

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

**STATE OF NEBRASKA ex rel.
DOUGLAS J. PETERSON, Attorney
General, and SCOTT FRAKES,
Director of the Nebraska
Department of Correctional
Services,**

Plaintiffs,

v.

**SENATOR LAURA EBKE,
Chairperson of the Judiciary
Committee of the Nebraska
Legislature,
SENATOR DAN WATERMEIER,
SENATOR ERNIE CHAMBERS,
SENATOR ROY BAKER, SENATOR
MATT HANSEN, SENATOR BOB
KRIST, SENATOR ADAM
MORFELD, SENATOR PATTY
PANSING BROOKS, SENATOR
STEVE HALLORAN, SENATOR
KATE BOLZ, SENATOR SUE
CRAWFORD, SENATOR DAN
HUGHES, SENATOR JOHN KUEHN,
SENATOR TYSON LARSON,
SENATOR JOHN MCCOLLISTER,
SENATOR JIM SCHEER, and
PATRICK J. O'DONNELL, Clerk of
the Nebraska Legislature,**

Defendants.

Case No. CI _____

COMPLAINT

(Related Case No. CI 18-1026)

Plaintiffs State of Nebraska ex rel. Douglas J. Peterson, Attorney General, and Scott Frakes, Director of the Nebraska Department of Correctional Services, for their claims against Defendants, in their official capacities, allege the following:

PARTIES

PLAINTIFFS

1. Plaintiff Douglas J. Peterson is the Attorney General of the State of Nebraska.
2. Plaintiff Scott Frakes is the Director of the Nebraska Department of Correctional Services.

DEFENDANTS

3. All of the Defendants are sued in their official capacities.
4. Senator Laura Ebke is, and was at all times relevant herein, a Nebraska State Senator and Chairperson of the Judiciary Committee of the Nebraska Legislature.
5. Senator Ernie Chambers is, and was at all times relevant herein, a Nebraska State Senator. Senator Chambers is the only one of the defendants who is both a member of the Judiciary Committee and the Executive Board of the Legislative Council.
6. Senator Chambers is also a plaintiff in the pending case of *Chambers and Griffith v. Frakes, et al*, Lancaster County District Court Case No. CI 18-1026, in which Senator Chambers sued Director Frakes and then used his official capacity as a member of the Judiciary Committee and Executive Board to pursue and promote the unlawful subpoena that is the subject of this Complaint.
7. Senators Roy Baker, Matt Hansen, Bob Krist, Adam Morfeld, Patty Pansing Brooks, and Steve Halloran are, and were at all times relevant herein, Nebraska

State Senators and members of the Judiciary Committee of the Nebraska Legislature.

8. Senator Dan Watermeier is, and was at all times relevant herein, a Nebraska State Senator and Chairperson of the Executive Board of the Legislative Council.

9. Senators Kate Bolz, Sue Crawford, Dan Hughes, John Kuehn, Tyson Larson, John McCollister, and Jim Scheer are, and were at all times relevant herein, Nebraska State Senators and members of the Executive Board of the Legislative Council.

10. Patrick J. O'Donnell is, and was at all times relevant herein, the Clerk of the Nebraska Legislature.

11. Senator Halloran is named as a defendant only in his official capacity and only because he was a member of the Judiciary Committee that took the unlawful action that is the subject of this Complaint. Senator Halloran voted against the unlawful action that is the subject of this Complaint.

12. Senators Scheer, Kuehn, Hughes, and Larson are named as defendants only in their official capacities and only because they were members of the Executive Board that took the unlawful action that is the subject of this Complaint. Senators Scheer, Kuehn, and Hughes voted against the unlawful action and advised the rest of the Defendant Senators against taking the unlawful action that is the subject of this Complaint. Senator Larson was absent.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this action and the requested relief sought under Neb. Rev. Stat. §§ 24-302, 25-21,149, and 50-406.

14. Venue is proper in this Court under Neb. Rev. Stat. §§ 25-403.01 and 50-406.

FACTUAL ALLEGATIONS

15. This is an action for declaratory relief, injunctive relief, and to quash the subpoena issued by the Judiciary Committee of the Nebraska Legislature to Director Scott Frakes on April 24, 2018. Plaintiffs seek a declaration that neither Neb. Rev. Stat. § 50-406 nor Rule 3, Sections 1 or 21 of the Rules of the Nebraska Unicameral Legislature authorized the issuance of a subpoena in this instance. Plaintiffs seek to enjoin Defendants from any future acts violating these provisions. Plaintiffs request this Court quash the subpoena served by the Judiciary Committee of the Nebraska Legislature on Director Scott Frakes on April 26, 2018.

16. Plaintiffs also seek a declaration that Defendants have violated the separation of powers provision in the Nebraska Constitution, Neb. Const. art. II, § 1, and seek to enjoin Defendants from any future actions violating Neb. Const. art. II, § 1.

17. The Nebraska Department of Correctional Services Execution Protocol was promulgated under the Nebraska Administrative Procedure Act and is found at 69 Neb. Admin. Code, Chapter 11.

Senator Chambers' Complaint

18. On or about March 21, 2018, Senator Chambers filed a complaint concerning the Execution Protocol with Senator Watermeier, Chairperson of the Executive Board

of the Legislative Council, pursuant to Neb. Rev. Stat. § 84-907.10. A copy of the complaint filed by Senator Chambers is attached as Exhibit 1.

19. Senator Chambers' complaint questioned:

- a. The Department's authority to promulgate the Execution Protocol;
- b. Whether the Execution Protocol is consistent with the Legislature's intent when it passed LB 36 in 2009;
- c. The process and procedure employed in adopting the Execution Protocol, including the Department's compliance with all applicable aspects of Nebraska's Administrative Procedure Act;
- d. The constitutionality of the Execution Protocol, including the constitutionality of the protocol as applied in the Director's announcement of the Department's intent to employ a series of four drugs to be delivered intravenously when executing two specific inmates sentenced to death in light of the Eighth Amendment's and the Nebraska Constitution's prohibitions against cruel and unusual punishment; and
- e. Any and all conflicts between the Execution Protocol, or the application thereof, and all applicable federal statutes or regulations.

**Senator Watermeier Referred The Complaint
To The Wrong Committee Of The Legislature**

20. Under Neb. Rev. Stat. § 84-907.10, Senator Watermeier was required to refer Senator Chambers' complaint to the chairperson of the standing committee of the Nebraska Legislature that had subject-matter jurisdiction over the issue involved in the rule or regulation.

21. The standing committee of the Nebraska Legislature with subject-matter jurisdiction over administrative rules and regulations is the Government, Military and Veterans Affairs Committee.

22. Since 1987, the standing committee of the Nebraska Legislature with subject-matter jurisdiction over the Nebraska Department of Correctional Services is the Government, Military and Veterans Affairs Committee. *See* Legislative Research Report #89-25, September 1989.

23. In short, Senator Watermeier was required by law to refer Senator Chambers' complaint to the Legislature's Government, Military and Veterans Affairs Committee.

24. Instead of referring the complaint to the Government, Military and Veterans Affairs Committee, on or about March 22, 2018, Senator Watermeier referred Senator Chambers' complaint to Senator Ebke, Chairperson of the Judiciary Committee of the Nebraska Legislature. A copy of Senator Watermeier's referral is attached as Exhibit 2.

Judiciary Committee Vote To Conduct Unauthorized Public Hearing

25. On or about April 9, 2018, the Judiciary Committee determined, by an affirmative vote of seven members of the Committee, to conduct a public hearing regarding the Execution Protocol.

26. On or about April 9, 2018, Senator Halloran voted against conducting a public hearing regarding the Execution Protocol.

27. Neb. Rev. Stat. § 84-907.10 does not authorize the Judiciary Committee to hold a hearing on a complaint filed under Neb. Rev. Stat. § 84-907.10.

28. Neb. Rev. Stat. § 84-907.10 does not authorize the issuance of subpoenas.

Executive Board's Unlawful Action For The Wrong Committee To Issue The Unlawful Subpoena

29. On or about April 18, 2018, Senator Ebke sent a letter to Senator Watermeier requesting that the Executive Board provide approval to the Judiciary Committee to issue a subpoena to the Director of the Department of Correctional Services, Scott Frakes. A copy of Senator Ebke's letter is attached as Exhibit 3.

30. In her April 18, 2018, letter, Senator Ebke repeated the allegations from Senator Chambers' March 21, 2018, complaint.

31. On April 18, 2018, the very last day of the Second Session, 105th Nebraska Legislature, the Executive Board met and considered the Judiciary Committee's request for approval to issue a subpoena to Director Scott Frakes.

32. During the meeting of the Executive Board, Senator Watermeier asked Senator Ebke to provide a history of the request.

33. Senator Ebke informed the Executive Board that the request for approval to issue a subpoena "comes out of Senator Chambers' request for the committee, to me to look into the procedures of the naming of the death penalty drugs, if you will."

34. Senator Watermeier, Senator Chambers, Senator Bolz, Senator Crawford, and Senator McCollister then voted to approve the Judiciary Committee's request to issue a subpoena to Director Scott Frakes. Senator Watermeier cast the last and deciding vote to issue the unlawful subpoena by the wrong committee.

35. Senator Scheer, Senator Hughes, and Senator Kuehn voted to deny the Judiciary Committee's request to issue a subpoena to Director Scott Frakes. Senator Larson was absent.

Judiciary Committee Issues The Unlawful Subpoena

36. On April 26, 2018, Director Scott Frakes was served with a subpoena from the Judiciary Committee of the Nebraska Legislature compelling his presence to testify at 9:00 a.m. on Tuesday, May 8, 2018, in Room 1113 of the Nebraska State Capitol Building, 1445 K Street, Lincoln, NE 68508. The subpoena was signed by Senator Ebke and Clerk of the Legislature Patrick J. O'Donnell. A copy of the subpoena is attached as Exhibit 4.

37. The subpoena served on Director Scott Frakes states it was issued pursuant to Neb. Rev. Stat. § 50-406.

38. On April 26, 2018, Director Scott Frakes was also served with a letter from Senator Ebke and a copy of the Rules of the Nebraska Unicameral Legislature. A copy of Senator Ebke's letter is attached as Exhibit 5.

39. The April 25, 2018, letter from Senator Ebke stated the subject matter of the Judiciary Committee's inquiry. All of those matters stated in her letter were from Senator Chambers' March 21, 2018, complaint that had been submitted pursuant to Neb. Rev. Stat. § 84-907.10 of the Administrative Procedure Act, none of which were within the authority of the Judiciary Committee.

Judiciary Committee Lacked Authority To Issue The Subpoena

40. Neb. Rev. Stat. § 50-406 provides:

In the discharge of any duty imposed by the Legislative Council, by statute, or by a resolution of the Legislature, the council, any committee thereof, and any standing or special committee created by statute or resolution of the Legislature may hold public hearings and may administer oaths, issue subpoenas

when the committee has received prior approval by a majority vote of the Executive Board of the Legislative Council to issue subpoenas in connection with the specific inquiry or investigation in question, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and cause the depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court. The council or the committee may require any state agency, political subdivision, or person to provide information relevant to the committee's work, and the state agency, political subdivision, or person shall provide the information requested within thirty days after the request except as provided for in a subpoena. The statute or resolution creating a committee may prescribe limitations on the authority granted by this section.

Litigation to compel or quash compliance with authority exercised pursuant to this section shall be advanced on the court docket and heard and decided by the court as quickly as possible. Either party may appeal to the Court of Appeals within ten days after a decision is rendered.

The district court of Lancaster County has jurisdiction over all litigation arising under this section. In all such litigation the executive board shall provide for legal representation for the council or committee.

41. Pursuant to Neb. Rev. Stat. § 50-401, the Legislative Council consists of all members of the Legislature.

42. Neb. Rev. Stat. § 50-406 authorizes a legislative committee to hold public hearings and issue subpoenas with prior approval of the Executive Board in only three instances:

- a. In the discharge of any duty imposed by the Legislative Council;
- b. In the discharge of any duty imposed by statute; or
- c. In the discharge of any duty imposed by a resolution of the Legislature.

43. Each of these duties can only be imposed by a majority vote of the entire Legislature.

44. The proposed May 8, 2018, public hearing and the April 24, 2018, subpoena issued by the Judiciary Committee to Director Scott Frakes were not in the discharge of any duty imposed by the Legislative Council.

45. The proposed May 8, 2018, public hearing and the April 24, 2018, subpoena issued by the Judiciary Committee to Director Scott Frakes were not in the discharge of any duty imposed by statute.

46. The proposed May 8, 2018, public hearing and the April 24, 2018, subpoena issued by the Judiciary Committee to Director Scott Frakes were not in the discharge of any duty imposed by a resolution of the Legislature.

47. For these reasons, Neb. Rev. Stat. § 50-406 cannot serve as a lawful basis for the issuance of the subpoena to Director Frakes.

48. The actions of the defendant senators of the Judiciary Committee and Executive Board were not lawful, or authorized legislative activity. Rather, they were the unlawful and unauthorized actions of the Judiciary Committee after having been unlawfully authorized by the Executive Board, following the initial referral of Senator Chambers' complaint to the wrong committee.

Judiciary Committee Failed To Comply With Legislative Rules

49. Rule 3, Section 21 of the Rules of the Nebraska Unicameral Legislature provides that any legislative committee can conduct investigations of matters within its subject-matter jurisdiction.

50. The standing committee of the Nebraska Legislature with subject-matter jurisdiction over administrative rules and regulations is the Government, Military and Veterans Affairs Committee.

51. Since 1987, the standing committee of the Nebraska Legislature with subject-matter jurisdiction over the Nebraska Department of Correctional Services is the Government, Military and Veterans Affairs Committee.

52. Rule 3, Section 21(A)(i) of the Rules of the Nebraska Unicameral Legislature provides a committee may, by a majority vote of all of its members taken at a meeting properly called, issue a subpoena requiring a person to appear before the committee and be examined in reference to any matter within the scope of the inquiry or investigation being conducted by the committee, but only when the committee has received prior approval by a majority vote of the Executive Board to issue subpoenas in connection with the specific inquiry or investigation in question.

53. On information and belief, a majority of the members of the Judiciary Committee did not vote at a meeting properly called, following the Executive Board meeting of April 18, 2018, to issue a subpoena to Director Scott Frakes.

54. Rule 3, Section 21(B)(ii) of the Rules of the Nebraska Unicameral Legislature requires that any person who is served with a subpoena to attend a hearing of a committee shall also be served with a copy of the act defining the purpose of the committee.

55. Director Scott Frakes was not served with a copy of the act defining the purpose of the Judiciary Committee.

56. Rule 3, Section 21(A)(iv) of the Rules of the Nebraska Unicameral Legislature requires that a person subpoenaed to attend a hearing of a committee shall receive the same fees and allowances as a person subpoenaed to give testimony in an action pending in a court of record.

57. The subpoena issued to Director Scott Frakes did not comply with the witness fee provisions of Neb. Rev. Stat. § 25-1223.

FIRST CAUSE OF ACTION

58. Each and every factual allegation contained in Paragraphs 1 through 57 is incorporated herein by this reference.

59. On or about March 21, 2018, Senator Chambers filed a complaint concerning the Execution Protocol pursuant to Neb. Rev. Stat. § 84-907.10.

60. The Judiciary Committee's request to the Executive Board for approval to issue a subpoena originated from Senator Chambers' request that was referred by Senator Watermeier to the Judiciary Committee.

61. Neb. Rev. Stat. § 84-907.10 does not authorize the Judiciary Committee to hold a hearing or issue a subpoena when a complaint is filed under Neb. Rev. Stat. § 84-907.10.

62. The members of the Judiciary Committee and the Executive Board acted unlawfully and outside their authority when they requested, approved, and issued the subpoena to Director Scott Frakes.

63. Plaintiffs therefore request a declaration that Defendants violated Neb. Rev. Stat. § 50-406, and Rule 3, Sections 1 and 21 of the Rules of the Nebraska Unicameral

Legislature by issuing a subpoena in response to a complaint filed pursuant to Neb. Rev. Stat. § 84-907.10, and that this Court enjoin Defendants from future acts violating these provisions.

SECOND CAUSE OF ACTION

64. Each and every factual allegation contained in Paragraphs 1 through 63 is incorporated herein by this reference.

65. The April 24, 2018, subpoena issued to Director Scott Frakes states it was issued pursuant to Neb. Rev. Stat. § 50-406.

66. The April 24, 2018, subpoena issued to Director Scott Frakes was not issued in the discharge of any duty imposed by the Legislative Council (i.e., the entire Unicameral Legislature), by statute, or by a resolution of the Legislature. Rather, the unlawful scheme and subpoena was the result of not allowing the Legislature to vote on the matter of issuing the subpoena when there was no duty imposed by the Legislature or by any statute for the Judiciary Committee members to carry out.

67. The members of the Judiciary Committee and the Executive Board acted unlawfully and outside of their authority when they requested, approved, and issued the subpoena to Director Scott Frakes.

68. Plaintiffs therefore request a declaration that Defendants violated Neb. Rev. Stat. § 50-406 by issuing a subpoena under Neb. Rev. Stat. § 50-406, and that this Court enjoin Defendants from future acts violating Neb. Rev. Stat. §50-406.

THIRD CAUSE OF ACTION

69. Each and every factual allegation contained in Paragraphs 1 through 68 is incorporated herein by this reference.

70. In the process of issuing the subpoena to Director Scott Frakes, the members of the Judiciary Committee violated Rule 3, Section 21; Rule 3, Section 21(A)(i); Rule 3, Section 21(A)(iv); and Rule 3, Section 21(B)(ii) of the Rules of the Nebraska Unicameral Legislature.

71. Plaintiffs therefore request a declaration that Defendants violated Rule 3, Sections 1 and 21 of the Rules of the Nebraska Unicameral Legislature by issuing a subpoena outside of the subject-matter jurisdiction of the Judiciary Committee, without a vote of a majority of the members of the Judiciary Committee at a meeting properly called, without complying with the witness fee requirements, and by not serving the subpoena with a copy of the act defining the purpose of the Judiciary Committee.

72. Plaintiffs further request a declaration that Defendants failed in all material respects to comply with the requirements of the Rules of the Nebraska Unicameral Legislature and accordingly, Director Scott Frakes is relieved of any requirement to attend the hearing for which the subpoena was issued pursuant to Rule 3, Section 21(H)(ii) of the Rules of the Nebraska Unicameral Legislature.

FOURTH CAUSE OF ACTION

73. Each and every factual allegation contained in Paragraphs 1 through 72 is incorporated herein by this reference.

74. Defendants' actions described herein were not within the sphere of legitimate legislative activity.

75. Defendants violated the separation of powers and exceeded their authority when they requested, approved, and issued the subpoena to Director Scott Frakes.

76. Defendants seek to violate the separation of powers by exercising a power properly belonging to the judicial branch and determine a case or controversy regarding the Department's compliance with the Administrative Procedure Act, the constitutionality of the Execution Protocol, and any and all conflicts between the Execution Protocol and all applicable federal statutes and regulations.

77. Plaintiffs therefore request a declaration that Defendants violated the separation of powers provision in the Nebraska Constitution, Neb. Const. art. II, § 1, and that this Court enjoin Defendants from future acts violating Neb. Const. art. II, § 1.

FIFTH CAUSE OF ACTION

78. Each and every factual allegation contained in Paragraphs 1 through 77 is incorporated herein by this reference.

79. Neb. Rev. Stat. § 50-406 provides that the district court of Lancaster County has jurisdiction over all litigation arising under this section and litigation to quash compliance with authority exercised pursuant to this section shall be advanced on the court docket and heard and decided by the court as quickly as possible.

80. Plaintiffs therefore request that the April 24, 2018, subpoena issued to Director Scott Frakes be quashed because of Defendants' violations of Neb. Const. art.

II, § 1, Neb. Rev. Stat. § 50-406, and Rule 3, Sections 1 and 21 of the Rules of the Nebraska Unicameral Legislature.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court enter an Order:

1. Declaring Defendants in violation of Neb. Const. art. II, § 1, Neb. Rev. Stat. § 50-406, and Rule 3, Sections 1 and 21 of the Rules of the Nebraska Unicameral Legislature;
2. Permanently enjoining the Defendants from any future acts violating Neb. Const. art. II, § 1, Neb. Rev. Stat. § 50-406, and Rule 3, Sections 1 and 21 of the Rules of the Nebraska Unicameral Legislature;
3. Quashing the April 24, 2018, subpoena issued to Director Scott Frakes;
4. Taxing the costs of this action to the Defendants; and
5. Providing such other relief as the Court deems appropriate under the circumstances.

Dated May 1st, 2018.

**STATE OF NEBRASKA ex rel. DOUGLAS J.
PETERSON, Attorney General, and SCOTT
FRAKES, Director of the Nebraska
Department of Correctional Services,
Plaintiffs.**

By: DOUGLAS J. PETERSON, NE #18146
Attorney General of Nebraska

By: s/ Ryan S. Post
Ryan S. Post, NE #24714
Civil Litigation Bureau Chief

James D. Smith, NE #15476
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Exhibit 1

Nebraska State Legislature

Hand Delivered
3/24/18

SENATOR ERNIE CHAMBERS

District 11
3116 North 24th Street
Omaha, Nebraska 68110

Legislative Address:
State Capitol
PO Box 94604
Lincoln, Nebraska 68509-4604
(402) 471-2612



COMMITTEES

Agriculture
Business and Labor
Judiciary
Executive Board
Reference

DW

March 21, 2018

Senator Dan Watermeier, Chair
Executive Board of Legislative Council
Room 2108
Legislative District 1 State Capitol
PO Box 94694
Lincoln, NE 68509

Re: Complaint Under Neb. Rev. Stat.
§ 84-907.10 re Lethal Injection Protocol

Dear Senator Watermeier,

Nebraska law provides a procedure for any member of the Legislature to file a complaint with the chair of the Executive Board of the Legislative Council when the adoption of a state regulation offends state law, federal law, or the Constitution, or when unforeseen circumstances have arisen since the passage of the legislation affording authority to a state agency to issue a regulation. See Neb. Rev. Stat. § 84-907.10 *Member of the Legislature; complaint; procedure*.

On January 26, 2017, the Governor approved Title 69, Chapter 11 of the Nebraska Administrative Code, the Department of Correctional Services' Lethal Injection Protocol, to be used for execution of Nebraska death row prisoners.

This is a complaint, under Neb. Rev. Stat. § 84-907.10 (1), that the protocol as applied conflicts with federal law, *id.* at (1) (c), conflicts on its face with state law, *id.* at (1) (c), is unconstitutional as applied, *id.* at 1 (a), and because circumstances have changed since the passage of the legislation vesting authority in the Department of Correctional Services to create the protocol, which are that the NDCS has implemented the

protocol in violation of federal drug laws and in violation of constitutional prohibitions against cruel and unusual punishment.

Pursuant to Neb. Rev. Stat. § 84-907.10, this complaint must be referred to Senator Laura Ebke, Chair of the Judiciary Committee. The Judiciary Committee is the standing committee with subject matter jurisdiction over the issue involved in the rule or regulation and which has traditionally handled the issue for the purpose of holding a public hearing to address these grave concerns and to bring the Department of Correctional Services forward to answer questions about the rule it has adopted to carry out the state's most solemn and grave authority.

The bases for my conclusions concerning the protocol are that:

- 1) NDCS's current implementation of the lethal injection protocol violates federal law concerning the registrations required for entities handling controlled substances. This has been accompanied by failures to comply with the Nebraska Public Records Act concerning the lethal injection drugs the state has obtained. These are new circumstances, unforeseen at the time of the passage of Neb. Rev. St. § 83-964.
- 2) The protocol itself was created in violation of Nebraska's Administrative Procedure Act, Neb. Rev. Stat. § 84-906(2), a development the Legislature did not foresee when it enacted Neb. Rev. St. § 83-964.
- 3) Current implementation of the protocol by the NDCS involves a paralytic drug that will cause cruel and unusual punishment in violation of the Eighth Amendment to the U.S. Constitution and in violation of the Nebraska Constitution. These are new circumstances unforeseen at the time of passage of Neb. Rev. St. § 83-964.

Each will be addressed below.

As pertinent background, in 2009, we enacted Neb. Rev. St. § 83-964 (LB 36), the statute vesting the NDCS with the authority to select the lethal substances this state will use to carry out death sentences. The law states: "A sentence of death

shall be enforced by the intravenous injection of a substance or substances in a quantity sufficient to cause death. The lethal substance or substances shall be administered in compliance with an execution protocol created and maintained by the Department of Correctional Services." In turn, Title 69, Chapter 11 of the Nebraska Administrative Code sets out the NDCS's most recent lethal injection protocol.

Highlighting the urgency of this complaint, NDCS has issued written notices on November 9, 2017, and January 19, 2018, respectively, that it intends to carry out the executions of Jose Sandoval and Carey Dean Moore using a four-drug cocktail that includes fentanyl citrate, diazepam, cisatracurium besylate and potassium chloride.

- 1) NDCS's current implementation of the lethal injection protocol violates federal law concerning the registrations required for entities handling controlled substances.

When the Legislature enacted Neb. Rev. St. § 83-964, we assumed the NDCS would follow applicable state and federal laws in selecting the substances it selected for lethal injection. It has not done so. On March 12, 2018, the ACLU of Nebraska sent a letter to the federal Drug Enforcement Administration raising significant questions about NDCS's authority to obtain, store, and dispense lethal-injection drugs. The meticulously-documented letter and 13 exhibits is available for download on the ACLU of Nebraska website. In sum, the letter demonstrates several problems with the NDCS's use of DEA registrations to obtain, store, and dispense lethal injection drugs, including:

- a. The DEA import certificate of registration the Nebraska State Penitentiary appears to have used to obtain Fentanyl is a registration number the NSP appears to have obtained by misleading the DEA to claim that it held a Nebraska community pharmacy license which was, in fact, a non-transferable license assigned to the NDCS Pharmacy, at a separate location.
- b. Even if properly obtained, the DEA import registration NSP appears to have used to obtain fentanyl did not authorize NSP to obtain fentanyl because it is a Schedule II controlled substance under 21 USC 812(c), Schedule II, while the import registration permits only the import of

Schedule 3N and 4 controlled substances. In these federal schedules, the lower the schedule number, the more tightly regulated the drug.

- c. DEA has issued a certificate of registration to a hospital/clinic at the same Lincoln address as the NSP (4201 South 14th Street), which presumably is the skilled nursing facility at the prison. Under federal law, that hospital/clinic certificate, however, authorizes the dispensing of controlled substances to patients of the hospital/clinic, but does not authorize NSP to administer controlled substances to prisoners for the purpose of execution. Nor, as the ACLU letter points out, may the DEA provide NSP with a certificate of registration to administer the controlled substances because the prison is not, under Nebraska or federal law, a dispenser and is not engaged in professional practice when it administers controlled substances. Nor, as the letter establishes, may the NSP handle and dispense the controlled substances under a law enforcement exemption to DEA regulations because NDCS staff are not law enforcement officers under Nebraska law, and they are not engaged in the enforcement of state law related to controlled substances.

Based on these problems, the DEA has been requested to suspend or revoke the registrations assigned to the NSP, and to place under seal the any and all controlled substances intended to be used in a lethal injection execution.

The NDCS's disregard of the DEA laws is undoubtedly connected to the secrecy under which it has shrouded its attempts to obtain lethal injection drugs. Nothing about the records detailing the NDCS's possession of lethal injection drugs is exempt from the state's public record laws. Yet the NDCS has unjustifiably withheld that information from both the ACLU and the media organizations seeking this information. Mandamus proceedings pending in the District Court of Lancaster County would require the NDCS to follow the law, and therefore to disclose the records under the Nebraska Public Records Act. Additionally, NDCS's unlawful secrecy is partially fueled by its aim to stymie efforts of pharmaceutical companies to secure from correctional departments throughout the nation, the return of drugs designed to alleviate pain, cure diseases and save lives-- which such departments have procured improperly and/or under

false pretenses for use in lethal injection executions. See Paul Hammel & Joe Duggan, *Pfizer warns Nebraska to return any lethal injection drugs it has manufactured that state may have*, Omaha World Herald, Nov. 17, 2017. Given the Legislature's decision when enacting LB 36 in 2009 to reject efforts to exempt information concerning lethal injection drugs from the public records act, I am troubled that the NDCS is now disingenuously doing precisely what the Legislature determined Nebraska law would not allow.

These new facts give me pause about the authority we have vested in the Director of the State of Nebraska Department of Correctional Services, under Laws 2009, L.B. 36. The Director appears to be exercising that authority in a manner that violates federal law, and places our state in the unacceptable position of surrendering controlled substances, purchased with state revenues, but unlawfully obtained.

- 2) The protocol itself was created in violation of Nebraska's Administrative Procedure Act, Neb. Rev. Stat. § 84-906(2), a development the Legislature did not foresee when it enacted Neb. Rev. St. § 83-964.

I am deeply concerned that the NDCS did not follow the Administrative Procedure Act because there is evidence that it withheld from the public documents that must be made available to the public under this law.

A purported Nebraska rule or regulation is invalid unless "adopted in substantial compliance with the provisions of the" APA, Neb. Rev. Stat. § 84-906(2). Under § 84-906.01(1), the administration making the rule or regulation "shall maintain an official rulemaking or regulationmaking record for each rule or regulation it adopts or proposes by publication of a notice[,]" and must make that record "available for public inspection . . . for at least four years after the effective date of the rule or regulation." This public rulemaking "shall contain:"

- (a) Copies of all publications with respect to the rule or regulation;
- (b) Copies of any portions of the public rulemaking or regulationmaking docket

containing entries relating to the rule or regulation

(c) All written petitions, requests, submissions, and comments received by the agency and all other written materials prepared by or for the agency in connection with the proposal or adoption of the rule or regulation;

(d) Any official transcript of oral presentations made in a proceeding about the proposed rule or regulation or, if not transcribed, any tape recording or stenographic record of those presentations, and any memorandum prepared by the hearing officer summarizing the contents of those presentations;

(e) A copy of the rule or regulation and the concise explanatory statement filed with the Secretary of State;

(f) All petitions for adoption of, exceptions to, amendments of, or repeal or suspension of, the rule or regulation;

(g) A copy of any comments on the rule or regulation filed by a legislative committee; and

(h) A description, including an estimated quantification, of the fiscal impact on state agencies, political subdivisions, and regulated persons.

§ 84-906.01(2).

Further, under § 84-907 (2), at the time of notice of the required public hearing on the question of adoption of a regulation, "draft copies or working copies of all rules and regulations to be adopted, amended, or repealed by any agency shall be available to the public in the office of the Secretary of State[.]" *Id.*

Notice of the hearing was published on November 28, 2016. Preparation of the lethal injection protocol was complete at least by January 20, 2017, the date on which the Attorney General approved it. There is evidence that members of the public, who attempted to view the rulemaking record and draft and working copies on December 20, 2016, were unable to do so. When they made an oral request at the NDCS for any information, drafts, and supporting material related to the proposed new rule, they received none. Instead, they received only a printed copy of the proposed rule itself.

At the time, the NDCS lawyer who drafted the protocol claimed to have done so in a single draft, having created no rough drafts, and without receiving or reviewing any materials or communications "with Gov. Pete Ricketts' office, Attorney General Doug Peterson's office, Director Scott Frakes, outside experts or other states' officials." Joanne Young, *State won't detail how it crafted execution protocol*, Lincoln Star Journal, Dec. 26, 2016.

It is inconceivable that the NDCS had no other information or supporting material in its possession by the date they already had a proposed rule, and one month before it was approved.

Because of this violation of the APA, members of the public could not comment with any knowledge of the information that went into the regulation, including at the public hearing. As I stated at the public hearing on December 30, 2016, this protocol was created in secrecy. Therefore, members of the public could neither make fully informed public comments under § 84-906.02 nor participate in a meaningful way at the hearing under § 84-907. In short, without disclosure by the NDCS of the materials information considered in the formulation of the lethal injection protocol, our laws requiring the public to have an opportunity to participate in the process became a dead letter. This is particularly concerning given the ways in which the NDCS appears to have violated federal laws and the Constitution in selecting the lethal injection drugs currently in its possession.

When the Legislature enacted LB 36 in 2009, vesting the NDCS with the authority to promulgate a lethal injection protocol, there were efforts to do away with the requirement to

comply with the APA. I am concerned that the current efforts to thwart the APA are an end-run around the specific decision in 2009 that the APA must be followed. The NDCS should not be allowed to undermine this determination regarding the application of this state's gravest power.

3. Current implementation of the protocol by the NDCS involves a paralytic drug that will cause cruel and unusual punishment in violation of the Eighth Amendment to the U.S. Constitution and in violation of the Nebraska Constitution.

As noted above, the State has issued notice to prisoners Jose Sandoval and Carey Dean Moore of its intent to execute each of them with a four-drug cocktail that includes fentanyl citrate, diazepam, cisatracurium besylate and potassium chloride. If either Mr. Sandoval or Mr. Moore were to be executed with this four-drug protocol, it would be the first time in any state or nation in which this progression of drugs has been used to execute.

Nevada, however, has proposed a similar protocol: execution by fentanyl, diazepam, and cistatracurium (without the potassium chloride). On November 27, 2017, following an evidentiary hearing on this protocol, a Nevada state court has held that execution with this protocol would violate the U.S. and Nevada Constitution's parallel guarantees against cruel and unusual punishment. *See Scott Raymond Dozier v. State of Nevada*, Findings of Fact and Conclusions of Law, Case No. 05C215039 (Clark County D. Ct. Nov. 27, 2017). Based on the testimony, the trial court found that cistatracurium was a paralytic agent. Further, it

- would mask signs of the condemned prisoner's distress, pain, or suffering during the execution, including the feeling of suffocating to death;
- and served no valid purpose because the execution could be accomplished without it.

Applying U.S. Supreme Court precedent for inquiring into the constitutionality of a lethal injection protocol, the court found that the prisoner's counsel had proposed a viable alternative, proven up through medical testimony — that the execution could be accomplished using only the first two drugs

in the Nevada protocol. The court also noted that the risk of the paralytic masking the prisoner's distress could arise if the first two sedating drugs were not administered properly. Finally, it observed that because Nevada had not executed a prisoner in eleven years, its protocol was untested, and its Department of Corrections was inexperienced with executions, it was not known whether the execution would go smoothly.

I share the concerns of expressed by the Nevada court with respect to Nebraska's protocol. The proposed protocol adds a fourth drug - potassium chloride, to stop the heart. That change does not eliminate the significant risks of using a paralytic agent and if anything enhances the possibility of unconstitutional pain and suffering that is masked. Here, too, circumstances contributing to the risks are deeply troubling. Nebraska has not executed a person since 1997, and has never executed a prisoner using lethal injection. To assume that execution with an untested protocol by an untested team will go smoothly appears to be folly, imprudently rolling the dice of death and hoping they don't come up "craps."

Finally, I am aware of decisional case law declaring that the use of a paralytic agent in lethal injection prevents the media from reporting on how the prisoner experienced the execution, prevents the public from having such information, and therefore runs contrary to our state's history and tradition of open, transparent government. And it does so when the state is exercising its most solemn and irrevocable power.

Based on these considerations, pursuant to Neb. Rev. Stat. § 84-907.10, I renew my request that you refer this complaint to Senator Laura Ebke, Chair of the Judiciary Committee of the Legislature for the purpose of holding a public hearing with all deliberate speed.

Sincerely,

A handwritten signature in cursive script that reads "Ernie Chambers".

State Senator Ernie Chambers

Exhibit 2

State of Nebraska

LEGISLATIVE COUNCIL

2017-2018
EXECUTIVE BOARD
DAN WATERMEIER, CHAIRMAN
JOHN KUEHN - VICE CHAIRMAN
KATE BOLZ
ERNIE CHAMBERS
SUE CRAWFORD
DAN HUGHES
TYSON LARSON
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JIM SCHEER
JOHN P. STINNER (ex officio)



PO Box 94604
State Capitol, Lincoln, NE 68509-4604
www.nebraskalegislature.gov

PATRICK J. O'DONNELL
Clerk of the Legislature

NANCY CYR
Director of Research

MARTHA CARTER
Legislative Auditor

JOANNE PEPPERL
Revisor of Statutes

MICHAEL CALVERT
Legislative Fiscal Analyst

MARSHALL LUX
Ombudsman

REFERENCE COMMITTEE REPORT

AGENCY RULES AND REGULATIONS (Complaint)


Pursuant to *Section 84-907.10*, the enclosed complaint regarding proposed or current agency rules and regulations was received in my office on March 21, 2018, from Senator Ernie Chambers and is hereby referred to:

Pursuant to *Section 84-907.07*, this information is being referred to:

Senator Laura Ebke
Chairperson
Judiciary Committee

Senator Mike Flood LB36 (2009)
Primary sponsor of bill/amendment
☒ check if member is no longer in the Legislature
☐ check if not a result of legislative action

Date: March 22, 2018


Senator Dan Watermeier
Chairman, Executive Board

Signed receipt:

_____ (Office of the Chairperson of Standing Committee)

_____ (Office of primary sponsor of bill/amendment)

Exhibit 3

Nebraska State Legislature

SENATOR LAURA EBKE

District 32
1935 St. Andrews Drive
Crete, Nebraska 68333
(402) 540-6510

Legislative Address:
State Capitol
PO Box 94604
Lincoln, Nebraska 68509-4604
(402) 471-2711
lebke@leg.ne.gov



COMMITTEES

Chairperson - Judiciary
Chairperson - Justice Reinvestment Oversight
Education

Sen. Dan Watermeier
Chair of the Executive Board
Room #2108
P.O. Box 94604
Lincoln, NE 68509

Hand Delivered

April 18, 2018

Re: Request for Prior Approval to Issue Subpoena Requiring Scott R. Frakes, Director of the Department of Correctional Services, to Testify Before the Judiciary Committee

Sen. Watermeier:

On April 9, 2018, the Judiciary Committee determined, on an affirmative vote of seven members of the Committee, to conduct a public hearing pursuant to Neb. Rev. Stat. § 50-604 and Rule 3, Section 1 of the Rules of the Nebraska Unicameral Legislature to begin an inquiry into certain matters related to the Department of Correctional Services's rules and regulations outlining the protocol for execution of the death penalty under Nebraska law, which protocol is referred to as the Department's "Execution Protocol" and is now codified at Title 69, Chapter 11 of the Nebraska Administrative Code. The Committee's interest in such an inquiry was spurred by recent and ongoing concerns related to the Execution Protocol, the process by which it was adopted by the Department, and the constitutionality of both the protocol itself and its application in two recent cases where there Department has announced its intent to employ the protocol.

Specifically, allegations have been raised asserting that the Department failed to follow Nebraska's Administrative Procedure Act when it adopted the Execution Protocol by failing to provide proper and complete public notices and failing to make certain information available before and during public hearings. Furthermore, the constitutionality of the Department's application of the Execution Protocol has been recently called into question in the wake of the Department's announcement of its intent to employ a series of four drugs to be delivered intravenously when executing two specific inmates sentenced to death. Indeed, at least one court has considered the constitutionality of a four-drug protocol similar to the protocol developed by Director Frakes and

has deemed it in violation of the United States Constitution's prohibition against cruel and unusual punishment.

And while the complaints voiced amount to mere allegations at this point, the gravity of the matter at issue and the validity of some of the concerns expressed regarding procedural questions have convinced the Judiciary Committee that it is in the interest of the Legislature and paramount to the State of Nebraska that the legislative branch make efforts to ensure that any attempt to execute a person under Nebraska law is proper.

Considering the seriousness of the allegations made and the bases for the allegations, the Committee has determined to inquire and investigate questions surrounding the Execution Protocol, including, but not limited to, the following matters:

- The Department's authority to promulgate the Execution Protocol;
- Whether the Execution Protocol is consistent with the Legislature's intent when it passed LB 36 in 2009;
- The process and procedure employed in adopting the Execution Protocol, including the Department's compliance with all aspects of Nebraska's Administrative Procedure Act and other applicable state laws;
- The constitutionality of the Execution Protocol, including the constitutionality of the protocol as applied in the Director's announcement of the Department's intent to employ a series of four drugs to be delivered intravenously when executing two specific inmates sentenced to death in light of the Eighth Amendment's and the Nebraska Constitution's prohibitions against cruel and unusual punishment; and
- Any and all conflicts between the Execution Protocol, or the application thereof, and all applicable federal statutes or regulations.

In pursuit of its investigation, the Judiciary Committee believes it necessary to examine certain persons and books, papers, or other documents pertinent to its inquiry. The Committee believes that its power of subpoena pursuant to Neb. Rev. Stat. 50-406 and Rule 3, Section 21 of the Rules of the Nebraska Unicameral Legislature will be necessary to adequately complete its inquiry and investigation into the aforementioned matters.

Accordingly, I am writing on behalf of the Committee to request the Executive Board provide approval to the Committee to issue a subpoena and possible subpoenas duces tecum to the Director of the Department of Correctional Services, Mr. Scott R. Frakes, as the Committee believes it necessary and appropriate in completing the Committee's inquiry. Information from Director Frakes will be greatly valuable due to his involvement in developing the protocol and implementing it. Specifically, Director Frakes is intimately acquainted with the Execution Protocol as he served as the Director overseeing the Department when the protocol was developed and adopted, and as he continues to serve as the Director charged under the protocol with the task of applying it to execute Nebraska inmates sentenced to death.

It should be noted that prior to making this request to the Executive Board for authority to issue a subpoena to secure information from Director Frakes, the Committee did invite Director Frakes to cooperate in its endeavor. A letter was sent via email to the Director on Tuesday, April 10, 2018,

inviting the Director to voluntarily appear before the Committee at its May 8, 2018, hearing to testify under oath about the aforementioned matters. A copy of the letter sent by the Committee to Director Frakes is enclosed herein for your reference and consideration. A courtesy call from Judiciary Committee legal counsel to the Director's Chief of Staff was also made in advance of the sending of that letter.

To date, the Committee has received no response from Director Frakes. A follow-up telephone call and email were made and sent on Monday, April 16, 2018, to the Director's Chief of Staff. The Chief of Staff replied via email and noted that the Director did intend to respond, but did not provide any further information. A second email and phone call were made to the Director's Chief of Staff on Tuesday, April 17, 2018. As of this writing, no response has yet been received and the most recent follow-up phone call was not returned.

Because Director Frakes has failed to respond to the Committee's invitation, the Committee has adequately determined that no other method of securing the desired information would be successful or practicable, and therefore issuance of a subpoena is necessary. Moreover, because the nature of the matter itself is of such consequence, the Committee has determined that the matter is of primary importance to the welfare of the State of Nebraska. Accordingly, the Committee believes its request for authority to issue a subpoena for the testimony of Director Frakes, and potential subpoenas duces tecum for production of relevant documents, is proper under state law and the Rules of the Legislature.

Please feel free to contact me with any questions or concerns you might have. Thank you for your consideration of the Committee's request.

Respectfully submitted,



Sen. Laura Ebke

District 32

Chair, Judiciary Committee of the 105th Nebraska Legislature

cc: Patrick O'Donnell, Clerk of the Nebraska Legislature
Members of the Judiciary Committee of the 105th Nebraska Legislature

Exhibit 4

SUBPOENA

TO: SCOTT FRAKES, DIRECTOR, NEBRASKA DEPARTMENT OF
CORRECTIONAL SERVICES

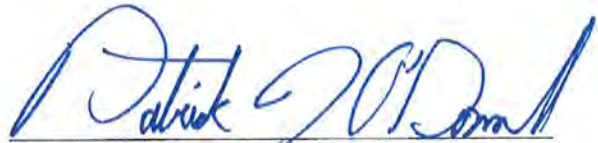
Pursuant to statutory section 50-406 R.R.S., the Judiciary Committee of the Nebraska Legislature hereby compels your presence to testify at ~~9:00am~~ on Tuesday, May 8, 2018, in Room 1113 of the Nebraska State Capitol Building, 1445 K Street, Lincoln, NE 68508.

If you have any questions regarding this subpoena, please contact Senator Ebke's office at (402) 471-2711.

Dated this 24th day of April, 2018.



Senator Laura Ebke
Chair, Judiciary Committee of the
Nebraska Legislature



Patrick J. O'Donnell
Clerk of the Nebraska Legislature

Exhibit 5

Nebraska State Legislature

807266

SENATOR LAURA EBKE

District 32
1935 St. Andrews Drive
Crete, Nebraska 68333
(402) 540-6510

Legislative Address:
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PO Box 94604
Lincoln, Nebraska 68509-4604
(402) 471-2711
lebke@leg.ne.gov



COMMITTEES

Chairperson - Judiciary
Chairperson - Justice Reinvestment Oversight
Education

RECEIVED

Mr. Scott Frakes
Director, Nebraska Dept. of Correctional Services
P.O. Box #94661
Lincoln, NE 68509-4661

NDCS Director's Office
*Hand Delivered via Personal
Service by the Lancaster County
Sheriff's Office*

April 25, 2018

Re: Required Notices Accompanying Subpoena to Appear before the Judiciary Committee

Director Frakes:

On April 9, 2018, the Judiciary Committee of the Nebraska legislature determined by the affirmative vote of seven of its members to begin an inquiry into concerns related to the Department of Correctional Services's preparation, adoption, and application of its "Execution Protocol," which protocol is now codified at Title 69, Chapter 11 of the Nebraska Administrative Code. In furtherance of that inquiry, the Committee determined to begin by holding a public hearing on the issue and to invite your testimony as the Director of the Department of Correctional Services who oversaw the development, adoption, and application of the Execution Protocol, and if necessary, to issue a subpoena to compel your participation. After a formal request sent to you on April 10, 2018, seeking your willingness to participate voluntarily, and following a series of attempts to contact you and make arrangements, the Committee determined that no other method of securing your attendance was available and that a subpoena would be necessary.

On April 18, 2018, the Committee submitted a request to the Executive Board of the Legislative Council to provide prior approval of the Committee's issuance of a subpoena to compel your attendance at a public hearing on issues related to the Execution Protocol. Upon motion, a second, and discussion, the Executive Board voted by majority vote to provide approval of the Committee's issuance of a subpoena to compel your appearance at a public hearing to testify under oath.

This letter is being provided to you pursuant to Rule 3, Section 21(B)(ii) of the Rules of the Nebraska Unicameral Legislature, which requires a Committee serving a subpoena upon a witness to provide certain specific information. Accordingly, please take notice of the following:

STATE OF NEBRASKA

Lancaster County

I hereby certify

To serve the within

Subpoena

on

day of

April 2018

Served By

48257

1. The Judiciary Committee of the Nebraska legislature exists as an established standing committee of the Nebraska legislature pursuant to the Rules of the Nebraska Unicameral Legislature. The Judiciary Committee is the standing committee having jurisdiction over issues related to criminal penalties and sentencing, and, specifically, the state's statutes providing for a sentence of death.
2. The Judiciary Committee functions under the general rules applicable to committees of the Nebraska legislature as outlined in the Rules of the Nebraska Unicameral Legislature, One Hundred Fifth Legislature, Second Session (2018). A copy of those Rules is included herewith for your reference. For purposes of the May 8, 2018, public hearing at which you have been subpoenaed to appear, the Committee will conduct its hearing in the following manner: Sen. Laura Ebke, Chair of the Committee, will serve as chair throughout the hearing. The Chair will open the hearing, introduce members of the Committee and staff, provide the witness a welcome, and place the witness under oath. The witness will then be allowed up to ten minutes to provide opening remarks if he or she chooses to do so. Following the witness's opening statement, members of the Committee will be given opportunities to ask questions of the witness. Each member of the Committee will be allowed at least two rounds of questioning, with each round lasting up to ten minutes. At the discretion of the Chair, additional rounds of questioning may be added if there are obvious and important lines of questioning that have not had sufficient time to be explored. Committee members may pass on their turn(s) and may pass on any time remaining if they do not use their full ten minutes. Committee members will not be allowed to yield any unused time to other members of the Committee. The order in which Committee members will be allowed to ask questions will alternate from each side of the Committee table based on the seating positions of the Committee members, beginning with those farthest from the Chair's seat and working toward the middle. The expected order will be as follows: Sen. Baker, Sen. Halloran, Sen. Morfeld, Sen. Hansen, Sen. Krist, Sen. Pansing Brooks, Sen. Chambers, and Sen. Ebke. Once the Chair has determined that there has been a sufficient opportunity for the Committee to ask its questions, the Chair will provide the witness an opportunity to make up to ten minutes of closing or rebuttal remarks.
3. The general subject matter of the Committee's inquiry is the Department's Execution Protocol, codified at Title 69, Chapter 11 of the Nebraska Administrative Code. The Committee's inquiry includes, but is not limited to, the following:
 - The Department's authority to promulgate the Execution Protocol;
 - Whether the Execution Protocol is consistent with the Legislature's intent when it passed LB 36 in 2009;
 - The process and procedure employed in adopting the Execution Protocol, including the Department's compliance with all applicable aspects of Nebraska's Administrative Procedure Act;
 - The constitutionality of the Execution Protocol, including the constitutionality of the protocol as applied in the Director's announcement of the Department's intent to employ a series of four drugs to be delivered intravenously when executing two specific inmates sentenced to death in light of the Eighth Amendment's and the Nebraska Constitution's prohibitions against cruel and unusual punishment; and

- Any and all conflicts between the Execution Protocol, or the application thereof, and all applicable federal statutes or regulations.
4. You are hereby notified that you may be accompanied at the hearing by counsel of your own choosing. During your testimony, you will be provided the opportunity to consult with your attorney as needed, but your attorney will not be seated at the testifier's table.

Please govern yourself accordingly.

Very truly,



Sen. Laura Ebke

District 32

Chair, Judiciary Committee of the 105th Nebraska Legislature

cc: Sen. Dan Watermeier, Chair of the Executive Board of the 105th Nebraska Legislature
Patrick O'Donnell, Clerk of the Nebraska Legislature
Members of the Judiciary Committee of the 105th Nebraska Legislature
Douglas J. Peterson, Nebraska Attorney General