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LATHROP: We can begin. Good morning and welcome to the Judiciary Committee. I'll just say at the front end that I have a little recital that I go through before we begin the hearing. And so you'll see senators, they know it takes about 10 minutes, so they'll be here before we start actually getting into the bills. And I think they've already heard this enough. So with that, good morning and welcome to the Judiciary Committee. My name is Steve Lathrop and I represent Legislative District 12, and that includes Ralston and parts of southwest Omaha. I Chair the Judiciary Committee. Committee hearings are an important part of the legislative process. Public hearings provide an opportunity for legislators to receive input from Nebraskans. This important process, like so much of our daily lives, is complicated by COVID. To allow for input during the pandemic, we have some new options for those who wish to be heard. I would encourage you to strongly consider taking advantage of the additional methods of sharing your thoughts and opinions. For complete detail on the four options available, go to the Legislature's website at nebraskalegislature.gov. We will be following COVID-19 procedures in this session for the safety of our committee members, staff, pages and the public. We asked those attending our hearings to abide by the following procedures. Due to social distancing requirements, seatings in the-- seating in the hearing rooms is limited. We ask that you enter only when necessary for you to attend the bill in progress. Bills will be taken up in the order posted outside the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. The committee will pause between each bill to allow time for the public to move in and out of the hearing room. We request that you wear face covering while in the hearing room. Testifiers may remove their face covering during testimony to assist the committee and transcribers in clearly hearing and understanding the testimony. And the pages will be sanit-- sanitizing the front table and chair between testifiers. When public hearings reach seating capacity or near capacity, the entrance will be monitored by the Sergeant at Arms who will allow people to enter the hearing room based on seating availability. Persons waiting to enter a hearing room are asked to observe social distancing and wear a face covering while waiting in the hallway or outside the building. The Legislature does not have the ability, because of the HVAC project, of an overflow room for hearings which may attract many testifiers and observers. For

hearings with large attendance, we request only testifiers enter the hearing room. We also ask that you please limit or eliminate handouts. Due to COVID concerns we're providing two options for testifying at a committee hearing. First, you may drop off written testimony prior to the hearing. Please note that the following four requirements must be met to qualify to be on the committee statement. One, the submission of written testimony will only be accepted the day of the hearing between 8:30 and 9:30 in the Judiciary Committee hearing room here in 1113. Number two, individuals must present the written testimony in person and fill out a testifier sheet. Number three, testifiers must submit at least 12 copies of their statement. Four, testimony must be written, a written statement no more than two pages, single-spaced or four pages double-spaced in length. No additional handouts or letters from others may be included. This written testimony will be handed out to each member of the committee during the hearing and will be scanned into the official hearing transcript. This testimony will be included on the hearing statement if all four of these criteria are met. And of course, the second way to testify is in person. Those attending public hearings will have an opportunity to give verbal testimony. On the table inside the doors, you will find yellow testifier sheets. Fill out a yellow testifier sheet only if you are actually testifying before the committee, and please print legibly. Hand the yellow testifier sheet to the page as you come forward to testify. There is also a white sheet on the table, if you do not wish to testify but would like to record your position on a bill. This sheet will be included as an exhibit in the official record. If you are not testifying or submitting written testimony in person and would like to submit a position letter for the official record, all committees have a deadline of 12 noon the last work day before the hearing. Position letters will only be accepted via the Judiciary Committee's email address posted on the Legislature's website or if they are delivered to my office prior to the deadline. Keep in mind that you may submit a letter for the record or testify at a hearing, but not both. Position letters will be included in the hearing record as exhibits. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally 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 names and spell them for the record. If you have copies of your testimony, bring up at

least 12 copies and give them to the page. If you are submitting testimony on someone else's behalf, you may submit it for the record, but it will not-- but you will not be allowed to read it. We will be using a three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning. And when the red light comes on, we ask that you stop with your testimony. As a matter of committee policy, I would like to remind everyone the use of cell phones and electronic devices is not allowed during public hearings, though senators may use them to take notes or stay in contact with staff. At this time, I'd ask everyone to look at their cell phones and make sure they are on the silent mode. A reminder that verbal outbursts or applause are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave the hearing. Since we've gone paperless this year in the Judiciary Committee, senators will instead be using their laptops to pull up documents and follow along on each bill. And finally, you may notice committee members coming and going. That has nothing to do with how they regard the, the importance of the bill being heard, but senators may have other bills to introduce and other committees or have other meetings to attend to. And with that, I'd like the committee members to introduce themselves, beginning with Senator DeBoer.

DeBOER: Good morning, everyone. My name is Wendy DeBoer, District 10, which is Bennington and parts of northwest Omaha.

PANSING BROOKS: Good morning. Patty Pansing Brooks, Legislative District 28, right here in the heart of Lincoln. And I'm Vice Chair of the committee.

SLAMA: Julie Slama, District 1: Otoe, Nemaha, Johnson, Richardson and Pawnee Counties.

McKINNEY: Good morning. Terrell McKinney, District 11: north Omaha.

LATHROP: Assisting the committee today are Laurie Vollertsen, our committee Clerk; and Neal Erickson, one of our two legal counsel. We are also assisted by pages Evan Tillman and Mason Ellis, both students at UNL. And with that, we will begin the first bill, which is LB57, and that one is mine.

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PANSING BROOKS: Good morning, Chairman Lathrop. Welcome to your Judiciary Committee.

LATHROP: Good morning--

PANSING BROOKS: We now open on LB57.

LATHROP: Good morning, Vice Chair Pansing Brooks and members of the Judiciary Committee. My name is Steve Lathrop, L-a-t-h-r-o-p, I represent District 12, and I'm here today to introduce LB57. This is a very simple bill. As I'm looking around the table, I think everybody has gone to law school or in law school, so you understand what hearsay is. It's an out-of-court statement offered to prove the truth of the matter asserted. It is-- generally, hearsay is inadmissible unless it falls within an exception. Most of the states in the country have followed the federal rules of evidence. When Nebraska adopted the federal rules of evidence, we did not include in our list of exceptions to hearsay. The one under consideration today, which is "A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it". I'm not exactly clear why we didn't include that. The advantage to including it is we, we more generally accept the federal rules. And when we accept a, an exception to hearsay that is recognized in the federal rules of evidence, we have the benefit of all the interpretations that have come from the federal rules and from other states that have adopted that. And today I am pleased that behind me you will hear from Chris McMahon, who is a recent graduate of Creighton Law School. And some of you who were here last year will recognize Mr. McMahon was here last year; as well as Professor Mangrum, my old evidence teacher, who will testify today. They were here last year on the, the, the out-of-court lineup, pretrial identification exception to hearsay, which we passed. And I think that's benefited both sides in the criminal trial process. And today we have a very simple exception. And those that will follow me can explain the difference between this exception and excited utterances, which I'm sure you're all anxious to hear. And with that, I will waive close. It doesn't look like we have any letters and we have two witnesses that I think would be-- or testifiers as proponents.

PANSING BROOKS: Thank you, Senator Lathrop. Anybody have a question for Senator Lathrop? I actually just have one. I just wanted to know,

is there any question or any kind of definition of not immediately after? Is that pretty much like within five seconds or is that within a day? What does immediately after--

LATHROP: So I'm sure there are a lot of cases. Since we don't have it in our rules, I'm not familiar with it.

PANSING BROOKS: Yeah.

LATHROP: But I can assure you that Professor Mangrum is very familiar with all of the cases interpreting this. I walked in with him today and I said, so tell me, what's the difference between an excited utterance and this exception? And it really is the foundation, and he'll be able to talk about that.

PANSING BROOKS: OK, perfect.

LATHROP: How quickly or whether someone is perceiving it at the moment or immediately afterwards.

PANSING BROOKS: Well, for those of us legal geeks in here, this will be an interesting discussion. Thank you.

LATHROP: Well, we have the right people here to engage in that.

PANSING BROOKS: That's sounds good.

LATHROP: All right. Thank you.

PANSING BROOKS: Wonderful. Thank you. And now we would like to call for the proponents of LB57. Proponents. Welcome.

CHRISTOPHER McMAHON: Good morning. Thank you. My name is Christopher McMahon, it's M-c-M-a-h-o-n. Thank you, Mr. Lathrop, for the introduction. So, Mr. Lathrop is right, this is a very simple bill, and I was the one who wrote it, the initial proposal. It's very simple, it's just a simple update to modify the Nebraska rules of evidence so that they, that the hearsay exceptions exactly match the federal rules at this point. Now, the book I have here, which some of you have probably seen before, some of you may own, is a, is a compilation of the most information on Nebraska evidence that, that exists in one tome. And it was it was written by the man who is going

to follow me, so he'll be the perfect person to explain scenarios. But I would like to, to answer your question in kind of the classic example I think of. And Professor Mangrum can, can correct me if I'm wrong, but when I think of present sense impression, it's if I wake up in the middle of the night because of a lightning strike, you know, lightning hit and thunder right outside the window and I looked over at my wife and I say, oh, my gosh, it's, it's 4:00 a.m.. The lightning just hit at 4:00 a.m.. And then the next day, I'm accused of some crime from, from that time period and I say, well, no, I didn't commit it. And I know that because, you know, my wife and I, we were in bed and lightning and thunder, it was 4:00 a.m.. Well, right now in Nebraska, the way the rules are, and Professor Mangrum can correct me if I'm wrong, but that would be inadmissible hearsay. If we modified this, we would match the federal rule and every other state in the country, and that would be admissible in a court of law. So, so that's my understanding of the present sense impression. But I just briefly wanted to mention that. So Professor Mangrum, for those who went to Creighton, they're familiar with them. They probably had him for an evidence professor. If you went to Lincoln for law school over the past 40, 45 years, you probably are familiar with Professor Kirst, Roger Kirst. So if there's, if there's anybody who is-- who knew nearly as much about Nebraska evidence as Professor Mangrum, it would be Professor Kirst. And I did speak to him. I invited him to attend today. He told me that he is fully and happily retired, but we had a nice conversation. And he gave me a little bit of history because he, he became a professor in 1974 at Lincoln. And this, the, the articles in Nebraska were actually drafted the prior year, in '73, and enacted in '74. So he is very familiar with the history. And he said, Chris, you know, I remember last year when you, when you updated the rules for the pretrial identification, and that was very good. He said for this one, when Nebraska enacted the rules, they gave no justification at all. For pretrial identification, they had some reasoning. It was, it was flawed, but they had a basis for why they didn't enact that rule in '73. For this one, there was no basis at all. So he said, he said it's good that you're coming out to speak on behalf. But I guess that was it for me. If anybody has any further questions, I would invite you to take them up with Professor Mangrum. He is truly the expert on this topic.

PANSING BROOKS: Does that conversation with the fabulous Professor Kirst constitute hearsay or--

CHRISTOPHER McMAHON: I think. Yes, Your Honor. That is the proof to prove the truth of the matter asserted.

PANSING BROOKS: OK, then I trust it.

CHRISTOPHER McMAHON: Thank you.

PANSING BROOKS: So thank you. Anybody have any other questions? No. Thank you so much for coming today, Mr. McMahon.

CHRISTOPHER McMAHON: Thank you.

PANSING BROOKS: OK, next proponent.

RICHARD COLLIN MANGRUM: I'm Richard Collin Mangrum, and I'm here to answer any questions you may have. And I'll start with an answer to your original question, which was the perfect question. I'm gonna take my mask off here. And that is the timing of present sense impressions, and is there anything built into the rule that--

PANSING BROOKS: One second, could you spell your name and--

RICHARD COLLIN MANGRUM: R--

PANSING BROOKS: I'm sorry, for the record.

RICHARD COLLIN MANGRUM: Yes, I appreciate it. R-i-c-h-a-r-d, Richard, Collin, C-o-l-l-i-n, Mangrum, M-a-n-g-r-u-m.

PANSING BROOKS: Thank you.

RICHARD COLLIN MANGRUM: The present sense impression does not, on the face of it, define the medium. The words themselves are while perceiving or immediately thereafter. And but we do have, this was adopted in 1975 at the federal level, so we have almost 45 years of interpretation of that particular hearsay exception. It is-- it doesn't come up very often because it is so limited in time. But when it does come up, it is very useful. And so the timing itself, if you're talking about five minutes later, it's too late, right? Now, it

doesn't say that in the base of the statute, but all the cases say that, all those cases interpreting that. So it's while perceiving it or immediately thereafter. And one or two minutes timing wise, you won't see cases that are longer than one or two minutes around the country on that issue. So the idea and the rationale for the rule is that it is, it's not reflective. It's, it's, it's something that comes along with the experience and people didn't have enough time to think about and try to formulate an argument. Let me, let me put on the back side of why this is, it is a backstop to it. And that is the confrontation clause. So the confrontation clause is it trumps any hearsay statement that would be offered against the accused in a criminal case if it is testimonial in nature. And what that means is if the statement, even the immediate statement is made and the primary purpose is to testify, making something, a statement that could be used in court against a criminal defendant, even if it falls within the present sense impression, it would not come in because it would be kept out by the confrontation clause. So the confrontation clause coexists with the hearsay rule. I see my yellow light is up.

PANSING BROOKS: That just warns you that you have one more minute so.

RICHARD COLLIN MANGRUM: OK. So here's the other thing that I think that's really important with this. It's unfortunate that the one they admitted was 803 (1)-- number 1. So in Nebraska, 803 (1) is excited utterance, 803 (2). So when people look at-- and they're, and they have experienced both state and federal, if they do any research, it's very confusing because the numbers don't match up. If I would have been recommending, even if they would have not adopted 803 (1), I would have put a link and started excited, you know, excited side-- as 803 (2) because when people look, I mean, we're a nation and the federal rules dominate the rules of evidence. So adding 803 (1) puts us in sync with all the other, all the other states and federal government. So when people do research or look at material, it makes sense to have that number. And so that's a, that's a secondary benefit. And as important, I believe, just to-- for us, for purposes of coherency, that we, we can use that to research.

PANSING BROOKS: Wonderful. Thank you for your insight, knowledge. And we're glad to have you here today. Does anyone have any questions? No?

RICHARD COLLIN MANGRUM: OK.

PANSING BROOKS: I think you've done your job. Thank you so much--

RICHARD COLLIN MANGRUM: Thank you.

PANSING BROOKS: -- for coming here today, Professor. Any additional proponents? OK, any opponents to LB57? Anybody in the neutral? I don't think-- I don't see anybody, so that concludes our hearing on LB57. There were no proponents, no opponents and no neutral letters. Also, there was no written testimony that was dropped off. So that concludes our hearing for LB57, and I give it back to Senator Lathrop.

LATHROP: Thank you, Vice Chair. We will now take up LB155, that brings us to Senator Wayne. Welcome to the Judiciary Committee.

WAYNE: Thank you, Chairman Lathrop. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 3-- 3, 13, which is north Omaha, northeast Douglas County. I saw Professor Mangrum, and I haven't seen him in a while. So I don't know what that bill was, but if he's involved, it's a good bill. He's the reason why I know everything about the rules of evidence that I know today. Great professor. This is a very interesting bill. This committee will recall, and I won't go through it all because it should be pretty short, last year we passed a bill regarding paternity for juveniles. And a situation arose, I had a case, and it falls into a small line of cases, but it's, it was a gap in our law that this committee corrected where we have a presumption in Nebraska of if somebody is married, the child is presumably theirs. And you can't override that presumption unless you have DNA evidence. An affidavit isn't enough. So the case in particular that I had was a young lady who left Alabama, an abusive relationship about 20 years ago, came here, had a child. That child had meth in his system and was part of the juvenile proceeding. Well, the actual father, the person I represented, could never get into court because they couldn't establish paternity, although the case worker and everybody knew that they were the father because the state had the child and the child wasn't made available for DNA testing. So we passed a bill, I believe it was LB91. Then we had COVID. And what happened is a Supreme Court ruling came out on the exact language or section we were dealing with during the summer of COVID. And as you all know, our bills don't become law until 90 days after session. So the Supreme Court ruled on that section of law without interpreting our bill strictly due to timing, which is going to be ironic because

this afternoon I'm going to talk about timing too. And so judges started ruling, which I think was not in favor of the intent of what we had just passed, but it wasn't law. And so I do want to thank DHHS. I just passed out an amendment where I work at the department to clarify to make sure this doesn't happen again. And the amendment before you, AM69, is the department and I worked together to come up with language to remedy not only the case law that was just done, but the intent that this body passed last session of making sure that if there is a child in a juvenile proceeding, we want to know who the actual father is regardless of marriage, because that father should be involved in that juvenile proceeding. So I worked with Bo, and Bo did a great job coming up with some additional language. And so we got this amendment off this morning after our meeting yesterday, and this is what I'll be asking the committee to adopt. And with that, I'll answer any questions.

LATHROP: When is this going to, when is this going to play? So if there's a juvenile court proceeding-- I'm trying to read your amendment real quick. But if there's a juvenile court proceeding, juvenile court thinks they got mom and dad in front of them. And in fact, there's another person that says, I'm actually the dad. This looks like you don't automatically in, in your client's case, being the, maybe the biological father that wants to get himself involved in the juvenile court proceeding, it looks like the court can say, well, I don't know, this guy's been treating this child as his own for, for 17 years. I'm not letting you in or being-- and establish that you're the biological father.

WAYNE: Correct. And part of it is, is we have-- we were trying to find a balance, and that's what we've been struggling with. And that's kind of what the court case was about. We were trying to find a balance saying, if you never had a relationship with the kid, then you can't come in 10 years later where stepdad has always been with the kid and now claim, I'm biological dad, I want to intervene. We want the court to at least have some discretion to look at did you abandon the kid or not? And we're not going to allow just random people from other states to continue to fly in and rehash out the case, as it could draw draw out those juvenile proceedings. Do I think we should always allow bio? Yes, but I think it will delay the process.

LATHROP: So the court can order the test, but there are certain things, considerations where they can say not in this one. So what's left? Who's going to, who's going to be able to get the test if this is the standard?

WAYNE: Who would be able to get the test is probably bio dad. I mean, that's what-- we're trying to define bio dad. But I do have to be, I do have to recognize that there are cases where bio dad has never been involved, and that's what we're trying to prevent is, is the the fly-in of a dad who's never been involved and just wants to be a dad today.

LATHROP: So this will be the dads who have been involved that will--

WAYNE: Correct.

LATHROP: -- be able to clear these hurdles? Like you're authorizing it and putting some hurdles up and you've got to be able to clear the hurdles and that, that would require basically that you're involved in the child's life?

WAYNE: Correct, that you're involved in some capacity. And usually the caseworkers know. But again, this stemmed from, because of the presumption, the state had no obligation to even find bio dad if you were married. So there were a lot of bio dads out there who couldn't even intervene. But then we ran amok of some people coming in when the kid is 15 saying, I'm bio dad, I want to be here now. And we're-- I think that's better for the juvenile court to decide how to proceed.

LATHROP: So you can imagine that the legislative history you're laying down right now is probably going to be kind of important.

WAYNE: Correct.

LATHROP: And so I'm going to ask a couple of questions to give you an opportunity and maybe just a scenario. Let's say that the juvenile court is involved in a, in a proceeding, there is somebody that signed the birth certificate and mom are parties to this juvenile proceeding, and the child is three. Dad hasn't been around, but it's a young child, one, two, three, a toddler. Dad-- can dad intervene or because he hasn't, I mean, does your criteria allow for the father under those circumstances to at least get the test and, and attempt to intervene?

WAYNE: Yes, he will be able to at least file a motion. And that's what I'm trying to get, at least file the motion and have a hearing. They have to have a hearing on it and the judge has to make a determination. And it says may consider, so he-- it's not a factor that he has to, they have to go through and find a finding of all of these. It says he may consider. But in that situation, we are trying to leave discretion for the court to to do that. I guess the whole purpose of juvenile court for me in being a practitioner of juvenile court is to try to do what's in the best interests of the child. And so I want the court to go through all those evidentiary equations to figure out what is in the best interest of the child and not have somebody who may not be in the best interest, although he's bio dad, to come in and intervene. Because also under that presumption, that bio dad, if not charged, that child would have to go with that bio dad, and that necessarily is not always the best-case scenario. So if the bio dad isn't also included in the adjudication, then by case law, that child has to be placed with that bio dad unless he's also being adjudicated. So we're trying to balance all that scenario. I mean, the cleanest language would be to allow the judge complete discretion on who can intervene, who can, who can get it. But I figured if I put at the judge's discretion, I would probably have a lot of people here testifying against it.

LATHROP: OK, well, we appreciate that. I, I-- this, this seems very consequential to me and a, and a consequential bill and a consequential amendment. I'm not, believe me, I'm not trying to argue. I'm just trying to understand. So consideration, and I'm looking at number (ii) on line 25 of your amendment, the (ii). The relationship between the child and the presumptive parent, that would be the guy that signed the birth certificate. And presumably, if that person has had a father/child relationship and then we get down to whether the-- pardon me, number (iv), the relationship between the child and the intervenor. So let me give you a scenario. Let's say that, that I'm the presumptive father because I signed the birth certificate. I've done all this, but I'm a terrible parent. So does that allow the guy who hasn't been involved to come in, would that be your expectation?

WAYNE: No, my expectation is, well, if you were the presumptive parent and there's some kind of neglect going on in the adjudication, that you would also be a part of the adjudication process. And if the bio dad in your scenario wants to intervene, then this gives him the

ability to file a motion to the court to get that test. And that court should or may consider these type of factors. That would be the scenario in that [INAUDIBLE].

LATHROP: One more scenario for you.

WAYNE: OK.

LATHROP: Let's say that this is headed for a termination. Like the, this mom and the, the presumptive father are doing meth, and they are, they're just not taking care of the kids. And bio-- the kids are now five, six and seven. Bio dad comes along and says, I may not have had a relationship with them, but they're actually my kids. You think they would get a test under that?

WAYNE: I think they get a test under that scenario, and there's also another proceeding to "disestablish" paternity in which they could file a matter in district court to, to get a paternity test underneath. If you believe you're the father, you can always file a paternity action in district court. The issue was in juvenile court, and particularly the issue is when the juvenile is in state custody. That, because then the state has to make that child available. And the problem that I ran into, actually, in Kearney was an attorney contacted me and raised this issue after the Supreme Court decision was without a order from the court, the question is, who pays for it? And so the state has taken the position that because it wasn't a court order, because we didn't have that, we didn't order that, we'd have to pay for it. And so this also was trying to give the flexibility for that parent who maybe can't pay for genetic testing that is court ordered and the state has to do it. So we were trying to kill two birds with one stone. But the issue is we ran into some issues after we passed the original bill. All we said is we have to make the child available for DNA testing. And that's what the bill said last year. We just have to make the child available and a test could be ordered. This has given some guidance to the courts to say, let's balance the older kids. And I do think on the floor, if this bill comes out of this committee, we will have to lay some groundwork on legislative history that age is a factor, but also that relationship. So if I'm looking at 14 years and younger and there's no relationship, I think bio dad should still be a part of the proceeding. But if the kid is 16 years old and you never had a relationship, I don't know how you can

jump in now saying I'm playing dad. And we're trying to balance that. That's just all we're trying to do.

LATHROP: Do you think you would have got a test if this was the law, for your client?

WAYNE: Yes.

LATHROP: How old was your kid?

WAYNE: Two years. Well, by the time we got adjudicated, two years. He was in the system for two years and we fought for two years. We appealed to the Court of Appeals and there was no, no statutory grounds to really do anything, as a judge's discretion. And at that time, that judge said there's nothing in the law that allows me. And what was ironic, the judge appointed me to find an area in the law to give this dad a test. The judge actually wanted to provide a test, but there was no way to compel the state to make the child available.

LATHROP: So we get down to any other factor, which is pretty much lets the court-- that leaves the door pretty wide open for the juvenile court to do a little equity.

WAYNE: Correct. And so we are trying to find a balance. That's been the hard part about this is trying to find balance. But I do think all those younger kids, the parents should be available. But in those particular cases, and they usually for, for this committee's purposes, it usually involves a younger woman or a woman who was involved in domestic violence, who left their marriage, came to this state and never got a divorce because they never wanted to go back home. And when they have a kid and if they end up in the juvenile system, the state searches the record and says, oh, they're married. So under the presumption, that's that. Even though they've been dating this guy, well, in my particular case for four years. The caseworker originally cited my guy for negligence, too, and they had to dismiss the case because they found presumptive dad and that's all that matters in the state of Nebraska at the time. But we changed that law.

LATHROP: Is this just something bio dad can take advantage of?

WAYNE: Or bio mom.

LATHROP: Or can the court just say, you know what, I think this guy, I mean, I'm hearing that this guy's the dad, let's test him? Even if he doesn't want to be.

WAYNE: So in juvenile court, if there is an interested party, which bio dad technically would be, at least in Douglas County, actually, most state-- most counties. I can't think of one that doesn't, they appoint an attorney to file this type of motion. So they would appoint an attorney and say, you are an interested party. You have the duty to inter-- or you have the right to intervene if you choose to. And so you would file the motion. But it would also apply to bio mom, and it's not just bio dad. If bio mom disappeared for a while and dad got charged with something, bio mom could come in and say, no, this is my kid. Here goes the factors.

LATHROP: OK. Is-- one last question. This going to be the final version?

WAYNE: This would be the final version.

LATHROP: OK.

WAYNE: I would ask you guys to take in consideration of this. I do understand the concern of, of, of you, Chairman Lathrop, of regarding the factors. The biggest concern from the prosecution's standpoint and from DHHS and from the judge's standpoint is just having multiple people come in and say, I'm dad, I'm dad, and there's no way of really knowing without having some kind of factors. So you would have a case that would drag on with 14 different dads coming in and saying, I'm dad, and then you'll never get the services and things that need to happen for that juvenile.

LATHROP: Probably demonstrate other problems with mom.

WAYNE: Correct.

LATHROP: If 14 dads come in.

WAYNE: Or 14 moms. I guess you can't have 14 moms, but 14 different people claiming to be mom could be the same scenario. But, yeah, that was the concern of having anybody be able to come in and do it.

LATHROP: OK, any other questions for Senator Wayne? Senator Pansing Brooks.

PANSING BROOKS: Thank you for bringing this. And I'm sorry I may missed it because I had to ask the pages for something, but why-- can you explain to me again why you're doing "shall" versus "may"?

WAYNE: You mean "may" versus "shall"?

PANSING BROOKS: Yeah, "may" versus "shall".

WAYNE: Because I didn't want to be as restrictive. Because I do think, I mean, if I do shall, and I think that the child's age, to Chairman Lathrop's point, if we reach a certain age, they'll say, well, he's already at a certain age. Too bad, dad. Or too bad, mom. So I just want them to be able to factor in some of these things. And it's a way for the court to be a gatekeeper on the non-real bio parents. And what I mean by that is, is, you know, a lot of families may live in different homes and have cousins or friends take care of kids and we just don't want to have people lined up to try to intervene and have multiple hearings under this. So we're trying to say, here goes the factors you should look at and I would ask you to look at. But we're trying to give discretion to the juvenile courts.

PANSING BROOKS: OK, I--

WAYNE: It's just so complex.

PANSING BROOKS: It is. I guess I was just like somebody could be in prison for 10 years, not have been around, and all of a sudden is back on the scene and doesn't like what's happening to the kid. I don't know. And then if the judge decides for whatever reason not to allow it, you know, I don't know, that just-- it seems like if somebody is really trying to file a claim and to, to help with the kid, I don't know. Just worries, it worries me.

WAYNE: I agree. I'm not disagreeing with that. I'm not opposed to a "shall". I'm just, there are-- so let's take the motion to transfer, because you guys had that yesterday in front of you. There's a shall in there and there are about three or four factors that don't apply to 90 percent of the courts. And so the courts typically always weigh that as a negative on the factors. One of them is the predisposition,

pretrial, pretrial diversion program. Well, there's hardly anybody that has a pretrial diversion program. And so when you look at the factors in this says "shall consider these factors", that's always read as a negative because the county doesn't offer it. And that's not fair to the, to the kid because it's not their fault they don't offer it. So I used "may" to give them discretion. I'm, I'm not opposed to it. If it came out with a, with a shall, I'm not going to fight about that. I would still support the bill.

PANSING BROOKS: Thank you.

LATHROP: I see no other questions. Are you going to stick around to close?

WAYNE: If nobody testifies, I will wait.

LATHROP: OK, are there any, anybody here as a proponent? Anyone here as an opponent? Anyone here in a neutral capacity?

WAYNE: Real quick, Chairman Lathrop, and the reason I think nobody is here and the reason I think there is not a fiscal note is because I did work with Health and Human Services on the amendment and that's how we came up with the word "may". But this, this is a bill that I think is, even though it's substantial is kind of Consent Calendar because we're just cleaning up the language of the Supreme Court did truly because of the gap in COVID. Had the bill passed and everything, they would have pointed to the new language. But we didn't have the bill implemented at the time.

LATHROP: OK, we have no position letters either. So that will close the hearing on LB155. Thanks, Senator Wayne. And bring us to LB47, and that is Senator Matt Hansen. Welcome.

M. HANSEN: Thank you. Good morning, Chairman Lathrop and members of the Judiciary Committee. For the record, my name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent District 26 in northeast Lincoln. I'm here today to introduce LB47, a bill that would make changes regarding Nebraska's child support order. I had a constituent come to me in the 2019 interim with an issue that she had with the courts and child support court. I'll let her tell her committee directly about her experience, but will give you a quick summary of what this bill

does. When someone fails to pay court-ordered child support, the obligee, or the person who receives the child support on behalf of the child, has different avenues they can pursue to compel compliance. One is filing an application for order to show cause, which asks the court to enter an order requiring the person who owes support to appear and show why they should not be held in contempt of court for failure to pay child support. You can get this application on the Nebraska Judicial Branch website, along with clear instructions on how to file this out-- fill it, file it and submit it. And it is a common application for individuals to handle pro se. However, you must be a party to the case in order to request an order to show cause. And as I learned, if you are an obligee or usually a custodial parent, you are not automatically a party to the case. Specifically, if the action for child support was brought by the state on behalf of a parent receiving state assistance, the state is the party to the case and the parent who is owed the child support payments is left out of the process. I believe this is unfair to the parent and inadvertently blocks them from exercising rights other parents would have in enforcement of child support orders. My intent here with this bill is to, one, make the person who is due child support a party to the case; and two, put language in the child support orders explaining their existing right to request an order to show cause. You might remember this as a bill I introduced as last year's LB883. Since then, we've worked closely with the county attorneys to narrow the bills that applies to only known obligees who are legal parents to the child receiving support. These changes are reflected in AM64 that I have emailed to the committee staff as well as just passed out, and I would request that this amendment be adopted as a committee amendment. I want to thank the County Attorneys Association and the Lancaster County Attorney's Office specifically for their willingness to work on me with this issue. With that, I would close and be happy to take any questions from the committee.

LATHROP: I have one for you.

M. HANSEN: Yeah.

LATHROP: So if the state initiates one of these child support proceedings and this would allow mom to become a party to that proceeding, is that right?

M. HANSEN: Yes.

LATHROP: Once she's a part of that proceeding, can she then use that litigation to sort out visitation, custody and, and sort of things related to child support or the parties with children ending the relationship?

M. HANSEN: Yes. So it's kind of a tricky scenario where, and that's one of the reasons the County Attorneys Association wanted it to be narrow, that it could be appropriate, I believe, to file those as their own separate actions or file them as motions within this current child support case. But the problem is, if there's an existing child support case created by the state of Nebraska, the parent, you know, mom, in your example, couldn't start her own case or couldn't do anything in child support and actually can't sometimes talk to the county attorney because she's not a party to the case, even though she's the person who's going to be getting the deposits in the bank account to spend on behalf of the child.

LATHROP: So if that's the case, then does mom need to come in with her own lawyer to sort out-- we're not making the county attorney become the--

M. HANSEN: No.

LATHROP: -- divorce lawyer.

M. HANSEN: No. And this would not require that to. As I said before, there's actually a lot of good pro se forms on the county-- sorry, in the Supreme Court website that a lot of people handle these cases pro se for the simple ones. It's when the state has already created the case, you have to find a way to join that case, which is technically possible. But there's no good pro se process or form already existing for that. And that's kind of the catch 22 is you're blocked from filing your own case, even though there's forms in the Supreme Court website and there's not an easy way to join the already existing case. So it's those parents kind of--

LATHROP: So how about this, this scenario? And I'm asking because I don't know.

M. HANSEN: Sure.

LATHROP: I did the coursework a million years ago. But the state initiates one of these proceedings to collect child support because mom is getting some kind of public assistance, right?

M. HANSEN: Right.

LATHROP: That's the scenario. And mom may only be on it for two years or three more months, but, but she has an interest in what that child support gets set at, right?

M. HANSEN: Right.

LATHROP: She's-- they go to the courthouse, they're having their proceeding. And she says, no, wait a minute, he comes by every Friday afternoon to pick the kids up and he's drunk. And now are we letting, are we letting the sort of the dispute over who gets the kids, visitation, those kind of things enter into this process as soon as mom becomes a party to a proceeding to set child support between mom and bio dad?

M. HANSEN: Yes, potentially, but that is, again, a right that kind of the parents would have if they were the person who filed the court case before the state did, just kind of like whoever-- so, so, so the answer is yes. And that's part of the reason we work with the county attorneys to narrow it. One thing the county attorneys were worried about was originally we talked about any obligee or obligor and then we started to get into the scenario of, well, do you have like maternal grandma who watched the kids for like one summer but hasn't seen them in two years filing in the case and all sorts of this. Limiting it to legal parent, when there's a legal parent who is owed child support, everybody kind of recognizes that they do genuinely have a real interest in the case and should be allowed in a case if they want.

LATHROP: I'm just--

M. HANSEN: No, not at all, yeah.

LATHROP: Hopefully somebody that's sitting in the room is going to come up here and tell us how this will work, because I-- one of the reasons they haven't been to this point in time, I assume, has something to do with limiting what's at issue. But child support can

be affected by how much time the child spends with mom versus dad, right?

M. HANSEN: Right.

LATHROP: So I don't know how the court can fix the child support without sorting through who gets the child on Fridays and where is the child spent weekends and every other Wednesdays or--

M. HANSEN: No, I think we're talking all about the same thing, because if you think about it, if the parent-- so, so, so the state files child support. And let's say a traditional scenario, mom, mom, you know, has custody of the child, is going to be receiving child support. Dad's paying. Dad's party to the case, the state is party to the case on behalf of the child. Mom is 100 percent left out, so mom can't do anything. And she also can't file her own case because there's already a case pending against dad. And so that's where the scenario we're trying to left out, where mom doesn't have a legal recourse to solve child support in any manner.

LATHROP: OK.

M. HANSEN: If that makes sense.

LATHROP: I just want to make sure we're not making the county attorney responsible for sorting out custody and visitation and--

M. HANSEN: Speaking with, worked with the County Attorneys Association and we spoke with the lead in the Lancaster County Attorney's Office in terms of who handles most of their child's court cases. With the committee amendment, they were comfortable that this would-- they were comfortable with this--

LATHROP: OK.

M. HANSEN: I'll just put it that way.

LATHROP: Any other questions for Senator Hansen? I don't see any. Thanks.

M. HANSEN: Thank you.

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LATHROP: We will take proponent testimony. Good morning.

LEIGHA SOPIAK: Good morning. Members of the committee, my name is Leigha Sopiak, L-e-i-g-h-a S-o-p-i-a-k, I'm here testifying in favor of LB47. I'm a family law attorney. I deal with issues pertaining to the collection of child support, both as a practitioner and as a parent on almost a daily basis. Numerous amounts of parents in the state are struggling to collect on child support judgments. The Child Support Enforcement Center can be helpful, but there's a limit to what those folks can do. A family law attorney can be helpful, but there's a fee. Obligees can collect on their own by filing an application for show cause. This is a great remedy. The obligee can file the application and get a judge to compel the obligor to pay or impose consequences. Forms are available on the Supreme Court website, and they're very easy to navigate pro se. The problem is, is that the parent has to know about this option. When parents are owed back child support, they are not told by child enforcement agencies that they have the ability to file this application and collect themselves. They assume that there's nothing they can do but wait for the enforcement agencies to help them, even if they're struggling to pay or provide for their kids. LB47 fixes that problem by adding a simple paragraph to child support decrees. There's no downside to adding that language. The obligor is advised of his or her rights in the decree, so it makes sense that the obligee should be provided the same courtesy. It costs the taxpayers nothing to do that, and it will take some of the burden off the enforcement agencies without limiting their ability to enforce. If a parent files an application, it won't put a stop to any collection action that's currently in the works. This part of LB47 is simple and it's effective and it doesn't appear to be opposed. The second part of LB47 allows and encourages the county attorney add the obligee as a party when bringing a lawsuit to enter child support orders. Some counties are doing this already. Sarpy County has determined it's best practice to always add the obligee as a party because it makes sense. LB47 encourages the practice be uniform among all counties. When the state brings a lawsuit under these circumstances, the County Attorney's Office compels the collector to attend all of the hearings. If the collector doesn't, state aid is terminated. The state's bringing in action in their child's name, they have to come to the hearings. But really they have no skin in the game. And if they want to take an action to collect later, they can't

without filing additional motions. If they file something later on this matter, whether it's for custody or to enforce this order, it will be dismissed because they are not a party. Just wanted to elaborate a little bit on your question about is the county attorney going to become the makeshift divorce attorney and are we going to be dealing with visitation issues during a child support action? The answer to that is no. If the collector is there to, to testify and the county attorney offers a lot of evidence as it pertains to income, their income and also the income of the obligor during that hearing. If there is any question about best interests of the child, visitation or other custody issues, there's a relevancy objection and that objection is sustained. It's not relevant to the proceeding. Typically, we go into these, these child support and these child support court hearings under the presumption that the obligee is the custodial parent. There is not a joint custody situation happening here because this custodial parent is receiving state aid. And in order to receive state aid because of the child, you have to be the custodial parent. So adding the obligee as a part of the case isn't going to complicate that. The obligee will have to file a separate complaint to establish custody. And honestly, often that happens and the state of Nebraska has to remain a party to the case. But that's unavoidable. It happens often in my practice.

LATHROP: We got to observe the red light, so let's see if there's any--

LEIGHA SOPIAK: That's fine. If you have any questions, I'd be happy to take them.

LATHROP: Senator McKinney.

McKINNEY: Thank you for your testimony. The one question I've got is how do, how do we protect from having the obligee file an application of order to show cause on a retaliation? Because I'm a, because I'm aware of situations where there's a child support order. The mom and dad knows it's delinquent, but they're on good terms and then something bad happens and either the mom or dad gets upset at the other, and one of the part-- whoever is the obligee at the time, just like, OK, you made me mad, now I'm just going to do this out of retaliation. And then what I'm-- what concerns me is sometimes that begins a trickle-down effect of you're behind on your child support,

you've lost your license. You can't drive to work. You end up getting pulled over, you're in a county, lose your job, get further behind in child support. So how does, how do you think we could protect against that?

LEIGHA SOPIAK: The short answer to that question is we can't. Not with this bill. Those remedies that you've stated already exist in Nebraska law, and Child Support Enforcement Center is going to exercise those, those sort of consequences if, if the person is owed back child support, whether the parents have an agreement that they don't have to pay it or not. And as far as the filing of application of show cause on retaliation, this bill doesn't necessarily-- it doesn't create a remedy. The remedy is already there. The only thing it does is it lets parents know of that, the availability of that remedy. Now without getting too technical, the application for show cause comes with an affidavit. The judge has to sign that in order to show cause. The judge has discretion on whether or not he signs that order to make a parent appear and show why they're not paying child support. They also have to show that it's, that the, the failure to pay is willful or consumatious. If there was an agreement with the parents that he didn't have to pay or some, some outside agreement, the willful and consumatious piece might be missing. But again, those revenues are already available. I don't know that there's a way to protect it, certainly not with this bill. We're not creating any revenues here, we're just letting people know that they're available to them.

McKINNEY: Thank you.

LATHROP: I have no questions for you.

LEIGHA SOPIAK: Thank you.

LATHROP: Thank you for being here today.

LEIGHA SOPIAK: Thank you.

LATHROP: Any other proponents of LB47? Anyone here to testify in opposition? Anyone in a neutral capacity? Seeing none, Senator Hansen, you may close. And as you come up, we have no position letters and one written testimony from Katie Zulkoski, Z-u-l-k-o-s-k-i, Nebraska

County Attorneys Association, and she is a proponent. Little drum roll there.

M. HANSEN: Thank you. No, and so let me close by again thanking the County Attorneys Association for working on this with this committee amendment. We've had many, many emails and ultimately we hashed it all out on a Zoom yesterday, and I'm appreciative of their time and specifically the Lancaster County Attorney Office's time. Kind of my testifier summed it up great in we're not necessarily creating any sort of new processes or new remedies. We're making it a little bit simpler and a little bit more clearer for somebody who is trying to navigate this pro se, what their current remedies are, and giving them a little bit more direction on how to handle their current case. And with that, be happy to take any questions.

LATHROP: I don't see any questions.

M. HANSEN: Thank you.

LATHROP: Our next bill is also a Senator Hansen bill. You may open on LB48.

M. HANSEN: Thank you. Good morning, Chairman Lathrop and members of the Judiciary Committee. My name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent LD 26 in northeast Lincoln. I'm here to introduce LB48, which updates Nebraska's marriage and annulment laws. First and most important, it strikes outdated language that prohibits those with a venereal disease from marrying in Nebraska. You may be surprised to learn that at one time it was illegal to get married in Nebraska if you suffered from this condition. Case law from the Nebraska Supreme Court, however, determined in 1944 that this phrase is not an outright prohibition on marriage for persons with a venereal disease, but allows for such marriage to be voidable by an annulment. From my research, we've not found any case where someone has used this law to try to get an annulment any time recently, and has found it's simply left over from a time when the state was concerned about the spread of syphilis. The law now, however, is not being enforced and therefore I believe it should be removed from our statutes. There have been multiple attempts to strike this language over the years with no testifiers in opposition, including a bill from me last year and a bill from Senator Ebke in 2016. But I think it's just never been at

the forefront enough to officially make it off the books. LB48 also makes two other small changes to the annulment statutes. Currently, annulments can only be filed in the plaintiff's county of residence. LB48 allows for annulments to follow the county residence of either party, which is the standard in divorce cases. The last change is that it updates language on those who are incapable of managing their own legal affairs by striking the term "under disability" and replacing it with the more accurate and modern phrase of "who are incapacitated". With that, I would close and be happy to take any questions from the committee.

LATHROP: Senator Morfeld, do you have any questions?

MORFELD: I have no questions whatsoever.

LATHROP: OK, I just wanted to check with the marriage guy. Thank you, Senator Hansen. Are there any proponents? Any opponents? Anyone here in a neutral capacity? Senator Hansen, waives close. We have one letter, position letter in support, and we also have a testimony, written testimony as a proponent from Jon Cannon, C-a-n-n-o-n, at NACO. That letter is in support of the bill. And with that, we will close our hearing on LB48 and our bills for this morning. That will close our hearing.

LATHROP: Good afternoon to the Friday-- for the Friday session of the Judiciary Committee. My name is Steve Lathrop and I'm the Chair of the Judiciary Committee. Before we take the first bill, I'm going to read our opening, which is more information on how to testify and sort of some of the limitations that we have during COVID. My name is Steve Lathrop. I represent Legislative District 12 in Nebraska-- here in-- Legislative District 12 in Omaha and I'm the Chair of the Judiciary Committee. Committee hearings are an important part of the legislative process. Public hearings provide an opportunity for legislators to receive input from Nebraskans. This important process, like so much of our daily lives, is complicated by COVID. To allow for input during the pandemic, we have some new options for those wishing to be heard. I would encourage you strongly to consider taking advantage of the additional methods of sharing your thoughts and opinions. For complete details on the four options available, go to the Legislature's website at nebraskalegislature.gov. We will be following COVID-19 procedures in this session and for the safety of our committee members, staff,

pages, and the public, we ask those attending our hearings to abide by the following procedures. Due to social-distancing requirements, seating in the hearing room is limited. We ask that you enter the hearing room when it is necessary for you to attend the bill hearing in progress. Bills will be taken up in the order posted outside the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. The committee will pause between each bill to allow time for the public to move in and out of the hearing room. We request that you wear a face covering while in the hearing room. Testifiers may remove their face covering during testimony to assist the committee and transcribers in clearly hearing and understanding the testimony. The pages will sanitize the front table and chair between testifiers. When public hearings reach seating capacity or near capacity, the entrance will be monitored by a sergeant at arms who will allow people to enter the hearing room based upon seating availability. Persons waiting to enter a hearing room are asked to observe social distancing and wear a face covering while waiting in the hallway or outside the building. The Legislature does not have the availability of an overflow room for hearings which may attract many testifiers and observers. For hearings with large attendance, we request only testifiers enter the hearing room. We also ask that you please limit or eliminate handouts. Due to COVID concerns, we are providing two options this year for you to testify at a committee hearing. First, you may drop off written testimony prior to the hearing. Please note that the four following requirements must be met to qualify for dropped-off testimony to be on the committee statement. One, the submission of written testimony will only be accepted the day of the hearing between 8:30 a.m. and 9:30 a.m. in the Judiciary Committee hearing room. That's Room 1113. Number two, individuals must present the written testimony in person and fill out a testifier sheet. Number three, the testifier must submit at least 12 copies of their testimony and four, the testimony must be written-- a written statement no more than two pages, single spaced or four, four pages, double spaced in length. No additional handouts or letters from any others may be included. This written testimony will be handed out to each member of the committee during the hearing and will be scanned into the official hearing transcript. This testimony will be included in the committee statement if all these four criteria are met. And of course, the second way to testify is in person. Attending the public hearing-- persons attending a public hearing will have an opportunity

to give verbal testimony. On the table inside the doors, you will find yellow testifier sheets. Fill out a yellow testifier sheet only if you are actually testifying before the committee. Please print legibly. Hand the yellow testifier sheet to the page as you come forward to testify. There is also a white sheet on the table if you do not wish to testify, but would like to record your position on a bill. This sheet will be included as an exhibit in the official hearing record. If you are not testifying or submitting written testimony in person and would like to submit a position letter for the official record, all committees have a deadline of 12:00 p.m., noon, the last workday before the hearing. Position letters will only be accepted by way of the Judiciary Committee's email address posted on the Legislature's website or delivered to the Chair's office prior-- that's my office prior to the deadline. Keep in mind that you may submit a letter for the record or testify at the hearing, but not both. Position letters will be included in the hearing record as exhibits. We will begin each hearing today with the introducer's opening statement, followed by the proponents of the bill, then opponents, and finally anyone wishing to be heard in a 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 spell them for the record. If you have copies of your testimony, please bring 12 copies and hand them to the page. If you are submitting testimony on someone else's behalf, you may submit it for the record, but you will not be allowed to read it. We will be using a three-minute light system. It's on the table. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning and when the red light comes on, we ask that you stop with your testimony. As a matter of committee policy, I would 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 to take notes and stay in contact with staff. At this time, I'd ask everyone to look at their cell phones and make sure they're in the silent mode. A remind over-- a reminder: verbal outbursts and applause are not permitted in the hearing room. Such behavior may be cause to have you excused from the hearing room. Since we have gone paperless this year in the Judiciary Committee, senators will be instead using their laptops to pull up documents and follow along with each bill. Finally, you may notice committee members coming and going. That has nothing to do with how they regard the importance

of the bill being heard, but senators may have bills to introduce in other committees or have other meetings, meetings to attend. I will share with you-- and most of you here probably already know this-- because of COVID, we've shortened the number of days that we can hear bills and we have actually more than the usual number of bills. So to accommodate the number of bills introduced, we have to have about nine or ten hearings a day. As a consequence, we will have the introducer introduce the bill and they will be able to close. In between, we will allow 30 minutes for proponents and 30 minutes for opponents. So if everybody that I'm looking at here is a proponent, not everyone's going to have an opportunity to testify. If you want to talk about who should or who you want to have come forward, that's entirely up to you, but after 30 minutes of proponents, then we'll go to opponents and then the hearing will be closed, OK? I apologize for that. Typically, we try to hear everybody that comes down, but because of the volume of bills, that won't be available to us this year. And with that, we will have the members of the committee introduce themselves, beginning with Senator DeBoer.

DeBOER: Hi, my name is Wendy DeBoer. I represent District 10, which is all of the city of Bennington and parts of northwest Omaha.

BRANDT: Tom Brandt, District 32: Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster County.

MORFELD: Adam Morfeld, District 46, northeast Lincoln.

McKINNEY: Terrell McKinney, District 11, north Omaha.

LATHROP: Also assisting the committee today are Laurie Vollertsen, my committee clerk, and Neal Erickson, our legal counsel. Our pages today are Ryan Koch and Sam Sweeney, both students at UNL. And with that, Senator Wayne to introduce LB28. Welcome back.

WAYNE: Thank you, Chairman Lathrop. Good afternoon, Chairman Lathrop and Judiciary Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is north Omaha, northeast Douglas County. Sometimes our laws and our courts get it wrong. We have to look no further than DNA exonerations, separate but equal doctrine, and juveniles being sentenced to life imprisonment. As lawmakers today, we have a chance to get it right.

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LB28 allows an individual to file a motion for a new trial when evidence that is constitutionally barred from being presented at the time of trial becomes available after the trial. Today, you'll hear testimony about Earnest Jackson, but this bill is not about Earnest Jackson. In fact, Earnest Jackson is an example of the injustice happens if we do not pass LB28. Earnest Jackson is a byproduct of a failed process. In order to understand this bill, I have to first mention the Fifth Amendment and I'm doing this so many of the non-attorneys on this committee kind of understand the background. The Fifth Amendment basically says no person shall be compelled to testify in a criminal proceeding against themselves. So essentially, this means as a defendant, if I come-- ask somebody to come testify and they take the Fifth Amendment right, that never gets in front of the jury so that evidence is never heard. But afterwards, after your Fifth Amendment privilege is no longer needed, say that person went to trial and they were found innocent. They-- that privilege is no longer there so they can now testify or if they decide to testify in their own trial, they waive that Fifth Amendment right. But prior to waiving or being proved innocent, that testimony never comes in in front of a jury. So essentially, this bill will allow evidence of that testimony if a new trial was granted. And the key word is if a new trial is granted to be heard by that jury. What you'll hear from the county attorneys today who are against it are basically two essential reasons. One is the county attorney and judicial efficiency and two, when they talk specifically about Earnest Jackson, they'll say he can apply for a pardon. And I'll tell you why I think both of those are not fair. First, judicial efficiency. Our system is not set up for county attorney efficiencies or a judicial efficiency. In fact, our judicial system is set up for justice and only justice. This concept was first laid out in 1760 by William Blackstone when in summary, he says it's better that ten guilty men go free than to convict one single innocent man. And if you think about that, you think about the presumption of innocent, you think about the requirement of proof beyond a reasonable doubt, you think about the requirement for a unanimous jury verdict, these are the core elements of our criminal justice system and they all directly flow from the premise of a wrongful, wrongful conviction of a single innocent person is ten times worse than the guilty person going unpunished. Where do we find that? We find that in our founding documents. The Declaration of Independence says we hold these truths to be self-evident, that all

men are created equal and that they are endowed by their Creator with certain unalienable rights. Among these are life, liberty, and the pursuit of happiness. And in fact, this document mentions rights over ten times. The Preamble of our Constitution says "we the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Prosperity." And we have to look no farther than the Bill of Rights, the rights to be free from unlawful search and seizure, the right to remain silent if wrongfully accused, the right to be represented by counsel, and the right to a jury trial. We focus on the individual because we have founded-- we have founding documents that say the community is best served if the individual right is best served. Today, the county attorneys will ask you to ignore our core constitutional rights and care more about county attorney and judicial efficiencies. And again, I must say that a justice system is about justice-- about just outcomes, not county attorney or judicial efficiencies and to make that argument goes against their own constitutional duties and is completely wrong. This bill is to say that if you find evidence that is constitutionally barred from being presented at trial and it becomes available after trial, you have a right to file a new motion or a motion for a new trial. That is not guarantee you'll get one. You have a right just to file it and that evidence also has to be material and that is up to the judge to decide if it's material. The county attorneys will bring up and you'll hear testimony about Earnest Jackson, but they'll also bring up that Earnest Jackson can get a pardon. That argument is misleading the point. First, a pardon says you're guilty and the crime and your actions were wrong and we forgive you as a state. That's not justice. That is forgiveness. This bill is about making sure our judicial system is just. A just judicial system is about allowing someone the ability to prove their innocence rather than ask for forgiveness. This case-- this bill is not about that particular case, but people who can end up like in the situation of Earnest Jackson. I must also make a note that last year, Chairman Lathrop introduced a bill, a the priority bill, and I went to him last-- well, not last year, last session-- I guess it is last year-- and I asked him to introduce this exact amendment to have an opening and a small discussion and I'll withdraw it. And I signaled to all the county attorneys, this is an issue that we have to address. I did my opening, talked to the county

attorneys' lobbyists and the County Attorneys Association, but since then, there's been silence. There's been no back and forth of how to tighten or narrow this if they have concerns about opening the floodgates. And in fact, it's just been a refusal to do anything. We have to demand better and we should be better. This bill is simple. If there is new evidence that could not be presented to the jury and it is material, that person should be able to file for a new trial. With that, I will answer any questions.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Just a real quick question: how big is the scope of this problem? Is it more than just Earnest Jackson? I mean, are we talking there's ten of these out there, 100 of these out there, 1,000?

WAYNE: The only one that I'm familiar with is Earnest Jackson. So there are gaps in the law, like today before you, I came with a paternity issue this morning and you weren't here--

BRANDT: No, sorry.

WAYNE: --but it was a bill that we passed last year. That was just the case that I ran across and since then, there's been at least three other cases that I've been contacted to by an attorney. I don't think the problem is, is very wide and narrow, but it does come down to justice and I think we as a Judiciary-- I'm no longer on the Judiciary, but I used to be-- but we as a Legislature should provide the tools for justice.

BRANDT: OK, thank you.

LATHROP: You'll stick around to close on this one?

WAYNE: Yes, sir.

LATHROP: OK, terrific. First proponent. Welcome.

TOM RILEY: Good afternoon, Chairman Lathrop and members of the committee. My name is Tom Riley and I'm the Douglas County Public Defender and I am here also representing the Nebraska Criminal Defense Attorneys Association as a proponent for this bill. I, I agree with

Senator Wayne's statement that this is not just about Earnest Jackson. This is a remedial statute to, to try to fix a interpretation of the statute that was rendered by the Nebraska Supreme Court in Earnest Jackson's case. And in order to understand it, I, I would like to put a little bit of, of background into his case. Basically, Mr. Jackson and two other individuals were charged with homicide, as being an aiders and abettors to each other. The cases were not consolidated for trial. I represented an individual named Shalamar Cooperrider who was one of the individuals charged, as well as Mr. Jackson, as was a man named Dante Chillous. As, as I said, the cases were not consolidated for trial and the way it works is whoever got their case filed first would go first to trial. Who was-- the case that was filed second would go second and third would go third and these were all filed on the same day. It just happened to be Jackson's was first, Cooperrider's was second, Chillous was third. So Mr. Jackson went to trial first and indicated he was not present at the shooting. The jury found him guilty. He requested that our client testify. However, our obligation is to our client and we asserted the Fifth Amendment because we didn't want to give county attorney's office a free shot at him before his trial. So he went to trial second, testified that he did, in fact, do the shooting and it was in self-defense. The jury found him not guilty. The third man went to trial thereafter, named Mr. Dante Chillous, and Mr. Cooperrider testified at that trial in the same fashion that he did at his own and Mr. Chillous was also found not guilty. So basically by a luck of the draw, bad luck of the draw, Mr. Jackson got convicted. On his appeal, the lawyer said now that, now that he's testified, the Fifth Amendment doesn't apply so it's newly discovered evidence under the statute as it was written. The Nebraska Supreme Court said no, no, it's not newly discovered evidence. It's newly available evidence and does not fit into the statutory requirement, so we're not going to consider it to give you a new trial. This statue, this statute, LB28, is there to remedy just such a situation and there have been a handful of cases that had similar situations. I had another case myself where they were the codefendant and I tried to get him to testify and he asserted the Fifth Amendment and it would have helped in our defense and my client got convicted. So this, this bill is a, is a remedial statute to fix something that the Supreme-- I think the Nebraska Supreme Court determined incorrectly and you have the power to, to change it.

LATHROP: OK. I do have a question. I do have a question and just for the benefit of everyone, if we change this, this-- the-- and somebody made a motion like this, this-- the court is going to have to make a decision that would have made a difference.

TOM RILEY: Right.

LATHROP: It's not everybody who had somebody take the Fifth, that was a co--

TOM RILEY: No.

LATHROP: --codefendant?

TOM RILEY: No.

LATHROP: There is some judgment by the trial court.

TOM RILEY: Absolutely. The, the-- all this does is allow for a person to file the motion and say here is the evidence that I was not allowed to present to the jury. Judge, you determine if it's material and exculpatory and would change the outcome of the case. And if the judge believes that is the case, then a new trial would be granted. This is not a exoneration-type, type bill and it is not you automatically get it. The judge that hears the, the hearing on the motion for a new trial would be allowed to consider that which was previously constitutionally barred and what the testimony of the, of the person who no longer has the Fifth Amendment privilege. And then the judge would say, OK, this is not going to change the outcome in the case, you're not getting a new trial or yes, I do think this is very substantial and there's a likelihood you-- that the result would be different and we're going to give you a chance to present to a jury.

LATHROP: OK. Senator Brandt.

BRANDT: Thank you, Senator Lathrop. Real quick question. Is this unique to Nebraska?

TOM RILEY: Is this-- is the--

BRANDT: Is what's happening now unique to Nebraska or are all the other states like Nebraska?

TOM RILEY: I can't answer that question. All I can tell you is that the, the statute that we have for granting a new trial is the one that was interpreted by the Nebraska Supreme Court and said it was newly available versus-- it was newly available, not newly discovered. There are-- there is a paucity of cases on this. I have done some research on it, on that other case I told you about and there wasn't a heck of a lot out there.

BRANDT: OK, thank you.

LATHROP: OK, thanks for being here.

TOM RILEY: Thank you.

LATHROP: We appreciate hearing from you. Next proponent. Good afternoon.

JANELL FOLKERTS: Good afternoon. My name's Janell Folkerts, J-a-n-e-l-l F-o-l-k-e-r-t-s. I want to thank Senator-- Good afternoon. I want to thank Senator Wayne for introducing this bill and I want to thank this committee for listening to my testimony today. I know several of you on this committee personally and you might be wondering why I am here testifying in support of this bill today. I am here today to support Earnest Jackson, who was wrongly convicted of a crime he did not commit, as well as those who are currently incarcerated for crimes they did not commit. I consider myself a freedom fighter. I believe in limited government and believe that more government involvement in our lives is usually always the problem and not the solution. It's because of this stance one day last fall, I was outside this very building protesting the overbearing and unconstitutional mandates being placed on individual citizens and businesses because of COVID-19. There was a group of opponents that had gathered across the street from us. Because I am always interested in learning and understanding other people's positions and point of view, I engaged with several of the opponents to have a better understanding of why they were there. At that time, I met a young man from Omaha who said he was there not in support or against the mandates, but because he also believed in freedom like me and was there to represent Earnest Jackson, a man whose freedom was wrongly taken away. Once I heard Earnest Jackson's story, I knew I had to get involved. How can I claim to be a freedom fighter if I only fight for the freedom of those not

incarcerated? Do I truly care about freedom if I'm not fighting for the freedom of individuals currently serving time behind bars for crimes they didn't commit? The answer is no. I believe in liberty and justice for all Americans. In the case of Earnest Jackson, he was convicted of a crime that another man confessed to. The man who confessed was then acquitted on self-defense. However, because Earnest's trial was first, he was convicted of first-degree murder and still remains incarcerated and has been for over 20 years. Earnest has exhausted all appeals and his only chance of being released is to receive a pardon, which the Pardon Board is not set up to determine innocence or guilt or receive a new trial, which this bill would allow. With the new evidence presented after Earnest's first trial, it's almost certain a jury would find him not guilty. I wish Earnest's case was an isolated situation. However, wrongful convictions happen far too often due to bad eyewitness accounts, witness tampering, fabricating evidence, concealing exculpatory evidence, misconduct in interrogations, misconduct at trial, as well as other misconduct by police, prosecutors, and law enforcement. According to a study by the National Registry of Exonerations released in September 2020, in the United States between 1989 and 2019, there have been over 2,600 exonerations. Of the 2,600, 93 innocent defendants were sentenced to death, but later cleared before executed. I support law enforcement and our justice system. We need them in order to have a civil society, society. However, for far too long, we have allowed this system to go unchecked. Many defendants that do not have the means to hire good defense or simply do not know their rights are taken advantage of. This bill would allow us to give these defendants a chance for the system to right the wrongs. When new evidence is presented that could lead to the innocence of someone wrongly convicted, we have a duty as citizens and legislators to act and seek justice on their behalf. I'll just leave with this, a quote from Martin Luther King Jr. Justice too long delayed is justice denied, denied and I hope you all would vote in support of this bill.

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

JANELL FOLKERTS: Thank you.

LATHROP: Next proponent. Good afternoon and welcome back.

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JASON WITMER: Hey. Well, Jason Witmer, W-i-t-m-e-r. I'm going to cut mine in half because the facts have been stated and yes, I will speak a bit about Earnest Jackson because I feel he is the essential of what injustice looks like when a loophole like this is not closed. As far as the bill, as was said, this does not open the gateways to-- from prison to society. It-- nowhere does it lack of accountability. In fact, it's all about accountability, for the defendant has to go back to trial if he gets to trial. The courts, our justice system, accountability is what we want. In the case of Earnest Jackson-- which I feel is a great example here, so that's why you will continuously hear him-- his, his case. As you heard the facts, he did not give the testimony of the individual who did it, but one other thing that's included here is that person was acquitted of self-defense, not of misconduct of the jury, self-defense. That means he was innocent and that means there's not even a crime here. So 20 years for accessory to a non-crime. This loophole is a noose. This is-- lynching is all about holding somebody accountable without evidence because somebody has to be punished and this is what's happening to Earnest Jackson. So imagine if that happened to you, to your children, to your neighbor, to your constituent. So Earnest Jackson's been in prison for two decades and because our Appeals Court use of language-- not for morals, not for ethics, and I would argue not necessarily common sense-- but language stating that this testimony fully vindicating this child-- because he was a child, 17 years old-- was newly available and not newly discovered evidence because the actual shooter wanted to exercise his constitutional right, which is his right. It's language-- language is always meant to diversify, not to destroy. So I really don't want to-- I, I would love to reiterate this case. You know this case. You know this case. The 17-year-old boy was crucified for saying he was innocent-- because he was. His family was made out for liars for telling where he was, at home. He wasn't there so he had no defense other than to say he wasn't there. He had no privilege to-- for individual's life. Don Kleine or Katie Benson to give him a deal to vindicate himself and the Appeals Court came to the conclusion that somebody else's constitutional right will be used against him as an executioner's ax. So no one with basic decency of humanity would allow such an injustice to remain, especially if it was your own. I think this bill speaks for itself. It's very narrow language. It does not open the gates. This is a pro-justice bill, a pro-life bill. It's a

bill that demands accountability. I don't know what else can be said here.

LATHROP: OK. Let's see if there's any questions. Before we let you get away, you had been on this. You've been a great friend to Earnest Jackson. I can tell because you have brought this before this committee on a number of occasions. I appreciate you being here today.

JASON WITMER: Thank you, sir.

LATHROP: Yeah, thank you. Next testifier. Good afternoon.

JONATHAN LATHAN: Afternoon, committee. Jonathan Lathan, J-o-n-a-t-h-a-n, last name is Lathan, L-a-t-h-a-n. So thank you, Judiciary Committee, for allowing me to come speak on the LB28. I'm here to speak to you today as a proponent of this bill. Although this bill covers more than just a case I'm familiar with, which is Earnest Jackson's case, I'd like to take some time to speak on this. I grew up in Omaha. I ran some of the same streets as Earnest. Fortunately, I was able to enlist in the military before I found myself in a similar situation as Mr. Jackson. I'm a father of five, three of my children being boys. My oldest is 17. He hangs out with his friends, spends time with family, and plays video games, just like Earnest. I keep excellent track of where he is, but just as with Earnest, a case of mistaken identity or allegedly being at the wrong place in the wrong time could cost him 21 years of his life, 21 years away from his family, 21 years away from his friends, losing the opportunity to be physically present raising children and losing the opportunity to be a free man. I couldn't imagine my son being taken away from me. Initially, based on seemingly inconsistent charges and convictions, Earnest was found guilty of first-degree murder, but not use of a weapon to commit that murder. On top of that, he is still incarcerated even after the actual shooter was acquitted of that same murder on a charge of self-defense at his own trial. That trial just happened to be after Jackson's. Even with the knowledge that another person confessed and was acquitted of the murder, Earnest is still in jail. State law has prohibited this information from giving Earnest a new trial, basically because of bad luck. Earnest had his trial first and his legal team asked several times for Cooperrider, the shooter, to testify. Those requests were denied because it could potentially incriminate Cooperrider because his trial was set for a later date.

This is why we're here today. If Earnest had been given a trial after Cooperrider, the verdict to self-defense would have counted. Earnest would potentially be free. That's not the only evidence that should be considered, though. An eyewitness placed Jackson at the scene, hitting the victim on the head with the pistol. The autopsy did not show that to be true. The witness that saw Jackson at the scene didn't even know who he was until police told them who he was. And there are many inconsistencies with this trial that LB28 will be paramount in bringing justice to Jackson and his family. We live in a society of second chances. We now have a second chance to make this right for Earnest and for every other inmate who may have similar circumstances. We talk about justice. We talk about how important family is. We talk about doing the right thing. Well, now is the time to do that. Vote to pass LB28 for Earnest, for his family, and for our sons. Even though we are good parents, could end up in a situation to be taken away from us for 21 years. Earnest is just one example of countless others that we can bring justice to who deserve the chance to have their voices heard and deserve the chance for retrials. Thank you.

LATHROP: Thank you, Mr. Lathan. I do not see any questions, but thank you for being here--

JONATHAN LATHAN: You're welcome.

LATHROP: --appreciate it. Next proponent. Anyone else here to speak in favor of the bill? OK, seeing none. We will take up opponents. Opponent testimony, if you're here in opposition, you may come forward. Good afternoon.

KATIE BENSON: Good afternoon. My name is Katie Benson, K-a-t-i-e B-e-n-s-o-n. I'm a deputy county attorney out of Douglas County, Nebraska, and I'm here on behalf of the Nebraska County Attorneys Association and I am here in opposition of LB28. By way of background, as I stated, I am deputy county attorney and I've been so for 12 years. Throughout those 12 years, I have handled all collateral attacks filed in Douglas County, Nebraska, including motions for new trial based on newly discovered evidence, but the majority are post convictions and DNA act. Prior to that, I was a law clerk for the district court judges where I did sit through hearings and render orders in collateral attacks as well, so I'm very familiar with the statute, as well as the other remedies available for those

incarcerated. Specifically with, specifically with regard to LB28 and why I'm here in opposition of the bill, first and foremost, I would ask you to, to really look at the additional verbiage placed into 29-2101 because of LB28. I find that it's not very clear and it would promote confusion. Specifically when you look at the first sentence, it states newly discovered evidence includes testimony or evidence from a witness who previously asserted a constitutional privilege. Well, if you're just somebody opening a statute and reading that, I think even a judge would have some confusion as to where did they assert their privilege? When did it happen? Was it in the case of the person who filed a motion for new trial only and who was convicted based on that or was it in some other proceeding? And on that, the second part of it, part of the newly amended-- the amendment by Mr. Wayne, it says, "and refused to testify or produce evidence in a prior proceeding." Well, what prior proceeding? A preliminary hearing, a trial, a deposition? So I think you really have to look at if you're in favor of this in general, you have to look at this verbiage and really ask yourself if when a judge, a prosecutor, or a defense attorney or a defendant who's incarcerated looking for a remedy would read this, does it make sense and is it clear as to when it would apply? Also, I would ask you to really consider the ramifications of what that additional language would do. And I can say it no better than the Supreme Court who said that if you were allowed to this type of evidence in the Supreme Court in Earnest Jackson's case, that it would encourage perjury to allow a new trial once codefendants have determined that testifying is no longer harmful, harmful to themselves, they may say whatever they think might help a codefendant, even to the point of pinning all the guilt on themselves and knowing they're safe to not be retried. So look at the language of the Supreme Court who specifically rejected what LB28 is trying to do here. This is a legislation that is driven to help one person. It has been rejected by the Supreme Court and I think it would create a precedent where every time an individual would want a different outcome for an incarcerated person, they would ask for a change to Postconviction Act, the DNA Act, or the motion for a new trial and I think that's a precedent that this committee would not want to start. The legislation was presented in an argument 20 years ago before the Supreme Court and it was rejected. Thank you.

LATHROP: OK. Oh, Senator DeBoer.

DeBOER: So I want to make sure I understand the, the arguments here correctly. The verbiage argument, is your contention that, that it isn't possible or just that it isn't currently the correct verbiage? Because I have to say, I feel like we could write something that would probably work, I mean amongst the people in this room and outside of this room who could work on this. So if, if you think that it can't be written in a way to create the legislative intent, which Senator Wayne suggested, that's one thing, but if you think that it doesn't currently, I think we could probably fix it. So which, which position do you have?

KATIE BENSON: I, I-- both positions. So the first position is that the way it's written now, I think if you ask yourself-- if you just sat down--

DeBOER: Sure.

KATIE BENSON: --and read that as a judge, it is not clear--

DeBOER: OK.

KATIE BENSON: --on either of those-- would-- and then but also I am here in opposition because I think that such an amendment is unnecessary based on the language in the Supreme Court, the Nebraska Supreme Court decision, as I just read from the Earnest Jackson case from 2002. So I don't think that the language is necessary and I think that it promotes-- would promote perjury, as indicated by the Nebraska Supreme Court.

DeBOER: OK, so let's, let's get rid of the first argument because I think we could write it better. If that's a problem, I think you all could consult with us. We could figure that out and we could get what Senator Wayne wants to have done actually on paper. So the second question of whether or not it would lead to sort of promoting codefendants to, after their own trial-- I mean, doesn't that already exist? If a codefendant is the one who gets tried first, then-- and they're acquitted, then in the second trial, they could say whatever they want and get the next however many codefendants off. Wouldn't that already exist as a possibility?

KATIE BENSON: Oh, absolutely if somebody gets acquitted--

DeBOER: So then--

KATIE BENSON: --in a first trial, but this is a, this is a bill regarding a collateral attack.

DeBOER: Right, I understand, but I'm saying if the concern is we don't want to have codefendants perjuring themselves because they-- the first one is going to say-- you know, the first one who gets acquitted is then free to take the blame is basically the argument that you're making. But that already exists in the law, the, the possibility that someone could perjure themselves to acquit everybody else who was there if they just happened to be the first one who's, who's tried. So I mean, I, I get your point. I take your point. But on the other hand, it doesn't really stop that possibility of perjury from happening.

KATIE BENSON: You're right. I guess in a-- it's-- it would be incredibly rare, you know, if somebody were to take the stand in their trial and then they would get acquitted. Yes, they could testify in another trial, but the reason why I'm here opposing this is because what it does is before that occurs, this allows a defendant situations where they could-- I guess, I don't, I don't really understand what your--

DeBOER: So if your concern is that you are afraid that, that putting this collateral attack in for folks who are codefendants and who have taken the Fifth, etcetera, and your, your concern is it's going to lead those previously taking the Fifth codefendants into potential perjury, I mean, that, that potential perjury exists in the wild, we'll call it. If-- I mean if the, if the, if the order of the defendants changes, then, you know, that changes who's going to have the desire to do it. So I, I-- anyway, OK. I don't--

KATIE BENSON: I guess and that's-- I mean, the Supreme Court, and if you look at the language, obviously would have been aware of what you're saying too and our Nebraska Supreme Court specifically said that allowing such a newly discovered evidence as is in LB28-- if you read this, that would be my answer. The Supreme Court said this-- our-- it's not me saying that. It's the Nebraska Supreme Court--

DeBOER: Sure.

KATIE BENSON: --said. And not only that, but if you look in the decision, they also say we note that this conclusion is consistent with other-- majority of other state and federal jurisdictions, who I'm sure all thought when this issue was brought to them as to whether or not it is necessary to have a motion for newly discovered evidence based on coconspirator testimony, they were aware of the situation that you're presenting. And all of those supreme courts said that it would promote what I just read.

DeBOER: And, and that-- I-- you know, I haven't done the research on all these other courts and what they decided 20 years ago and whether they've changed that in the meantime, but I, I will ask you this. Does the situation with respect to Earnest Jackson seem just to you?

KATIE BENSON: Well, I don't think I'm a person who's able to say that, but what I can say is that I did handle Alabama vs. Miller. It was a Supreme Court case that allowed juveniles to be resentenced and I handled the resentencing for our office, so I'm familiar with the facts of the case. I obviously was not there for the original trial, but I do know that there was a witness, an eyewitness in Mr. Jackson's case, and if you read through the Supreme Court Opinion, it goes through the testimony and that witness specifically stated that--

DeBOER: I, I get--

KATIE BENSON: --he saw--

DeBOER: There's other evidence--

KATIE BENSON: Well, yeah, if I could finish, that eyewitness specifically testified that he had no doubt that Jackson was the person that he saw shoot, period.

DeBOER: OK.

KATIE BENSON: So when you, when you asked me is it just, I don't think that's my position--

DeBOER: No, you're right.

KATIE BENSON: -- that there has been a jury of 12 people that convicted him based on that testimony. In the Supreme Court decision,

they-- the, the defense attorneys brought up sufficiency of the evidence, specifically based on what you're asking me, that this witness, they denied that and then the motion for new trial was also brought up in the direct appeal in the juvenile resentencing, which I did handle. The public advocacy handled that and they argued, as a mitigator in that resentencing, all of these facts to the district court judge who handled the resentencing about three or four years ago.

DeBOER: OK, so you're right. I asked a very "inartful" question. I'm sorry about that. Let me ask a more specific question. Do you think it is just to not allow exculpatory evidence from a codefendant about someone just by virtue of the order that their trial came in?

KATIE BENSON: I think exculpatory evidence should always come in, but this is a situation that was based on felony murder. There was an eyewitness who saw Mr. Jackson shoot the firearm. His codefendant testified that-- I have not read Shalamar Cooperrider's transcript, but I'm assuming his testimony was as such-- is that I felt I had to shoot because my life was in danger. Well, exculpatory evidence to me would be DNA. You were not there. This shows that in this particular case, there's evidence that more than one person shot. So just because the codefendant felt that he had to shoot, I don't know if Mr. Jackson felt that he had to shoot because he didn't take the stand in his defense.

DeBOER: OK, I think I understand your position. Thank you.

LATHROP: Who else? Anybody down here? Did you have a question?

PANSING BROOKS: I do in a minute, but I'm going to think--

McKINNEY: So--

LATHROP: Senator McKinney.

McKINNEY: --so you were the prosecutor representing the state in the resentencing of, of Earnest Jackson?

KATIE BENSON: I'm-- I didn't-- I'm sorry, I didn't hear the very end of what you said and why--

McKINNEY: Did you, did you represent the state against Earnest Jackson in his resentencing?

KATIE BENSON: In the juvenile resentencing, yes.

McKINNEY: OK. I guess one question I got, before today, why didn't your office work with Senator Wayne to craft the correct language or work out the kinks in his bill?

KATIE BENSON: I can-- I can't say what contact Senator Wayne had directly with my office. All I know is that I was asked through the lobbyists at the Nebraska County Attorney Association to come here based on my experience with collateral attacks and I'm here, my boss, Don Kleine and Brenda Beadle, all-- also asked me to be here. I personally have not been asked to help clear up the language or to draft anything on this. As for anyone else, I can't testify to them.

McKINNEY: Are you aware of anyone in your office offering any support of Earnest Jackson and his pardon process?

KATIE BENSON: I'm not aware of anyone being asked to do that and I'm not aware, I'm not aware of any part of his pardon process.

McKINNEY: Do you think your office would be open to doing so?

KATIE BENSON: I can't speak to that.

McKINNEY: All right, thank you.

KATIE BENSON: And again, I'm here, obviously, that-- this LB28, to-- I mean, to further answer your question, does not have the name Earnest Jackson in it. I'm here to propose-- to oppose this because I think it would be-- have long-term ramifications for all defendants in collateral attacks, so that's why I can't testify directly to Earnest Jackson. I'm not trying to evade you.

McKINNEY: I have one more. How do you, in your opinion, propose we deal with situations of injustice in our court systems if you come here-- because my thing is we update everything in life. Everything gets updated year after year, month after month, day after day, but when it comes to the courts and the prison systems, it seems like that no one's willing to update that system. But if you look at the

historical facts and the facts that are said, there's, there's just so many disproportionate rates of individuals being "injustly" convicted of crimes across the nation, not only in our state. Why is-- and, and our, and our current prison system has an overcrowding issue because of this. Why is this so hard for the courts and, and the prison system to open their minds to update the system to improve outcomes for all?

KATIE BENSON: Well, I, I think obviously that's a way bigger question than I'm here-- but I will speak directly to collateral attacks and I will say that they have evolved. And they've evolved through case law. They've evolved through statutes. A few years ago, there were additions made actually to this statute when you look at that and so there has been an evolution. There has been amendments and adoptions in the Post Conviction Act, the DNA Act, and with regard to the motion for new trial and those are all available to ensure that there is justice and so that individuals do have the ability, if you can follow through with requirements of those statutes, if it shows that you are innocent or you can avail yourself, those are all available. The problem with LB28 is that it opens the-- to get rid of the five-year timeframe, I mean, that would just open the door in every single case. There has to be a narrower way to handle that than the legislation as written.

McKINNEY: Just an estimate, realistically, how many cases do you think this would apply to?

KATIE BENSON: I have no idea. I, I, I don't know how I would be able to know that. I mean, I-- you know, I mean-- I don't know how many people are incarcerated, where their codefendants-- where somebody was convicted first and another codefendant either pled-- because that could be a situation too where codefendant two takes the Fifth Amendment in codefendant one's trial and then pleads and then, you know, is willing to testify in codefendant three's trial. I mean, there's a lot of scenarios. I have no idea.

McKINNEY: I guess my question is, if, if, if you're making the argument that it would open the floodgates, I would like to see how many cases this applies to. If you can give me that data-- if not, I understand, but if possible, I would like to see it.

KATIE BENSON: And I apologize if I created any confusion when I said floodgates. If you look at the amend-- there's two amendments in LB28. One is to 21-101 [SIC] and the other is to 21-103 [SIC]. And what is in 2103 is that it eliminates the five-year requirement for a motion for retrial and that, that doesn't eliminate it just for situations like Earnest Jackson, where there's a codefendant. It was eliminate it for all motions for a new trial--

McKINNEY: If--

KATIE BENSON: --so that, that's what I was referring to.

McKINNEY: --if, if that's fixed in the bill in a limited-- limits it just to these, these situations, would you be OK with it?

KATIE BENSON: Can you restate the question?

McKINNEY: If, if it was adjusted within the bill to limit it to these type of situations, would you be OK with that language?

KATIE BENSON: I would say no because I'm not OK with the language in 210-- 2101.

McKINNEY: All right, thank you.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: So you said that, that it-- to be-- it should-- for justice, that it should be more narrowly drawn than five-year-- than lifting the five years. How long-- I mean, so you think justice is served after five years in that sense? It's a bright line and if, if, if we find out information later, then too bad for the person that was convicted? Yet, meanwhile, we go back and exonerate people after they've died, posthumously. I, I'm just interested in what this theory is that justice has a five-year window.

KATIE BENSON: Well, that's not what I stated. Right now, the statute as currently written that was passed by the Nebraska State Legislature pre-LB28, that has that five-year restriction on it. I didn't come up with that.

PANSING BROOKS: I know, but you're saying--

KATIE BENSON: That's in statute--

PANSING BROOKS: --we have to stick to that.

KATIE BENSON: Well, yes, but if you read the statute in the second part of that verbiage, what it says is five years, unless there's other showings. There is a way to have things-- or not things, cases and motions for a new trial filed outside the five-year limitation. What I'm saying is I think the way it's drafted now with regard to 2103 is fair and that allows for these to be filed outside that. And I don't think there's any reason under the change for 2101 why there would be a reason to eliminate the five years except for just Earnest Jackson.

PANSING BROOKS: Well, we don't, we don't know who else might be coming. That's true. And it doesn't seem like there's going to be a lot, but our justice system needs to be just. So the discussion previously was about newly discovered versus newly available. I was looking at my notes that I made. So the, the statute clearly says newly discoverable and doesn't talk about newly available. I think that's a, a weakness in our statutes and why shouldn't that be something that would help us to make sure that our justice system is just?

KATIE BENSON: I-- so--

PANSING BROOKS: To use the--

KATIE BENSON: --what's the question?

PANSING BROOKS: To use--

KATIE BENSON: I understand your thought, but--

PANSING BROOKS: To use newly available or to-- that's the discussion about changing it. And it's my understanding-- I've not read the Supreme Court case yet. I'm understanding that the Supreme Court didn't, didn't-- pointed to the fact that it said that it had to be within a reasonable time after the discovery of the new evidence. And what was mentioned before was well, there's newly available evidence in a case where somebody who's, who's pled the Fifth comes forward and says now I can't. I mean, shouldn't we err on the side of justice in

making sure that each person is able to be heard and all evidence come forward rather than saying, oh, my gosh, we have-- it was available before and, you know, they couldn't get it discovered because somebody was asking for the Fifth. That's not justice. That's not a way to go forward with our system if we have somebody that's innocent that is held in prison. Can you explain that to me, why newly available wouldn't be better?

KATIE BENSON: Senator Pansing Brooks, with all due respect, I'm not trying to be difficult. I researched and prepared to be here to testify regard to LB28 and the-- this small addition that that added as well is striking the language of the five year. The language of newly available versus newly discovered is in the statute. It's in the decision by the Nebraska Supreme Court as well as federal and state courts. I, I was not prepared to sit here and, and go over every case which analyzes and explains for so many different scenarios as to the case laws when we determine if something is newly available, first discovered. I mean, tons of cases, which I handled. So I can't-- that's a very huge question to say why I would think that a statute that's been on the books forever and the case laws and the courts have upheld forever-- I wasn't prepared to sit here and testify to that today. I think the language that was added, I'm here in opposition of for the reasons I gave and I don't think it's necessary to strike the language in 2103. As for when the statute--

PANSING BROOKS: Thank you.

KATIE BENSON: --was first created and that verbiage, I don't know.

PANSING BROOKS: Thank you, Ms. Benson.

LATHROP: OK, thank you for being here.

KATIE BENSON: Thank you, Senator Lathrop.

LATHROP: Next opponent. Anyone else here to testify in opposition? I don't see-- before you get away, I don't see any other opponents and I wanted to allow time for that. I got a question for you, though. So what we don't see in here, but maybe what I've experienced reading advance sheets is that if the court were to take up a motion like this, say Earnest-- we pass this thing. Earnest Jackson now hires a

lawyer and he's going to make the motion. The court also has to make a determination that whatever this person has to say would affect the outcome, right? So it's not every-- it's not--

KATIE BENSON: Yeah.

LATHROP: --you have somebody that, that took the Fifth in the case before you, he wasn't available at trial, now you get a new trial. Somebody has to make a determination that that testimony would have made a difference.

KATIE BENSON: Correct and so-- yeah, there's multiple roles. It's just not whether is it newly available versus newly discovered. Then the second prong is-- and that's how you overcome the five years-- is when you show part of that is that it could impact the ultimate outcome of the trial. Not that just, you know, maybe a jury would have thought. It's-- like, would that critical information--

LATHROP: Clearly, clearly. That's a pretty high standard to overcome.

KATIE BENSON: --possibly-- correct.

LATHROP: OK, so when we talk about the implementation of the statute and you said, well, when, when I was at the preliminary hearing or was it at somebody's trial, the reality is if it, if it wasn't some testimony somewhere that would have ultimately changed the outcome of-- in this case, we keep talking about Earnest Jackson, but it wouldn't have affected the outcome in Earnest Jackson's case-- motion overruled. Earnest Jackson continues to sit in the Department of Corrections.

KATIE BENSON: Correct and you would-- I mean the argument would also be that you look at the evidence that obviously was adduced in Mr. Jackson's case in comparison to what the newly available or newly discovered evidence would be.

LATHROP: Yeah and maybe another way to illustrate this point is if this were to pass and he makes the motion, you're not going to concede it because there's an awful lot he'd have to overcome besides--

KATIE BENSON: And again, I prepared for this particular case, but in other cases where there has been a motion for a new trial based on

newly discovered evidence, yes, I read through the bill of exceptions and I would make the argument hey, judge, even if this person said this now, look at all of this. Wouldn't make a difference.

LATHROP: May be the most common, may be the most common defense you use in these kind of cases. It's kind of the so what, didn't make any difference.

KATIE BENSON: Correct.

LATHROP: OK.

KATIE BENSON: And because-- and the remedy would be that, you know, the-- that's the problem also with the five years is that, that you have to understand that the remedy would be that yeah, the state, after 20 years-- you know, you'd have to find those witnesses and that's why it's so important to rely on that prior transcript as you brought it.

LATHROP: Got it. OK, thank you so much for answering the questions and being here today. We appreciate it.

KATIE BENSON: Thank you.

LATHROP: Again, any other opponents to this bill wish to be heard? Anybody here in a neutral capacity? Seeing none, Senator Wayne to close. And as you approach, I will-- for the record, we have 21 position letters, all proponent, and we have two written testimony offered and filed this morning; one by Spike Eickholt with the ACLU as a proponent and James D. Smith from the Nebraska Attorney General's Office and also on behalf of the County Attorneys Association and he is an opponent or his testimony is in opposition. With that, Senator Wayne, you are free to close.

WAYNE: Thank you, Chairman Lathrop, and I, and I will try to be brief because there were some interesting points and some good points that were brought up; one, the idea of the floodgates opening. We don't know how many cases are like this and so we don't know if the floodgates will open. But to Senator-- Chairman Lathrop's point, there's still a process in which a judge has to decide if it's material, in addition, if it will make a, a difference in the case. To Senator DeBoer's about language and things we can do, I'll give you

one example that we've already drafted an amendment, but we were-- I do apologize to the Judiciary Committee. I'm sorry that this hearing has to be the compromising process for me to understand their actual issues. I was just told they were going to be against it and not really a whole lot of issues as far as the bill itself. But as far as the five-year look back, you can limit it to Class I, Class IA, Class IB, and Class IC felonies and most of those are all 50 year-- up to 50 years or life. Why should five years apply to somebody who is sitting in there for life? Now if it's a, a five-year sentence, then obviously the class by-- or, or the, the, the statute of limitations on five years makes sense. So I think there is language we can come up with to, to make this, this work, but the key difference-- and, and I will work on an amendment actually starting today because it's such an important bill that I want to get to the floor. It isn't a constitutional right that is being asserted, the issue. It's the actual testimony under oath as evidence that is the new evidence. And underneath that testimony, it's under oath, subject to cross-examination. That's why it's allowed to come in in any other hearing. That's the critical piece of evidence that is failing to admit-- or to be, I think, understood by the, the opposition. In, in addition to that, in the Earnest Jackson case-- and I tried my hardest not to talk about it-- what's failed to be mentioned is the person admitted to shooting also admitted to Earnest Jackson not being there twice under oath, twice under cross-examination, and was part of the reason the other individual was not guilty because he also testified that it wasn't there. Now why is this important about the Fifth Amendment for those who don't practice? It's not like on TV. And what I mean by that is if you know that witness is going to take the Fifth, you have an ethical obligation not to put that person on the stand. If you do, it's an automatic mistrial because the prejudice of having somebody plead the Fifth, especially in a criminal trial, will all but assure-- serve as a not guilty verdict to the one who is on trial. So the Supreme Court says you can't even do it. So what actually happens is either in this situation with Earnest Jackson where their attorney asserts it, maybe even signed the affidavit, sometimes a judge will bring a person in voir dire and make them assert underneath, underneath oath. But once they assert, the jury never gets to see that person, never gets to hear that testimony because no good attorney, one, is going to allow that person to be called, but two, the prejudice of a Fifth Amendment waiver or a Fifth Amendment assertion

is so prejudicial that it can't happen. And it's actually misconduct on the part of the attorney to allow that to happen if you know it's going to happen. So we're actually talking about the testimony under oath. So we are not allowing the testimony in as evidence. We aren't saying that anyone can come back years later and say I have a witness who didn't say anything. We're actually talking about the testimony and not the witness and I have no problem bringing an amendment to clear that up. But the biggest issue or the underlying context of this bill is that there's a fundamental principle in our Constitution, in our judicial system that it is about justice, not about court efficiency. It's not about how many hearings, not about everything else, but justice. And our foundation, our community is best served to the community when the individual rights are maintained and ensured. This is not about Earnest Jackson. Earnest Jackson is just a byproduct of an unjust process. And I have to remind this committee that a pardon is about forgiveness, not about innocence. And what we're trying to do is allow somebody and those who are in a similarly situated situation where they have the lowest docket, where somebody asserts a Fifth Amendment right and later comes back under oath and testifies that is new evidence, that should have been heard or should be heard in a new trial. But there's still an obstacle you have to overcome and that's filing the motion, as Senator-- Chairman Lathrop said, and making sure that the judge still even grants it. A just judicial system is not about allowing-- a just judicial system is about allowing someone to prove their innocence. Even though the burden is on the state all the time, if they have evidence out there that they can later come back and say, here we go, look, that person should have their day in court. And with that, I'll answer any questions.

LATHROP: I don't see any questions, Senator Wayne.

WAYNE: Thank you.

LATHROP: You'll let us know after you work through whatever you've got to work through?

WAYNE: I'll be working through it today. Thank you.

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

LATHROP: OK, thanks. That will close our hearing on LB28 and bring you to the next bill, LB88. We're going to wait a second while the room clears and it depends how many. Senator Morfeld, you may open on LB88.

MORFELD: Thank you, Chairman Lathrop, members of the Judiciary Committee, my name is Adam Morfeld. For the record, spelled A-d-a-m M-o-r-f as in Frank -e-l-d representing the fighting 46th Legislative District here today to introduce LB88. A bill to protect student journalists at high schools and state colleges and universities across the state of Nebraska. The protection of student journalists' First Amendment rights in our K-12 schools and state institutions of higher education is critical in the development of current and future civic leaders. While I was in high school in Sioux Falls, South Dakota, I was nearly expelled for starting an alternative student publication. As a representative of Nebraska's largest university, I represent many student journalists who will be the next generation of civic leaders to build a strong and robust democracy. This starts with protecting the First Amendment rights in government institutions. The Student Journalism Protection Act works in the following ways. It will guarantee high school and university students have access to their First Amendment rights, regardless of whether the media is financially supported by the institution. Furthermore, this bill will protect student journalists from disciplinary action for exercising their First Amendment rights. Additionally, the Student Journalism Protection Act ensures that professors and teachers of journalism, otherwise known as media advisers, cannot be punished for protecting their students' First Amendment rights. Finally, LB88 promotes independence between the student media and the educational institution by stating that no publication or expression by the student shall be deemed to be an expression of the institution's policy. Beyond the immediate implications, this legislation will also foster relationships between Nebraska's public high schools and postsecondary institutions. As outlined within the bill, public high schools shall attempt to form relationships with postsecondary institutions to learn about and train in mass media law and journalistic ethics. It is important to note that there are few exceptions within the bill found in accordance with the First Amendment. Student journalists will not be protected in cases of libel or slander, unwarranted privacy invasions, violations of federal law, or inciting violence or substantial disruption of orderly operation of the schools. In

addition, pursuant to our debate on the floor last year, I also included language for high school students to adhere to certain ethical standards. Various states have implemented legislation to protect student journalists. In fact, North Dakota and Iowa passed similar pieces of legislation in 2015, 2016 respectively. Kansas, a state with protections on the books since 1992, recently reaped the rewards of preserving First Amendment rights. At Pittsburgh High School in southeastern Kansas, a student newspaper led by an incredibly bright and savvy student journalist published an investigative article that highlighted their principal's faulty credentials and questioned the legitimacy of her resume, eventually leading to the principal's resignation. This is all because under Kansas law, high school journalists are protected from the administrative censorship. Had a similar situation occurred in a Nebraska school, it's very likely that this incredible investigative effort would have never come to light. These states around us that have had these protections, fortunately, are still in operation. The schools are still open, order has not collapsed, and students are able to enjoy their First Amendment rights. The First Amendment should not carry with it any political agenda. Instead, the First Amendment ensures a free press for young Nebraskans when it comes to exercising their rights and state institutions of K-12 and higher education. It's critical to teach the incredible power of the First Amendment and its consequences at an early age to ensure informed civic leaders. I'd like to thank Michael Kennedy from the Nebraska Collegiate Media Association and the Student Press Law Center who have worked with me on this legislation along with the students. I would like to also thank the countless educators and students who have reached out to me. Some are here today testifying-- don't worry, they know they have only 30 minutes, for their commitment to building the next generation of civic leaders. It's time to ensure that students have a voice and that it is free and not unnecessarily impeded by state and local administrators, regardless of how well-meaning they may think they are. I urge your favorable consideration of LB88 and I'm willing to listen to any suggestions or questions that you have. As many of you know, this moved on to Select File last session. We ran out of time. I did include the things that I discussed on the floor in this legislation, including the specific journalistic standards for high school students. So that's included from last year. And then I also made sure that it was, it was confined only to public institutions and

schools, because there were some religious freedom concerns from, from some of those institutions. So I included both of those in here. I'd be happy to answer any questions that you may have.

LATHROP: I don't see any questions at this time, but we will begin taking proponent testimony.

MORFELD: OK, thank you very much.

LATHROP: Thanks, Senator Morfeld. As Senator Morfeld indicated, we have of necessity made a decision as a committee to allow 30 minutes for proponent testimony on bills and 30 minutes for opponents. So hopefully you've worked out who's coming up. But generally we will limit the testimony to 3 minutes per person and 30 minutes per side. And with that, we'll take the first proponent.

MICHAEL KENNEDY: Can we ask a question for what of masks, can we--

LATHROP: Once you get behind the screen, you can lower your mask if you need to. And if you don't, we need to make sure you're speaking clearly and into the mike.

MICHAEL KENNEDY: Understood.

LATHROP: So this will all be transcribed. Thank you.

MICHAEL KENNEDY: Thank you, sir. Sorry. My name is Michael Kennedy, M-i-c-h-a-e-l K-e-n-n-e-d-y. I represent the Northern Plains Collegiate Media Association, formerly Nebraska Collegiate Media Association. While I am employed as a journalism instructor in student media adviser at a state college, I am testifying solely on behalf of our association today. Chairman Lathrop, esteemed committee members, thank you for the opportunity to testify on behalf of LB88 sponsored by Senator Morfeld. First, I would like to thank Senator Morfeld for his indefatigable commitment to LB88 and to five senators: Carol Blood, Machaela Cavanaugh, Matt Hansen, Morgan [SIC] Hunt, and Julie Slama, who recognize the importance, value, and need for LB88 by signing on as cosponsors. The last time we met, January '19, you heard about 20 public high school students and their advisers from Omaha to Scottsbluff testify to administrative abuses they've endured as a consequence of the U.S. Supreme Court's '88 Hazelwood v. Kuhlmeier decision. You heard those students and advisers plead with you to move

this legislation forward. You heard Cathy Kuhlmeier Frey testify to the censorship she endured as a high school editor and later defendant in that infamous Hazelwood case. And you heard her extol the need for this legislation to move forward. You will hear from her again. I spoke with her yesterday. She'll be writing in on behalf this legislation. You heard me, representing NPCMA, explain that while we know of no censorship or abuses at public colleges and universities in the press, we need this legislation to prevent the Hosty v. Carter decision from infecting our great state. As a reminder, the U.S. Seventh Circuit Court of Appeals in 2005 applied Hazlewood to colleges and universities within its jurisdiction only. We must keep that decision from creeping into Nebraska. LB88 will do that. You heard testimony or read letters of support from professional organizations: the Nebraska Press Association, Nebraska Broadcasters, the Academic Freedom Coalition, and the Student Press Law Center. You heard us in 2009 [SIC]. We asked today for you to remember what you heard in the past and we ask as we come before you today to move this legislation forward. I'll take any questions.

LATHROP: I do not see any questions. Thanks for being here. Next proponent. Good afternoon.

AUBRIE LAWRENCE: Hi. My name is Aubrie Lawrence, A-u-b-r-i-e L-a-w-r-e-n-c-e. I am the student editor of The Eagle at Chadron State College, but I am here on my own accord, not on behalf of the newspaper, though several of my other editors speak-- I speak for. Chairman Lathrop, honorable committee members, thank you for the opportunity to speak on behalf of LB88. I was only 17 years old and a junior in high school when Senator Morfeld first sponsored this bill in 2018. At the time, I had no idea that this was even going through our state's Legislature. While I was never censored working for my high school newspaper, I had heard stories of high school administrators around the state censoring their student media. I had been taught about the Hazelwood v. Kuhlmeier case. I simply assumed that censorship was something we had to deal with as high school students. We were still young and learning the rules of journalism, we needed to be regulated by our administration. Now I'm in the middle of my sophomore year of college and know much more about the rights I have as a student journalist. Someday, I hope to be working in Washington, D.C., covering national politics. If I am to perform well and succeed, I must start learning now. College administrations are

the equivalent of a governing body to college students. If this bill is passed, it would help me and other student journalists in my position learn to report on what's going on in executive positions without being scared that my story might be censored. I would like to end by thanking the sponsors of LB88 and committee members here today again for taking the time to hear this testimony. As a student journalist in Nebraska, it means a lot to me. Thank you.

LATHROP: OK. I do not see any questions. Thanks for being here.

AUBRIE LAWRENCE: Thank you.

LATHROP: Did you come all the way from Chadron?

AUBRIE LAWRENCE: Yes, I did.

LATHROP: All right. We're glad--

AUBRIE LAWRENCE: Thank you.

LATHROP: --to hear from you. Good afternoon.

ANGELA WOLFE: Hi. Chairman Lathrop, committee, thank you for having us and for your support in the past. My name is Angela Wolfe, A-n-g-e-l-a W-o-l-f-e. I am here as an executive board member of the Nebraska High School Press Association. Just like my colleagues, I do-- I am employed as a public high school adviser, but I am here speaking on behalf of the NHSPA. I am also a certified journalism instructor with two degrees in journalism and I'm in my eighth year of teaching and advising media. And as you'll see in the statement from the Nebraska High School Press Association, we are an organization that is here to support advisers around the state of Nebraska. One of the things that has been routinely questioned is like what-- how are these advisers supposed to know what they're supposed to do? How are they supposed to know ethics? How are they supposed to know laws? And I'm here to tell you that it's because we exist. You also are going to receive a statement from Michelle Hassler, our executive director at UNL, and we have a partnership with them where it-- we are committed to making sure that every adviser in Nebraska has the tools and the resources they need to know the laws, to know their roles as a journalism adviser, and to be supportive in that. We have a mentorship program. We have members that range from Scottsbluff to Norfolk to Omaha,

Lincoln, and everywhere in between. We represent small schools, we represent medium schools, we represent large schools. And we are that resource, along with all of the national resources and organizations that the advisers in Nebraska belong to. I'm also here to just tell you how amazing the advisers in the state of Nebraska are. You have national award winning advisers who are in these schools working with these students every day. Their students win national awards. They went-- there are-- we have a state competition and these people are here and they are professionals and they are knowledgeable and they are some of the best of the best. And yet we are still having to deal with the fear and the decisions of censorship in our buildings. I got a call from an adviser earlier this year. Her students wanted to write about racism in their school and students find their-- the Confederate flag. And she was having to make the decision between fighting for her students' rights and, and her livelihood. And this is not something that these incredibly qualified, incredibly intelligent, incredibly hardworking advisers should have to decide. Do I stand up for the First Amendment or do I save my job? And so I would enthusiastically ask you to support this bill and vote yes, not only to protect these students who are going to give you some amazing testimony behind me, but also the, the people who stand in between them and the administrators and just want to do what's best for their students. So thank you for your time.

LATHROP: OK. Senator Slama.

SLAMA: Thank you, Senator Lathrop. And thank you very much for making the time to come testify today. In the example you referenced with the school journalism, was there any documented reference from the administrator as to the, the job security of the media adviser pertaining to that story? Because that's something that actually came to fruition or was that just a hypothetical?

ANGELA WOLFE: I would say in this particular situation, it was not anything that had gone that far in the past, but it had an different situation. So this was not something that she had not-- she had experienced before and she had been written up before.

SLAMA: OK.

ANGELA WOLFE: And so I do think that maybe, although we don't have any documented about very specific instance, she did have a, a history of having to deal with this and to be worried about those types of things.

SLAMA: OK, thank you.

LATHROP: I see no other questions. Thank you for your testimony. Next proponent. Good afternoon. Welcome.

RAMYA IYER: Hi. Thank you. My name is Ramya Iyer, that's R-a-m-y-a I-y-e-r. I am a senior at Westside High School in Omaha, Nebraska. Well, it's Nebraska. And I am here to advocate for LB88. I have been a member of my school's student-run journalism program for the past four years and everything from getting staff trained and motivated to figuring out the tricky publication logistics has been fully facilitated by students such as myself. Being student run is the foundation of our program's success because as students we are hyper aware of the impact our work has on our community. We hold each other accountable because we deeply care about what we represent. But this past summer, our school district revoked our status as a public forum for student expression and decided to enact full prior review, meaning an administrator must now read and approve content that we produced before it is allowed to be published. This has been a dramatic change for the program, considering that we've historically operated as a public forum for student expression by practice for over 40 years. As a former editor in chief of the yearbook, for example, it was my responsibility to decide which content would be published in the final book. But I only earned this responsibility after considerable time learning our editorial policy, which requires us that we produce journalism in an objective, legal, accurate and ethical manner, as outlined by the Student Press Law Center. To now leave final content decisions up to administrators who are unqualified in journalism doesn't make sense when they're both students and advisers in the program who have had the training to foster quality work. In fact, prior review detracts from the educational experience of student editors such as myself, as we are now unable to carry out our responsibilities to the fullest extent. Additionally, I have observed that prior review has had a chilling effect on my peers, meaning that students are now more reluctant to cover sensitive or potentially controversial topics because they assume that there's a good chance

that it'll be censored by administration anyways. This has been incredibly disturbing to watch, especially considering the current political and social climate as students' voices are more important now than ever before. The protection for freedom of speech and freedom of the press for student journalists granted by LB88 would erase the need for prior review entirely, as our publications would be reinstated as public forums and our school district would no longer need to be responsible for the content that we produce. This would not only ease the burden on school administrators, but it will also re-empower student journalists to take back full control of our work. I'd like to quickly thank Senator Morfeld as well as the cosponsors of this bill and all of you for your time. Thank you.

LATHROP: Thank you. Thank you. And thanks for being here.

RAMYA IYER: Of course.

LATHROP: Appreciate your testimony. Next proponent. Good afternoon.

WILL EIKENBARY: Good afternoon. Hello, my name is Will Eikenbary, W-i-l-l E-i-k-e-n-b-a-r-y. I go to Westside High School and I have been in the journalism program at Westside for the last four years. I'm currently an executive publication coordinator and what that means is my job is overseeing all the different publications in our program. During the time I have been in Westside journalism, we've always prided ourselves on being student run and giving students real world experience that can translate into careers in journalism in the future. My freshman year, I always loved that students were the one to hit the publish button. It really made the program feel like a real newsroom, which is what exactly every budding journalist needs. While the sentiment of student-run journalism is still around in the program, it's frankly not the case this school year due to our public forum status being taken away. This year, our district made the decision to enforce mandatory prior review of all published student content. Prior review, as mentioned earlier, is the practice of executive persons reading and reviewing content before it's been made available to the public. This sounds like a small change that wouldn't impact the program very much. But as someone who has been trying to deal with it for the past six months, that is far from the truth. This practice has resulted in less timely, hard-hitting content on all of our platforms and has completely stripped students of many real-world

journalism experiences they can [INAUDIBLE]. However, LB88 would fix that. By giving our program back the public forum status we've had in previous years, it would revitalize the program for an incredible amount of students involved. Students would no longer need to worry if a story could be published, or if it would simply be buried by administration. Stories would be able to be published timely by trained editors instead of waiting for a district administrator to post it a week later. Timely, hard- hitting content is the lifeblood of a good publication. And in order to uphold the basic idea of a free press as written in our constitution, public forum status is vital. For these reasons, I implore Nebraska legislators to pass the new voice LB88 built into law and defines student publications as a public forum for student expression. The future of so many young, passionate journalists is resting in your hands, and I sincerely hope you understand the impact of your decision on so many. Thank you all for your time. And I would also like to thank Senator Morfeld and everyone else involved in this amazing opportunity.

LATHROP: OK. Well, thank you, Mr. Eikenbary. Thanks for being here. Welcome.

LUKE STEINER: Thank you. My name is Luke Steiner, L-u-k-e S-t-e-i-n-e-r. I'm a student journalist and editor in chief for our school newspaper at Westside High School in Omaha. So from the moment I joined journalism at Westside my freshman year, I noticed my advisers consistently reminded us that it's a students' program. I've always seen my past editors advertise our journalism department priding ourselves on being completely student run. Unfortunately, this year, being my first year leading a publication, our administration reintroduced a former prior review policy on the basis that we are not a public forum. Over the course of the last five months, our advisers and publication editors and journalism program leaders alike have fought against some of the administration's more restrictive requests. Our administration's new policy has forced us to question every story before it is written and every photo before it is taken out of fear of not being able to publish. When it comes time to brainstorm in the hallway, we used to ask if our peers would appreciate a story and now I find us asking more if administration would accept our story. Not only has this policy created issues of self-censorship, but has disrupted our process in producing timely and relevant content. Despite it still being students, we take responsibility and pride into

getting information out to our audience as it happens, something now nearly impossible with administration's two-day review policy prior to publishing. Lastly, I feel for the new members of our journalism program who don't really know what it was like to have freedom of expression which was vital in, in driving creativity. This new prior review policy has drained creativity from a program making, making all students new and returning more fearful of publishing our once vast number of hard-hitting stories. At one weekly editor meeting, someone made the comment that we are becoming the district's PR team. And it couldn't be truer as they are restricting the photos we publish-- post and the stories we publish to fit the district's image, impeding our full right to show what is happening. If LB88 is to pass, we can once again feel as if our journalism program is student run and we will be able to, to return to only concerning ourselves with what we can publish for the benefit of our peers and no longer for the approval of the district. I'd like to thank Senator Morfeld and the core contributors to LB88 and for taking the time to hear my testimony.

LATHROP: Hey, Mr. Steiner, can I ask you a question?

LUKE STEINER: Yes.

LATHROP: So now that you have somebody looking over your shoulder, is it your journalism teacher or is it administration like the principal or the superintendent? Who's, who's reviewing what your--

LUKE STEINER: It's our assistant principal.

LATHROP: The assistant principal?

LUKE STEINER: Yeah. All of administration has the ability to look over, but our, our main coordinator is our assistant principal.

LATHROP: That's not a journalism teacher?

LUKE STEINER: No, our advisers are not part of policy.

LATHROP: OK, I don't see any other questions. Thank you.

LUKE STEINER: Thank you.

LATHROP: Good afternoon.

ZANE MROZLA-MINDRUP: Good afternoon. My name is Zane Mrozla-Mindrup.

LATHROP: A little bit louder, if you can.

ZANE MROZLA-MINDRUP: My name is Zane Mrozla-Mindrup, Z-a-n-e M-r-o-z-l-a hyphen M-i-n-d-r-u-p. The first thing that students entering the journalism program at Gretna High School learn is how to ethically and responsibly report the news. They are drilled on the five freedoms guaranteed by the First Amendment and learn of landmark court decisions on student speech, most notably Tinker v. Des Moines Independent Community School District, which guarantees certain student speech rights to millions of students across the country. They then learn that because of the Supreme Court's ruling in Hazelwood v. Kuhlmeier, they do not have the same First Amendment rights in their home state. Their administration has complete oversight to censor anything students might create in the journalism program. In all fairness to the administration of Gretna High School, this power is used sparingly. But the fact that it is used at all is alarming. Just this last September, our administration pulled a photo from our newspaper because it showed a student sitting in class with their face mask off in flagrant violation of the school's COVID-19 protocols. The threat of censorship remains the greatest opponent to the journalism program at Gretna High School and factors into every decision we make as a staff from assigning stories, to taking pictures, to getting interviews. I'm in favor of LB88 because it protects students from these harmful levels of oversight because after all our journalism programs are classes offered to teach students about the right way to produce and consume information, an essential skill to learn in today's media environment. The current state laws which allow students to be punished by school officials for the content they produce ceases debate and stunts many attempts by the student body to engage in meaningful conversation.

LATHROP: Very good. I do not see any questions, but thanks for being here.

ABIGAIL SCHREIBER: Hey, all. My name is Abigail Schreiber, that is A-b-i-g-a-i-l S-c-h-r-e-i-b-e-r, and I am here for Westside journalism in support of LB88. I'm currently a senior at Westside right now, and I joined my school newspaper as a freshman. And as all of my peers said, it's-- was one of our journalism program's greatest prize. Our

advisers are constantly talking about how this is a student-run publication. We have the control. We don't have to face prior review. And when that was the case, we were an outstanding program. Not to brag or anything, but we're really good. I mean, we have won the state journalism competition the last two years in a row, along with countless other state and national awards for our school. And I mean, we were great. But this last year, our new superintendent decided to implement prior review. And it has been very difficult for our program. I mean, we-- if something big happened at our school, we used to be able to put a, put a story up on our website in an hour, but now it takes days, even weeks just because we're waiting for a response from-- for an email from our superintendent. And we just have to wait. And we just can't create the same content because people are scared of being censored. People are scared of just not being allowed to write the stories they want. And it has hindered our creativity, our growth, and our passion. And any school environment where the students are put in fear is clearly doing something wrong. That should never be the case. And it's just-- it's been so hard for our program and-- but our administration won't budge. They've decided to put the school's image over the students actual education. So we are here right now in support of this bill because you all have the power to make us the program we should be and help us be better. You know, our administration is afraid of us making mistakes, but real educators, they should see mistakes as opportunities for growth, you know, but now we don't get those opportunities anymore because there's no chance for us to step outside of the box. We can't grow and change and be better. So that is why I support this bill. And, you know, I'm no expert on the constitution, but last time I checked, the First Amendment doesn't say 18-plus next to it. I mean, we're student press, but we're still press and we deserve the same freedom to act as so. So I strongly urge you to pass this bill and help us be better. Thank you.

LATHROP: I got a question for you.

ABIGAIL SCHREIBER: Yeah.

LATHROP: So the last testifier, one of the last testifiers said that you now have a vice principal that is reviewing your content?

ABIGAIL SCHREIBER: Yes, he is the main one that works with our program.

LATHROP: Before the change in policy, do you have a journalism instructor that guides you through the process and says, wait a minute, that's, that's beyond our ethics and--

ABIGAIL SCHREIBER: Yeah.

LATHROP: --that's not appropriate?

ABIGAIL SCHREIBER: Um-hum, we have two great teachers at Westside that even before this year, they reviewed all of our stories before they were published. But now we have to deal with the administration reviewing them, too.

LATHROP: But not for content necessarily, but for whether you're being ethical and--

ABIGAIL SCHREIBER: They also do edit for content, though, on the stories. They do.

LATHROP: OK. Senator McKinney.

McKINNEY: Thank you for your testimony. One thing. Are you aware of what triggered this change? Was it the, the picture with the student with the face mask off?

ABIGAIL SCHREIBER: Well, this last year, the school board and our superintendent were reviewing a bunch of old policies and they came up with the one, with our former one for the school journalism program, which hasn't been updated in a very long time. And when they were reading that, they, you know, saw that we weren't a public forum and that they had the right to implement prior review. And there were a couple of issues in our school last year, like, there was this one girl who wrote a story about this teacher who was previously fired working with a business class at the school. But when that story was published, the administration didn't know that that fired teacher was working there. So our program got in trouble for that. And it really isn't a just reason for them to implement prior review, but that was one of the reasons they cited.

McKINNEY: Thank you.

LATHROP: OK, thank you.

ABIGAIL SCHREIBER: Thank you.

LATHROP: I think we have time for one more proponent. Welcome.

ELLIOT EVANS: Hi. My name is Elliot Evans, E-l-l-i-o-t E-v-a-n-s. I'm here to explain why I support LB88. I'm a senior at Westside High School, where I'm in my fourth year of taking student-led journalism classes. I'm also in my second year of being the editor in chief of Westside's literary magazine, whose focus is to cover student voice and creativity. Until this year, our journalism program had been operating as an open forum, meaning administration didn't interact with us unless they took issue with the story that had already been published. Because of this, working in journalism was extremely rewarding. Being trusted to set our own standards and explore the ideas that we thought were relevant and interesting created an environment where I wanted to go above and beyond for the sake of doing a good job. This, this setting taught me how to lead my peers, how to take initiative, and how to approach starting a publication from scratch. All of these skills were built on a foundation of respect. I was able to be confident in my authority to create because of the basic understanding that my point of view as a student was the most relevant one to do my job. It was this respect that made my experience in journalism so educational. This school year, a prior review policy was put in place eliminating that trust. I understood their perspective, which was that what we published was a reflection of the school district as a whole so they should see everything before it's published. However, what hurt me about the decision, other than its inherent distrust of students, was that a group of educators had made the decision to protect themselves rather than protect the education of their students. The decision was made that an adult with little journalism experience was more qualified to decide whether a story is appropriate or not than any student editor who all have years of experience doing the job themselves. Adults should always be respected, but it is a fantasy that all adults know more than every child or teenager about absolutely everything. By passing LB88, you will ensure that both teachers and students are respected and that students have the opportunity to learn, to think and create for

themselves. The benefits that come from this don't just make great journalists, they make smart people who take responsibility for their actions. That is why I care so much about this bill. Its benefits are exponential. More trust in students now translates to a greater sense of responsibility later. Thank you.

LATHROP: Very good. I do not see any questions for you, but thank you. We appreciate hearing from the proponents. We are next going to hear testimony from opponents. Anyone here in opposition?

MARY HAMILTON: Hi.

LATHROP: Welcome.

MARY HAMILTON: I'm Mary Hamilton, and it's spelled M-a-r-y H-a-m-i-l-t-o-n. And I'd like to thank you, Senator Lathrop, and the committee for letting-- giving me the chance to speak today. I'd also like to thank the students for speaking out in opposition. I think that's very brave of them. I mean, in-- I mean, not opposition. Anyway, I am a K-12 educator in Nebraska. I'm licensed in Nebraska. And I'm just here to speak out against-- in opposition to LB88 because I think it could lead to disruption of the classroom and the learning environment. And there are many other issues that could come from allowing young students to publish articles without the guidance and oversight from the administrators. This could not only lead to disruption of a learning environment, but also lead to the bullying of others. And I know that we have had many issues with that in our classrooms. And by allowing any type of speech without oversight, it could give the possibility of weaponizing our children when they are sent to school to concentrate and learn. When I send my children and my grandchildren, I have six grandchildren in the LPS system right now, I expect that they receive guidance in their writing processes and not to worry about what is getting published. There are so many places for a student to express themselves through social media platforms such as Facebook, Instagram, Snapchat, Twitter, YouTube, Messenger and Reddit, just to name a few. The Supreme Court determined that students' freedom of speech and press must be balanced against the interest of the schools in maintaining institutional order and good learning environment. I want to keep our learning environment for Nebraska students safe by voting against LB88. And I just want to thank all of you again for allowing me to speak out.

LATHROP: You know, when people come and thank us, this is your Legislature and your Judiciary Committee. We're, we're glad you're here today. And, and, yeah, you're always welcome.

MARY HAMILTON: Yeah, I'm-- I, I, I thank you for the opportunity because I haven't really done this before, so--

LATHROP: All right.

MARY HAMILTON: --I just felt compelled to do it today.

LATHROP: Well, you did a fine job.

MARY HAMILTON: Thank you.

LATHROP: Yeah, thank you. Next opponent. Good afternoon. Welcome.

BRAD JACOBSEN: Take that off so you can hear clearly. Thank you. Good afternoon, my name is Brad Jacobsen, B-r-a-d J-a-c-o-b-s-e-n. I am here representing the Nebraska Council of School Administrators and I am also the president of our state principals group as well. I have a strong belief that relationships impact culture in a building and that culture impacts the, the ultimate results for students. In any school, we try to put in types of preventative measures. So, you know, maybe not in COVID times, but in most times we love to have guests. We love to have speakers and military recruiters and college recruiters. And we-- and parents to come to our buildings, but we still screen them. We still have locks on our doors and we allow people in. We have sign in and sign outs. We escort people around the buildings. So constantly as a building principal, you know, we're putting in protective measures for our, for our students at all times. One of the things, and I'm not a legal expert at all, but one of the things you learn very early on in your principal preparation is the Tinker standard or the Tinker case and the Tinker case basically, what it means to a principal is, is I can intervene in advance if there's a reasonable likelihood of a disruption of the operation of school. And because we're trying to prevent to make sure that culture is protected and prevent to make sure our kids are protected as much as we possibly can. I would much rather prevent and try to put toothpaste, toothpaste back in the tube. So we've heard some about the provisions and the exceptions. And so I think, you know, some of the exceptions, one in

particular draw-- drew my attention. You know, clearly, if the story is libelous or slanderous, then that's an exception that can be-- that story can be stopped. Right? And so, however, you know, like I'm not legally trained. I don't know if I know what a libelous and slanderous actually might mean. Somebody probably does, but that would mean I'd have to maybe work with an attorney to figure that out. If the story is unwarranted or invasion of privacy, again, that probably requires me to do some legal analysis. And that's, that's not necessarily my forte. You know, one of the exceptions, and I don't need to go through them all, but the one-- the, the exception, I think is the biggest difference or biggest challenge for me as a building principal or, or, or my colleagues is it's, it's, it's on the last page, lines 3 and 4 of the bill, but it's: if the publishment or the publishing is shown to cause material and substantial disruption. So if you compare that to the Tinker language that says: reasonably likely that it would cause a disruption. That allows me to prevent. The language that says causes material and substantial disruption. Again, to me would also-- it sounds to me like I have to wait for it to cause material or substantial disruption. And now I'm cleaning up the toothpaste that's already out of the tube. So from a concept of what a school principal deals with is, I would much rather keep the cap on, if I can, to protect kids versus trying to clean up the mess of the toothpaste that's out of the tube. So that would be why I am in opposition of LB88 and I'm certainly happy to take any questions from a perspective of a building principal.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. And thank you for appearing today. Is that your only problem with the bill is just that one paragraph?

BRAD JACOBSEN: It's kind of a big one. I mean, yes, so it definitely would be one that causes me concern.

BRANDT: And, and you didn't state where you're a building principal and that's fine with me. But I would assume you have a journalism program at whatever school you're a principal at and your journalism teachers are the ones responsible for oversight, are they not?

BRAD JACOBSEN: Correct.

BRANDT: And we've heard some students testify that with this prior approval, it's taking so much longer to get the stories out. Is there, is there a way to manage that? I mean, where they're talking it used to take a day or two now because you guys are so backlogged and this is another duty on your assistant principal that it might take a week or two. And by that time, that story is stale. Is there a way to work this?

BRAD JACOBSEN: That's a great question. You know, I know in, in my-- my school is not as, as large as, as Westside. It's actually Greenwood. And I, I did not say it, I just, you know, I'm-- but, you know, what happens in, in my situation right now is, you know, if it's something that one of my-- and I've had multiple instructors over the years, but if, if they think it's a little bit, you know, it's a process for us. It's more of a communication with the kid. And like a question that I would ask a student is just simply, you know, let's, let's play this out. Does this ultimately have a positive impact on the culture of our school or could it potentially have a negative impact on our, our, our culture at school or an individual or whatever it might be? And that's the relationship, I guess, that my instructors and I guess if it ever got to me, I, I really only had a couple of things that I've had in more of a yearbook setting more than, you know, but it-- it's to me, it's not a-- it doesn't happen very often. But that's how we've handled it more as it seems like more of a relationship piece where we can have a discussion about how it could ultimately have an impact. You know, to your point about, you know, the, the length of time that it, it would take for review, that-- that's something, you know, I, I would hope that could be reviewed by each-- I think each district and each school probably is going to handle that a little bit differently. I totally get the frustration that a kid would feel if they write a story and have to wait two weeks for it to get approved or not. I mean, I, I, I would feel that same frustration, any of us would if we wanted some approval on something that we had to wait and then ultimately have the rug pulled out from under us.

BRANDT: All right. Thank you.

BRAD JACOBSEN: Yeah, you're welcome.

LATHROP: I don't see any other questions. Thanks--

BRAD JACOBSEN: All right. Thank you.

LATHROP: --for being here. Anyone else here in opposition to LB88? Anyone here in the neutral capacity? Seeing none, Senator Morfeld to close. And as he approaches, I'll let the record reflect we have 16 position letters, 13 of those are in favor and 3 are in opposition. We also had written testimony received from a number of people and organizations. A proponent, Dennis DeRossett, D-e-R-o-s-s-e-t-t, Nebraska Press Association. Also a proponent, Jason Hayes with the NSEA. Spike Eickholt with ACLU of Nebraska, also a proponent. Korby Gilbertson, Media of Nebraska, also a proponent. Again, a proponent, Shari Veil, V-e-i-l. And finally, Cameron-- it looks like Collins (Collier), proponent with ASUN, A-S-U-N Student Government. Senator Morfeld to close.

MORFELD: Thank you very much for listening to testimony. I think it's always pretty inspiring to, to hear from the student journalists, and I, I think that you also see the quality of young Nebraskans that we have right here. I know that we had like a two- or three-hour hearing last year and we heard a lot of other stories of censorship and really just incredible students from across the state. We should be fostering these voices. We should be allowing them to learn the power and the consequences of the First Amendment. Democracy is a little messy. It's not always comfortable, but those are lessons that should be learned in high school before-- and college, but particularly in high school before students become adults. And it's always concerning to me when we have administrators who are, remember, government actors suppressing the free speech of individuals and saying that it's to ensure a positive or, or negative impact on the culture of the school. Well, I suppose that's one consideration. But the other consideration is what kind of impact does this have on our democracy? What kind of impact does this have on the formative years of our students when this is when they're experiencing government intervention and intrusion on a fundamental right? And to believe that our students simply only read what comes out of the student newspaper is naive. There's plenty of controversial things online. So why not foster these skills in a format in a forum that is controlled to a certain extent and not necessarily controlled, that's doesn't the term, supervised by a, by an adviser, by an adult. So instead, what we're doing is we're encouraging students to go and talk about these things in unsupervised forums like Twitter, Facebook, Snapchat, you know, whatever the case

may be. And I don't think that that's ideal either. The other thing that was brought up was, well, students can already do this on, again, Twitter or Snapchat, all those things. Again, I don't think that that should be the forum that we should be fostering student journalism and ethics. And, in fact, the difference between Instagram, Snapchat, and all that, those are not government institutions. Those are not government actors. The standard that we put material and substantial disruption is the same standard as Tinker. So I don't know if that was a misstatement by the administrator behind this or not, but that's the same standard. I looked it up again just to make sure that I had my case law down. So we have the same standard as Tinker in here. If they're not aware of what that means, material and substantial, there's a lot of legal resources that are free. I can provide them to the administrator out here as examples. He doesn't even need to hire an attorney. I know several good ones, though, that he can. And so there's in any case, I, I just want to close by saying constitutional rights are not designed to be convenient for government actors and government institutions. They're designed to be inconvenient. They're designed to be protected. They're designed to foster debate, democratic discourse in a time in our country where I think on both sides of the aisle, we could really use that and really use fostering those skills. So I think this legislation is more important now than ever, and I hope that we have serious consideration of it again this year. Thank you.

LATHROP: OK, thanks, Senator Morfeld. And thanks to everyone that came here, both proponents and opponents of LB88. It's an important part of the process and we appreciate hearing from you. So we will-- we're going to have to exchange the people in the room for the next bill. But thanks for being here.

MICHAEL KENNEDY: Thanks for having us.

LATHROP: Yeah, go ahead, we'll wait. Hey, do you need to break? You want to leave us on TV or take us off? OK.

[BREAK]

LATHROP: --can go on live. Senator Pansing Brooks, our next matter to take up is LR20CA and Senator Pansing Brooks--

PANSING BROOKS: Thank you, thank you.

LATHROP: --you are good to open.

PANSING BROOKS: OK, good. Thank you, Chairman Lathrop, and good afternoon, fellow members of the Judiciary Committee. For the record, I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28, right here in the heart of Lincoln. I am here today to introduce LR20CA, which proposes that an amendment be submitted to the electors of the state, state of Nebraska to repeal Article I, Section 29 of the state constitution, a dated and unenforceable amendment, which states that only marriage between a man and a woman shall be valid or recognized in Nebraska and that the uniting of two persons of the same sex in a civil union, domestic partnership, or any similar same-sex relationship shall not be valid or recognized in Nebraska. Article I, Section 29 of the Nebraska Constitution was rendered obsolete by the United States Supreme Court in the decision Obergefell vs. Hodges in 2015. Public opinion on marriage equality was share-- changing at a rapid pace even prior to Obergefell. Since the landmark decision, the numbers show a sea change of public opinion on this issue. Just last year, the, the 11th annual American Values Survey showed that 70 percent of Americans support same-sex marriage and just 28 percent opposed. Earlier in the year, Gallup had previously shown support for marriage equality at 67 percent. It's become clear that we have reached something close to a national consensus of public opinion on this issue. In light of this, the discriminatory language in our constitution banning marriage equality and also civil unions and domestic partnerships feels archaic and even embarrassing. It's language from a now bygone era that has not withstood the test of time. LR20CA follows the same language cleanup as LR1CA in 2019, an amendment that Senator Wayne brought to eliminate slavery or nonvoluntary-- involuntary servitude as a punishment for a crime. As you know, the voters passed this amendment last year. LR20CA seeks to do the same thing with this discriminatory marriage language by putting the issue before the voters in 2022. These kinds of cleanups are important because they send an important message about our state. Last year, Nevada voters went as far as to enshrine marriage equality in their state constitution, with 62 percent of support from voters. LR20CA doesn't add marriage equality to our constitution. It simply removes the outdated, discriminatory, and unconstitutional language, so I would expect overwhelming support

from our voters. Cleaning up this discriminatory language in our constitution would have benefits to our economy. Nebraska has one of the lowest unemployment rates in the country. Even during the pandemic, our unemployment rate is at 3 percent, the lowest in the entire country. While we want low employment-- unemployment rates, it can be a double-edged sword. We also want the business community to have trained workers so we can grow our economy with quality jobs. We simply need more people to expand our workforce. That is why the State Chamber of Commerce and local chambers across the state continually say that the number one business issue is workforce development. It's also why the chambers have been continually outspoken and supportive of nondiscrimination efforts in our state. I asked one of our interns, Chloe Molnar, to research the state-by-state landscape of constitutional amendments and she provided me the following information. There are 28 states with prohibitions on marriage equality and 22 have either changed their constitutions to make them consistent with the Supreme Court ruling or already had consistent language in their constitutions. It seems clear that more states are going to be following Nevada's leads and updating their constitutions. With Nebraska having the lowest unemployment rate in the country, it seems that we would be wise to be among those states with the biggest welcome mats for young people. Perhaps one could argue the lower the unemployment rate, the bigger the welcome mat should be. When we are competing with our neighboring states for talent, including Iowa and Colorado, we can't afford to be the state, which tells young people that they aren't welcome here, young people whom we have educated. Whether they're born here, go to school here, or are just looking to make a good life for themselves in our great state, we want to have an open for business sign on our doors. The positive publicity we would get by removing this language from our constitution could have enormous economic advantages for our state. That's why I ask you to move LR20CA out of committee. Thank you and I'll be glad to answer any questions that you might have.

LATHROP: I do not see any questions, but thank you, Senator Pansing Brooks.

PANSING BROOKS: Thank you.

LATHROP: We will take proponent testimony on LR20CA. If you're in favor of the bill, come forward. Good afternoon.

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

SARA RIPS: Good afternoon. My name is Sara Rips, S-a-r-a R-i-p-s. I am the LGBTQIA plus legal and policy counsel for the ACLU of Nebraska. Before I jump in, I just want to thank Senator Patty Pansing Brooks for bringing this legislative resolution to amend our constitution and making sure that our most treasured living, breathing document reflects the law and the reality of our state. I am here today to speak in support of LR20CA. Marriage equality is the law of the land. That is the reality. Amending our constitution brings it in line with reality. Just like the vestiges of slavery that haunted our constitution until last November, Section 29 of the Nebraska Constitution is an outdated relic that reflects poorly on our state. Empowering our voters to remove this harmful constitutional amendment sends a message to the entire nation that Nebraska is a welcoming, hospitable place for all. Our businesses have spoken time and time and time again about how being LGBTQ friendly is good for bringing in business and preventing brain drain. Our citizens, in poll after poll after poll, have voiced support for LGBT rights. Nebraskans support marriage equality and our constitution needs to reflect that. And I just want to say to all of our LGBTQ Nebraskans, the ACLU of Nebraska sees you, we hear you, and we will always fight for your constitutional rights. Thank you, Senators.

LATHROP: Thank you and thank you for being here today. We appreciate your--

SARA RIPS: Thank you.

LATHROP: --testimony. Next proponent. Anyone else here to speak in favor of LR20CA? Seeing none, we will take opponent testimony. Welcome.

MARION MINER: Thank you. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Marion Miner, M-a-r-i-o-n M-i-n-e-r, and I am here to testify on behalf of the Nebraska Catholic Conference. The Catholic Conference advocates for the public policy interests of the Catholic Church and advances the gospel of life through engaging, educating, and empowering public officials, Catholic laity, and the general public. The conference opposes LR20CA, which proposes to strike language from the state constitution regarding marriages between one man and one woman. Article I, Section 29 of our state constitution, enacted 21 years ago, does not define marriage,

but does declare something about what marriage is not, namely, the uniting of two persons of the same sex. In 2016, Section 29 was rendered unenforceable by the U.S. Supreme Court decision Obergefell vs. Hodges in a 5-4 decision. Justice, Justice Anthony Kennedy's majority opinion in that decision and the larger conversation about what our public policy regarding marriage should be shed light on the fact that our society has at least two conflicting understandings of what the institution of marriage is. One understanding of marriage holds that its primary purpose is the public recognition of a committed relationship between two adults for their fulfillment. Another more deeply rooted understanding is that marriage is the social institution that unites a man and a woman with each other and with any children born from their union. The second definition is the one that has endured and been recognized, promoted, incentivized, and protected as an irreplaceable foundational support for any healthy society by states, cultures, and religions, each according to their own competencies, for millennia. Marriage's essential public purpose is to attach mothers and fathers to their children and to one another. If there were no need for these attachments and our common experience illustrates there most assuredly is, then neither would there be any need for an institution that encourages and protects those attachments. This is what marriage is and does. It is the only civil institution that we have that serves that essential purpose. Every child has a mother and a father. That fact has a significance that goes beyond biology. Marriage is the institution of order toward protecting the right of children to know their parents and be raised by them, those persons from whom they derive an irreplaceable part of their identity, except when an unavoidable tragedy prevents it. There are other benefits of marriage and individual persons have unique motivations for getting married, but marriage's essential public purpose remains the same. It exists to protect the legitimate rights of children, which they cannot assert for themselves. Section 29 may be unenforceable as a practical matter as long as the Obergefell remains authoritative, but its repeal would signal that the state of Nebraska has abandoned the understanding of marriage as the singular institution for upholding the most basic natural right of children after the right to life itself. The conference, therefore, respectfully urges you not to advance LR20CA to General File. Thank you.

LATHROP: OK, any questions for Mr. Miner? I see none.

MARION MINER: Thank you.

LATHROP: Thank you for your testimony. Anyone else here to testify in opposition to LR20CA? Anyone here to testify in a neutral capacity? Senator Pansing Brooks, you my close.

PANSING BROOKS: Thank you.

LATHROP: We do have four position letters, one proponent, three opponent, and we've received written testimony this morning, which I'll also add to the record. Abbi Swatsworth from OutNebraska is a proponent. Kristen Windle from Planned Parenthood Advocates of Nebraska is also a proponent. Meg Mikolajczyk is also a proponent for Planned Parenthood of Northern Central States and Kayla Meyer from Lincoln Young Professionals Group is a proponent. And Karen Bowling from Nebraska Family Alliance is an opponent. We've received that testimony in writing this morning. That will be included in the record. And with that, Senator Pansing Brooks, you may close.

PANSING BROOKS: Thank you. First off, I want to thank all the advocates who have written letters. We have asked and we, we've all sat through LGBTQ hearings before and know that there are a lot of people who are huge advocates of this issue and they stayed away at our request, as has happened on many of our bills. So I just want to thank them. I know that there are people that wanted to be here today and we asked them to be aware of the committee system and the fact that we are trying to accelerate these hearings due to COVID. So I just wanted to say that the opposition that we hear betrays a distrust of the voters, in my opinion, who support equal protections under our constitution. I have faith that Nebraska voters will do the right thing. I don't see any reason why we shouldn't be able to bring a constitutional amendment to clearing up our constitution. And if the voters decide not to do it, that is their choice, but I have great faith that the voters of Nebraska will get rid of this archaic language that seems to discourage young people from moving here, settling here, and helping our economy thrive. So those who, who are opposed and don't want to have the voters weigh in, clearly to me they think they will lose so they know where public opinion has gone. Voters have supported the validation of all people, no matter whom

they love. So I ask that you move forward and I hope that you'll forward this to the floor. And with that, I thank you for your time and attention.

LATHROP: Very good. Thank you, Senator Pansing Brooks. That will close our hearing on LR20CA and bring us to LB97 and our own Senator DeBoer. Why don't you wait just a second, Senator DeBoer. We've got a few people moving around. OK.

DeBOER: Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r, and I represent the 10th Legislative District, which includes northwest Omaha and Bennington. Today, I'm introducing LB97, which would provide for adoption by two persons jointly and would also provide for second-parent adoption. You might recognize this bill, as I've brought some versions of it in the past. We keep refining it and getting it-- now we think we've got it to a place where we're, we're ready to go. Nebraska currently allows three major categories of adoption. The first type is adoption of a minor child by any person or persons. This is the type of adoption we typically picture when imagining adoption in which a single person or a couple may adopt a child they do not have a familial relationship with after they complete a pre-adoptive or foster care placement, an extensive, extensive home study, and interview process. LB97 would clarify that two persons could adopt the child jointly regardless of their marital status, providing they complete the same requirements under existing law. The second type of adoption is the adoption of an adult child. An adult child may be adopted when another adult or adults who are not the stepparent of the adult child-- if the adult child had a parent-- may adopt-- may be adopted by another adult or adults who are not the stepparent of the adult child if the adult child had a parent-child relationship with the prospective parent or parents for at least six months proceeding [SIC] to the adult child's age of majority and that that adult child has no existing legal parent. The third type of adoption currently allowed under Nebraska's statute is stepparent adoption. The stepparent of either a minor or adult child may be-- may adopt their stepchild, provided that the child only has one legal parent. No person in Nebraska may ever have more than two legal parents and LB97 does not seek to change this. LB97 would provide for second-parent adoption, which is simple-- similar to stepparent adoption in many ways. Second-parent adoption allows a second person who is not married

to a child's parent to legally adopt the child. Under LB97, a child who has a sole legal parent may be adopted by a second person with whom the child has a parent-child relationship. LB97 is carefully tailored when it comes to second-parent adoption. First, the, the child in question must have only one legal parent and that parent must consent to the adoption. Second, the second person seeking to adopt the child must have a parent-child relationship with the child. This is the same standard currently applied concerning the adoption of an adult child. Finally, a home study must take place before a second-parent adoption is permitted, just like in any other adoption. There are variety of situations in which a second-parental relationship with the child has been established, but is not legally recognized. For example, say a couple has a child together and after the child is divorced-- after the child is born, the couple divorces. The father of the child then remarries and that woman acts as a stepmother to the child. With all three parents taking an active role in the child's life, the stepmother cannot legally adopt the child because the child does not have a sole legal parent. There's already two parents, can't have a third, and this would still be the case if LB97 were to pass. But if the father of the child passed away under the current law, the stepmother who the child grew up with would not be able to adopt the child and would only be able to adopt the child after obtaining-- oh, since-- sorry, the stepmother in that case who would raise the child would be unable to obtain parental rights since she's not married to the surviving parent, the biological mother. Under LB97, the stepmother is the hyper-- in this hypothetical situation would be able to adopt the child only after obtaining the consent of the biological mother, after completing a home study, and she could do so without the biological mother relinquishing her parental rights. Then you could have the situation where the stepmother and the mother would both have parental rights. Suppose that a single mother moves in with a trusted relative who agrees to coparent with her. The mother may want the relative to adopt the child through second-parent adoption to provide stability for the child. Allowing second-parent adoption provides for stability and permanency in the lives of children who only have one sole parent. In all these cases, the person seeking to adopt the child already has a parental relationship with the child in everything but legality. Legal adoption assures financial benefits, including health insurance benefits, veterans benefits, life insurance benefits, inheritance with or

without a will, and so on. Legal adoption allows a second parental figure to make medical decisions for a child, take family and medical leave for the child if necessary, and ensures custody should something happen to the other parent. The best interest of the child should always be the primary concern in adoption cases. And in situations where is there-- where there is a second person who already occupies the parental role in all but legality, it is important to provide a method for legal recognition of that relationship. Thank you for considering this bill. I'm happy to answer any questions.

LATHROP: Doesn't look like there's any questions just yet, but thank you, Senator DeBoer. Move forward to the testimony. We will take proponents of the bill first. Good afternoon.

SUSAN SAPP: Thank you, Senator Lathrop. How are you?

LATHROP: Good.

SUSAN SAPP: Thank you, committee members. My name is Susan Sapp, S-u-s-a-n S-a-p-p, of Cline Williams Law Firm, Lincoln, Nebraska. I'm here in my individual capacity and I'm also here as a representative of the Nebraska State Bar Association. I am the chair of the house of delegates and the executive committee and house of delegates has asked me to register the bar of support of LB97. This is a piece of legislation that I really appreciate Senator DeBoer bringing forward. We've worked to refine it to provide exactly the relief and plug some of the holes in the adoption statutes. I've been practicing adoption law for almost 32 years and there are different ways that families get formed. This is not a bill that I consider to, to benefit adults. This is a bill I consider to benefit children. Children are being raised by two people who aren't married and have parental relationships with both and if something happens to the one person who does have legal rights because perhaps they were the person that gave birth to the child, then that other parent has no legal right to the child and the child has legal instability that is intolerable for us to leave children in these kinds of situations. LB97 doesn't create families. It provides a method to solidify and create legal stability for families that already exist. And we know that families come in all kinds of different sizes. This is not a same-sex or, or non same-sex bill. This is a family bill and reflecting that a child may have two parents. The child doesn't know if they're married or not. The child

doesn't care if they're married or not. The child needs the stability of two people. It might be me and my mom. It might be me and my sister. It could be any set of situations where two people love and care for a child who needs legal stability by both of them being recognized as legal parents. So with that, if you have any questions, I'd be happy to answer them.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you for your testimony. How many states have a law like this?

SUSAN SAPP: At least 11, Senator Brandt. Last time I looked, there were 11.

BRANDT: And not being an attorney in adoption law, then what say does the child have in this-- in the, in the process? And there is going to be such a wide age on children, what's your experience on that?

SUSAN SAPP: The statutes currently say that if a child is 14 years of age or older, the child has to consent to the adoption.

BRANDT: And if they're younger?

SUSAN SAPP: They-- their consent is not required, but the stopgap-- and you're getting at a really important point that I'm glad that you, that you're bringing up-- the stopgap for whether or not this adoption would be in the child's best interest is the home study process. Nebraska Children's Home Society, CSI, adoption consultants does a full home study. So it-- in other conversations, people have said to me, well, what if a woman meets some guy at the truck stop and, and three months later decides to have him adopt her kids, but he-- but she doesn't know he's a sex offender? The home study process will be the stopgap, will be the protection, will be the safety net because that whole background check has to be done. And if he's a sex offender, it's going to come out and the home study agency is not going to approve that adoption. And then the second stopgap is the county court. The county court has to oversee and make sure that what's being proposed in solidifying this family is in the child's best interests. So there are protections built in for younger kids who wouldn't have a say or whose consent would not be necessary.

BRANDT: OK, thank you.

LATHROP: OK.

SUSAN SAPP: Thank you, Senator.

LATHROP: Thanks for being here. We always appreciate hearing from practicing members of the bar--

SUSAN SAPP: Thank you, Senator.

LATHROP: --particularly on bills like this. Any other proponents? Welcome.

LAUREN WARD: Thank you so much. Thank you for the committee's time today. My name is Lauren Ward, L-a-u-r-e-n W-a-r-d. I'm here testifying in favor of LB97, second-parent adoption, for the second time. I'm here to voice its continued importance and desperate need for your support. I was so scared to learn that Nebraska was one of only a few states to not allow second-parent adoption and this lack of legal protection would soon affect me personally. When we had our daughter, Romy, who is the one wiggling around behind me, concerned friends, colleagues, and even our attorney recommended that we consider leaving Nebraska so that our child and our family could be protected, so that my wife, Cassandra, who is also here, could legally adopt Romy. We always had a lurking fear, a nagging "what if," a sense of instability and shakiness. What if something happened to me, the only legal parent as far as Nebraska was concerned? I have no other family here. What would happen to Romy? Would someone challenge Cassandra's right to parent? Romy's other mom? Could Romy end up a ward of the state despite being conceived in what I assure you was the most intentional and planned out way to-- and with complete involvement by both of her two moms? I didn't even want to imagine that possibility, but I had to. Let's get real about what it means if this bill fails yet again to get out of committee, what it means for families like ours. It means I have to get a power of attorney issued and notarized every six months so that Cassandra and I both can take Romy to the doctor. It means my wife wouldn't be able to add Romy to her medical insurance because Romy isn't recognized as her daughter. It means Romy's birth certificate not only has a father category, but that I heartbreakingly had to rate unknown-- sorry, I was not

expecting to be emotional. I had to write unknown in that section instead of Romy's other parent's name. It means Cassandra and I got wills and POAs executed when we were so young and before we even married because Nebraska would not protect us. LB97 doesn't make something happen that isn't already taking place in countless households across Nebraska, but it will give legal rights, protections, and supports to those already acting as parents. This affects all nonmarried people who are parents to children, the mom and grandma who coparent, the couple who ended their relationship, but still coparent, the dad and the uncle, the sisters. This is the third time the bill is being introduced and by two different senators now with thoughtful and intentional revisions. Put children first and finally advance this bill. Demonstrate that being a family does not require a marriage certificate. Show that Nebraska is moving forward and that its representatives are seeking to protect children. Please and help provide all Nebraskan families the rights, stability, and legal protection of being recognized as just that, Nebraskan families. Thank you. I'm also happy to answer any questions,

LATHROP: OK. I don't see any questions, but thanks for being here.

LAUREN WARD: Thank you.

LATHROP: Other proponents?

SARA RIPS: Howdy, y'all.

LATHROP: Welcome once again.

SARA RIPS: Yes, I'm still Sara Rips, S-a-r-a R-i-p-s, and I am still employed as the LGBTQIA plus legal and policy counsel for the ACLU of Nebraska. First of all, thank you, Senator DeBoer, for bringing this bill and for the Judiciary Committee for their time today. I am here to speak in favor of LB97. Like most of the laws involving our children in this state, the best interest of the children are always at the forefront. This is especially true when it comes to adoptions and our case law reflects that. However, our adoption laws are outdated and no longer conform to the reality of what parenting is in the twenty-first century. The current adoption laws don't reflect the growing number of couples who choose to have children without marrying and for whatever reason, didn't establish parentage early in life. It

also helps same-sex couples who had children with their partners at a time when they legally could not marry and have since separated. These families still parent as if they were legal parents, but the current law keeps them from adopting their children and executing legal rights with their children. This impacts the ability of people who are already parents in everything but the eyes of the law. They cannot legally make medical decisions for their children, even though that child calls them mom or dad. Even though everyone but the law acknowledges this parental relationship, without that legal affirmation, they are left in the lurch time and time again. Senator DeBoer's promised law-- proposed law requires the custodial parent's consent and the adoption cannot proceed without it. This is an excellent requirement because it really solidifies that everyone involved acknowledges that such adoptions will be in the best interest of their children. With personal choice and autonomy at the center of decisions relating to marriage and family life, the ACLU of Nebraska offers its full support of LB97 to update this provision within Nebraska's adoption law. Thank you.

LATHROP: Very good. I do not see any questions. Thanks for being here.

SARA RIPS: Thank you.

LATHROP: Any other proponents? Anyone here wishing to be heard in opposition? Good afternoon.

MARION MINER: Good afternoon again, Chairman Lathrop and members of the committee, and my name is Marion Miner, M-a-r-i-o-n M-i-n-e-r, and I'm here on behalf of the Nebraska Catholic Conference, which advocates for the public policy interests of the Catholic Church and advances the gospel of life through educate-- engaging, educating, and empowering public officials, Catholic laity, and the general public. The conference opposes LB97, as with LB907 from a year ago and LB426 from 2019. LB97 would provide for adoption of a minor child by two adults, regardless of those adults relationship to each other. LB97 diminishes the rights of a child to familial stability and permanency in favor of the desires of adults. We urge the committee to consider the harmful consequences to adopted children in some circumstances that would be made possible by the bill. If two adults cannot make a commitment of permanency to each other, it makes little sense for the law to invite them to acquire children for themselves. Every child is

a gift and trust to his parents and every child has the natural right to a permanent relationship with his mother and father. When the relationship with his natural parents is not possible, he has a right to a permanent relationship with adoptive parents who have made a permanent commitment to the child and to each other. Marriage as a civil institution has been recognized, privileged, and regulated by the state for centuries precisely because of its "protectivity" of children. Marriage and binding parents to one another with an expectation of permanency protects the legitimate rights of the child, which the child cannot assert for himself. LB97 diminishes the rights of adopted children by removing the expectation of permanency from the picture. On page 2, line 6 and 7 provide that "any minor child may be adopted by any adult person or persons jointly, regardless of their marital status." That could mean any two people with any kind of relationship to each other or no relationship at all. This is not conducive to the best interests of the child. LB97 undermines the very important right of children to stability and security in the family by removing a legally recognized expectation of family permanency that exists for their protection. For this reason, the conference opposes LB97 and asks that you not advance it to General File. Thank you.

LATHROP: OK. Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Mr. Miner, for testifying today. You heard the testimony of Ms. Sapp, a seasoned adoption attorney?

MARION MINER: I did.

BRANDT: Do you agree or disagree with the way that children are adopted in the state of Nebraska?

MARION MINER: So again, I think I-- what I would draw attention to is if there is an expectation of permanency with two adults who wish to adopt a child together, then the logical thing for them to do in that circumstance would be to get married. And in that circumstance then, you have a legally recognized expectation of permanency built in that is conducive to the best interests of that child, to the stability, the permanency that the child needs. So to me, right, this does not actually impede two adults who are in a committed expectation-- or in a committed relationship of permanency together to proceed with

adopting a child. They just need to make that-- a public affirmation of that and get married and that removes that impediment.

MARION MINER: But you heard Senator DeBoer's testimony and I believe she stated it could be a grandparent and a parent situation and what you're saying would deny that grandparent from adopting.

MARION MINER: So there are-- in, in the, in the-- my understanding would be in the instance that a parent is still alive, right, and still has right-- parental rights over a child, then, yes, a grandparent would be precluded from adopting as sort of a coparent legally in that circumstance. However, in the event that there is no other legal parent, you know, there are provisions that would allow for that type of process to proceed. I hope that makes sense.

BRANDT: So you have a willing partner and a willing grandparent. There's nobody else in this picture. You're against that?

MARION MINER: Against what? I'm-- I'm not sure if I--

BRANDT: If you have a willing parent and a willing grandparent and there's nobody else going to come forward in this picture, you would be opposed to that?

MARION MINER: Yes, because-- right-- that's, that's one possible scenario, but there are any other number of possible scenarios, right--

BRANDT: Sure.

MARION MINER: --some, some of which are, are not anything like that. And so this, this bill then-- instead of being confined to that type of situation-- and, and I think there are other processes, right, by-- whereby you can provide for. And if they don't exist in the law, you can, you can pass legislation that would allow for this-- that would provide for things like medical benefits and things like that to be extended without provision of, of the legal adoption process at the same time. So that is an, is an entirely separate issue and would not be something that, that we would be opposed to.

BRANDT: OK.

MARION MINER: But we're, we're, we're concerned, right, with the over breadth of the way that this might apply.

BRANDT: All right, thank you.

MARION MINER: Sure.

LATHROP: What I hear you saying-- and you can tell me if I'm not hearing this right, but you are here to express the church's view that the best interests of the child are met when the parents are married before the adoption.

MARION MINER: Correct.

LATHROP: We have a judge who's going to preside over an adoption, who has to determine, as, as a part of the adoption process, that the adoption is in the best interests of the child. You're not satisfied with leaving it to a judge, county court judge, to make that decision, but you think it's a matter of the church's teaching that the best interests of the child could only be met when the adoption occurs between married people?

MARION MINER: It's not that the best interests of the child can only be met when an adoption occurs between married people. I mean there, there are circumstances, right, where an adoption may be in the best interests of the child by a single person. I mean that scenario-- those scenarios do exist. What we're saying is that when you bring somebody into a legal relationship like an adoption without also providing for this expectation of permanency through marriage, right, it, it, it invites a scenario whereby you have this sort of possibly revolving door of relationship and nonrelationship between adopting parents, right? What happens when the person who is not married to the parent, when that doesn't work out and they leave? What happens in the dissolution of that type of relationship? The adoption relationship still exists, but the, but the, the commitment of the parents to each other no longer does. That's what it comes down to is that the child has a right to an expectation of permanent, a permanent relationship with parents who are committed not only to the child, but to each other as well. And if that relationship doesn't exist, then, then adoption is not in the best interest of the child.

LATHROP: OK and that's a matter of church teaching?

MARION MINER: Well, that's, that's just a matter of, of fact. I mean, the church teaching is reflective of that fact. The, the church teaching doesn't create the truth; the church teaching reflects the truth.

LATHROP: I was struck by the testimony of Ms. Sapp who suggested that what we're, what we're here to talk about today isn't the creation of a family. The family already exists right behind you. There's a family of two moms and a, and an adopted daughter and all we're doing is giving legal protection to that relationship.

MARION MINER: I think--

LATHROP: Does that make the bill still objectionable?

MARION MINER: Again, I think what we're, what we're doing here is-- I think that there are good reasons, right, in a, in a, in a nonmarried relationship sometimes for, for things like medical benefits and so on, which are important and, and can be very inconvenient if they're not extended. There are ways to get at that, right, without providing for adoption or there are ways to provide for that, if they don't already exists in the law, that would be different from simply extending the right to adoption to two unmarried persons.

LATHROP: OK.

MARION MINER: So--

LATHROP: I don't, I don't want to be argumentative and I, and I appreciate your testimony and your answer to my questions. I am struggling with this one a little bit, but I, I very much appreciate the fact that you're here--

MARION MINER: Sure.

LATHROP: --and that you're willing to answer questions as well.

MARION MINER: Sure and I'm, I'm doing, I'm doing my best--

LATHROP: I know.

MARION MINER: --but the-- yeah, I mean the idea here is, is-- I mean, we're getting at some of this. The proponents and, and me speaking as an opponent are getting actually at a lot of the same stuff. The interest here is what is the child entitled to as a matter of justice? And for us-- and there's been a lot of talk about permanency, stability, security and those interests are served by making sure that the parents who enter into an adoption together are committed to each other as well as the child. That's what we're getting at here.

LATHROP: OK, so I, I also appreciate your testimony on the last bill, which would be we shouldn't-- we shouldn't take out of our constitution that a, that a marriage is between a man and a woman. We have two ladies sitting right behind you that are married to one another. That, that child is very clearly as attached to one as the other and a legal recognition for not just the child, but for the parents-- and what happens if one dies without a will? The same things that, that might be available to my children when I'm raising them and they are still minor children and-- well, even as an adult, if I pass away without a will, my property and intestate succession is determined based upon a relationship of parent to child. And that's not available absent a, absent an adoption and a legal proceeding that lets that take place. Because we can't, we can't put into the probate code that, you know, if, if this person was around while you were being raised by one parent, then you're, you're entitled to receive by intestate succession, for example.

MARION MINER: Why not?

LATHROP: Because you can't-- that's, that's a black and white line.

MARION MINER: Uh-huh.

LATHROP: Being a-- being the-- a descendant of a person when you're trying to determine intestate succession, that can't-- that's not a fuzzy thing where we talk about--

MARION MINER: I, I agree, for the record.

LATHROP: Right? It's black and white and that's just an example, I suppose. And I, I really do appreciate the fact that you come in here. You share the church's view and express that and I, and I don't want

to be argumentative. I'm not being argumentative. I'm just kind of struggling with this one because we, we clearly have a couple in the room today who are very, very attached to one another in a permanent relationship and they share a daughter together.

MARION MINER: And I, I absolutely wish the best for them. Any-- I'd, I'd be willing to engage with anybody on this further if you'd like. I don't, I don't want to prolong the discussion.

LATHROP: No, no, I get it, I get it. Neither do I.

MARION MINER: Yeah, if you or any others have any questions, I'll do my best to answer them.

LATHROP: OK. I think that's it. Thanks for being here.

MARION MINER: Thank you.

LATHROP: Any other opponent testimony? Anyone here in a neutral capacity? Senator DeBoer to close and as you approach, LB97 has four letters-- position letters, two that are proponent, one that is opposed, and one in the neutral. And we have received no written testimony on this bill.

DeBOER: Thank you, Senator Lathrop. Thank you, everyone. I think you're having trouble hearing me. Is that better?

LATHROP: Yes.

DeBOER: Yeah, OK. Thank you so much for the conversation today. I think one thing we really need to think about when we think about permanency is that permanency exists greater in adoption than nonadoption, that that relationship-- the, the adoptive relationship is a permanent relationship. One of the things that people keep telling me about me that I didn't know before I started in this Legislature is that I'm a pragmatist. You would think somebody who's nine-tenths of the way done with a Ph.D. in philosophy and theology would not be a pragmatist, but it turns out that I am. Opponents of this bill want to look out for the best interests of, of kids, just as we do, just as I do. They want every kid to have a loving household with, if possible, two parents, and that's fine, but that isn't always the situation that we're in in this world. And historically, it hasn't

been the situation necessarily either. So my question is how do we get more kids to have their second parent, a permanent second parent? And the truth is we won't really affect that in this room. A parent is the person a kid runs to when they skin their knee or calls first as a young adult when they have a big decision to make. An official adoption or not, that person is a parent. It's just that now we live in a world where so much is reliant on the state's recognition of that already existing relationship. Think about health insurance, talked about passing on your, your inheritance, but maybe even more important than the financial ramifications, think about consent to treat for a child who may need consent for a medical procedure. I think about Senator Morfeld's bill to allow 18-year-olds to consent to their own treatment and we can see how important it is that there be somebody designated to make that medical consent. The legal role of parent, the legal role of parent has become so ingrained in everything that we do. We ought to provide an avenue to legally recognize what already exists. A parent, in fact, ought to have a shot at becoming a parent under the law, subject to a number of guardrails. I wish we lived in a perfect world where all our kids had two loving parents under the law automatically, but we don't live in that world. We really never have and wishing it were so doesn't make it so. But we can help make the myriad legal reasons a second legal parent is important available to more kids. This bill won't create parent-child relationships where they don't exist. It will just provide an avenue to recognize those legal rights where they already exist. Thank you.

LATHROP: Thank you, Senator DeBoer. That will close our hearing on LB97 and bring us to LB245 also to be introduced by Senator DeBoer. You may proceed.

DeBOER: Good afternoon, Chairman Lathrop, and members of the Judiciary Committee. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r, and I represent Legislative District 10, which includes Bennington and northwest Omaha. Today, I'm introducing LB245, a bill which takes a comprehensive look at our adoption statutes in Nebraska. In 2019, I began working on adoption issues when I brought LB426, a bill to allow second parent adoption. But in the process of that, working with several stakeholders on this issue, it was brought to my attention that the adoption statutes in Nebraska are in many cases confusing and include unnecessary provisions. Because of this, I decided to bring a comprehensive bill that would remove unnecessary provisions and

streamline the adoption process. I won't go section by section through all the changes this bill make-- this bill makes, but I do want to highlight some of the major points included in the bill. LB245 includes several and defines all categories of father as identified by the Nebraska Supreme Court in case law. It also increases the time a putative father has to file a notice of objection to-- excuse me, a notice of objection to adoption and intent to obtain custody from 5 business days to 10, which is consistent with laws in other states. By the way, you'll note that there's a small fiscal note on this, and that is because of that change from 5 business days to 10 and the possibility of having wards of the state in state custody for 5 days instead of 10 days. The bill also clarifies which courts would have jurisdiction throughout the adoption process to help steam-- streamline the process and decrease confusion on jurisdictional questions. I do have an amendment, at this point I would like to hand out. It's AM32 for the committee's consideration. The amendment moves the subsection-- sections addressing consent needed in private adoptions from the Section 43-166, which deals with approval of communication and contact agreements between the biological parent adoptee to 43-104, which includes other consent provisions. Again, a lot of cleaning up our statute. Our adoption statute has not been opened up in quite a lot of years. Luckily, we're going to have some testimony from some who practice in this area who will go through and answer questions about specific changes that we have as we're trying to clean up our adoption statute. So I'd like to thank the attorneys and the judges who assisted in drafting this bill, and several of them will be following and can answer any technical questions. Thank you for your consideration of this legislation. Happy to answer any questions at this point.

LATHROP: I just have one. Is the fiscal note a General Fund fiscal note or is that going to come out of some cash account, if you know?

DeBOER: So when I read the fiscal note, it says that the department staff, the DHHS staff workload will increase and there's an estimate of 75 youth per year that could have a delay of permanency by those 5 days. And then they thought that that would cost DHHS an additional $10,988 to $32,963 over the course of the year. So I think that just comes out of their budget, but I don't know for sure.

LATHROP: I will observe that they can find 10 million when they need it over there, but anyway.

DeBOER: Yeah.

LATHROP: Thank you, Senator DeBoer. I don't see any other questions. We will take proponent testimony now.

FRANK SKORUPA: Can I remove this for testimony?

LATHROP: You may.

FRANK SKORUPA: Thank you. Good afternoon, Senator Lathrop, and members of the committee. My name is Frank Skorupa, F-r-a-n-k S-k-o-r-u-p-a. I'm a County Judge at the 5th Judicial District sitting in Columbus, Platte County, Nebraska, and I'm appearing on behalf of myself and on the Nebraska County Judges Association. And I'm just going to address two aspects of this bill. I thank Senator DeBoer. This is, you say confusion, you're right. It's not only confusion that exist with regard to the current adoption statutes, but there are risk taken with it. And the two things that I want to address are procedural issues with regard to the statute that we feel this bill cures. The first one has to do with the involvement of the district court in an adoption proceeding. You may not be aware, for instance, if a couple is divorced or if there's a paternity action in the district court and a custodial parent now, wants their spouse to adopt, the adopting parent has to go to the-- or the custodial parent has to go to the district court and get consent of the district court for that adoption, even though in a divorce situation or in a paternity situation, the noncustodial parent may consent to that adoption, that couple still has to go to the district court to get consent for that adoption. This can lead to a situation where the district court is and has been making determinations on whether or not the consent of the noncustodial parent is required for the adoption. And there are a number of factors that are considered, such as abandonment and so on. So attorneys have been using that process to get an order from the district court that the consent of the biological noncustodial parent is not required. The Supreme Court has indicated that the county courts have exclusive jurisdiction with regard to adoptions, and now this takes the district court out of the equation there. The other thing and, Senator, you may remember, last year I testified my selfish

motive for this particular procedure, and that is defining a juvenile court has not only a separate juvenile court, but also a county court exercise in its jurisdiction as a juvenile court. Right now, a separate juvenile court has concurrent jurisdiction for adoption for a child that is under the jurisdiction of that separate juvenile court. The county court acting as a juvenile court, does not have that concurrent jurisdiction. So that if I've heard a case and a case for two years or more where-- which resulted in termination of parental rights and now the children are to be adopted by parents living in Seward County, I don't have the jurisdiction to hear that case. It belongs, in my opinion, to Seward County. And I've had these kids for a long time. I'd like to be able to finish it off, ask myself is motive. Be glad to try and answer any questions that you may have.

LATHROP: Just for clarification, for people that don't appreciate this or understand this, we have separate juvenile courts in the bigger municipalities, but in the smaller communities, the smaller counties, the county judge sits as the juvenile court.

FRANK SKORUPA: And the Supreme Court has been pretty emphatic, if you will, about indicating that a separate juvenile court is not the same as a county court sitting as a juvenile court. We hear the same types of cases and everything, but-- but there's a difference.

LATHROP: And this would change that.

FRANK SKORUPA: This would change that.

LATHROP: I got that. Any questions for the judge?

FRANK SKORUPA: Thank you.

LATHROP: Yeah. No, thanks for being here and your patience today. Good afternoon.

KIM ANDERSON: Good afternoon. Good afternoon, Chairperson Lathrop, and members of the Judiciary Committee. My name is Kim Anderson, K-i-m A-n-d-e-r-s-o-n. I am the chief program officer for Nebraska Children's Home Society. We are a statewide accredited, nonprofit, licensed child placing and child caring agency with offices in six communities across the state of Nebraska. Our core services include adoption, foster care and family support. I'm here on behalf of

Nebraska Children's Home Society to testify in support of LB245. As someone with more than 20 years in providing licensed and accredited services in adoption, I know even the slightest of changes to adoption statutes can support thriving children and families or fracture meaningful family connections for that child. The definition of family is ever evolving. For children and those who care for them, sometimes there is not a birth connection, but rather a familial relationship. This familial relationship is not any less than a birth connection. Fathers, even in a familial relationship, are important to the stability of the permanency of a child. Currently by Nebraska statutes, a mother who is considering adoption must identify all possible fathers, so they may be legally notified that she is considering a plan of adoption for her child. LB245 would recognize this new relationship. It provides fathers in a familiar relationship the right to participate in a plan for their child. Fathers, biological or adjudicated or-- and familial all deserve the right to receive the support and education, just as mothers do when a plan of adoption is being considered for a child by agencies such as ours. Fathers also deserve the opportunity to have an ongoing relationship with their child and the adoptive family through an open adoption relationship. LB245 would also increase the time, as already mentioned, from 5 business days to10 business days that a father would have the opportunity to file an objection to adoption and intent to obtain custody. It would also increase the amount of time a father then has to file a petition with the court for 30-- from 30 calendar days to 45 calendar days to determine if a father's consent is required. This additional time is very important for men as it allows them, for those men who may have just learned that they have been identified as a father, time to receive education and support regarding a plan of parenting or adoption in order for them to make an informed decision for their child. Nebraska Children's Home Society has always encouraged and welcomed fathers to participate in education and in support because we do believe that is-- it is in their best interest and in their child's best interest to be involved in making that decision. LB245 would greatly enhance Nebraska's adoption statutes by recognizing fathers as defined in this bill. It would also identify them in adoption proceedings and importantly in continuing relationships with caring adults for children. We support LB245 and ask the Judiciary Committee to support it as well. I welcome any questions that you may have.

LATHROP: Very good. I do not see any questions for you, but thanks for being here.

KIM ANDERSON: Thank you.

SUSAN SAPP: Thank you, Senator Lathrop, and committee members. I'm Susan Sapp, S-u-s-a-n S-a-p-p, Cline, Williams law firm in Lincoln, Nebraska. I'm here on behalf of myself in my individual capacity as a 32-year adoption attorney in the state of Nebraska and also here on behalf of the Nebraska State Bar Association. I'm the Chair of the House of Delegates, and the House of Delegates and the Executive Committee all voted to support LB245 and ask this committee to pass it on to the full Legislature. Without going into great detail, I have been working on all the legislative changes in adoption law since 1994, which ages me a bit more than I would prefer. So the things that have gone well in the adoption statutes, I can take some credit for, but I'll also take the blame for some of the things that didn't work. And the Nebraska Supreme Court has told us in a series of cases over the last 15 years some things that they don't like and will not enforce in our adoption statutes. Whether I agree with that or disagree with that is immaterial. It is what it is, and they need to be fixed. And so the categories of birth fathers, adjudicated fathers, familial fathers, acknowledged fathers, legal fathers, are straight out of the Nebraska Supreme Court decisions. They've also given us where I called bold invitations to fix things where they aren't necessarily germane to what's going on in a particular case, but the Supreme Court will say sort of in an offhand way that perhaps the Legislature would want to do such and such. So we took them up on each of those invitations as well. So what you'll see is a codification that's been really a function of teamwork in all of the adoption community in AAA, Nebraska Children's Home, the County Judges Association, and all of the feedback that I've gotten from judges informally or people who call me and say this didn't work with this judge, can you help me? What should I do? The way the statutes are right now, they're a trap for a new practitioner, because unless you have read 30 years of case law, you won't know that the statutes say what they say, but don't really mean what they say because the Supreme Court has said that's not enforceable anymore. It's not a workable situation because adoption law is a creature of statute. And so if the statutes aren't right, if they aren't enforceable, it's very easy to mess up an adoption and nobody wants that to happen because those are

the most important things that we work on. There's nothing more important than adoption cases in my world. I do litigation for hospitals and doctors and schools, and none of that is as important as the adoption work that I do. So I would ask that the committee support LB245 and I'd be happy to answer any questions.

LATHROP: This has been scrubbed, right? This is it right here. This is the-- this is the last word on adoptions.

SUSAN SAPP: I hope so. [LAUGHTER]

LATHROP: You know, it's interesting I do read, as a practicing lawyer, I do read Advance Sheets and I'll see these things where parents have had a kid for three years and something was not right in a court proceeding and the child gets taken away. You're right, this needs to be right.

SUSAN SAPP: It really hasn't happened very often. There was a case in 2017 where the decision was not favorable to the adoptive mother, but that birth father wasn't actually the biological father and the birth father didn't end up wanting the child after all. So that family did not disrupt, but it was sort of the last straw of we've got to fix this.

LATHROP: Yeah. Yeah. Well, I appreciate all the work from the people you've mentioned, the county judges and the practicing bar. And, you know, this is-- this is the kind of stuff that we should be taking care of. So I appreciate it.

SUSAN SAPP: I agree. Thank you.

LATHROP: Any questions at all? I see none. Thank you.

SUSAN SAPP: Thank you to Senator-- Senator DeBoer to continue to push this legislation forward. I appreciate it. Thank you.

LATHROP: You're very welcome. Any other proponents, any opponents or neutral testimony? Seeing none, Senator DeBoer, you may close. We have no position letters and we have one written testimony from Amber Bogle, B-o-g-l-e, Children and Families Coalition of Nebraska, as a proponent.

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

DeBOER: I won't take much time. I just want to say thank you to all of the lawyers, the judges, everyone, and also to my legal assistant, my legal aide, Taylor Bickel, who did so much work on this and doesn't get enough credit for all the work on this, because this was a long process of trying to get all these pieces into the right place. So I just want to say thank you to everyone for helping and look forward to working with the committee on this.

LATHROP: Great. Thanks. That will close our hearing on LB245 and close our hearing for today. Have a great weekend, everybody.