in *Van Horn*," (T1765), but that is not so. As *Van Horn* explained, "the rule" it described arose from multiple cases, and this Court's articulation of a rule "to decide whether [a party's] allegations br[ing] his case within it" is *never* dictum. *Sedlacek v. Welpton Lumber Co.*, 111 Neb. 677, 680 (1924)).

Second, although *Wagner* applied article III, § 2's single-subject rule for ballot initiatives, it quoted two cases involving single-subject

rules for legislative enactments because this Court *expressly concluded* that those cases involved "a similar context." 307 Neb. at 153 n.35 (quoting *Gregory v. Shurtleff*, 299 P.3d 1098, 1112 (Utah 2013), and *Wirtz v. Quinn*, 953 N.E.2d 899 (Ill. 2011)). Those cases, in turn, warned against "selecting a topic so broad that the rule is evaded as a meaningful check on the legislature's actions." *Shurtleff*, 299 P.3d at 1112; *Wirtz*, 953 N.E.2d at 905 (same). In quoting them, this Court simply replaced "on the legislature's actions" with "on the initiative process." *Wagner*, 307 Neb. at 153. Accordingly, even if there is some difference in the operation of single-subject rules under article III, §§ 2 and 14, the rules apply identically at the subject-identification step.

Third, the text of article III, § 2, simply does not set forth a different single-subject rule than is found in article III, § 14. Section 2 provides: "[C]onstitutional limitations as to the scope and subject matter of statutes enacted by the Legislature shall apply to those enacted by the initiative. Initiative measures shall contain only one subject." The first sentence makes "constitutional limitations" imposed on legislative acts—such as article III, § 14—applicable to "those" citizen initiatives for statutes. And the second sentence, added in 1998, confirms that these single-subject limitations apply to *all* citizen ballot initiatives, whether those initiatives seek to enact legislation *or* amend the state constitution. *See* 1997 Neb. Laws, L.R. 32CA.

To the extent this Court concluded otherwise in *Loontjer*, it should revisit that decision. *Loontjer* stated that the single-subject rule for legislative enactments "does not apply to ballot measures for constitutional amendments," because the 1998 amendment—adding the words "[i]nitiative measures shall contain only one subject"—imposed a requirement to "exceed[]" the existing "requirement that the subject matter of initiatives shall be subject to the same requirements as legislative enactments." 288 Neb. at 994, 998. Respectfully, that does not seem right. The 1998 amendment followed the Attorney General's conclusion that art III, § 2, as initially written, applied the single-subject rule of art. III, § 14, to "a statute" proposed by initiative, but not to "*constitutional amendments* proposed by [initiative]." Att'y

Gen. Op. No. 96005, at 8, 1996 WL 17187, at *5–*6 (Jan. 8, 1996). The 1998 amendment to article III, § 2, overrode that conclusion. That is, the amendment simply *extended* the single-subject requirements of article III, § 14, from statutes proposed by initiative to all initiative proposals—including constitutional amendments. Thus, as *Wagner* said, the single-subject rules in article III, §§ 2 and 14, truly are similar contexts.

2. A legislative enactment's provisions must be naturally connected and incidental to its main subject.

Once the Court determines an enactment's main purpose, the enactment will survive single-subject review only if its provisions are all "naturally connected with and incidental to that main purpose." *Midwest Popcorn*, 152 Neb. at 872. The Court has also used the phrase "relate and are germane to" in describing the required fit. *Jaksha*, 241 Neb. at 131–32; *Anderson*, 182 Neb. at 409. Even assuming that this is a more lenient test than for other single-subject rules, the test still has teeth.

For example, in *Trumble* the act's two core provisions concerned "the law in regard to decedents, and therefore the professed subject of the act extended only to such matters as were germane to those two sections." *Van Horn*, 46 Neb. at 73 (citing *Trumble*, 37 Neb. at 345)). The Court struck down the act because it included other provisions—including on the estates of dower and curtesy—that, while relevant to the distribution of personal property, were not germane to the issue of *decedents*. *Trumble*, 37 Neb. at 345. Likewise, in *Lancaster County,* this Court struck down a law which aimed to provide for "the registry, sale, leasing, and general management" of school lands, but also repealed an earlier act that refunded taxes levied on state-owned school lands. 17 Neb. at 86.

3. L.B. 574 violates this Court's construction of article III, § 14, because it is not broad and neither of its halves is naturally connected with or incidental to the other.

L.B. 574 violates the rule described above. At the first step, this

Court's repeated warnings about choosing a subject at too high a level of generality—from *Van Horn* to *Wagner*—apply fully here. That is because L.B. 574 is not a thorough, let alone "complete," regulation of some broad subject. *Contra Beisner*, 138 Neb. at 451; *Anderson*, 182 Neb. at 408–09. Instead, like *Van Horn*'s example of an unconstitutional enactment combining two aspects of civil procedure—supersedeas bonds and original summonses—L.B. 574 combines an abortion ban and a restriction on gender-affirming care. *Van Horn*, 46 Neb. at 74. Deeming those two aims part of some broader, single subject would directly contravene not just *Van Horn*, *Trumble*, and *Lancaster County*, but also this Court's more recent warning against "selecting a [general subject] so broad that the rule is evaded as a meaningful constitutional check." *Wagner*, 307 Neb. at 145.

Thus, under cases both old (*Van Horn*) and new (*Wagner*), one of the two aims of L.B. 574 must be its subject, and the enactment can survive single-subject review only if *the other* aim is naturally connected with or incidental to it.

But banning abortion is not naturally connected with or incidental to restricting gender-affirming care, or vice versa. As shown above, L.B. 574 pursues two aims through distinct titles, regulated conduct, enforcement mechanisms, rulemaking authorities, and operative dates. *Compare* Neb. L.B. 574 §§ 1–13, 21, 24, *with* Neb. L.B. 574 §§ 14–20. Nothing about the abortion ban implements, clarifies, or addresses the gender-affirming care restriction. Thus, under any plausible construction of article III, § 14, legislation that contains only an abortion ban and a gender-affirming-care restriction violates the single-subject rule.

4. The theories urged by the district court and defendants are inconsistent with this Court's cases.

As noted above, the theories urged by the district court and the defendants—that L.B. 574 is a "health care" bill or a "public health and welfare bill"—are incompatible with each other and with the Nebraska Constitution's plain text. *See* Argument Part II.A, *supra*. For three reasons, they also contradict this Court's cases.

First, the "health care" and "public health and welfare" theories contradict the rule of *Van Horn* and other cases explaining that a bill containing two disparate provisions may not be upheld based on a theory that they are part of some broad subject. Even if a broad bill thoroughly regulating "health care" or "public health and welfare" could survive single-subject review, L.B.574 is not such a bill.

Second, accepting either the "health care" or "public health and welfare" theories would not only allow but encourage "eva[sion]" of the single-subject rule. *Wagner*, 307 Neb. at 145; *see Trumble*, 37 Neb. at 345 ("While all of its provisions are connected in some sense with one another, the connection is in some cases very remote."). The provisions that could be deemed to relate to "health care," or "public health and welfare," may be infinite. If combining an abortion ban with a gender-affirming care restriction can be upheld based on a theory that each provision sought to improve some notion of health care or public health, then the same would be true of a bill regulating abortion and oxycodone, or gender-affirming care and fireworks, or abortion and trampolines.

What is more, while defendants represented to the district court that "[a]ll of the provisions of LB 574 create or revise specific sections under Chapter 38 of the Nebraska Revised Statutes which governs 'Health Occupations and Professions,'" that representation turned out to be inaccurate. (T153, 186, 1715). Many parts of L.B. 574 were placed under Chapter 71. *See* Neb. Rev. Stat. §§ 71-6912 to 71-6917 (abortion ban); *id.* §§ 71-7301 to 71-7307 (gender-affirming care restriction). That chapter ranges from barbers to crematories to drug labs to private detectives to building codes. *Id.* §§ 71-201, 71-1355, 71-2432, 71-3201, 71-6401. If an enactment combining two different aims can be deemed constitutional so long as both aims wind up somewhere in Chapter 71, then the Legislature can evade the single-subject rule by assigning every bill a subject like "good legislation."

Third, this Court has never upheld an enactment against a single-subject challenge by putting words in the government's mouth. As the district court seemed to acknowledge, the Legislature did not

characterize the final version of L.B. 574 as a "health care" bill, (T1764), and defendants have not defended it as such. This is perhaps because they do not regard abortion as health care. Regardless, it is unsurprising that the district court and defendants could not agree on one subject for L.B. 574: the enactment defies an easy one-subject summary because it contains two subjects.

C. The purposes of the single-subject rule require invalidating L.B. 574.

The single-subject rule ensures that every bill "stand[s] upon its own merits." *Trumble*, 37 Neb. at 344. It aims to eliminate logrolling, namely, "the joining of several measures in one act, in order to combine the friends of each measure, and pass the bill as a whole." *Id.*; *Conservative Sav. & Loan Ass'n of Omaha v. Anderson*, 116 Neb. 627, 628 (1928). This aim is especially crucial in Nebraska because when the Legislature combines multiple subjects in one bill, it creates a take-it-or-leave-it proposition not only for legislators but also for the Governor, who lacks a line-item veto except for appropriations bills. *See* Neb. Const. art. IV, § 15.

Accordingly, courts raise their antennae when the Legislature adds a new provision to a bill to smooth its passage. In striking down the enactment in *Lancaster County*, this Court noted the challengers' observation that part of the enactment had failed "as an independent measure." *Lancaster Cnty.*, 17 Neb. at 86. Likewise, when this Court concluded that a proposed constitutional amendment authorizing certain horserace betting violated the separate-vote provision of Nebraska Constitution article 16, § 1, it noted that an amendment allocating gambling tax revenue to tax relief and education arrived "[a]fter contentious floor debates." *Loontjer*, 288 Neb. at 980. In contrast, when upholding the enactment in *Wirtz*, the Illinois Supreme Court found "no evidence that any obviously unrelated provisions were 'tacked on' to the bill at a later time.'" 953 N.E.2d at 911.

This case involves a "tacked on" provision. L.B. 574's abortion ban arrived only after two rounds of contentious debate and the failure of the six-week abortion proposed in L.B. 626. (T1750). That history

directly implicates the reasons for the single-subject rule.

Noting that L.B. 574's abortion ban is less restrictive than its L.B. 626 precursor, the district court deemed it "speculative that logrolling in fact occurred." (T1766). But proving what would have happened if the Legislature had voted on each subject separately cannot be the test. Single-subject rules exist partly because, once two proposals are sandwiched into one "take-it-or-leave-it proposition," *Loontjer*, 288 Neb. at 1004, it can become *impossible* to know how they might have fared as single-subject bills. It is sufficient to consider whether a provision was added in a bid to enhance a bill's chances of approval. *Id.*; *Lancaster Cnty.*, 17 Neb. at 86.

That is what happened here. Indeed, that L.B. 574's abortion ban is less restrictive than L.B. 626's abortion ban only amplifies the concern that it was added to facilitate L.B. 574's enactment.

III. The district court erroneously excluded plaintiffs' evidence.

The district court admitted certain written testimony from Dr. Traxler as well as certain legislative history of L.B. 574 and L.B. 626, but summarily sustained the defendants' objections to other evidence submitted by plaintiffs. (T1753) (admitting, for example, paragraphs 24–28 of Dr. Traxler's affidavit, but not 21–23, and Exhibits 7–16, but not 17–24). The excluded evidence generally falls into two categories. First, the court excluded, on foundation grounds, Dr. Traxler's testimony about the barriers pregnant people face in seeking abortions, the impact of L.B.574 on them, and the harms of forced pregnancy and childbirth. (T1753, 956–66; E1, p. 8–18, ¶¶ 29–35, 38–44, 49, 52, 54–59, 62). Second, the court excluded, on hearsay and relevance grounds, "Unicameral Updates" on the Legislature's website, Governor Pillen's statements upon signing L.B. 574, and certain news articles. (T1753, 1068–1108, 1501–49; E17–24, 29, 30–35). The district court did not explain these rulings, and they are incorrect.

The district court abused its discretion by excluding portions of Dr. Traxler's affidavits on foundation grounds because Dr. Traxler has personal knowledge of how abortion access affects her patient

population. *See* Neb. Rev. Stat. §§ 25-1334, 27-602. Her decades-long experience practicing and teaching in obstetrics and gynecology makes her competent to describe how barriers to access delay otherwise-eligible patients past twelve weeks of pregnancy, as PPH performed abortions for these patients before L.B. 574. (T950, 956–58; E1, p. 2, 8–10, ¶¶ 5–10, 9–35, 37).

Separately, the district court's exclusion of Governor Pillen's signing statement and the Legislature's Unicameral Updates was incorrect as a matter of law. Even if hearsay, the Governor's signing statement was admissible as the admission of a party opponent. Neb. Rev. Stat. § 27-801(4)(b)(i); *State v. Abligo*, 312 Neb. 74, 90 (2022). But neither the signing statement nor the Unicameral Updates are hearsay. Plaintiffs did not offer them to prove the truth of their claims about L.B. 574. Neb. Rev. Stat. § 27–801(3). After all, plaintiffs disagree with many of those claims. Plaintiffs instead cited these statements to reveal how the Governor and Legislature have *characterized* L.B. 574. Beyond not being hearsay, those characterizations are proper subjects of judicial notice. *See In re 2007 Administration of Appropriations of Waters of Niobrara River*, 288 Neb. 497, 502 (2014); *Day v. Walker*, 124 Neb. 500, 506 (1933). Indeed, the appellate rules allow "hyperlink[s] to the official Nebraska Legislative website for Nebraska Laws, Bills, and legislative history," which is where Unicameral Updates reside. Neb. Ct. R. App. Pr. § 2-103(A)(5)(e).

These materials are also relevant. They describe, in the government's own words, L.B. 574's evolution into a two-subject bill:

- *Ban on gender-altering procedures for minors advanced to final round after cloture*, Unicameral Update (Apr. 14, 2023), http://update.legislature.ne.gov/?p=34125; (T1074; E21, p. 1);
- *Abortion restrictions stall after failed cloture vote*, Unicameral Update (Apr. 27, 2023), http://update.legislature.ne.gov/?p=34258; (T1094; E22, p. 1);
- *Ban on gender-altering procedures expanded to include abortion restrictions, returned to final reading*, Unicameral

Update (May 18, 2023), http://update.legislature.ne.gov/?p=34361; (T1099; E23, p. 1);

- *Ban on gender-altering surgery, abortion restrictions approved*, Unicameral Update (May 19, 2023), http://update.legislature.ne.gov/?p=34390; (T1105; E24, p. 1); and
- "L.B. 574 is simply two things." Jim Pillen, Statement at Signing Ceremony, at 1:42 (May 22, 2023); (T1501; E29, p.1).

The district court's contrary conclusion as to relevance, along with its holdings as to foundation, should be reversed.

CONCLUSION

The district court's order should be reversed, and this case should be remanded with instructions to grant plaintiffs' motion for summary judgment.

Dated this 17th day of November, 2023.

RESPECTFULLY SUBMITTED,

Planned Parenthood of the Heartland, Inc., and Dr. Sarah Traxler, Appellants.

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CERTIFICATE OF COMPLIANCE

I, Rose Godinez, state that I prepared this document using Microsoft 365 and this brief complies with the typeface requirement of Neb. Ct. R. App. P. § 2-103, and contains 10,090 words not including this certificate.

/s/ Rose Godinez