

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 8, 2019

**PANSING BROOKS:** Good afternoon, everyone. Welcome to the Judiciary Committee. My name is Patty Pansing Brooks. I represent District 28 right here in the heart of Lincoln and I am the Vice Chair of the committee. Today we will have some bills by Senator Lathrop, so I'm taking over the spot. I'd like to-- we'll introduce the members of the committee later because I think they're going to be coming in. There, I come closer so you can hear. So assisting the committee today are Laurie Vollertsen, our committee clerk; Neal Erickson, our legal counsel. The committee pages are Alyssa Lund and Dana Mallett, both students at UNL, except that's not true, is it? And on the table inside the doors that you came in you'll find the yellow testify sheets and if you're planning on testifying today please fill out and hand it to the page when you come up to testify. This helps us keep an accurate record of the hearing. There's also a white sheet on the table if you do not wish to testify but would like to record your position on a bill. Also, for future reference, if you're not testifying in person on a bill and would like to submit a letter for the official record, all committees have a-- a deadline of 5:00 p.m. the day before the hearing. We will begin bill testimony with the introducer's opening statement. Following the opening, we will hear from proponents of the bill, then opponents, and finally by anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last name and please spell, spell them for the record. We utilize an on deck-chair up here on my right, your left, and we hope that you will come up to and be in the on-deck chair. Keep it filled with the next person that's going to testify in order to keep the hearing moving. If you have any handouts, we are asking that you bring up at least 12 copies and give them to one of the pages. And if you don't have enough copies then the page can get extra copies for you. We will be using a light system. It's up here on-- in the box. And when you begin your testimony the light on the table will turn green, and then the yellow light is your one-minute warning. And when you see the red light, we are asking that you wrap up your final thoughts and stop. And as a matter of committee policy, I'd like to remind everyone that the use of cell phones and other electronic devices is not allowed during public hearings, though senators may use them at times to take notes or to contact staff members. At this time, I'd ask for everyone to just check your phones and please make sure that they're on the silent mode. Also, we do not allow verbal outbursts or any kind of applause in this hearing room. Such behavior may be cause for one of the Red Coats or troopers to

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come and ask you to leave. And one more thing: You may notice that the committee members are coming and going. This has nothing to do with the importance of the bill before you or how much we care or don't care about the issue, because we do care about them. But senators may have bills to introduce in other committees or other meetings to attend. So with that, I'd like to start and have the senators introduce themselves and we'll start with Senator Slama-- Slama.

**SLAMA:** Senator Julie Slama, representing District 1, which includes Otoe, Johnson, Nemaha, Pawnee, and Richardson Counties in southeast Nebraska.

**MORFELD:** I like how Vice Chairwoman Pansing Brooks starts on the right, unlike the Chairs. Thank you, Senator Pansing Brooks. Adam Morfeld, District 46, northeast Lincoln.

**CHAMBERS:** Ernie Chambers, District 11 in Omaha.

**BRANDT:** Tom Brandt, District 32, which would be Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster Counties.

**DeBOER:** Wendy DeBoer, District 10, Bennington and surrounding areas in northwest Omaha.

**PANSING BROOKS:** And we have Senator Wayne just arriving too, so Senator Wayne from Omaha. OK. This-- this begins the opening of-- of LB300 and today we have Senator Lathrop. Please start. Welcome.

**LATHROP:** Thank you and good afternoon, Vice Chair Pansing Brooks and members of the Judiciary Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I'm the state senator from District 12 and I'm here today to introduce LB300, which I have introduced at the request of Governor Ricketts. As written, LB300 increases the salaries of the Chief Justice and the judges of the Supreme Court by 2 percent each year for the biennium. Because other judges' salaries are set as a percentage of the Supreme Court salaries, the bill also effectively increases the pay of judges of the Court of Appeals, the district courts, separate juvenile courts, county courts, and the Workers' Compensation Court. It's fair to consider that the 2 percent figure as a placeholder. There are ongoing discussions between my office, the Governor's Office, and the judiciary about exactly what percentage that increase should be. This is a process the Legislature engage-- engages in just about every two years, and there are people coming up

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after me who can give more detail concerning the bill. And with that, I'd ask for your favorable consideration of LB300.

**PANSING BROOKS:** Thank you, Senator Lathrop. Any questions for Senator Lathrop? Yes, Senator Chambers.

**CHAMBERS:** Senator and Chairman, do you think that there should be a core-- correlation between the salary a person receives and how well that person performs his or her job?

**LATHROP:** I think we have a statutory process for determining district court or the Supreme Court, and that just sort of rolls down to the various judges. I-- I think that's an appropriate--

**CHAMBERS:** I think you're ahead of me. I should make it clear that I'm asking on the basis of a general principle. For any employee conducting any work anywhere for anybody, should there be a core-- would it be logical to establish a correlation between what that worker is paid and the work which the worker does?

**LATHROP:** I-- I think that, yes.

**CHAMBERS:** And now to further refine that. The work which the worker does, would the quality of the work which is done have a bearing also?

**LATHROP:** Generally, that would be true with workers. Yes, sir.

**CHAMBERS:** Now we'll get into what this bill does, and I'm not going to hold you too long. I just want to lay some groundwork. Whatever the salary is for the Chief Justice will be the point from which we will determine on a percentage basis the salary of the lower courts.

**LATHROP:** That's true.

**CHAMBERS:** If I think that, say, juvenile court judges in Douglas County are doing a horrendous job, I cannot vote directly on their salary. I only do it indirectly when I vote for the Chief Justice's salary. Is that correct?

**LATHROP:** That would be true.

**CHAMBERS:** So if I did not want to see the judges or some of the judges on the Douglas County bench get an increase, the only way I could

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achieve that is by lowering what would ordinarily be the salary for the Chief Justice.

**LATHROP:** That would be true. That's what this bill does. It increases the Chief Justice's salary and, thereby, increasing all the other judges of the lower courts.

**CHAMBERS:** And for you, that's all that I will ask. But I couldn't allow you to leave without me asking you something. Thank you.

**PANSING BROOKS:** OK. Any other questions? Yes, Senator Wayne.

**WAYNE:** This is not a question. Last year or two years ago I made the same statement on the floor, but since I'm in this commish-- committee I'm going to make the statement now. I will not be asking any questions of the judge regarding sal-- any judges or this particular bill regarding salaries, as my wife works for the Court of Appeals and is indirectly and sometimes directly involved in this pay raise. So I will not. I will abstain from any votes and I'll also abstain from any votes on the floor regarding this issue.

**PANSING BROOKS:** Thank you, Senator Wayne. Any other comments or questions? Seeing none, thank you, Senator Lathrop. First proponent. Go ahead. Thank you.

**GERRY OLIGMUELLER:** OK. Thank you, Senator Pansing Brooks and Chairman Lathrop and members of the Judiciary Committee. My name is Gerry Oligmueller. It's spelled G-e-r-r-y O-l-i-g-m-u-e-l-l-e-r. I'm the State Budget Administrator and administrator of the Department of Administrative Services, Budget Division. I'm appearing here today on behalf of Governor Ricketts in support of LB300. LB300 is one of eight separate legislative bills introduced at the request of the Governor that contain his budget recommendations to this first regular session of the Hundred Sixth Legislature. The remaining budget bills, LB293 through LB299, have been referenced to the Appropriations Committee. The Governor's budget recommendations include funding to increase the salaries of the Chief Justice and judges of the Supreme Court, the appellate court, district courts, and separate juvenile courts, county courts, and Workers' Compensation Court. LB300 is necessary because judges' salaries are specifically established in state law. LB300 increases the salaries of the judges of the various courts by 2 percent on July 1, 2019, and another 2 percent on July 1, 2020, consistent with that being provided for others within state government

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in his budget recommendations for the 2019-21 biennium. Do you have any questions you'd like to ask today about LB300?

**PANSING BROOKS:** Thank you. Any questions? Yes, Senator Chambers.

**CHAMBERS:** Mr. Ol-- Oligmueller, you've been connected with the state in some capacity or other for how many years?

**GERRY OLIGMUELLER:** Forty years.

**CHAMBERS:** How many?

**GERRY OLIGMUELLER:** Forty.

**CHAMBERS:** OK, junior, I've got you beat by four.

**GERRY OLIGMUELLER:** We're close. We're close.

**CHAMBERS:** I just wanted that in the record.

**GERRY OLIGMUELLER:** I came right on your heels actually.

**CHAMBERS:** Now with-- the only bill, from what I read of your statement, which is a part of the Governor's budget package that did not go to the Appropriations Committee would be this bill that deals with the judges' salaries.

**GERRY OLIGMUELLER:** Correct.

**CHAMBERS:** If I were looking at the Governor's budget overall, I can vote or attempt not just to raise it or not just to lower it. We in the Legislature can raise or lower it. Correct?

**GERRY OLIGMUELLER:** Correct.

**CHAMBERS:** So when we get a-- a bill that talks about judges' salary, although traditionally we think of it in terms of an increase, we could lower that amount, couldn't we?

**GERRY OLIGMUELLER:** That's correct.

**CHAMBERS:** In your recollection, has there been a time when the Legislature lowered the salary for judges?

**GERRY OLIGMUELLER:** I do not recall such an instance.

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**CHAMBERS:** I'm-- I'm with you on that. But there always is a-- can be a first time for everything, can there not?

**GERRY OLIGMUELLER:** Correct.

**CHAMBERS:** Do you think-- and if this is not within the work that you do, you don't have to answer it. The questions that I ask of Senator Lathrop: Do you think that there should be a correlation drawn between the salary a worker receives and the quality of work done by that worker?

**GERRY OLIGMUELLER:** Yes.

**CHAMBERS:** And if the workers' performance is unsatisfactory but you don't think the worker should be fired, is a traditional way of showing that dissatisfaction a reduction in salary?

**GERRY OLIGMUELLER:** It's not the traditional way.

**CHAMBERS:** A gen-- generally, is that accepted as a way?

**GERRY OLIGMUELLER:** To lower a salary?

**CHAMBERS:** Yes, if you're not going to fire the person.

**GERRY OLIGMUELLER:** You may engage in some disciplinary action short of an adjustment to compensation.

**CHAMBERS:** You're-- you're fine-tuning the answer. But I'm going to ask mine more directly.

**GERRY OLIGMUELLER:** OK.

**CHAMBERS:** Is a reduction in salary one of the methods that can be used to show dissatisfaction with the quality of a worker's performance?

**GERRY OLIGMUELLER:** Could be.

**CHAMBERS:** OK. If you had a job and you were told that your salary would be reduced and there is nothing in the economy in general that would require it, nothing in the bottom line of the company that would require it, what would you think was the reason for it?

**GERRY OLIGMUELLER:** Lack of performance.

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**CHAMBERS:** OK. See, when you deal with clever people, you have to make sure you ask a question from which they cannot escape without giving you the answer that you want. Why was this bill, since it's a part of the Governor's package, referred to the Judiciary Committee, if you know?

**GERRY OLIGMUELLER:** I think because of these, you know, the need to make an adjustment in substantive law to address this specific issue.

**CHAMBERS:** Could you answer a little louder or move closer to the mike?

**PANSING BROOKS:** Yeah, please close-- pull those closer.

**GERRY OLIGMUELLER:** Yeah.

**PANSING BROOKS:** It's hard to hear in here and so we do need to pull those mikes closer.

**GERRY OLIGMUELLER:** OK.

**PANSING BROOKS:** Thank you.

**GERRY OLIGMUELLER:** Because it requires a change in substantive law.

**CHAMBERS:** And we handle that branch, those subjects, in the Judiciary Committee.

**GERRY OLIGMUELLER:** Correct.

**CHAMBERS:** OK. I think that might be all that I will ask of you, except this question. Why is it that this year you came to speak for this bill? I don't recall you having appeared before.

**GERRY OLIGMUELLER:** Two thousand fifteen I was in this committee on this same bill. In 2017 I was not because there was not a specific amount referenced in the Governor's recommendations for judges' salaries.

**CHAMBERS:** OK. That's all I would have. Thank you.

**PANSING BROOKS:** Any additional questions? Thank you very much for coming today.

**GERRY OLIGMUELLER:** Thank you very much.

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**PANSING BROOKS:** Next proponent. Welcome, Chief.

**MIKE HEAVICAN:** Thank you very much. My name is Mike Heavican, and that is spelled H-e-a-v-i-c-a-n, and I'm the Chief Justice of the Nebraska Supreme Court. Vice Chair Pansing Brooks, Senators, thank you for your attention to today's judicial bills, especially the judges' salary bill LB300. As Senator Lathrop has already noted, LB300 currently asks for a 2 percent raise for judges in fiscal year 2019-2020 and another 2 percent raise for judges in fiscal year 2020-2021. We hope, however, to increase those numbers after receiving further information about state tax revenues and other variables which might bear on your decisions in regard to LB300. This request is based on the need to attract and retain good lawyers for Nebraska's judiciary. We need to have judicial salaries remain competitive, not only in comparison to the salaries of other public employees but also in comparison to private practice incomes, so that we can attract diverse and qualified individuals to serve on Nebraska's bench. Candidates for judicial office typically must make career and life-changing decisions at a critical point in their professional lives. If a lawyer chooses to become a judge and is so appointed, he or she, for all practical purposes, forgoes the opportunity to build a lucrative private practice or to resume a leadership career track in another public sector position. Nebraska's judiciary is busy, innovative, and dynamic. Our judges are encouraged to become leaders in their courts and communities regarding access to justice; our Through the Eyes of a Child Initiative teams, which are focused on juveniles in the courts; guardianship/conservatorship issues; justice reinvestment; civil justice reform; and a host of other justice-related topics. I especially call your attention to justice reinvestment. Our trial court judges, in conjunction with Probation, have successfully implemented many LB605 reforms by actively participating in community corrections programs. In adult criminal court it is judges who have taken on more of the up-front diversion and supervision of criminal defendants, as well as the supervision of recently released felons. I know particularly problem-solving courts, such as drug courts, a DUI court, veteran's treatment courts, and most recently reentry courts, these programs have saved Nebraska taxpayers millions of dollars and work to make Nebraska's citizens safer at the same time. In my State of the Judiciary Address I pointed out that an incarcerated felon costs Nebraska taxpayers approximately \$38,627 per year, and that a felon diverted to problem-solving courts costs Nebraska taxpayers approximately \$2,865 per year. Hence, further success of criminal justice reforms in Nebraska will lie significantly in the hands of

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Nebraska's judges. Likewise, our county and juvenile court judges have assumed more responsibilities for the supervision of juvenile delinquents and for more careful monitoring of guardianships and conservatorships, and have risen to the occasion. Of course, Nebraska's judges will continue to solve Nebraskans' more routine legal problems and disputes, both large and small, and do so with patience and grace. Our judges decide child custody cases, multimillion-dollar lawsuits, and make difficult criminal sentencing decisions. Many cases, of course, involve lesser amounts of money and seemingly less dramatic issues. Every case, however, is important to someone and every case is important to our judges. There is no better investment you can make in the future of state government than by investing in competitive salaries for a judiciary that will be in place long after most of us in this room have left public life, and a judiciary that is so key to so many critical issues facing Nebraska and Nebraskans. On at least four occasions in the last decade not enough qualified lawyers, that means a minimum of two, have applied for an open judgeship for the Governor to make an appointment for a judicial vacancy. While several factors have contributed to this previously unheard of happening, the need for competitive salaries is definitely one of those factors. I recommend the passage of LB300. Thank you and I would be happy to take questions.

**PANSING BROOKS:** Thank you, Chief Justice. Any questions for Chief Justice Heavican? Yes, Senator Chambers.

**CHAMBERS:** Mr. Chief Justice, since on this matter you're the point of the spear,--

**MIKE HEAVICAN:** Uh-huh.

**CHAMBERS:** -- there are questions that I'd like to put to you. Based on the constitution, what are the main duties of the Chief Justice?

**MIKE HEAVICAN:** Well, the Chief Jus-- Justice has a-- a-- a number of duties. I'm a member of the court, so I participate in all of the, if you will, routine cases that come through the-- come through the Supreme Court year in and year out. And also as you are aware, the Supreme Court has administrative responsibilities for the entire court system. And the Supreme Court has special-- or the Chief Justice has special responsibilities in regard to that. And sort of implied in all of that is a-- a special obligation to promote access to justice and promote the legal profession and protect the legal profession.

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**CHAMBERS:** You-- the administration of the entire court system, that would mean you're the chief administrator of the court system.

**MIKE HEAVICAN:** Arguably so, yes.

**CHAMBERS:** You mentioned the qual-- oh, as the chief administrator, you're concerned about what is transpiring in all of the lower courts. Would that be true or false?

**MIKE HEAVICAN:** That would be true.

**CHAMBERS:** Would it include the juvenile court?

**MIKE HEAVICAN:** It certainly would.

**CHAMBERS:** Well, one of the juvenile courts, which is under your administration as the chief administrator, not that you appoint the judges or anything like that, sent some youngsters--

**MIKE HEAVICAN:** That's an important point right there.

**CHAMBERS:** Say it again?

**MIKE HEAVICAN:** I said that's an important point right there.

**CHAMBERS:** Yes. And I don't appoint any judges either, and the world probably says thank goodness for that. But I'm concerned about children, especially black children. And it is my view that black children are treated in a discriminatory, racist fashion. For example, in Douglas County they have a detention center. And black people don't make up even 25 percent of the population of Omaha, yet more than 50 percent of the detained juveniles are black, and some years 80 percent. There happens to be a black member of the Douglas County Board named Chris Rodgers who is-- these counsel-- these persons are assigned certain specific areas of operation, each member. His deals--

**MIKE HEAVICAN:** And I know Mr. Rodgers.

**CHAMBERS:** OK. His deals with juvenile justice. And I'm not going to ask you to explain, because I cannot, how when a black man is in charge of that activity, and he himself has been black all of his life, will tolerate this disparity in the detention of these black youngsters when not too long ago a white youngster who shot a Douglas County deputy was placed on probation. Now Rodgers does not determine how people are sentenced in individual cases, but he can say something

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about the pattern of locking up all these young black children. Then, and I'm coming to a question for you. Let me not get too much on the table first. Is there anything that you as the administrator can do in terms of making an inquiry, I don't mean like an investigation, but to determine why this disparity in the percentage of the black children? Compared to the white, Latino, Native American, all of them are locked up, percentagewise and absolute-- in absolute numbers, a lower rate than black children.

**MIKE HEAVICAN:** Senator Chambers, this is an issue that is not unique to Nebraska. It is an issue that many, if not all, states are confronting and trying to do something about. We have set up something called the Access to Justice Committee that works on these kinds of issues. I think it would be fair to say that almost everybody involved in the justice system is concerned with those very things. One of the things that we have tried to do in the judiciary, now that we have supervision of juvenile justice, part of which used to be with the Department of Health and Human Services, was to concentrate on getting fewer young people out of incarceration, out of detention, and to try and handle those kinds of problems as best as possible in their homes and to provide the kinds of services they need, which normally involve not just the young person but the family and environment around the young person. So our entire effort in the juvenile justice area has been to diminish that. And especially we are as concerned as you are about any kind of discrimination in regard to the detention of young people based on race or other issues forbidden by the constitution. I will agree with you that unquestionably that is present in our system. It may involve a lot of different reasons and it may be very complex. And again, it is not unique to Nebraska.

**CHAMBERS:** But whatever happens somewhere else cannot be of concern to me because I can affect those things. What I'm concerned about is these children winding up there in the first place. This is activity by judges. Judges are doing it. I cannot get at them any kind of way other than through salaries. There's a particular juvenile court judge, who I think has indicated that when her retirement time comes she'll retire, get out or something. They won't do anything about her. I don't think that there is any inclination on the part of the court system in Nebraska to do anything other than follow the racism that's found in society at large. The judges are sending these children there. Three young black kids were sentenced to the regional center. None of them was convicted of a crime. They were sent to the regional center. They're kept in solitary confinement. They are in-- they are

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given medication, psychotropic medications, designed for adults. The regional center is not, under its licensure, authorized to handle young people. It's an adult facility. These judges are charged with that knowledge. Nevertheless, they disregard it. These children are given these drugs against their consent. They are locked up and given these drugs and then put in restraints and kept in restraints for hours. That's happening. And I think the chief administrator should know and will be charged with that knowledge. The judges don't care. You don't care, not you--

**MIKE HEAVICAN:** Senator Chambers,--

**CHAMBERS:** -- of your direct knowledge perhaps.

**MIKE HEAVICAN:** -- I-- I don't want to interrupt you but I might note that though those are likely cases that are going to be appealed to the court that I sit on. That's the way that that system works.

**CHAMBERS:** That's--

**MIKE HEAVICAN:** So--

**CHAMBERS:** -- that's not a good enough answer. But that's all I'll ask of you. You have to do what you can do where you sit. I have to do what I can do where I sit.

**MIKE HEAVICAN:** And I appreciate--

**CHAMBERS:** Now I'm going to ask you something else. You talk about the quality of the judges. How do people obtain a seat on the Nebraska Supreme Court?

**MIKE HEAVICAN:** You obtain a seat on the Nebraska Supreme Court the same way that you obtain a seat on any court in Nebraska. We utilize something that I refer to as the Missouri Plan as off-- that's the way it is often referred to. It is a kind of combination of an appointment process and the election process so that commissions are set up for every vacancy of a judgeship. The commissions are made up of four lawyers, four laypeople. Both the lawyers and laypeople are balanced by political parties. So there is a hearing every time a judgeship comes open. And not true for the Nebraska Supreme Court actually, but the-- but-- well, it is true for the selection process. And those commissions have to report then to the Governor the names of lawyers that they feel are qualified for whatever that opening is. So it's the same process for the Supreme Court, same process for other judges.

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Governor then appoints. Then all judges stand for retention, first of all, three years after the initial appointment, then every six years after that.

**CHAMBERS:** If no judge-- no recommendation on the list is suitable in the Governor's opinion,--

**MIKE HEAVICAN:** Uh-huh.

**CHAMBERS:** -- can the Governor go outside that list and select a judge?

**MIKE HEAVICAN:** No. Then it bounces to the Chief Justice of the Nebraska Supreme Court and that person appoints. That has never happened in the 12 years I've been there.

**CHAMBERS:** I was getting into an area when I mentioned a specific case that you felt you couldn't comment on because it might come before you--

**MIKE HEAVICAN:** Uh-huh.

**CHAMBERS:** -- on-- maybe-- here's what I-- I may as well say it. If they send somebody to us whose hands are tied behind his back, whose mouth has a gag and cannot answer questions, why would that person be sent to testify before a legislative committee?

**MIKE HEAVICAN:** If you are referring to me, I assume it is because I am the Chief Justice of the Nebraska Supreme Court. And though I may not be able to answer every question that you asked, I hope I've answered some of them.

**CHAMBERS:** Well, the one-- the-- the softball questions I threw, anybody can read a newspaper and get that. The questions that I really want answers to you can't give me.

**MIKE HEAVICAN:** Well, if your overall question is, is the Chief Justice concerned about the problems that you have indicated, is the judicial system as a whole concerned about those problems, we certainly are and we try day in and day out. It is a very complex system in many, many ways, but we try day in and day out to do our best and to always do better.

**CHAMBERS:** But when I have specific concerns and concrete cases, those are the kind I like to deal with so people won't say I'm speculating. But you can get around having to answer by saying, if there's any

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basis for an appeal. Well, I don't know if whatever their situation is will ever wind up before the Supreme Court. But nobody has to deal with it. They're not gonna deal with it in the juvenile court. Whoever the presiding judge is of the county court and the district court in Douglas County is not going to deal with it. You're not gonna deal with it. But there are three kids out there with adults, some convicted of murder, sexual predators, and three young black children are out there. One of them had been sent to Detroit, outside this state, where he was sexually assaulted and it harmed him so much that he was bleeding internally and had to go to the hospital for surgery. That's what you all do to our children. And why I say "you all," because it's your court system. You can't answer a question. The Douglas County juvenile judges don't care; they won't answer a question. So if I care like I say I do, I cannot bow before you because you have the title of Chief Judge, just like you're not going to bow before me because I have the title Senator. You're nothing but a man; I'm nothing but a man. But when it comes to my children, men reduce in stature when they can be aware of these things. You read the newspaper. You don't have to do everything out in the open. You can go talk to those people behind the scenes, because I know of judges who've done that in Douglas County who are interested in a raise for the juvenile judges. And I've even had some of them visit me in my office and we talked about cases, not that I wanted them to change anything in a specific case but to see what the kinds of decisions are that are being handed down. What I ought to do is leave this hearing, because I don't think it involves black people. I think it involves white people dealing with white people for the benefit of white people. But I'm not going to make people happy. I'm a stay here. And I believe that a person's salary should be a reflection of what that person does and how that person does it. And I'm dissatisfied with the way the judges, not everybody, not every judge, the judges from the Supreme Court, the district court, the county court, the juvenile court, and anybody else, whether they call them-- I don't know if they have magistrates in-- only in the federal system, but all of them because we suffer at the hands of all of them. And the only way that I can get at this issue is by dealing with what comes before me. You have a very competent, capable senator carrying the ball for you. And maybe he'll prevail; maybe he won't. But personally, I don't care about individuals. I care about our children. I don't know what's happening to those kids right now. And those racist judges, one a female and one male who sent them there, they don't care. Nobody calls them to account. In fact, people don't even complain about the judges other than me. You can't even read a letter if I send it because it

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might come before you in a case. We can't even discuss this case here because it might come to you on appeal. So what we're saying, and then I'm going to let you go as far as my questioning, I will give an analogy so I won't have to give it by way of a dissertation. There's a comic strip, and I think the one, the cartoonist, is named Schulz, it's called Peanuts. There's a little boy named Charlie Brown and a little girl named Lucy. They make Lucy almost the personification of evil. She's very meanspirited. Charlie Brown is innocent, naive, and as dumb as a post. So she has a football and she holds it for Charlie Brown. And Charlie Brown runs up on the football and draws his foot back. When he pushes it forward to kick, she moves the ball and he falls down. He never catches on. Well, what white people do in their court system, in their Legislatures, they are Lucy, the white people are. The football are the empty words that they give to black people: liberty and justice for all, equality before the law. And we buy it, like Charlie Brown bought it from Lucy. And when we get ready to reach out for those rights to have them vindicated, then the football is pulled away. I try to do what I do not because I'm stupid like Charlie Brown. Somebody has to try. And my trying for over four decades have proved to be in vain, so I have to take a different approach. If Lucy is going to trick me by moving the football, then I've got to find a way to put some restraints on Lucy or just not go for the okey-doke and try to kick the ball anymore. Mr. Chief Justice, I would be less than a man if I didn't make it crystal-clear while you're here and can respond any way you want to that I'm going to try this session to have something happen with judges' salary that has never happened before, not just prevent it from passing but reduce it. I have nothing else at my disposal. You cannot tell me what I can do to address these problems. So if I would reduce the judges' salary, they may take it seriously enough and say, maybe we ought to start behaving like judges, maybe we shouldn't mistreat these black children. We shouldn't, on the one hand, take a child who is brought to us because he committed some misbehavior in a school and he's gonna be locked up, and the white kid over here shot a deputy and we put him on probation; maybe we shouldn't be that glaring. And I have other cases, but those two I think show the difference. I don't have any more questions. You can respond any way that you want to or not at all.

**MIKE HEAVICAN:** Thank you very much. I appreciate your comments and I understand your concerns. I would beg to differ with you in that your efforts over the last 40 years have been futile. I think that there are lots more people, lots more judges, lots more people in the judicial system, in society as a whole who are concerned about the

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kinds of things that you have talked about. And it is not a perfect world. That is for certain. But I can tell you that our judges day in and day out try to do a good job and try not to express themselves in any way or carry out biases, recognized or unrecognized. It is not a perfect world, but we always try to do a good job and we will always try and do a better job, so that I would ask you and everybody else on the committee and ultimately everybody else in the Legislature to take to heart the kinds of things that I tried to say in my presentation which, generally speaking, are you've got a good judiciary in Nebraska. They work very hard to make sure that everybody gets a fair shake in the courts. And I understand that you may contest that, but I think if you look in and see in our judges day in and day out, they are very good people and they try to do a very good job. So in fact, I would ask you all again to support LB300. I think we are-- I'm not going to call us the best branch of government, because you obviously are a branch of government. I don't want to offend you. I don't want to offend the executive branch of government. But I think we are a very good branch of government. And as I said in this presentation, you can't make a better investment in state government than by making sure that you are competitive with judges' salaries and that good people are attracted to be judges. Thank you.

**PANSING BROOKS:** Any other questions? Well, thank you, Mr. Chief Justice.

**MIKE HEAVICAN:** Uh-huh.

**PANSING BROOKS:** OK. Further proponents. Welcome, Judge Otte.

**ROB OTTE:** Thank you. My apologies. Vice Chairwoman Brooks, Senator Lathrop, I appear on LB300. My name's Rob Otte.

**PANSING BROOKS:** Would you pull out the-- the mike really close because obviously there's--

**ROB OTTE:** My name is Rob Otte, O-t-t-e, Rob Otte. I'll try to keep my remarks relatively brief. You know, Chief Justice Heavican mentioned a number of things. You know only a judge can grant a divorce, confirm an adoption, order the termination of parental rights, deal with juveniles, deal with injured workers, enter protection orders, oversee the administration and the proper administration of estate, change property rights, review improper agency determinations that work towards shutting down or closing businesses, or damages from personal injury accidents or malpractice. Only a judge empanels juries to

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determine guilt or innocence and then is left with determining whether probation, jail, the Penitentiary, or other sanctions are in order. Only a judge protects us from illegal searches and seizures and intrusion into our lives. And I'd just say think about this for a moment. If your loved ones find themselves in court, whether it's a civil matter, an administrative matter, or a criminal matter, what is the level of expertise and competence you want in the judge making those determinations? In our roles now as judges, we've been asked to evolve. We've been asked to oversee drug courts, veteran's courts, reentry courts, other problem-solving courts. These are demanding. I would say in my district, the 3rd Judicial District, Lancaster County, half of the judges are involved in those sorts of things and, quite frankly, doing that in addition to their regular caseload that they maintain. We've also been very involved in the reinvestment, Nebraska reinvestment under LB605, and that's again significantly increased the role of judges. The reality is we want to attract the best and the brightest. We want people that have experience and the right temperament. We ask judges to come from positions that generally they've been at for decades, in my case almost three decades, and they have been recognized in their profession. We need to attract lawyers and make sure that when a judicial vacancy needs to be filled, private practicing lawyers, lawyers from the administration or from other walks want to put their name in the hat. And I would say for me, one of the things I looked at when I decided to become a judge was what the historical factors were in terms of raises. And everybody knows that a judge coming out of private practice really forgoes the opportunity during his or her best years of practice, quite frankly. And we look at not only salary, because there are other benefits that go along with it, but we look at the salary and I would just suggest it's difficult to find the right people, to find the best and the brightest if-- if you diminish what LB300 attempts to achieve. Thank you. Any questions?

**PANSING BROOKS:** Thank you, Judge Otte. Any questions for Judge Otte? Senator Chambers.

**CHAMBERS:** Judge, I didn't get your name when you first started. You were not close to the mike.

**ROB OTTE:** Sorry. I've been fighting a little bit of a cold. Rob Otte, Rob Otte, O-t-t-e.

**CHAMBERS:** O-t-t?

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**ROB OTTE:** O-t-t-e, sir.

**PANSING BROOKS:** O-t-t-e.

**CHAMBERS:** But it's pronounced Ott?

**ROB OTTE:** It is.

**CHAMBERS:** All right. Judge Otte,--

**ROB OTTE:** There are some Ottees [PHONETIC] around, but that's not me.

**CHAMBERS:** OK. Are you-- what-- what court do you sit on?

**ROB OTTE:** I'm a-- I'm a district court judge in Lancaster County, 3rd Judicial District.

**CHAMBERS:** OK. You mention the phrase "best and brightest" to describe the kind of people that you'd like to see become judges.

**ROB OTTE:** Yes, sir.

**CHAMBERS:** Do you think that the best and brightest are now serving as judges?

**ROB OTTE:** I do. You look around to our sister states, we have a really good judiciary, a really good judiciary. And-- and I've listened to your remarks and-- and I appreciate that it's not perfect. I do think, by and large, we have the best and the brightest. We have people that have come out of private practice. We have former prosecutors. We have people from the public defender's office. I do think we have the best and the brightest. But as Chief Justice Heavican mentioned, we have had situations where either we can't have enough applicants or that the applicant base has been very thin, and that's what I'm most concerned about.

**CHAMBERS:** But when you say best and brightest, that you have to narrow that to say the ones deemed the best and brightest of those who are submitted to the Governor for selection, rather than just the best and brightest. Would you agree with that?

**ROB OTTE:** Well, loosely, yes, I would agree with that.

**CHAMBERS:** Now there are politics, whether you can acknowledge it or not, and I'm not going to put it to you as a question, involved and whose names are submitted to the Governor. There are politics he

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resorts to when he makes appointments. Are you aware of the background of the people who currently serve as judges of the Nebraska Supreme Court?

**ROB OTTE:** Not with--

**CHAMBERS:** The kind of law they practice? Well,--

**ROB OTTE:** Not with particular-- particularity. I couldn't go through the list of Supreme Court justices and give you their backgrounds. I know sev-- several of them have been in private practice. I know several of them served on a district court bench. I know sev--

**CHAMBERS:** Well, do-- do you think that a majority of the judges now on the Nebraska Supreme Court have at one time been prosecutors? If you don't have a feeling--

**ROB OTTE:** I'm-- I'm not-- I'm not sure I know.

**CHAMBERS:** OK. Well, I read the newspaper and I see where a lot of the judges now that are appointed, the people, they were prosecutors. And if those people are the brightest who practice law in Nebraska, the legal system is in trouble. I read judges' Opinions too. Some of them would flunk in a freshman law school class, because I was a freshman at one time in law school. I don't know they have [INAUDIBLE]--

**ROB OTTE:** You met with-- you met with me in my class when I was a freshman in law school.

**CHAMBERS:** But, see, you got out a lot sooner than I did because you didn't have conflicts with the administration like I did. He-- he know. See, I didn't go to class. I didn't have to go to a class to pass all my exams and courses. And because I always passed them, they felt at Creighton that at some point I was going to reach a level where I couldn't possibly pass the exams when I didn't attend class, because the white students were constantly asking the administration to get me out of that school because I'd been absent more than 20 percent of the time. Well, I think they figured he-- he can't-- when he gets into the meat of the law, he's not gonna do this. I read the case books. I know how white people think. I know how black people think. What I'm saying is I know how people think. Nothing in the way of an examination is going to have anything on it that's not contained in the case book. If I read the case book, they cannot write an exam that I can't pass. And if they write one I can't pass, nobody can pass

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it. So the white students were offended because they had trouble passing the tests and I didn't. But they didn't know how hard I studied. And here's why I'm saying that. I am a man who knows my capabilities and I also know my limitations. I'm very aware of my limitations as a member of this Legislature. Intelligence means nothing. Dedication means nothing. Integrity means nothing. None of those things mean anything. And when people campaign, they talk about them and they talk the loudest about what they don't have. But I'm noticing that the Governor is appointing prosecutors. And I'm noticing the Opinions that are coming down from these courts. And when the Opinions are written, they are not well written. So if what's on the courts represent the best and brightest of the legal profession, the state's in trouble. I don't think the Governor is concerned about the best and brightest. He's concerned about ideology. And I'm sure that the Republicans on that commission know from him the kind of people he wants them to submit to him. Those are my opinions. I want them on the record because I want the Governor to know, just like I want the Chief Justice to know, I want everybody I talk about and against to know they're nothing but men to me and I don't think they're doing the job that they should. There are enough resources in this country right now, there is enough machinery-- and when you talk about the structure of the courts and the structure of this government-- for Nebraska, if not the whole country, to be like a virtual utopia. There could be justice for everybody. There could be fairness for everybody. There would be a situation where your color is not viewed when you stand before the bar of justice. Whether you're rich or poor would not make any difference. The men and women sitting there would have these standards that they're supposed to apply when they make decisions. And they even take an oath of office, and those oaths are recognized mainly in the breach. So here's what I want to get around to asking you. Have you ever been on a sentencing panel when somebody faced the death penalty?

**ROB OTTE:** I-- I have.

**CHAMBERS:** Well, whatever you did was a matter of record. Have you ever voted to sentence somebody to death?

**ROB OTTE:** I have.

**CHAMBERS:** And I'm not condemning you. You-- you got a job to keep. And if you didn't, these people would vote you out. You know it and I know it. So we can be frank with each other. And if you're not with me, I'm-- I'm going to be with you. The Chief Justice gave us information

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and he was correct. He talked about various programs which, if utilized, could save money. And he's right about that. So considerations of--

**ROB OTTE:** But if I may, Senator,--

**CHAMBERS:** Say it again?

**ROB OTTE:** If I may,--

**CHAMBERS:** Sure.

**ROB OTTE:** -- it-- it is true there is a money-saving element. But I would tell you, from my experience on the veteran's court in Lancaster County and observing my brethren that do the drug court in Lancaster County, it isn't just money. Come to a graduation, listen to the folks that graduate from a veteran's court or a drug court.

**CHAMBERS:** Well, let me cut you off. I didn't make myself clear. I didn't say it's just money.

**ROB OTTE:** All right. Thank you.

**CHAMBERS:** I said he was indicating that money is saved by these programs if that's what people are thinking about. And I-- I agree. That's right.

**ROB OTTE:** All right. Thank you.

**CHAMBERS:** In addition to what we presume they're going to do in terms of helping the people who go through those programs, money is a consideration. Yet, the death penalty is extremely expensive.

**ROB OTTE:** It is.

**CHAMBERS:** Why don't the judges talk about that, and judges of all people? Now those who sit on the U.S. Supreme Court can be more frank than you all can. They have pointed out, and they will use the pronoun, personal pronoun, "we," we as judges know better than anybody else how people who wind up before this court who've been sentenced to die are here because they had poor lawyers, they didn't have money, there was discrimination against them when the jury pools were selected. We know that they were appointed lawyers, some of whom were intoxicated when they came to court, but they nevertheless were sentenced to die, who did not object when a jury was being selected

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and their clients were sitting-- sentenced to die. In a not too long ago case that has set a trend and a principle, a lawyer pleaded his client guilty when the client didn't want to be pled-- pled guilty, because the lawyer said he thought that if he pleaded him guilty then he'd escape the death penalty. But after pleading him guilty, the man was sentenced to-- to death. But the U.S. Supreme Court reversed that death sentence for that reason, because the lawyer went contrary to the client's wish in a way that was extremely detrimental. So you all know the discrimination that goes on in this country and in this state. You all know that there are far more heinous murders committed by people who don't even face the risk of the death penalty because they're granted a chance to cop a plea. A man was executed not long ago for killing two cab drivers. A man is now in the district court and he came from Grand Island or someplace. And he, when he was a county attorney, he used to always come down here to represent the prosecutors in seeking the death penalty. But there was a white man out in his part of the-- his neck of the woods, as they say, who was upset about a divorce. So what he did, his wife lived-- former wife lived in one county and he went there and he shot her with a high-powered rifle. Then he went to the county where this prosecutor I'm talking about was the prosecuting attorney and he waylaid the lawyer and shot him down with a high-powered rifle. That's considered a mass killing. Now this man who came down here to speak for the death penalty, even after this man that I'm talking about had been convicted of murder and was serving life-- he didn't get death in the killing of his wife-- he said that if this man would plead guilty to the second murder, he'd take the death penalty off the table, the one who came down here to speak for the death penalty. When it was a white man in his community who had murdered his wife and was serving life for it and had coldly, calculatingly planned and, with malice aforethought, murdered another man, a lawyer, they took the death penalty off the table. So when these judges and these hypocritical people like the Governor talk about, what's that word, "deterrence," it's saved for the worst of the worst, and the worst of the worst, if they're white, don't even face the death penalty. And they justify the death penalty and judges do too. If somebody is a murderer, how are you going to protect the inmates? We got to protect society. Well, are they telling me that when one of these murderers that they decide to take the death penalty off the table for are not going to be a danger and a threat to the population as he would have been had he been sentenced to die? The public is no less in danger because he copped a plea, the system? See, I-- I hear all this hypocritical stuff and I've been involved in it for so many years. That's why, if I have my way, Judge Otte, who is a

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member of the Lancaster County District Court, 3rd District, you're going to get a salary reduction for the reasons that I gave. And if I ever come before you, you can get even with me. But I want everybody to know that when it comes to people of my complexion and children of my complexion, who year after year after generation and generation will go through the same racism, and we're told, well, just-- just be cool, it's gonna get better, no, it's not. So I have to start speaking the language, not that I think civilized discourse should be conducted in. I'm going to have to start dealing with those I'm dealing with in the language they speak and which maybe they understand. And that's-- mine is not vindictiveness. You can call it vengeful, because I want you all to feel just a little bit of what others feel. You might not be able to get any filet mignon, but I'm dealing with people who have nothing to eat, no place to live, and will run afoul of the law. And you know why we have more black people in prison than white people and out of all proportion to our numbers? Not that we commit more crimes, but we go to jail for things that white people don't go to jail for. All of those black children are going to have a record. They'll be the statistics that show why you have to treat black people the way you do because look how many crimes they commit. But they won't show a correlation by looking at all the crimes the white kids commit, if they were considered crimes, and not sent to juvenile court and then sent home to their parents. Ours go to jail, keep your jails operating. And, Judge, I said it to you because I want those who are gonna be affected by what I'm going to try to do to have the opportunity, at the time I say it, to show my colleagues why they shouldn't pay attention to me and do what they think is right, which is the white thing-- I mean the right thing. But that's all that I have.

**PANSING BROOKS:** Thank you. Any other questions? I just wanted to-- to add a positive thought about the judiciary. I do understand that there's more effort across the state to at least keep silent about if they don't agree about right to counsel for juveniles. And I appreciate the fact that the judges are no longer weighing in on this matter across the state. And I-- they may be talking to their county attorneys, because I'm hearing some pushback now from the county attorneys. But again, I'm interested, Judge Otte, what-- what is the process if-- if a county doesn't have enough money to mete out justice? What is the-- what's the solution in that in our state where we have such vast areas?

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**ROB OTTE:** Those are just really tough questions. I-- I-- I-- I--

**PANSING BROOKS:** I just didn't know if you--

**ROB OTTE:** -- I'm not trying to duck it. But I-- I started by-- by listening when Senator Chambers was talking to Chief Justice Heavican. I think part of that is finding the best and the brightest, because the best and the brightest, as we have seen, come up with solutions. And whether it be issues you deal with, Senator Chambers, in particularity, or those kinds of issues, you find judges that around the state are investing their time, and really they're going beyond the call of their duty, to do reentry, to do juvenile court stuff, to ju-- to do the other things that are happening. And I think it might be counterproductive to-- to show judges that you're not intent on making sure that they keep up with inflation and that you show them that the judiciary really is-- is respected. I understand that it's not perfect. I mean we all understand that. We all can throw stones at an individual, whether it be in the legislative body, the judicial body, or anything else. OK?

**PANSING BROOKS:** We get plenty of stones.

**ROB OTTE:** Yeah. You can throw a stone. There's no doubt about it. I agree with-- with Chief Justice Heavican about the investment in judges I think will pay, pay many dividends for all those reasons that Senator Chambers talked about and you talk about.

**PANSING BROOKS:** So again, what I'm-- I'm interested specifically in, and I should have asked Chief Justice Heavican this question, but across the state, I mean we know that-- that we're having issues across the state with-- with smaller and smaller population bases across the state. It-- it-- ha-- have there been meetings for the bar or conferences that talk about what is next? What about these counties that continue to lose people, continue to lose tax base, continue to lose an ability to provide every courthouse in every single place across the state that we would like to provide? We would like to have them in every community, have a courthouse to exact justice, but that's obviously not possible. So what-- what are the solutions ahead?

**ROB OTTE:** This-- this probably meet-- needs to be addressed with somebody-- by somebody with a higher pay grade than me.

**PANSING BROOKS:** OK.

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**ROB OTTE:** But I will tell you that we have discussions about that all the time. We meet frequently, I'm on-- I'm on one of the technology committees, about whether technology can help solve some of that. So I know that that is not unnoticed. But it's complicated.

**PANSING BROOKS:** Yeah. And-- and I will say that I'm so proud of Lancaster County and Douglas County judges for what they're doing and other-- other court systems across the state helping juveniles. Thank you for being here. And also the-- the work that's being done in the-- in the specialty courts and we know that you're doing a lot, wearing a lot of different hats and attempting to react to the changing times. And I just want to, have to make a statement about advocating for the coun-- the right to counsel, the constitutional right to counsel for juveniles. Thank you, Judge Otte.

**ROB OTTE:** Thank you.

**PANSING BROOKS:** Any further proponents? Good afternoon, Judge Yardley.

**LAURIE YARDLEY:** Afternoon. My name is Laurie Yardley, L-a-u-r-i-e Y-a-r-d-l-e-y. I am a Lancaster County Court judge. Chairman Lathrop, Vice Chancellor or Vice Chairman Pansing Brooks, I just have a few short things to say. I know it's gone on for a little while. I've been a judge for almost 24 years. When I became appointed to the bench, when I was appointed the bench there were 24 applicants for two positions. It was a very long morning, that committee hearing. As I've noticed as we've gone farther and farther along, there's fewer and fewer applicants putting in for judicial positions. In fact, the last couple times that there's been openings in Lancaster County, myself and a couple other of my-- of the other judges in our county have been actually going out, kind of promoting people to put in just because there's just-- we'd heard there was hardly anybody that was going to put in. I think it's very important that you have a cross-section of lawyers putting in, not just prosecutors. I think you need civil attorneys, private practice attorneys, because our-- what we do is not just criminal. It is civil, probate. And again, it's been-- it's getting harder and harder to convince people to put in for this position. I-- it's-- through the years it's become a much busier court. I think it's a harder job than it was when I started. There's-- it's just very busy. You have lots of issues that you have-- that you're dealing with now that you didn't deal with as much. There's a lot more mental health issues with people coming in. We have a lot of pro se litigants. We're doing a lot of pro se trials. Just-- it's a

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very busy court this-- at this time. So I don't really have anything else to add.

**PANSING BROOKS:** Thank you, Judge Yardley. Any questions for Judge Yardley? Thank you for coming today.

**LAURIE YARDLEY:** Thank you.

**PANSING BROOKS:** Next proponent. Welcome.

**SCOTT PAUL:** Good afternoon. Senator Pansing Brooks, Senator Lathrop, members of the committee, my name is Scott Paul. It's S-c-o-t-t P-a-u-l. I'm here in my individual capacity as a lawyer in the state of Nebraska. I'm also the president of the Nebraska State Bar Association this year. I had the pleasure of being able to speak on behalf, in my individual capacity and in my capacity as president, in favor of LB300. We-- we support the bill. I would like to echo the comments that the committee has heard from the Chief Justice and the district court judges and the other persons who have testified, so I won't plow all that ground again. But I-- we certainly agree with the comments that have been made. I'd like to just give you my personal experience. I've been practicing law since 1981. I practice at McGrath North in Omaha and my-- mine's a civil practice, civil litigation practice. And I've had an opportunity to come before the judges in the Nebraska Supreme Court, the Court of Appeals, the district court, county court. To your previous question, Senator Chambers, I-- I haven't had the-- the opportunity to practice in juvenile court but I have had the opportunity to practice in the other courts, including county court, and I just want the committee to know that my experience has been very favorable in terms of the quality of the judges that we've seen. We think that we have excellent judges in the state of Nebraska. And I have also had the privilege of practicing all over the country, whether it be in Iowa or the southeast or the West Coast, and I've seen the systems that those states have for-- for nominating judges, appointing judges, and seen how those judges work. And while some of them are just as good as the judges I-- as judges I've seen in Nebraska, at no time do I think any of them were any better than the judges that I've run into and experienced in Nebraska. I would point out that usually when we-- when we have judicial applicants, they're usually in their 40s, maybe late 30s, sometimes a little bit older. They're in the prime of their career, the prime of their money/fee earning years as lawyers. And those that seek to become judges are giving that up and they give that up without-- with-- with knowing that they are not entitled, as a matter right, to any pay raise; that

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they-- any pay raise, given the statutory scheme here in Nebraska, is going to be determined by this Legislature. And yet, we still get qualified and competent and what I believe to be very good applicants, although, as has been previously said, those numbers are dwindling. So we want to continue to attract the best that we can for the-- the state court bench and we think one of the ways to do that is to have competitive salaries, which I think LB300 does. The other thing I would point out is that most-- most of the judges that I know, once they take the bench they stay on the bench till they-- they retire. So it's a career for them and they do it because they like it. They do it because I think they have a calling to do a job for the citizens of the state of Nebraska that goes beyond just making a buck. And that's been my experience in terms of the judges that I've seen. So I would just ask that this committee favorably view LB300, that it support LB300 so that we can continue to attract good judges in the state of Nebraska and continue to compensate those that are current judges in a competitive manner that as-- enables them to at least compete with the private sector. Thank you. I'd welcome any questions.

**PANSING BROOKS:** Thank you, Mr. Paul. Any questions? Senator Chambers.

**CHAMBERS:** When you said that you practiced before judges in other parts of the country,--

**SCOTT PAUL:** Yes, sir.

**CHAMBERS:** -- precisely where for example?

**SCOTT PAUL:** Alabama, Mississippi, Florida,--

**CHAMBERS:** Where?

**SCOTT PAUL:** Alabama,--

**CHAMBERS:** And where?

**SCOTT PAUL:** Mississippi, Florida, Louisiana, Texas.

**CHAMBERS:** Alabama and Mississippi, [INAUDIBLE] judges down there you say?

**SCOTT PAUL:** Did you want me to finish, sir?

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**CHAMBERS:** Well, a more civilized part of the country where they have more qualified people where education means something.

**SCOTT PAUL:** I'm-- I'm-- do you want me to tell you where I practiced or are you commenting on the states I've identified? I'm not sure.

**CHAMBERS:** Well, you said you'd practice before judges, I thought.

**SCOTT PAUL:** I did. And I-- I can tell you where-- where I practiced before those judges.

**CHAMBERS:** OK.

**SCOTT PAUL:** Would you like me to do so?

**CHAMBERS:** Yeah, 'cause we got Alabama and Mississippi.

**SCOTT PAUL:** OK. Louisiana, Texas, Arizona, California, Kansas, Iowa, Minnesota, Illinois, Michigan, and--

**CHAMBERS:** OK.

**SCOTT PAUL:** -- Washington, D.C.

**CHAMBERS:** Now as president of the Bar Association, there are certain things expected of the person in that position. Isn't that true?

**SCOTT PAUL:** I think so.

**CHAMBERS:** One of them is to speak for judges' salary increases whenever they come up and however the person may feel about the judges. Isn't that true?

**SCOTT PAUL:** I don't think so.

**CHAMBERS:** So your calm, your confidence that you have could be based on real confidence or you could be just discharging the duties of president of the Bar Association.

**SCOTT PAUL:** Well, I'm here both in my individual capacity and as president of the Bar. And I can tell you in my individual capacity I think LB300 is-- is a worthwhile bill that should be passed. It happens to equate to the same position of the Bar Association.

**CHAMBERS:** Well, those who come here in your capacity always say that, both as an individual and as president of the Bar. So they use-- read

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the same script. But maybe you're going off script and it's what you really believe. Now do you-- I want to ask a question in a way that it won't seem like it's to elicit a specific answer from you. Is Nebraska the place you'd rather practice law, not based on your family being here or your friends, based on the courts? Is this where you'd rather practice law than anywhere in the country where you've practiced before?

**SCOTT PAUL:** We're not talking about the weather?

**CHAMBERS:** No, not the weather.

**SCOTT PAUL:** No, in terms to answer your question, yes. The courts in the state of Nebraska I think are as good as any I've seen in others-- other states.

**CHAMBERS:** And I'll accept that at face value. Here's what I used to do in my younger days when I still was hopeful but knowing better. I watched how this Legislature would never give a decent salary increase to any of the so-called constitutional officers, never. So I laid it out as my belief that there are offices to which are attached very important duties and responsibilities. And when we annex a salary to that office, it should be based on the duties of that office, the importance of what they're doing, and not look at the individual who currently is occupying it because that's temporary anyway. And if the salary were decent then maybe better people would run for the office. And I was the first one in decades to be able to get a substantial increase in salary for all of the constitutional officers, every one of which I'd had conflicts with. I was able to look past the individual and act on my belief and my philosophy of government and compensation. I used to would look at the courts and I knew of a lot of judges that had misbehaved. I filed complaints against any number of judges. They had been disciplined, not all of them. One was removed who was thought to be like the Rock of Gibraltar, immovable. So what I did with reference to the courts was to try to purify their ranks by getting rid of the judges that I thought cast a pall over the judiciary as an institution and a negative reflection on the judges who were trying to do their job. And even when the commission, Judicial Qualifications, would not rule the way I thought they should, it didn't turn me against the judiciary. As I began to watch what judges in general did, not all of them, and the discriminations that I witnessed, especially the handling of death penalty cases, and I used to collect them and I still have-- I stopped doing it-- very heinous murders committed but the person was never made eligible for the death

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penalty because a plea bargain was offered. And if these people who commit murders are a threat to everybody, they wouldn't cease to be a threat just because they accepted a plea. They would still be in the general population and so forth. I would use that to show the arbitrariness of the way the death penalty was handled. And nobody could dispute it because I had the actual cases, multiple murders heinously committed. One man stabbed a woman and cut her throat 13 times, stabbed her 13 times and cut her throat in the presence of her children, and he got a plea bargain. So I can find those cases, anybody can if you read. Then I see the current Supreme Court make haste to allow an execution because the incompetent Governor, the incompetent director of Corrections surreptitiously obtained drugs in an unethical, unprofessional way, and they were about to expire. So the court, in order to beat the expiration date, ordered an execution to be carried out when by doing so they contradicted what they said they would do in previous cases. I couldn't do anything about it. I don't practice law. If I did, none of the men on death row would have been my client. And if the one on death row who agreed to let himself be executed were my client, I couldn't have done anything because he wanted to be executed. If he had told his lawyer, a lawyer whom the Supreme Court mandated represent him while at the same time making it clear you cannot offer any motions that would save his life because he's not gonna sign off on them. And if he doesn't sign off on them then they're not going to be entertained. So they tied his hands behind his back, put chains on him-- the lawyer-- threw him in the water, said sink or swim and if you drown shame on you. They created that situation. That's what the Supreme Court did and they ordered that execution to be carried out under very, very problematic circumstances. There was litigation pending, the outcome of which was predetermined when they allowed that execution, because the litigation dealt with whether or not the protocol, according to which it was carried out, was valid. They're not going to rule now that any of that litigation has merit. Otherwise, they'll look bad for allowing an execution be carried out while this litigation was pending. When the electric chair was in place a man, this same man, Carey Dean Moore, had told his lawyer, I don't want anything done in my case, because there was a Christian preacher who told him that he should die and Jesus would be waiting for him and Carey Dean Moore bought it. He had written to the court, and the current Chief Justice was a member that court, and said he didn't want anybody to be allowed to file any papers in his behalf; anything pending in his behalf, he withdrew it. So an execution date was set. I was very outraged because I had a bill before the Legislature to abolish the death penalty. It got 24 votes,

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fell 1 vote short. And to make sure that I might not be able to do anything with it a few days later the Supreme Court set an execution date. It would have been in May, I believe, of that year. And what I did, because no lawyer could file anything in his behalf, I'm not a lawyer, I wrote a letter to the Supreme Court. And before they changed the rule, that letter was read by the judges. And I laid out why they ought to look at this case. The main argument was that there was a lower court case that had been argued, a record had been compiled at the trial level with expert testimony of the kind never given in any death penalty case at the state or the federal level to show that the electric chair was cruel and unusual punishment. A lot of the statements that had been given about the instantaneous death or unconsciousness at the first jolt of electricity, all that was discounted by experts. So the argument I made was that when the U.S. Supreme Court had a case before it and another one was in the pipeline and if they held off this one that they're looking at until they resolved that one that was in the pipeline, it would not only resolve that one in the pipeline but all the similar cases. And the Supreme Court of the United States did that. And I said they should do that with Carey Dean Moore, there was such a case, and Judge Gerrard and some of the other-- enough of the others agreed. And I pointed out that the court, on its own motion, could withdraw the death warrant, that they had the inherent power to do so, and justice would not be served if they allowed that execution to be carried out. Fortunately for me, there was a reporter who talked to whoever the Chief Justice was then. I'm giving no names. And it was acknowledged that they got the letter but that they would not discuss it. I was told by an individual that had I not written that letter there was nothing the court could have done because no lawyer could file a paper, there was nothing pending. But that letter opened the door for something to be done. And if you read my letter and read the Opinion, you'll see that the letter was almost like a blueprint followed by the Supreme Court when they said that they acted prematurely in issuing that death warrant and they withdrew it and said he's not going anywhere, which is what I've argued in my letter; that if this case that they were going to look at that had been developed below with the evidence would go the other way they could always enter another death warrant, but it would be inexcusable to allow an execution and then subsequent to that rule that the death-- the electric chair was unconstitutional. Well, they did rule it was unconstitutional and I think one of the judges was very irate because he wrote a very strong dissenting Opinion, mainly because the inmate himself hadn't asked that anything be done in his behalf and they had never done anything like that before. And I

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think he got two other judges to go along. But four people were moral. Four people were judicious. Four people put duty of being a good judge over all political considerations and they struck down the electric chair. Subsequent to that, the Supreme Court changed the rule or modified it so a letter of the kind that I wrote in Moore's case before could not even be read by the court. Because I wrote such a letter and I got a very courteous reply from the Clerk of the Court saying that no judge read that letter, no judge would be allowed to read the letter. I think maybe they said they'd send it to whoever the lawyer was because that would be an ex parte communication and it would not be accepted. That was heading me off at the pass because they knew, with my strong attitude against the death penalty, I would not let that execution be carried out if I could avoid it. And I know I'm taking time but the Supreme Court took a life. And anybody in this room is free to leave, whether they're a senator, a citizen, or anybody else, but some things are so important I'm going to have my say, and I want it in the record. I'm not like my colleagues who'll whisper behind their hand how upset they are. I say it in front of the person, and he knows who I'm talking about. And I mean every word of what I'm saying. I said the Supreme Court allowed itself to be caught up in a political maelstrom. They made a political decision. Most of them had been appointed by Governor Ricketts, who they know is strongly in favor of the death penalty. They knew that those drugs had been inappropriately and unprofessionally obtained, but they had to give the Governor an execution. And if they hadn't carried out the killing of Carey Dean Moore when they did, Moore would be alive to this day. And the Attorney General, to show his sense of humor, had asked that court to set the execution date for the date of my birthday. That's what goes on in this state. So you all can come here and praise the courts all you want to, but they're just men as far as I'm concerned, very fallible men who, I even said, as Mr. Dooley, he didn't know whether the constitution-- whether the constitution followed the flag but he knew that the Supreme Court judges followed the election returns. And the Governor who wants the death penalty had won. The Governor who wanted the death penalty had appointed the majority of them and they gave the Governor what he wanted. And I was out-- was irate. I still am. And I want the record to be clear. And now I can show that I said it in front of the Chief Justice, about whom I've been speaking in case it's not clear. And I'm not the one who says he can't talk. He can say whatever he wants to here or anywhere else. He chooses not to. But I don't choose to be quiet. Now here's a flaw in my character. You all have a man for whom I have a tremendous amount of respect carrying this bill. The wisest choice

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they could have made was the one they made, if they made it on purpose and consciously, was to have that man carry this bill. He and I are going to talk and I cannot say, even with the determination I have right now to get my pound of flesh, that I'll be able to act on it. See, he knows me in a way that the rest of you all don't. He'll discuss things with me that the rest of you all wouldn't. And he knows me too well. But I'm acknowledging right now he might prevail. But I'm telling him I don't expect that he will and I certainly hope that he won't. But now I am through. These other people who've testify, I don't have anything against you all. You all were just a part of the sounding board. You didn't do anything unethical. You're not doing anything unethical. Judge Otte, I don't want to comment because he's a judge. And I've had my piece and now I'm through.

**PANSING BROOKS:** Any additional questions? OK. Thank you, Mr. Paul.

**SCOTT PAUL:** Thank you.

**PANSING BROOKS:** Any additional proponents? Any proponents? Any opponents to LB300? No opponents? Anybody in the neutral? Is there anybody in the neutral for LB300? OK. Senator Lathrop to close. And-- and before you close, we do not have any letters for the record among the support, opposition, or-- and we do not have any neutral letters.

**LATHROP:** Thank you, Senator Pansing Brooks. Senator Chambers' opposition to this bill comes as no surprise. He had an opportunity to visit with me and share his position and his concerns and his intentions, which I deeply respect. For the rest of the senators and-- and, for that matter, for Senator Chambers as well, I carried this bill in the past and I'm carrying it again. I've been a member, a proud member of the bar since 1981. I practiced in-- primarily in the district court in Douglas County but in the courts around the state and I, too, am impressed with the quality of judges that we have been able to appoint and retain in this state. The one thing that hasn't been said today and I do want to say is that those of us in the political branches of government have us-- have to have a special relationship with the third branch. They, the judges and the judiciary, do not get to vote on revenue bills. They don't get to say, you haven't raised or taxed the people of this state enough for the spending you need to do. What they do is serve every day in the posts that they've been appointed to. And then they are reliant upon the political branches of government to make sure that they're fairly compensated and that they have the resources to do their job. That's why I carried the bill. That's why I'm-- why I am in support of LB300

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and why I would-- frankly, I expect that we'll try to ask for more than what's in the bill by the time we get it to the floor. And I will look forward to our discussions with Senator Chambers and others at that time.

**PANSING BROOKS:** Thank you, Senator Lathrop. That closes the hearing on LB300. And now we will go to the hearing on LB309. Senator Lathrop, you may begin. I said you may begin.

**LATHROP:** Oh, OK. Good afternoon, Vice Chair Pansing Brooks and members of the Judiciary Committee. My name is Steve Lathrop, L-a-t-h-r-o-p, and I'm the state senator from District 12. I'm here today to introduce LB309. This is a pretty straightforward bill. We want to add a 17th district court judge in Douglas County. This reflects a recommendation made by the Judicial Resource Commission, which is a panel of judges, lawyers, and nonlawyers that is responsible for viewing these types of matters. They consider data, such as workload statistics and access to the court, and I believe there are people who are going to come up after me that can go into the detail of that analysis in their testimony. As you all know, having an adequate number of judges is key to making sure people in our most populous county have the same access to the courts and receive the same attention from their judges as litigants elsewhere in the state. And I can speak from personal observation to the workload of these judges and it is impressive. In the testimony we heard on the last bill, I'm going to go off script a little bit, in the testimony that we heard on the last bill you heard the Chief Justice talk about how we have established these problem-solving courts. That's an additional responsibility for the district court judges, which is a little bit like handing an unfunded mandate to the counties or the cities from this Legislature. They are effective but they also increase the workload of the district court judges, and that's no more true anywhere than it is in Douglas County. And for that reason, I would encourage your support of LB309.

**PANSING BROOKS:** Thank you. Any questions for Senator Lathrop? No. Seeing-- did you have something? OK, Senator Wayne.

**WAYNE:** Would this allow Douglas County to establish a night court possibly? I'm thinking of the constraints that they have on the building themselves as far as finding a placement for another judge.

**LATHROP:** Yeah, we talked about, you know, where are they going to put the-- put this new judge. I don't know if they're gonna have to clear

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the county attorney out of the basement. That's a-- I think that's a Douglas County issue where they're going to put them. And as for the night court, most of the night-- things that would generally happen in night court would probably be a county court function, and so bond settings, that sort of thing. So I don't know that this will have any effect on that, but I couldn't tell you it won't.

**WAYNE:** I just wanted to put it on the record because our first-- my first year here we initially approved two juvenile courts, and by the time it got to the floor that question got raised and we had to reverse ourselves. So I wanted to put it on the record now so we could start-- so at least Douglas County could start thinking about it.

**LATHROP:** I suspect that the district court judges have had-- or the court administrators had some conversation with the county board about where they're going to go. When I started practicing there was, you know, we had the sheriff and the public defender and the county attorney were all taking up space in the courthouse, and they've been basically moved to the basement. Yeah.

**PANSING BROOKS:** Thank you. Any other questions? Thank you, Senator Lathrop. We're going to go to proponents. And again, I'm just going to remind people about the light system. And we do want to be respectful of the judges that are here, but this committee was here until 9:30 last night. And we have four other bills after this one. So if you could please be cognizant of our-- of our light system. Thank you. Welcome.

**J. DERR:** Good afternoon. Thank you for the opportunity to appear before this committee, Senator. My name is J. Derr, D-e-r-r. I've been a district court judge in Douglas County for over 16 years. My colleagues asked that I just briefly address the committee and they have asked me to request that this bill be passed. In response to Senator Wayne's question, of course, the courthouse is packed. Our-- the building commission, in anticipation of someday perhaps having a 17th district court judge, it's my understanding that a courtroom that you're familiar with that's generally used by the county court right now on the third floor, during a recent remodel-- recent, last several years-- they expanded the jury box from 6 to 12 so that we can have a 12-person jury and use that courtroom. I think that's the plan right now. But very quickly with regard to statistics-- and Judge McDermott from the Judicial Resources Commission is going to speak in a moment. Douglas County is a little bit different than-- than some of the other districts. First of all, the Judicial Resources Committee-- Commission

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has indicated their study that we need four new judges. Now, in reality, I understand that's not going to happen. But one of the things that we differ from other districts is statistically the number of first- and second-degree murder cases that we try. I believe, and I got these statistics from the court administrator's office, I did not independently verify them, but generally it appears since 2011 through August of 2018 I believe Douglas County judges have conducted somewhere in the neighborhood of 67 first- and second-degree murder trials. I'm not picking on Lincoln, but they're probably the most comparable district to the 4th District in Omaha, and I believe their statistics indicate they've had four in the same time period. Judge Wheelock, one of my colleagues, is currently in the fifth week of a-- of a probable six-week murder trial and there is a codefendant yet to be tried. So basically, on two cases he will probably commit, exclusive of pretrial hearings, motions, and that type of thing, probably three months on two cases alone. That's-- we're a little bit different in that sense. But again, we understand the budget constraints but we are requesting, if you would indulge, an additional judge in Douglas County. I'd answer any questions I can.

**PANSING BROOKS:** Thank you, Judge Derr. Any questions for Judge Derr?

**J. DERR:** Thank you very much.

**PANSING BROOKS:** I don't see any. Thank you for coming today.

**J. DERR:** Appreciate your time.

**PANSING BROOKS:** Appreciate it.

**J. DERR:** Thank you.

**PANSING BROOKS:** Next proponent. Good afternoon, Judge.

**PATRICK McDERMOTT:** Good afternoon. Senator Pansing Brooks, members of the committee, my name is Patrick McDermott, P-a-t-r-i-c-k M-c-D-e-r-m-o-t-t. I testified last week so I was able to tell you I am a retired judge that did not elect to remain eligible to hear cases. So under the Separation of Powers Act, I can actually answer questions with respect to policy. I was a member for, you know, I don't know how long, it was 8 years, it seems like it was 20, of the Judicial Resources Commission of the state of Nebraska. In the last four years, for certain, that I served, and I served until I retired in January of 2018, this number in Douglas County kept creeping up.

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And I want to just briefly tell you where that number comes from. In 2006 the National Center for State Courts did a study where Nebraska judges, every day we filled out, I think it was for either six or eight weeks, exactly what we did for that day, how much time we put in, in each kind of case. And they compiled all that data and they came up with weighting factors for each kind of case. And in the district court the weighting factors were: problem-solving cases were 66 minutes; protection orders, 32 minutes; civil, 214 minutes; criminal, 175 minutes; domestic relations, 84 minutes; and appeals, 107 minutes. And that was per case. And then you calculated weights by taking the number of filings times that weight for category of case and you developed how many judges you should have for that district. Now as you probably know, the Chief Justice has a budget request this year to do another study. This study is 2006. I think any of you that are business people would not be operating on a 2006 business plan. You would have updated that plan by now to account for changes. The demographics have changed tremendously and that-- and particularly affecting Douglas, Sarpy, and Lancaster Counties. We are moving to the interstate and east. That's just what our population is doing. The commission has been aware of this. I made the motion in 2017, the motion was made again in 2018 at the annual meeting to recommend this additional judge. They need more resources, but we've already talked about the physical constraints and it-- it's smoother if you add these things incrementally. But that-- that's where it comes from. That's how we reached this conclusion as the commission. And I really would prefer to try and answer questions rather than get any further into the weeds of how all this statistical stuff was gathered.

**PANSING BROOKS:** Thank you, Judge McDermott. Any questions for Judge McDermott? I guess I have one. Thinking about the fact that we have to-- we have the eastern area of the state that is growing significantly. Has your commission, is there an effort to look at what's happening in the western part of the state and the needs of courthouses that can't find enough lawyers to represent kids, that can't put people into diversion because they are-- the diversion isn't close enough? Do you-- is anybody looking at that?

**PATRICK McDERMOTT:** The County Judges Association looks at that constantly. There's a-- a LISTSERV among the judges. They're always discussing this. And there-- there's a public policy balance issue here because the-- those people who are very remote, and I spent 19 years in Perkins County, right on the Colorado border in the city of Grant. I was a GP before I became a judge. The courthouse is this--

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one of the centerpieces of commerce in a small town. It brings people in. It retains professionals. So it is an important thing to a local community. The judiciary is not an economic engine. It shouldn't be. It's a service provider. And we've got to be smart enough to put our resources where the service demand is. Now most of the counties in the west are very resourceful. They do a lot of that by interlocal agreements. I was the Arthur County Attorney, smallest county in the state, for ten years. We did almost all of our work in Ogallala.

**PANSING BROOKS:** Which county? Excuse me.

**PATRICK McDERMOTT:** Arthur.

**PANSING BROOKS:** Arthur.

**PATRICK McDERMOTT:** It's just north of Ogallala. We would do most of our court work in Ogallala under an interlocal agreement because that was cheaper for the counties. That was true in McPherson County, Logan County, and that-- those Sandhills counties. We did that. Resources is always difficult of all types in rural. It's part of the choice you make to live in rural Nebraska. You go 70 miles to the grocery store. You go 250 miles to the doctor. I mean those are just the realities, but people accept that. So I think we have to recognize that we're not going to be able to support all of those courts, that we're gonna have to modernize, we're going to have to centralize to some extent. We didn't have the resources that in-- even in Colfax County that I would like to have had, but we always found a way to get things done. And I know that one of your very, very pet projects is appointment of counsel, and we managed to do that in Colfax County without breaking the budget, with the commissioners fully aware of it and supporting it. If any child asked for a lawyer in my court, they got it. And I didn't worry about that financial affidavit because I think it's critically important. And it harkens to something that Senator Chambers pointed out that's really important. There's a continuum in the criminal justice system beginning at the juvenile end, where the more adverse things that happen to you at the beginning become predictors for more adverse outcomes at the end. And it continues into adulthood. So juvenile court is really where you have the best chance. And having good lawyers in the juvenile system can really divert people away from repeating offenses, being in the system forever.

**PANSING BROOKS:** I-- I appreciate your efforts throughout your career and now, and I could not agree with you more. So I wish we could take you on the road and start convincing people how important that

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constitutional right for children is. Thank you very much, Judge McDermott. Any other questions? OK. Thank you very much for being here today. Other proponents? Welcome again, Mr. Paul.

**SCOTT PAUL:** Thank you. Again, my-- my name is Scott Paul, S-c-o-t-t P-a-u-l. I'm at McGrath North in Omaha. I was admitted to practice in the state of Nebraska in 1981. I'm currently the president of the Nebraska State Bar Association. I'm here to speak on behalf of LB309. I have just a few brief comments. I won't plow old ground that's already been mentioned by Judge McDermott and Judge Derr. I agree with their comments. I would point out that what we're asking is for the Douglas County District Court bench to be increased from 16 judges to 17 judges. And I think it's-- it's-- there's a serious need for the additional judge. One of the reasons we-- we think that is we-- we want to be able to attract good and qualified applicants to the judicial bench. And right now it's fairly well known among lawyers in the city of Omaha that the judicial bench in Omaha, the Douglas County, County District Court bench, is overworked, they're overburdened, and they're just basically trying to put out fires all the time. And so that creates kind of a chilling effect on getting good applicants because they see how daunting the job really is. Some of them would take a pay cut to become a Douglas County District Court judge. Some of them maybe would get a pay increase. But when you couple that with the daunting aspect of being just slammed, your schedule being slammed with all these hearings, all the things that they're required to do administratively, that could be alleviated in some small part if we had one more judge. As Judge Derr said, we could probably use another two or three, perhaps even four judges. But we're practical and we're just trying to do as little as we can, that would have as little effect on the budget as possible. So that's why we would be asking for one additional judge. The only other thing I would say is that at some point this becomes a due process issue as well. There's an issue of fairness here to the litigants. It's-- lawyers often say that the wheels of justice grind slowly, and it's true that they do, but at some point, you've heard the phrase before, justice delayed is justice denied. And we think, in terms of fairness to litigants, not to mention the judges that are trying to do their best to come by-- to deal with the schedule that they have, we think that that could be helped in some small part if we had one more judge. So we ask for your support of LB309. I'd be happy to take any questions.

**PANSING BROOKS:** Thank you, Mr. Paul. Any questions for Mr. Paul?

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**SCOTT PAUL:** Thank you.

**PANSING BROOKS:** Thank you for coming. Any more proponents? Proponents? OK. Any opponents? Opponents? And anybody in the neutral? Nobody in the neutral? OK. Senator Lathrop to close. And in the meantime, I will say that there have been no letters sent to the Judiciary Committee either in support, opposition, or neutral for LB309. Senator Lathrop.

**LATHROP:** Yeah. Just very, very briefly, I want to thank the people that have come down here today to testify in support of the last two bills. I think the need is evident, from the testimony you've heard, and I would encourage your support of LB309.

**PANSING BROOKS:** Thank you, Senator Lathrop. And that closes the hearing on LB309. And now we are going to open our next hearing on LB339 and Senator Lathrop again is presenting. Senator Lathrop.

**LATHROP:** Thank you and good afternoon once again, Vice Chair Pansing Brooks and members of the Judiciary Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I'm the state senator from District 12 and I'm here today to introduce LB339. This is a cleanup bill that addresses an oversight from last year's passage of LB697 which adjusted some judicial district boundaries as recommended by the Judicial Resources Commission. Those changes should have included an adjustment to the membership of judicial nominating commissions that help select judges for various districts. LB339 makes a small change to align the commissions with the updated district boundaries. With that, I'm happy to answer any questions you might have, although I think there are some people that are going to testify after me. But it's basically a cleanup bill, kind of fixing something that was an oversight.

**PANSING BROOKS:** We had an oversight?

**LATHROP:** I wasn't here.

**PANSING BROOKS:** Thank you, Senator Lathrop. [LAUGHTER] Well, I was, so. Any questions for Senator Lathrop to this point? OK. Thank you, Senator Lathrop. Any proponents? Welcome, Mr. Mueller.

**WILLIAM MUELLER:** Thank you, Senator. Senator Pansing Brooks, members of the Judiciary Committee, my name is Bill Mueller, B-i-l-l-M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association. And I was the one who made the error last year. I drafted LB697 where we moved Otoe County from the 2nd District into the 1st

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District. By doing that, we made the county court and district court in District 2 contained different counties. So when you do that you need a separate nominating commission to fill a vacancy in each of those counties. So this bill literally-- the only change is on page 3, line 4. We are inserting the numeral 2. I'd be happy to answer any questions that the committee may have.

**PANSING BROOKS:** Any questions for Mr. Mueller? Seeing none, thank you for coming and letting us know about what happened here.

**WILLIAM MUELLER:** Thank you.

**PANSING BROOKS:** Thank you, Mr. Mueller. Any other proponents? Proponents? Anybody an-- any opponents? Opponents? Anybody in the neutral? Seeing none, before Senator Lathrop waives, there are no-- I believe, yes-- no letters for the record either in support, opposition, or neutral. And Senator Lathrop waives closing and that closes the hearing on LB339. Thank you all for being here. Senator Lathrop.

**LATHROP:** Thank you, Vice Chair Pansing Brooks. That brings us to LB388 and Senator Howard. Pardon me?

**TIMOREE KLINGLER:** She's en route.

**LATHROP:** OK. Senator Howard is on her way.

**PANSING BROOKS:** Take a break?

**LATHROP:** Yeah, why don't we take a quick break. That might be of some benefit to the people that have been sitting up here for a while.

[BREAK]

**HOWARD:** My Vice Chair is presenting a bill.

**LATHROP:** Good afternoon once again and welcome back to the Judiciary Committee. We'll begin after the break with the introduction of LB388 and that will bring us to Senator Howard. Senator Howard, welcome to the Judiciary Committee.

**HOWARD:** Thank you, Senator Lathrop. I am-- I am thrilled to be here. All right. And I'm ready, I promise. All right. Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Senator Sara Howard, H-o-w-a-r-d, and I represent District 9 in

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midtown Omaha. This afternoon I'm presenting before you LB388. This is a bill that makes procedural changes to various statutes as they relate to child welfare guardianship proceedings and other family policy. So the impetus from this-- for this bill came from discussions with individuals surrounding another bill I introduced. So this group included judges, attorneys, and the Foster Care Review Office. LB389, which you'll hear next today, addresses termination of parental rights. It's another piece that came out of this discussion around a bill that I had last year, LB863. And for those of you who are on the committee, this was a bill-- I had the-- I-- I have a lot of concerns about how long young children are staying in our child welfare system, because those are incredibly important developmental years for children and babies. And when they're in an out-of-home placement and they lack permanency, that can often impact their-- their development long term. And so I had brought a bill that I had a great idea I'd heard from an Arizona legislator that they have a six-month, you can start a termination proceeding for a child below the age of three after six months. I presented it. It did not go very well. But what was wonderful about it was that it highlighted that this area of law and this section of our statutes hadn't been touched for decades. And so it was really ripe for an update. So through conversations that stemmed from LB863 last year, we just really understood that we needed to clean up some of these statutes and improve the process for everyone involved. So guardianship, for those of you who are unfamiliar, is when an attorney is appointed and has the legal authority and responsibility to care for the personal and property interests of another person, a ward who is typically a child in the care and custody of the state. We add a significant amount of language surrounding this subject that came from the Supreme Court Commission on the Protection of Children that is intended to standardize and streamline the guardianship process. It's my hope by improving this process we will move toward better outcomes for the children involved in Nebraska's child welfare system. I heard from many advocates that the-- on changes that they thought would make the bill better and incorporated their suggested changes into AM208 that I'm presenting to you that replaces the introduced green copy. So I'll walk you through the white copy because I think it's significant. It-- it absolutely changes the tenor of the green copy. So if you'd like to follow along, on page 2, line 6, LB388 moves the instruction of including a written independent living transition proposal for children 14 years of age and older who are state wards in the juvenile justice system from the juvenile court to the department. The department creates this transition plan and so it's appropriate that our statute actually

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reflects who's creating it and then who's sharing it. Then we move to page 7, on line 3 and again on line 23, and also on page 21. We are creating a regular requirement for exception hearings. An exception hearing is held when the court determines that an exception applies and terminating parental rights or looking for prospective adoptive parents is not appropriate. In juvenile court, oftentimes after the first exception hearing, subsequent hearings are not held on a regular basis or at all. So regular exception hearings should be held consistently to address this situation and the best interests of the child. In the data provided, the Foster Care Review Office found that of the 1,568 cases reviewed, in 60 percent of the cases they were unable to find that an exception hearing was held at all. On page 9, line 15, we create a requirement that if there is no significant relationship between a child and a relative, and a child has been in a foster home for more than 12 months, that foster home may be considered for permanency if there is evidence that it is in the best interests of the child. So this is an issue that we've been hearing about more and more. You place a child in a home. They're there for a year or two years, and then the department finally conducts family finding. They find a relative in another state who has never met the child. The child now has a significant relationship with the foster family, and there is nothing in our statute that allows the court to consider that relationship with the foster family. So essentially our statutes and-- and an argument could be made that best interests would apply. But often, because the foster parent doesn't have standing, and this doesn't allow them to have standing, but because the foster parent doesn't have standing there is no one to say, hey, wait a minute, we've had this child for several years, we have significant bonding, we've provided it with permanency and safety for several years, it's a part of our family. And so what we've seen is that those children will then be removed from a stable and permanent placement and taken to live with a kin that maybe they've never met before. And so this would not give them standing but allows the court to consider that foster parent relationship if the child has been in the home for more than a year. On page 11, line 1, it adds the language affirming that the best interests of the child is standard when placing a child after they've been removed and relatives are notified for a possible kin placement. So it just affirms the best interests standard. And then on page 13 we add new language that adds guidelines for judges on guardianship and the guardian ad litem that was recommended by the Supreme Court Commission on the Protection of the Children. This language adds in practices that are being done in court now, but this creates a more uniform process across all counties. This would

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govern-- govern guardianship agreements, requirements, modifications, and regular review of the agreements. There is a small change in this language from the green copy changing the age from 12 to 14 for written consent, and that matches what is currently in statute for probate for children. OK. On page 20, sorry, and bear with me because it was-- it's a new amendment. OK. On page 20, new language is added regarding disruption and termination of guardianship agreements, including adding a standard of clear and convincing evidence that the parent is now able to assume custody of the child. This language also came from the Supreme Court Commission. I feel that LB388 is a positive step toward more efficiency and better outcomes for children under the care and custody of the state. I also passed around a case that recently came out of Kearney for a-- a baby named Kimberly. She was removed from her home in April 2018 and she was placed in her second placement with the Jones family. The parents relinquished their rights in 2018. And upon removal, an aunt was identified in a pot-- as a possible placement, because that's when we do family finding is right at removal. An aunt was identified and said, no, I don't want to take her. And then after the parents' rights were terminated, the-- they noted-- they provided notice to the aunt, and the aunt said, well, now that the parental rights have been terminated I'm now interested, even though she had had a sif-- the baby now had a significant relationship with the foster parents. And in this instance you had a guardian ad litem who stepped in and said, wait a minute, this child has bonded with this family, she's been there for a long time. Aunt had turned down multiple times to-- to take this child. She actually only had a couple of two-hour visits. And so the judge ultimately ruled with the foster family and maintained that it was in the best interests of the child, but this is a rare ruling. And so really considering sort of the totality of-- of what we're working with here, I think that AM-- LB388, as amended by LB-- AM208, is a-- is a strong step forward for kids and families, and just clarifying both guardianship language and then assisting with the court-- court's understanding that there should be some recognition of that foster family's commitment to a child if they've had them for a year. I'm happy to try to answer any questions that you may have.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Senator Howard, for coming today. Just to be clear in my mind, the law as it's written today, the-- the court or the judge cannot consider the foster parents. Is that correct?

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**HOWARD:** As-- as it's written today, it-- it would fall under best interests. So the judge would consider every placement or every situation. If, because the foster family doesn't have standing, they can't sort of state their case to the court and say, wait, we've had this significant relationship. And so the only person who could do that would be a guardian ad litem for the family or a caseworker if they're actively involved.

**BRANDT:** And the change would allow the foster parents to have standing.

**HOWARD:** To have consideration but not standing.

**BRANDT:** Consideration. OK. Thank you.

**HOWARD:** Thank you.

**LATHROP:** Senator Wayne.

**WAYNE:** And I told you earlier I'm going to work with you on this and I just got this white copy, but I just want to put some things in the record. And I'll ask a couple people behind you some more questions for the record so we can figure this out. I think we're moving in the right direction. The issue that I have is that a kid is born, and it's a hypothetical, kid is born, has meth in his system, taken from parents. Grandparents live in another state. For whatever reason, the state, who has the burden, was supposed to have within 30 days to provide-- go through and find these people, never do. We're at two months, we finally figure out there's a grandparent in Washington County. It takes a year for the paperwork to do to transfer that kid out there. So at the time, nine months later, we have a ICPC and everything done. Does this affect that a rule-- that ruling that now the mom or the grandparents should be able to have it? Or does now the local person, who's built a bond over a year through no fault of their own, have greater weight in-- in establishing that relationship with the kid?

**HOWARD:** This-- this shouldn't affect that instance, especially if the grandparents were actively involved and maintaining visitation. Essentially, what the language says is if there is no significant relationship with that kin then the foster parents would be given some consideration.

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**WAYNE:** But it would only be to the grandparents' ability if the state notified them. If the state never notified Grandma and Grandpa that their grandchild is in the system, they would have no notice and, through no fault of their own, they would be in a less position.

**HOWARD:** So I see what you're saying and I-- and I definitely think we can work on some language to address that, that there is another state, Florida, that actually has some language where if-- if it's by no fault of the-- of the person but it's a fault of the department. So we could certainly work on some language to address that.

**WAYNE:** Then on page-- not-- or Section 8, page 19, I think this provision is unconstitutional underneath the parental preference doctrine by shifting the burden to the parent to seek the termination of a guardianship, when in fact it's up to the guardian to prove that the parent's unfit, because there's already a constitutional duty that the parent is [INAUDIBLE] .

**HOWARD:** My apologies. Which section on page 18?

**WAYNE:** Section 8, section (1) of Section 8 on page 18. Sorry.

**HOWARD:** Eighteen. OK.

**WAYNE:** I apologize.

**LATHROP:** Did you say 8 or 18?

**WAYNE:** Page 18, Section 8.

**LATHROP:** And I'll just-- this may be your first time here. It's hard for people to hear if you don't--

**HOWARD:** Oh.

**LATHROP:** -- pull that mike or talk right into it.

**HOWARD:** Well, I got married in this room so I can hear just fine.

**LATHROP:** It's not like the floor where, you know, you just have to be close to them.

**HOWARD:** OK. I'm going to lean in.

**WAYNE:** Because in this section it says a parent may file a motion to terminate the guardianship, which is true, but the burden flips on the

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guardian to prove that the guardianship is still needed underneath the parental preference doctrine, because they have to overcome that constitutional barrier that they're unfit. And this flips the burden.

**HOWARD:** OK. OK. We can fix that.

**WAYNE:** I think we can too. I just--

**HOWARD:** No, that's a really good point actually.

**WAYNE:** So I think we can work through those. But other than that, I just wanted to put that on the record so it's-- if it's a issue we can talk about it later.

**HOWARD:** Thank you.

**LATHROP:** I see no other questions. Thank you, Senator Howard.

**HOWARD:** Thank you, Senator Lathrop.

**LATHROP:** First proponent for LB388. Good afternoon.

**KIM HAWEKOTTE:** Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Kim Hawekotte, it's K-i-m H-a-w-e-k-o-t-t-e, and I am the executive director at the Foster Care Review Office and we are here in support of LB388. The Foster Care Review Office, just as a little bit of background, is an independent state agency. We are run by our own board. We provide for the oversight of all children in out-of-home care, both through the Department of Health and Human Services and also State Probation. We meet our statutory duties at two levels: One, we do over 4,500 individual case files reviews every year of children that are in out-of-home care and from there we collect data. And then we do both quarterly and annual reports as to what that data shows, and each of you should have received our last annual report. LB388 is really, like Senator Howard said, a cleanup, is to specify and clarify certain processes within juvenile court, that some of them are old, some of them aren't working, some of them aren't very clear. And needless to say, as Senator Chambers asked some judges earlier, there is wide discrepancy across the state as to interpretation. So we thank Senator Howard for bringing this forward. This was really a collaborative effort of many judges and attorneys across the state. So it really does four things and I'll be very quick. First, it amends LB-- 43-285, and just like Senator Howard stated, the bill states that the courts are to give all of us the case plan and court reports when really

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they're created by the department. And the practice, I've been up there over 25 years, it's always the department so the statute should probably correctly reflect what the practice is. Second thing it does is on page 9 it deals with what we call exception hearings. Both federal and state law requires that juvenile courts make a legal determination at a hearing as to whether or not termination of parental rights must be filed when a child has been in out-of-home care for 15 out of 22 months, and then statutorily we have exceptions. We call those exception hearings. And here in Nebraska, like I said, it's 15 out of 22 months. Well, the strange thing in our statute is the courts under our statutes only have to have that hearing once and that's at 15 out of 22 months. So when a child is out of home for two, three, four years, they never have to revisit that issue again. So what this clarification does is require the court, after they've had that exception hearing, that they have to have it at each and every review and permanency hearing thereafter so that we're always looking at, is there an exception determination of parental rights or should it be filed. I'm going to give you just a little bit of-- of data. As we go in and do our case file reviews, one of the things that we always look at is whether these hearings are occurring. They're only occurring in about a third of the cases statewide. So our judges are not doing a great job. Second thing, we know that as of January 31 there's 3,482 children in out-of-home care through the department, and 48 percent of those have been out of home 15 out of 22 months. So we know it affects a significant number of children. Next thing I want to talk about is the 43-533. And, Senator Wayne, I will try to answer some of your questions and if the red light comes on I'll ask for privilege to do it. This section is really kind of the guiding principle for juvenile court that says we're all supposed to deal on what's in the best interests of children, which can really vary. It's kind of the overarching principle. It also says that when a child is removed from the home-- . May I continue?

**LATHROP:** Why don't we see if Senator Wayne has some questions.

**KIM HAWEKOTTE:** Ask the questions.

**WAYNE:** I-- I don't remember how I framed them, but ditto.

**KIM HAWEKOTTE:** Ditto? So you're expecting me to remember, right? What this statutory section really does is at the time of removal it says that preference is to be given to relatives. We know as a state, and this is a positive, we are doing a great job at that because about 46 percent of all of our children in out-of-home care are placed with

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relative kins. Senator Wayne, I think what you are talking about is we also have another statute that's not included in this bill and it's 43-1311.01 and it requires the department, at the time they remove a child, within 30 days they are to provide written notification to this whole list of relatives. They are also to provide written notification to the court as to all these relatives that they contacted, which gets to your question as to a grandparent that was never notified that their grandchildren were in out-of-home care. Reality is-- I hate to say how many years I've been in juvenile court, I'll just say over 25 so I don't feel really old today-- I have never seen one of those. I've never seen it before the court. To me, Senator Wayne, instead of maybe worrying about some of the provisions in LB388 we need to look at are there things or penalties we can put into 43-1311.01 that would require the department to do this and to make that requirement. We might get more bang for our buck that way.

**WAYNE:** And I've been practicing for seven years and I've never seen one of those reports. And this the first time we've talked about it and the first time I heard about it. So that I think in order for me to support this bill, we're going to have to put some requirements on the state to notify people, I think that's the biggest issue, because the clock is ticking. Fifteen months is fifteen months. So my next question is fundamentally-- and I'm sorry, this is a Friday, but I have to ask these questions-- the exception hearing, if we require more and more exception hearings at each hearing, how do we get around the argument that a judge is not prejudice when they're essentially saying there's no exceptions to termination but yet I'm supposed to fairly rule at a termination hearing whether you should be terminated or not?

**KIM HAWEKOTTE:** I will give you Kim's personal opinion, because what some states require is once the judge makes a finding that no exception applies and that termination should be filed, that judge is then removed from that case and it's a different judge that actually does the termination trial to avoid any appearance of impropriety or bias.

**WAYNE:** So in our practice a judge will make a ruling that there's no exceptions, and then this is a question, no exceptions to a termination hearing. And then four or five months down the road a termination is filed and that's the same presiding judge, who just said there's no exceptions, making a ruling on it.

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**KIM HAWEKOTTE:** Correct. That's our current practice.

**WAYNE:** And in those other states, how is juvenile going that don't-- that don't have that same practice?

**KIM HAWEKOTTE:** I'll get-- I'll gladly look into that, Senator. I don't know. I just know a lot of states have the requirement that a different judge then hears it, to get rid of any of the appearance of impropriety or predecision or biases.

**WAYNE:** Then my question earlier regarding Section 8, regarding the parental preference doctrine, do you have any comments on where it has a parent or guardian listed, particularly a parent, listed as a party who may file the motion to terminate and puts the parent-- the burden on the parent being unconstitutional. Do you have any-- ?

**KIM HAWEKOTTE:** The-- the Supreme Court Commission for Children guardianship subcommittee did have that discussion. A lot of the discussion revolved around the fact that [INAUDIBLE] already had a juvenile court order that found the parent to be unfit. So that has already-- that constitutional right has already been found that they are unfit. If they want to try to get rid of the guardianship, the clear and convincing would be the appropriate burden. They didn't see an issue in that.

**WAYNE:** In those cases where-- where ju-- guardianship is established before a motion to terminate, so it's a-- it's a adjudication. Everybody thinks it's in the best interests for a guardianship to be established. We'll let the case go away. That isn't the case. They didn't find him unfit permanently. They found him that temporary adjudication. They didn't lose their rights.

**KIM HAWEKOTTE:** But they were adjudicated as being unfit under 43-247(3)(a).

**WAYNE:** How does that compo-- compare to the constitutional doctrine of-- of your-- the parental preference doctrine? Because my understanding, the Court of Appeals has ruled that differently, so I'm just trying to get this on the record.

**KIM HAWEKOTTE:** I think it's very situational. I do feel, though, Senator we can work on that language that if it's a parent it's a different burden of proof compared to I walk into any guardianship and say I want it dissolved because I don't like the guardian. I think you

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should hold me to a higher standard. I mean so maybe we need to differentiate to alleviate any of that issue between who is filing that actual motion to dissolve the guardianship.

**WAYNE:** Thank you.

**LATHROP:** I see no other questions. Thanks, Kim.

**KIM HAWEKOTTE:** Thanks.

**LATHROP:** Anyone else here to testify as a proponent to LB388? Good afternoon.

**JULIET SUMMERS:** Good afternoon, Chairman Lathrop, members of the committee. My name is Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s. I'm here on behalf of Voices for Children in Nebraska in support of this bill. Every child deserves the support and stability of a loving, permanent family. When children come into our child welfare system every effort must be made to pursue a forever family, whether that is by reunification with a parent or extended family or adoption by a foster parent. In cases where reunification or adoption are not possible, however, an important alternative, particularly for older youth lingering in care, is the option of a guardianship until the age of majority. Guardianships can provide needed safety, stability, and dependable relationship with a trusted adult so that foster youth need not be expected, through no fault of their own, to become independent adults too soon. The good news is that in recent years the percent of youth exiting foster care into some form of permanency or stability, whether that's reunification, adoption, or guardianship, has been steadily increasing. Most children will either reunify with their original family or be adopted. In 2017, 204 children, or 9.7 percent of all exits from foster care, exited out-of-home care to a guardianship, 168 of which were subsidized. Four percent of children or youth still exited to independent living, a number we would like to see drop even closer to zero. Because a guardianship does not provide the same full level of family permanency that reunification or adoption does, it's important for ongoing child well-being to have clear processes for periodic assessment of the relationship. Our juvenile code grants jurisdiction over guardianship proceedings arising out of child welfare cases but has been largely silent on how that jurisdiction should operate. LB388 is the result of a set of recommendations from the Supreme Court Commission on Children and the court's guardianship subcommittee and would provide a clearer process governing guardianships within our juvenile code. I'll skip what I had

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written to say to Senator Wayne that I had not, prior to testimony today, considered-- deeply considered that question. And in my brief Googling back there, did find a-- an on-point case from 2011, In re Interest of Lakota Z., that agreed with your-- your comments in this regard. I don't know, having not delved into the research, whether there's been a more recent case changing that. But I will certainly follow up on that and obviously would be happy to work on anything to ensure that parents' constitutional rights aren't undermined by that process. I have two other notes on other portions of the bill, specifically on page 9, lines 15 through 22. Voices for Children prefers the language contained in AM208 to the original draft but still want to highlight this is a nuanced issue. Bonded relationships with foster parents are an important consideration when a court has already determined reunification with the original family or parent is not possible. However, there's still immense value to placement with a relative, even sometimes in cases where a prior significant relationship may not exist. And we don't want this change to point our system away from positive steps taken in recent years toward aggressive family finding and commitment to keeping children connected with their biological family and siblings, in particular. I've run out of time and you have the rest of my testimony before you in written form. So I'd be happy to answer any questions.

**LATHROP:** We do. I don't see any questions, but thanks for being here today.

**JULIET SUMMERS:** Thank you, Chairman.

**LATHROP:** Any other proponent testimony? Anyone here as an opponent or in opposition? Anyone here to testify on LB388 in a neutral capacity? Good afternoon.

**SARAH HELVEY:** Good afternoon. My name is Sarah Helvey, S-a-r-a-h, last name H-e-l-v-e-y, and I'm a staff attorney and director of the Child Welfare Program at Nebraska Appleseed. We are testifying neutrally today with regard to LB388 because we are supportive of many provisions of the bill but have concerns about some others. We support the bill because it makes a number of helpful clarifications to key statutes within the Nebraska juvenile code. And we think these provisions would clarify the process and help ensure that parents, prospective guardians, and youth understand the parameters of the guardianship relationship. We also support provisions clarifying and authorizing juvenile court oversight to help address any issues and modify-- or modifications as needed. And we're hopeful that this will

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result in fewer guardianship disruptions, which we see far too often in the system. However, we have some concerns about the changes related to preference for placement of children with relatives, and that's that we are not sure that these are necessary and we are concerned that they could prevent some relative placements that can be beneficial to children. As others have stated, the standard in existing law is best interests and that incorporates many factors: school and placement stability, sibling connections, normalcy, special needs of the child, proximity to healthcare services, the child's preferences and attachments, and cultural and language considerations. The preference for placement with relatives does not override those over those other factors and is considered by the court as part of an overall determination. And when a child is being cared for by a nonrelative foster parent for 12 months or more and bonding has occurred, many aspects of that situation are already considered and often weigh heavily in the best interests determination. And I'll just say the pendulum, I think, has swung in favor of placement with relatives in that placement priority. I believe in the system now almost half of children are placed with relatives. But we still see cases where I think there's some unconscious bias that comes into play and in-- in individual cases that may be against the-- the-- the relatives in those situations. Also say I remember the very-- I think it was like the first bill that I worked on when I came to Appleseed 12 years ago was a bill on relative placement. It was before the federal law required notice to relatives. And it felt like a-- 12 years ago. It felt like it was almost a controversial bill at the time because there was a perception that the apple doesn't fall too far from the tree. So we're really pleased that Nebraska has made some progress in that area and are hopeful that we can find an appropriate balance with regard to that. And I'm happy to take any questions.

**LATHROP:** Thanks, Sarah. I see no questions.

**SARAH HELVEY:** Thanks.

**LATHROP:** Good afternoon.

**TIM HRUZA:** Good afternoon, Chairman Lathrop, Vice Chair Pansing Brooks, members of the Judiciary Committee. My name is Tim Hruza. That's spelled H-r-u-z-a. I'm appearing today on behalf of the Children and Families Coalition of Nebraska, also known as CAFCON. CAFCON is an association comprised of 12 members who provide services to children and families across our state to improve their lives. I appear today in a neutral position on LB388. LB388 as drafted proposed

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what we believed would be substantial changes to preference in the determination of placement and permanency for children. Notably, the bill would have provided a preference to a foster family with whom the child has bonded. While bonding and permanency are certainly valuable goals and have a positive impact on a child's life, research has shown that no matter a child's age, placement with a-- or a-- with, excuse me. Placement with a relationship-- placement-- placement with or a relationship with a biological family member can have a tremendous beneficial effect on children. Our member organizations have seen this play out firsthand. Because we know that a child's relationship with family members is so vital to their well-being, we are reticent to support a change to the law that might make it more difficult for kinship placements to be made. The amendment prepared by Senator Howard to LB388, AM208, does provide that consideration, rather than preference, shall be given to a foster family with which a child has bonded. That's an improvement. Even so, the amendment would still provide that a relative with which the child has no significant relationship would not receive any preference and would also give special consideration to the foster family rather than merely prioritizing the child's best interests. We have some member organizations who believe this significant relationship requirement should be given further discussion and they have asked us to testify today to ask that discussion over inclusion of this provision continue. Please know that we very much appreciate Senator Howard's willingness to meet and discuss our concerns in advance of today's hearing. The amended version of the bill does address a significant amount of our members' concerns with the bill. We thank Senator Howard for her work on these issues that are so important to Nebraska's future. Thank you for your time and I would be happy to answer any questions you might have.

**LATHROP:** I see no questions. Thanks, Tim. Anyone else here in a neutral capacity on LB388? Seeing none, we have some letters of support and one letter in neutral. The support letters come from Jordan Sikes, Amber Phipps and Michael Worsley, Maralee Bradley, and Marcia Blum of the National Association of Social Workers. And the neutral letter comes Matthew Wallen at the Department of Health and Human Services, Division of Child-- Children and Family Services. With that, Senator Howard to close.

**HOWARD:** I-- I'll be very brief. I'm having a banner year with the department. This is the first time they've ever been neutral on one of my bill. It's pretty exciting. They came in support on a committee

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bill earlier today, so it's just-- I'm having a red-letter day. I wanted to clarify on the foster parent side that it's a consideration, not a preference. But I also wanted to clarify where the significant relationship language came in the line before. So two of you will remember when my mother was here the department opened up kin to literally anybody who had laid eyes on the child. It was a school janitor. It was anybody who had met the child, sometimes people who had not, because kin placements are cheaper. And so when my mother was here for one whole year she passed a bill that said that kin had to be a blood relative. And so when I got here people said, well, we-- can we change that because that's pretty limiting? And so one of my first bills was to add or to create this significant relationship for kin. So it could be a godparent or it could be a teacher who had been really involved in their lives. So we've had several years of that significant relationship as part of our statutes. And so it seems like a logical thing to include when you're thinking about a kin placement that maybe isn't in the same place, making sure that there is a significant relationship, that they have in fact met the child. And then if there is a significant relationship then obviously they would be given some preference because they're kin. So with that, I'm happy to try to answer any questions you may have.

**LATHROP:** I don't see any questions.

**HOWARD:** Fabulous.

**LATHROP:** That will close the hearing on LB388 and move to LB389, which also brings us to Senator Howard.

**HOWARD:** I'm staying for a while. OK. Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Senator Sara Howard, H-o-w-a-r-d, and I represent District 9 in midtown Omaha. Today I am bringing you LB389, a bill that revises statutes that govern the termination of parental rights. I believe I have handed each of you a copy, a white copy amendment of this bill, but if you don't have it in your files we're bringing you extra. OK. So terminating the rights of a parent to their child is the last resort of the court and is not a step that is arrived at lightly or without significant process. It is considered in the best interests of the child for them to no longer have contact with their biological parents. So on January 31 of this year, Nebraska had 3,482 children who were placed in out-of-home care. Of that number, 951 of those children were under the age of four. And of those, 624 had been in custody of the state for at least six consecutive months. As of that

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same date there are 93 children in care that had been in care for five consecutive years or longer, and 16 of those children are ages five to ten. Of very small children, three years and under, there are 126 children under the age of one who are in care; 61 of those who have been out-of-home from 6 to 11 months. Of the 65 children who are three and in out-of-home care, 39 of those have been placed out of home for 24 to 36 months. Basically, their entire lives have been spent in out-of-home care. And if you do the math, I mean that's, for kids, that's their most important time and they've spent all of it away from their parents. So we introduce LB389. The original bill had what other states call the tender years doctrine which is your regular termination statute is 15 out of the most recent 22 months if they're in out-of-home placement. This would have created a-- sort of a quicker standard if a child was below the age of three. In Arizona, they have six months. In other states, they have 9 out of the last 12 or-- and it would have started at adjudication. Adjudication is usually after 90 days. So it would have been a year. In other states, Alaska I believe treats it a little bit like drug court where if you remove a child at birth then they have monthly hearings to-- to-- and the parents know that at the end of a year that child will be released for termination. I have removed that provision at the request of the advocates, but I do want to make sure that this committee is aware that there are babies in our care and custody who have been there for their entire lives and we are not doing anything about it. And I want you to be just as angry as I am about that. We need to do better and I think we can do better with some of our statutes. We are not going to do better today. So let's talk about the white copy amendment because, even though we have removed the tender years doctrine, we do still need to clean up our termination statutes. Last year we discovered they hadn't been touched since the '70s and, oh, do they show it. So on page 2, beginning with line 3, Section 43-283.01, these are the statutes containing criteria for preser-- preservation and reunification of family members. The new language on page 2 adds offenses of sexual violence that a parent has committed against his or her child, another child, or has committed labor or sex trafficking crimes with children as victims. This language is again noted on page 4, beginning on line 28. On page 3, line 5, this section of law lays out grounds that must be met to terminate all parental rights, and LB389 adds the burden of proof to clear and convincing evidence in statute and adds a reference to ICWA because ICWA is obviously, if you have a child who falls under ICWA, that is obviously the statute that governs. Further down on page 3, line 18, LB389 adds an enumerating factor that says if the court has terminated that rights for another

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child of the parent, this may be considered as grounds for termination. And on line 28 we also updating the section, this is my favorite one, regarding the use of alcohol, narcotics, and other drugs. The original section had said that if the parents are unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, or repeated lewd and lascivious behavior. We have modified that to say: The inappropriate use by the parent of alcohol, narcotics, or other drugs for such a duration or of such nature as to render the parent unable to care for the ongoing physical, mental, or emotional needs of the juvenile, or to be a serious detriment to the health, safety, and well-being of the juvenile. We have completely removed the requirement for their morals as well. So that's all I have. This bill is now a cleanup. It shouldn't have any problems. But we do need to be angry about how long kids are in our care. And this committee, as our statutes change, because right now we have traditional response where kids are in out-of-home care, we have alternative response where kids stay in the home, we have noncourt where kids stay in the home or they go to a kin but we don't have any record of them, and now we're going to have Families First where a child is a candidate for care, and we're still getting a drawdown, but they'll remain in the home with the parents. So when a child is removed, it's going to show that they're going to be removed for a reason, because everything else that we're doing in the department is to maintain that child in their home. So that's all I have for today. I-- I do hope you'll consider both LB388 and LB389. I am happy to try to work on both of these bills. And then I did have a letter that came in to me late. Dr. Sikes was one of sort of the parent letters that I submitted with this bill. But Tricia Meehan [PHONETIC] or Tricia Clark, who some of you may remember worked for Senator Norquist for several years. She was a CASA. Her husband is a-- a-- he-- he's an attorney in Sarpy County. They were both very savvy in regards to the juvenile court system. They were asked to take a child for three days. They kept him for 18 months. They are now his parents in everybody's regard but the law's. And they've just been through an experience that I want to make sure that this committee has the opportunity to read through and understand, because it has completely upturned their lives. So I will give you copies of that because we got it very late today. With that, I'm happy to try to answer any questions you may have.

**LATHROP:** I don't see any questions, Senator Howard. Thank you for that introduction. Are there proponents wishing to testify on LB389? Good afternoon.

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**HEATH JOHNSON:** Good afternoon, Senators. Thank you. And I'm going to put my head down and read, so if it hits red throw something at me, OK? Thank you for allowing me to speak today to you today about this very important issue. A lot has changed since I last testified about this bill last year, not including my hair loss.

**LATHROP:** Pardon me. Can you start with your name?

**HEATH JOHNSON:** Sorry. Heath Johnson, Heath, H-e-a-t-h, Johnson, J-o-h-n-s-o-n.

**LATHROP:** Perfect. Thank you.

**HEATH JOHNSON:** Apologize for that.

**LATHROP:** That's all right.

**HEATH JOHNSON:** My two foster children have been reunited with their parents after two years. Despite not fulfilling the court-ordered goals that were to be achieved, the boys were placed back. No drug counseling was completed. No domestic violence education was completed. No one stayed sober, as the courts instructed. Our boys left our home in October of 2018. Because it is my family that has these boys, we are able to stay in touch and up to date about them. When they lived in our home, they knew things like most children do. They knew love, routine, clean bodies and clothes. Since leaving our home, their parents have begun to use drugs once again, although I'm not sure I can honestly say again as I'm not sure they ever stopped. Our foster boys now know what domestic violence looks like. Our foster boys get to experience moving from their home to the cellar-like basement of another. They get to experience trips at a moment's notice because of the drug use and the violence that usually follows. They get to experience the honeymoon phase when they return, trips to hotels and indoor water parks. Our boys went to bed at 8:00; now it's whenever exhaustion overtakes them. When I speak to Foster Care Review Office, foster parents, former foster parents, HHS workers, former HHS workers, I'm not telling them anything new. They see it all the time. This is the new normal. We had over five different HHS workers in two years, three I know that no longer work for the Nebraska Department of Health and Human Services. When I asked HHS what would derail reunification as we got closer, as I wanted to begin to prepare my other three children for that day and I wanted to know our chances of getting to that day. I was told nothing short of a major incident would derail that. I mentioned that I assumed drug use would be a

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factor, and I was told it would not be, that if the parents who were former meth users were to be found using again, as long as the boys had heat, clothing, etcetera, they would not remove the children. Since then, all of the people I have talked to in child advocacy have confirmed this ideology. Our system needs overhauled. We need accountability at every level. I could tell you things that I've been told by guardian ad litem, HHS workers, and Foster Review people that I hope would shock you. In my 15 years in education, I've worked with kids from birth to the age of 21 and nothing is as important as protecting our kids, nothing, not unsolicited phone calls, not gun control, not guns in the school, not the opiate crisis which I see on a daily basis, not vaping which I also see, nothing. If you want to change society you have to do it with the people. Foster care touches every aspect of our state. It impacts the budget, human trafficking, drugs, and crime. In education the conversation has moved to how to get our kids the proper mental health services they need. I have attached Maslow's hierarchy of needs. Our foster system is ignoring the second and the third step, and in reality it's just as important as the first. I've seen an amazing increase in parents not having an accountability for their children and watch as they don't hold them accountable, make excuses and lower expectations and consequences. The best of the best don't always become parents, but the best of the best are supposed to be our judges-- an argument that was made earlier-- guardian ad litem, and HHS workers, and they are doing the same things. My foster kids are in a situation I knew was going to happen because I understand common sense and human nature. Their parents were never made to actually do anything the court told them to do and no one held the adults in authority accountable. If termination was an option at 6 months or even 12 months, my foster kids would have benefited. Instead it gave their parents enough time to figure out the system, manipulate it to the bare minimum, and state-- and the state got to say that they reunified another family from foster care. It has been compounded again as the mother is pregnant with her fifth child. Stuck in the whirlpool that is domestic violence, she may not get out. But we have all-- we have allowed, all of us have allowed for her children and thousands of others to pay for the consequences of their parents' decisions. And I believe we can do better. We have to do better. And I believe this step is a small step in that right direction. And I apologize for going over time.

**LATHROP:** No, that's all right. I don't see any questions. Let me-- let me ask one though. This idea that they have put these kids back with

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Mom and Dad before they ever accomplished anything they were ordered to accomplish,--

**HEATH JOHNSON:** Correct.

**LATHROP:** -- is that a money thing? Is that a resource thing like the department doesn't want to put the energy into it or they don't want to go through the process of a termination?

**HEATH JOHNSON:** I-- I believe in this--

**LATHROP:** [INAUDIBLE] opinion.

**HEATH JOHNSON:** I believe in this particular case, it served two purposes, the first one being the state got to make a checkmark and say we've-- we've reunified and we give ourselves a pat on the back. The other one I was informed by the guardian ad litem that the county in which they were currently being-- they weren't living in but the court resided there was that this court does not terminate parent rights. So at 15 months, when HHS suggested that that be done and that it was time to move forward with termination, the guardian ad litem said we don't do that in this county.

**LATHROP:** Were the parents family members of yours?

**HEATH JOHNSON:** Yes.

**LATHROP:** Did I understand that from your testimony?

**HEATH JOHNSON:** Correct. Yes.

**LATHROP:** What county was this?

**HEATH JOHNSON:** It was Wayne County.

**LATHROP:** OK. And do you see this as a problem-- statutory problem or is this a particular judge that has a philosophy that is-- allows something like that to happen?

**HEATH JOHNSON:** You know, it was interesting listening to Senator Chambers talk about the judges and the judges in Omaha. And I don't have any-- absolutely no clue what that would be like, but I know that it extends into the north-central part of the state. The thing that I guess I found most disturbing was I, as a foster parent, had nowhere to go, nobody to talk to, nobody to say, wait a minute, these things

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are not completed, wait a minute, these things aren't done. Our guardian ad litem is supposed to be me, it's supposed to be the parent, it's supposed to be the one saying, yeah, wait a minute, these things aren't done. And nobody was concerned with that. So I don't know. I guess I think the earlier that we start having that conversation in allowing the parents to say, you know, you're on-- you're on the clock and you need to show your resolve to get this done and at least make small steps towards their own reunification, the better off we are. If they're not going to show that progress then I think the clock is ticking for a child that we took home at birth and a child that we took home at three months.

**LATHROP:** OK. I don't see any other questions. Thanks for coming here,--

**HEATH JOHNSON:** Thank you. Appreciate your time.

**LATHROP:** -- sharing your story. Anyone else here to testify as a proponent of LB389?

**KIM HAWEKOTTE:** Good afternoon again, Senator Lathrop and members of the Judiciary Committee. My name is Kim Hawekotte, K-i-m H-a-w-e-k-o-t-t-e, and I am the executive director at the Foster Care Review Office. I've already talked to you about what the FCRO does do. Basically, LB389 codifies into statute a lot of case law that's happened over the last five to eight years by our Supreme Court. Senator Howard did a great job of going through and my testimony lays it out exactly how it codifies and sets it out now into statute so it's very clear and applied the same way across the state instead of differently, as we see in some areas of the state. Also, I want to-- to just also show the correlation between Senator Wayne's, bill, LB92, that dealt with the strict rules of evidence in termination of parental rights. Between that statute, that bill, and this bill, you would then know exactly how all termination of parental rights hearings are to be held, what the burden of proof is, and what people need to show. I think Senator Howard also listed out, and you have a handout from her, with regards to some of the data. That also is in my testimony. I included with my testimony one other thing that I just quickly want to bring, too, and it's an article from the Zero to Three national organization on the importance of those developmental years of three years of age and what other states have done to achieve permanency for children. And by permanency I mean returned to the parent as much as any type of adoption or other permanency. I think the scariest thing about article-- that article when I read it is that

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90 percent of my brain was developed by the age of three. That's really kind of scary. And we think about all the children that we see and the traumatic experiences they have, you think about those first, first three years, how imperative it is that we start dealing with those first three years. We thank Senator Howard for-- for spurring the long-needed discussions that need to happen. I've been in juvenile court for over 25 years and, like I said, there's a couple other things that we do need to work on that she discussed. First, under our statute, timely adjudications are to occur within 90 days. I can tell you, based upon our review and data, that happens maybe in about two-thirds of the cases. So we have a third of the cases that sometimes it's taken a year or two years to get adjudicated, which means services haven't even started for the family. Second thing is failure to timely file termination of parental rights. It says in our statute that the county attorney shall file a termination of parental rights. I have many counties in the state who county attorneys refuse to file. I'm not quite sure how you can refuse when the statute tells an attorney you have to do something, but they do. So we need to come up with a better mechanism in order to-- to ensure that our legal parties are actually doing what they're supposed to be doing. Some states do require that the Health and Human Services can also file a termination of parental rights, being they're the caregiver of the child. The other thing that I just wanted to bring up lastly was LB388, where we talked about the exception hearings, that also needs to be read together with LB389 so we make sure that cases are moving forward and when termination of parental rights happens we are available and we know what the situation is and so do the parents know what the situation is. Thank you again for your concern for Nebraska children and family and youth, and I'll be happy to answer any questions.

**LATHROP:** Senator Wayne.

**WAYNE:** How would you feel about raising the burden of proof to reasonable doubt to match a Indian Welfare Act?

**KIM HAWEKOTTE:** Do you want my former county attorney hat? I'd say no. I think it would be difficult in some of these cases to do the beyond a reasonable doubt. I think that in the Nebraska Indian Child Welfare Act, part of the difference is we require active efforts from that very, very beginning. And so once you require active efforts, the beyond a reasonable doubt is much easier to show.

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**WAYNE:** The reason why I ask is there's been a few Supreme-- a-- a few federal courts who have now found that discrepancy in termination unconstitutional. And particularly with the state of Nebraska and our constitution outlawing affirmative action, anything based off of race on the-- as far as the state is concerned, I think it's something we as a Legislature probably need to start thinking about as it relates to termination of parental rights and the separation of burden of proofs between two classes of individuals based off of ethnicity.

**KIM HAWEKOTTE:** And I don't disagree, Senator. One thing that I'm really hoping will help educate all of us sitting in this room is those 93 children that have been out of home continuously for five years or longer. We are doing a collaborative study now with the University of Nebraska-Lincoln with some certified law students to come in, looking at the data, figuring out what were the systemic errors that occurred so that we can then try to fix some of those systemic errors. Because in my opinion, we should never have a child in this system out of years five, five years or longer. Some are up to 10 and 13 years. The sad thing is 16 of those kids are age five to ten, which means they've been in their entire life. The other sad thing is 80 percent of them are from the Eastern Service Area.

**WAYNE:** And I just want to put on the record I am involved in the case where on the 19th the kid ages out at age 19, and he has been-- I been-- I've been his guardian ad litem for the last six years. And he's been in the system since 2009, out-of-home placement the entire time. The parent lost parental rights and we've quite never figured out how to find him permanency--

**KIM HAWEKOTTE:** So--

**WAYNE:** -- [INAUDIBLE] .

**KIM HAWEKOTTE:** Sorry, Senator. And that's why my hope is by looking at this data and this research we'll be able to tell, was it a legal issue, was it a court issue, was it an HHS issue, was it all of the issues? But how can-- we can't correct problems until we know what they are.

**WAYNE:** Agreed. My issue is more one particular person, but I'll leave that to Senator Chambers.

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**LATHROP:** I think that's it. Thanks, Kim. Anybody else here to testify as a proponent?

**JULIET SUMMERS:** Good afternoon, Chairman Lathrop, members of the committee. My name is Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s. I'm representing Voices for Children in support of LB389 as amended by AM209. Our child welfare system should function to strengthen families, minimize trauma to children through swift and thoughtful action. Voices for Children in Nebraska supports the white paper copy of LB389 as an overdue update to our statute governing termination of parental rights. In 2017, just over half, 50.7 percent, of all children exited foster care by reunifying with their original families. This is good but could be better, because family reunification, if possible, is the best outcome for children, and meaningful family engagement, assessment, case planning, and service delivery are key in achieving stable and successful reunification. To that end, we did have a concern with the introduced bill's provision shortening the time line to TPR for children under age four, and we appreciate Senator Howard's willingness to compromise by removing that provision this year. We look forward to working together on solutions to speed the process to permanency for all children but particularly for children in those tender bonding years. Where family reunification is not possible due to risk or safety needs, children deserve swift and thoughtful action in moving to an alternative permanency plan. To that end, we support LB389's inclusion of a parent or coparent's prior sexual assault, labor trafficking or sex trafficking of another minor child as a ground for TPR without requiring reasonable efforts to reunify the family first. Removing the ground "unfit by reason of debauchery" modernizes our statute and the replacement language is clearer and more concrete in what must be proven to show a parent's substance use or abuse rises to the level requiring TPR. We know that there is much work still to be done to achieve timely permanency for children lingering in limbo in our child welfare system, but LB389 is a sound step in the right direction for children who cannot find permanency through family reunification. I'd like to say-- thank Senator Howard for taking on this issue on behalf of Nebraska's vulnerable children. I'd also like to thank the committee for your time and consideration and all your hard work on behalf of our state's children.

**LATHROP:** Oh, Senator Brandt.

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**BRANDT:** Thank you for appearing before the committee. I guess I'm just curious what your organization's concern was with the shortening the time line.

**JULIET SUMMERS:** Absolutely. So it's-- it's a hard balance because we-- we absolutely are-- are aware of all of the research about those early years and-- and how important bonding is and-- and finding permanency very quickly, whether that's through reunification or otherwise. Our concern with setting a hard time line that was much shorter was-- there were a couple reasons behind it. So one was process concerns that, you know, I think as-- as you've heard or-- or may-- may hear over your work in this committee, we have a long ways still to go in making sure that our spectrum of services we're offering families is complete and appropriate and we're matching children and their parents to the needs that, you know, that they present in terms of safety and risk. So as a former attorney working in juvenile court, I can attest that, you know, sometimes it would take six months or longer to get to adjudication where-- and the child's been out of home that entire time. It might take even longer than that for the department to set up whatever service or treatment might be necessary in order to try to achieve reunification. And given that if we can successfully and safely reunify kids with their parents, that's the best outcome for everyone, including for the child long term. We want to make sure that we're getting those other pieces right before setting-- setting a hard limit on-- on that specific time line. We were also a little bit concerned about how it might interface with sibling sets. So when you have a parent who has a child who's eight, a child who's five, and a new baby, that the new baby has a different standard for when their parental rights might be terminated than the other children in that sibling set. And given how vitally important sibling relationships are, we were-- we wanted to do some further work on that front too.

**BRANDT:** So if I heard you correctly, if the resources were available you would have no objection to shortening the time line.

**JULIET SUMMERS:** I think if we could-- if we could really look at our system and say from day one we are matching families to services and we have evidence, say, here in this case, that everything was set up and parent wasn't complying and that is no fault of the child, we know how important that speed, that swiftness is, then I would say yes. Our concern was we know, as a practical matter, we're not there yet and that sometimes the backlogs for case processing and the backlogs for treatment are almost as long as-- or as long as that, that time line.

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**BRANDT:** All right. Thank you.

**JULIET SUMMERS:** Yeah. Thank you, Senator.

**LATHROP:** I have-- see no other questions. Thanks for being here today.

**JULIET SUMMERS:** Thank you.

**LATHROP:** Any other proponents on LB389? Good afternoon.

**SARAH HELVEY:** Good afternoon again, Senator Lathrop and members of the Judiciary Committee. My name is Sarah Helvey, S-a-r-a-h, last name H-e-l-v-e-y, and I'm a staff attorney and director of the Child Welfare Program at Nebraska Appleseed and we support LB389 with amendment, AM209, that Senator Howard provided today. With the proposed amendment, we believe that LB389 makes needed changes to the TPR statute which clarify and update language. We also support the addition of labor and sex trafficking of minors as exceptions to the reasonable efforts requirement. We do have one suggestion for an additional amendment, which we have already shared with Senator Howard but wish to put on the record. The bill, both the white copy amendment and the introduced version, clarifies that in order to terminate parental rights the court must find, by clear and convincing evidence, two things: one, that termination is in the child's best interest; and that the parent is unfit by reason of conduct or condition which renders them unable to properly care for the child due to one of the enumerated conditions. And that's a-- I think helpful new preamble to that section. However, the Nebraska Supreme Court has repeatedly held that one of the enumerated grounds, the child has been in out-of-home care for 15 or more out of the most recent 22 months, as the federal-- federal language, is not in and of itself evidence of parental unfitness, and that in those cases the state must separately prove unfitness in order to meet constitutional due process requirements. So therefore, we would just suggest that the 15 out of 22 ground be specifically excepted from the language suggesting that all of the enumerated grounds are evidence of unfitness. We also just want to thank Senator Howard for her amendment. We had similar concerns that Voices for Children expressed with the termination provision for children under age four, and appreciate. We know that that's an issue. We look forward to continuing to work on that and improving our system. And we want to thank Senator Howard for all of her efforts to improve Nebraska's child welfare system and strive for permanency for all children.

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**LATHROP:** I see no questions. Thanks, Sarah. Anyone else here to testify in support?

**TIM HRUZA:** Good afternoon, Chairman Lathrop, members of the Judiciary Committee. My name is Tim Hruza, H-r-u-z-a , appearing today on behalf the Children and Families Coalition of Nebraska. I've distributed to you a written statement, but I'm going to summarize my remarks very quickly for you because I think most of the ideas and thoughts that we have, have been incorporated in earlier testimony. I just want to start by thanking Senator Howard for taking the time to meet with us and a number of stakeholders with regard to some concerns about the original draft. The amendment does resolve some of our concerns with how the bill was drafted and we, therefore, support AM209 to LB389. The other thing that I might say just very quickly is that I think that our members are just as passionate as Senator Howard is with respect to the concerns that have been voiced about the young children who are languishing in foster care. And we have committed, especially during our conversation this morning about this bill, we are committed to working with her to address that issue moving forward. I thank her again for all of her work on the bill and for taking the time to listen to us and work with us. We look forward to working on this in the future. Thank you.

**LATHROP:** I see no questions. Thanks, Tim. Any other proponent testimony? Anyone here in opposition to LB389. Anyone here in a neutral capacity? Seeing none, Senator Howard to close. And she waives closing. I do have some letters that have been received by the committee on LB389. In support from Carley Lafler; Marcia Blum, National Association of Social Workers; and Maralee Bradley. In opposition: Eve Bleyhl-- Bleyhl, Nebraska Family Support Network; Austine Watzke; Terri Knutson; Amy Miller, of the ACLU; Matt Wallen from the Nebraska Department of Health and Human Services, Division of Children and Family Services. And with that, we'll close the hearing on LB389 and bring us to our last bill of the day, LB490, and Senator Wayne.

**WAYNE:** Thank you, Chairman Lathrop. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I will tell you that after introducing this bill I think it's better for us to study this issue a little bit more because there are pension issues with the overall merger of what I was trying to do. There is an amendment I filed on this bill to give this committee an idea of how they can move forward with the district clerks. But again, I think there's a bigger issue that we need to

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continue to look at throughout the summer, because it-- it is still deals with pensions an elected positions. And maybe half of the LR can go to Government to look at a bigger picture of elected positions, and the other half stays here around the clerk-- court. How we got here, briefly, is simply when President Trump declared a holiday for George Bush's-- President George Bush's funeral, there was a state holiday. Well, the court said they were gonna be open. And I called the bailiff and asked the bailiff, do we still have court? And the bailiff said, well, I think so but the county hasn't declared if it was a holiday. And I said, why does that matter? She told me she works for the county. I thought that was kind of odd that court personnel don't work for the court. It's really that simple. That's where the bill came from. After I introduced the bill, we found out there are pension issues and I am not smart enough to calculate how to solve all the pension-- pension issues, and that's why I'm essentially not withdrawing but am withdrawing. I think it's a conversation we need to continue to have around the court controlling their personnel. And with that, if anybody's here to really testify strongly, there's really no need to really strong, but there are some people from the court who I think it's important for them to establish a record of why it's important as we continue to look at this idea.

**LATHROP:** Any questions for Senator Wayne? I see none. Proponent testimony on LB490. Welcome to the Judiciary Committee.

**JUDY BEUTLER:** Good late afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Judy Beutler, J-u-d-y B-e-u-t-l-e-r. I am a deputy State Court Administrator for the Nebraska Supreme Court and I'm here on behalf of Corey Steel, the State Court Administrator, who is-- had a previous family scheduled-- a previously scheduled family obligation. So he's unable to be here. We want to thank Senator Wayne for his interest in increasing efficiency and effectiveness within the Nebraska court system. We support the concept of LB-- of LB490 that all who work in any capacity for the court system should be under the judicial branch of state government. We also support AM190, the amendment which proves-- provides a local option for consolidating the duties of the Clerk of the District Court with those duties of the clerk magistrate in the county court. This particular issue has been studied recently by the Nebraska Supreme Court with the help from a State Justice Institute grant. And the National Center for State Courts and the Administrative Office together assessed the operations of both of these offices, and a copy of those results have been given to you also today. Over time Nebraska has consolidated most court

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operations at the state level. Only one piece lies outside the authority of the Supreme Court in the Administrative Office of the Courts and Probation, and that's the district court clerk's office. Think for a moment how confusing it is for the public. The first level of court is the county court, but it's staffed by state Supreme Court employees. Then the second level is a district court and they're staffed by county employees working under each separate county. In addition, there are two administrative systems for the district court administration. There are counties with a clerk of the district court that's elected and then there are counties where the clerk of the-- where there is an ex officio clerk of the district court. The current system is confusing at the very least. Current statute does allow for a county with an ex officio clerk of the district court to transfer district court duties to the state level upon an agreement with the State Court Administrator. And in fact this has been done with-- in 4 of the 37 ex officio counties: Polk, Frontier, and just recently Deuel, and Garden Counties. These counties now have a single-tier court clerk's office and they're functioning well. Let me be clear, no county, under the amendment AM190, is mandated or required to consolidate. Each county board still has the local and control-- the local option and remains in control to decide what's best for their county in regards to the elected position of the clerk of the district court. The question is not whether elected clerks of the district court serve their electorate. The question is, what judicial branch structure provides the best opportunity for efficiency and effectiveness? It would be difficult for any business or organization to operate efficient-- efficiently if a single portion of the employees of that organization were under a different management, resulting in no authority over them. Yet, that is where we are today in the judicial branch. Chief Justice Heavican has a fundamental belief that if the court system is going to be held accountable for all court functions, all functions should be under the state judicial branch. And we believe that the amendment AM90 [SIC] would result in a more efficient and effective court system. Thank you for your time.

**LATHROP:** Thank you, Judy.

**JUDY BEUTLER:** Uh-huh.

**LATHROP:** I don't see any questions.

**JUDY BEUTLER:** Thank you.

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**LATHROP:** Next testifier. You guys are together. All right. Good.

**ERIC ASBOE:** We're tag teaming.

**LATHROP:** You're in the standby chair. Anyone else here to testify as a proponent of LB490? Anyone here in opposition?

**JANET WIECHELMAN:** Good afternoon, Senator Lathrop and Judiciary Chair people. My name is Janet Wiechelman, J-a-n-e-t W-i-e-c-h-e-l-m-a-n. I'm the clerk of district court from Cedar County and I am the legislative liaison for the Clerks of the District Court. We are here in opposition to LB490, the original bill, and AM190, which was filed as an amendment on Friday. Mrs. Beutler referred to the study that was done by the National Center of State Courts two years ago. After that study was done, Senator Watermeier brought LB544 in 2017 that provided the mechanism to transfer the clerk of district court ex officios and the full-time CDCs, which is part of the AM amendment that's in there. If you look at the testimony and the exhibits that were offered two years ago, our organization was in opposition to that bill. And overwhelmingly there was responses from the county boards and supervisors also in opposition to that. Due to the fact of Senator Wayne's comments as far as having a summer study, I'm not going to belabor the point anymore. We are opposing it and we'll stand on that. However, I'd like to bring two issues to the committee as far as the fiscal note. The first one is-- talks about the revenue that's going to be generated from the IV-D funds. I have handed out a worksheet that we use. Part of our contract each county clerk of district court has with HHS is to record and-- and maintain the child support records for HHS. In turn, we receive reimbursement of our direct expenses, which are our salaries and also our office supplies expenses. I can't, from looking at the fiscal note, I cannot see if that entails the total amount that the budgets are-- each county isn't getting in their budget, if it's actually including the fact of what is the state portion would be and what the county portion. If we would be moving to the state, I believe the county should still be entitled to their portion because they are still going to be maintaining the office supplies. They're still going to be maintaining the equipment, some of the equipment for those clerks of district court who would then become clerk magistrate offices. Also within that, the counties also receive, which is considered indirect, cost. I've also included in that a calculation of that allot-- allocation from Cedar County. That indirect is the-- for grounds and maintenance of the courthouse for the physical space that's being used by the clerk of the district

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court. Again, majority of that allocation are county expenses. So I would hope that when it's looked further, that those revenue note is looked at. Secondly, I'd like to bring up the issue two years ago and also in this, when this conversation comes around, it's-- it's said it can be a property tax relief to those counties. I have provided to you some examples of what is actually going to be property tax savings to the county, and I use my property tax as one example. Based on a \$250,000 house in Cedar County, the difference of taking my salaries of me and my-- my deputy and our benefits, it is going to be worth one large pizza. It's not a significant in-- decrease on property taxes. I see the red light is on. Thank you.

**LATHROP:** Yeah. Thank you. And I don't see any questions either.

**JANET WIECHELMAN:** Thank you, Senator.

**LATHROP:** We'll let you get to your weekend.

**JANET WIECHELMAN:** Thank you.

**LATHROP:** Thank you for being here today. Anyone else here an opposition? Anyone here in a neutral capacity? Senator Kolterman.

**KOLTERMAN:** Good afternoon.

**LATHROP:** Welcome.

**KOLTERMAN:** I wouldn't want to come and oppose Senator Wayne. Thank you for having this. My name is Mark Kolterman, M-a-r-k K-o-l-t-e-r-m-a-n. I'm Chair of the Retirement Committee. I'm here more than anything to let the Judiciary Committee know that the proposed changes under LB490 and AM190 would have a-- a significant impact, including potential funding impacts, on several retirement plans. We'd be looking at Douglas County, Lancaster County, and NPERS and the PERB really don't have any control over either one of those plans. Language in these plans would need to be added to address a number of questions that were raised by NPERS in their fiscal note on the bill, which you can see in your information. One final note: Under Legislative Rule 5, 15, any inter-- any bill introduced that may have a funding impact on a public retirement plan must have an actuarial cost study completed and distributed to each member of the Legislature prior to a vote on the Final Reading. If the bill would move forward, and I understand it's probably not going to, but if they want to continue to look at that my staff and I will work with Senator Wayne as well as Judiciary

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Committee and all necessary entities to make sure that the retirement-related issues are addressed and then-- and any necessary actuarial cost studies are completed and distributed to the members of the body. We're glad to help. We're here to help. But it's my understanding it's probably not going to move forward. Just wanted you to be aware of the challenges that exist. And I know you want to get out here. It's Friday afternoon. So thank you.

**LATHROP:** That may account for the fact that there are no questions, Senator Kolterman, or-- or it might be the clarity of your testimony.

**KOLTERMAN:** Thank you.

**LATHROP:** In either case, thank you for being here. Anybody else here in a neutral capacity? We have two letters: one in opposition from the Knox County Board of Supervisors; and a neutral letter from Randy Gerke, Nebraska Public Employees Retirement System. With that, Senator Wayne to close--

**WAYNE:** I will be very brief.

**LATHROP:** -- on LB490.

**WAYNE:** I'll be very brief. I do think it's important any agency have control over the employees that impact them. And I think it's something the judiciary branch and the Judiciary Committee should seriously look at to making sure that if we're gonna hold the Chief Justice accountable for how they run the guys, they should be able to control who operates. On the separate note of the clerks, I think it's important probably to do a overall study on all positions around the entire state. If they don't have taxing authority and they don't have a budget authority, we ought to figure out if we should still be electing them rather than the county appointing them. So with that, I'll close.

**LATHROP:** OK. Do it. That will close our hearing on LB490 and our hearings for today. Have a great weekend.