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Redistricting Committee
May 05, 2011

[LB699]

The Committee on Redistricting met at 3:00 p.m. on Thursday, May 5, 2011, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB699. Senators present: Chris Langemeier, Chairperson; Annette Dubas, Vice Chairperson; Bill Avery; Danielle Conrad; Deb Fischer; Scott Lautenbaugh; Heath Mello; John Nelson; and Ken Schilz. Senators absent: None.

SENATOR LANGEMEIER: Omaha, can you hear me? Wave your hand or...yes. Thank you. Scottsbluff?

KEVIN HOWARD: Yes, we can hear you.

SENATOR LANGEMEIER: (Exhibit 1) Thank you very much. My name is Chris Langemeier. I'm the Chairman of the Natural...or I am that too, but I'm Chairman of the Redistricting Committee. I'd like to introduce the committee that's with us today. We're going to start to my far left with Senator Bill Avery from Lincoln; Senator John Nelson will be with us shortly, is from Omaha. We have Senator Deb Fischer from Valentine; and we have Senator Annette Dubas, the Vice Chairman of the committee, from Fullerton. We have Nancy Cyr who is the legal counsel and the director of Research. I'm going to start to my immediate right or your immediate left, we have Senator Scott Lautenbaugh from Omaha. We have Senator Danielle Conrad from Lincoln. Then we have Senator Ken Schilz from Ogallala. And then we have Senator Heath Mello from south Omaha. And at the very end we have Barb Koehlmoos who is the committee clerk who will be taking our testifier sheets here in Lincoln. We have two pages that are going to be helping with us here. We have Sonya Sukup from Verdigre, Nebraska; and we have Katie Miller from Omaha that will be helping us here in Lincoln. We have two coordinators. First of all, thank you, Karen Anderson, at Scottsbluff for your help out there. And then we have Nicki Auman from Omaha who will be helping with the Omaha location. We would like to thank you for your help. For those of you here in Lincoln, we do have in the corners of the room there are green sign-in sheets; and I believe there's a sign-in sheet at each location in Omaha and Scottsbluff as well, that as you testify we would like you to fill those out. That helps us get a record and they will mail those from the remote locations back to us so we have our sign-in sheets at a later date. We ask you fill those out in your entirety so we can use that to help keep a very accurate record of today's hearings. We ask that when you come up, we'll have you come up one at a time when we're ready. We're going to start in Scottsbluff and allow people to testify there, and then we're going to move to Omaha if we have someone in Omaha, and then we'll move back to those of you that are in the room with us here in Lincoln to testify. We'll have you go one at a time. Just as a reference point, Scottsbluff, how many people there plan to testify? []

KEVIN HOWARD: Zero. []

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SENATOR LANGEMEIER: Okay. Omaha? []

NICKI AUMAN: The same, zero. [LB699]

SENATOR LANGEMEIER: Okay. We appreciate the people willing to come participate at least to listen to the process and view it at those locations. And so with that said, we will start with testifiers here in Lincoln. And before us today is the hearing on the judiciary redistricting map. And I see the people in Scottsbluff and outstate have maps. There are copies of maps on the table. They've been out and about. People have looked at those. So at this time, we would take anybody that would like to testify. These are a little different. We don't take proponents, opponents, and neutral testimony. We just take testimony. So if you'd like to come up and share with us your thoughts on the map, things you like, dislike, or concerns that something we've overlooked, we appreciate the information. Welcome. [LB699]

JANICE WALKER: Thank you. Senator Langemeier and members of the committee, my name is Janice Walker. I'm the State Court Administrator, and I'm appearing this afternoon on behalf of the Nebraska Supreme Court. And my remarks are going to be quite brief. I want to begin by expressing the gratitude of the court for the committee's willingness to expedite this particular portion of redistricting and to accommodate the situation that arose with the unfortunate death of Court of Appeals Judge Ted Carlson. Committee members and staff have been extremely gracious, and we appreciate that so very much, so thank you on behalf of the court. In response to the map that is before you, I would simply say that the map has been distributed to all Supreme Court Justices and all judges of the Court of Appeals. There have been no concerns expressed, no objections to the plan as set forth in this map. And if you have further questions, I will try to answer them. [LB699]

SENATOR LANGEMEIER: Very good. Are there any questions for Ms. Walker? Seeing none, thank you very much. [LB699]

JANICE WALKER: Thank you very much. [LB699]

SENATOR LANGEMEIER: If you would give Barb your testimony sheet, I'd appreciate that. Anyone else that would like to testify in regards to the...welcome. And if you have a handout, if you'll give that to her as well and she'll...go ahead. [LB699]

ROBERT BARTLE: (Exhibit 2) Senator Langemeier and members of the committee, my name is Bob Bartle and I appear today as the president of the 6,000 lawyers of the Nebraska State Bar Association, and I'm here and I passed out map to address concerns that have been relatively unanimously expressed to me in my role as president. As many of you recall, we have a legislative committee in the normal course

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that processes legislation. We had to act in a somewhat expeditious matter here. I share Janice Walker's concern and appreciation for your acting with some dispatch because, of course, we are acting with dispatch here because of the tragic and untimely death of Judge Carlson. So we tried to react very quickly as an executive committee to respond to the proposed redistricting. The districts of the Court of Appeals and the Nebraska Supreme Court impact lawyers most directly because it is from that pool of people that we draw our judges. So we, as lawyers, representing the Bar Association are the constituency, if you will, for what the judges are drawn. That's one of the obvious concern of Nebraska lawyers. The other is, of course, we're the group that evaluates the lawyers as they...we rate all judges as a member of the Bar Association and a practicing lawyer in the various districts. So the district members rate and evaluate those judges. That is a public process. And then, of course, finally the trial attorneys, as well as probate attorneys, and all those who practice in front of the courts and ultimately the Court of Appeals, the Supreme Court practice with particular judges that are selected. That's the interest. So in an effort to respond quickly, we received from the Supreme Court Administrator the proposal on April 26 and I started getting calls right away from various attorneys, particularly in Omaha, because of the concerns of taking some 290 Omaha judges and making them a part of District 3. That was the initial concern. I was hearing from Omaha attorneys. So what I did to get a good sense, first informally, I happened to be in Omaha Tuesday for the Law Day activities that Douglas County had and I impaneled a bunch of Omaha attorneys there. But of a more particular fashion, we held an executive conference call. The executive council of the Bar Association represents all the lawyers. They are the six...they're elected from these six districts. And so I had our members from North Platte and Scottsbluff on the line with me as well as the Omaha and Lincoln members. Unanimously we support an alternative proposal that I've passed out to you. And let me in an overarching way say what our objective was here. We understand we have to stay within the 5 percent deviation. We understand that it's all about people. But how can we impact these districts to, number one, our overall objective is to be as least disruptive as possible, both in terms of geography and in terms of attorneys impacted, and then to maintain the character of the districts--to maintain the character of such as District 3, the Norfolk or northeast Nebraska area, as well as District 5 and the area that is Hastings and southeast Nebraska. And so what our proposal does, rather than take 290 Omaha lawyers and move them into the Norfolk area, which seems to be somewhat alien as far as the character of that district, we much less impact that altogether and we give to District 3 counties such as Boone and Nance and Merrick that are more of the character of the county and the practice of the attorneys more reflective of District 3. What happens as far as the balance then in District 5, it's rural Sarpy. It's approximately 70 attorneys of Sarpy County that become a part of District 5. And I would suggest to you that is much less disruptive of the character of the county or the district itself than taking 290 metro attorneys. So our changes we think keep west Omaha within District 2, much more reflective of the way it was; move a smaller portion of Douglas County District 3, mostly a northwestern portion; we keep Bellevue, Papillion, and La Vista within District 4 that reflect the

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character and the precedent of District 4. We combine Seward and Lancaster and we've already had that in many ways, Seward and Lancaster fit. We, in the Lancaster County Court, for example, have been using, because of our overload, a Seward judge for years. And so that is I think contiguous and again reflective of the practice of the attorneys in that area. We leave Cass County intact and move to District 5 and we keep Nance, Merrick, Butler, Polk, and Hamilton Counties now as part of District 3 rather than lop off 290 metropolitan Omaha attorneys and make them a part of District 3. So that was our objective--to work with you as best we can and maintain the character of the practice, allowing lawyers as best we can to continue practicing within that same constituency to that same court. And then when you not only then choose the nominees such as when we have to replace someone on the Court of Appeals, that candidate comes from a pool of attorneys reflective of the practice as well as then the attorneys that evaluate that judge every three years now have a knowledge of that practice. I don't think, for example, just using one example, if you asked--presently it's Judge Gerrard serving in District 3--all his practice in private practice was around Norfolk. So early on in his practice, he's first evaluated in three years, 290 attorneys practicing in Omaha would have no idea who Judge Gerrard even was, and that's the point. That is how these appellate districts and Supreme Court districts relate to those of us who are in the private practice of law. Let me pause now because I also brought with me Jane Schoenike, who has done some work on just the number of attorneys impacted and could address those particular questions about how we...we measured how this proposal is least disruptive of attorneys than the legislative proposal. But let me pause while I'm here and answer any questions you may have. [LB699]

SENATOR LANGEMEIER: Are there any questions? We'll start over there and work our way around. Senator Avery. [LB699]

SENATOR AVERY: Thank you, Mr. Chair. We are supposed to, according to my knowledge of redistricting, supposed to try to get as close to zero deviation as we can in people, not just lawyers. [LB699]

ROBERT BARTLE: Correct. [LB699]

SENATOR AVERY: And I noticed that you have three districts, Districts 2, 3, and 4, that approach 4 percent or 5 percent...they're over 4 percent. And that's pretty high by the...comparing it to what we've done in the initial proposal, which is where the deviations are all under 1 percent and what we've been doing in other mapping. So how do you explain, for example, District 4 is 4.2 over and just next door District 5 is minus 2.92. You could have adjusted the boundaries between 4 and 5 and made that much closer to zero. Were you trying to include or exclude certain lawyers? [LB699]

ROBERT BARTLE: I could tell you that it was war to try to keep the rural and the urban nature of the practice consistent with what the districts used to have been. But we were,

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we were obviously...I represent lawyers and we were concerned about the impact this legislative proposal had as far as displacing, if you will, dividing Omaha into...Douglas County into three different districts and having that sort of factor. So my concern was certainly the nature of the practice of lawyers and looking at lawyers that are primarily urban in their practice versus lawyers that represent a larger geographic district. That is true, Senator Avery, in a general sense. [LB699]

SENATOR AVERY: It appears to me, though, you could have moved a few hundred people...and I'm...I really don't care how many lawyers in each one, could have moved a few hundred people from 4 into 5 and you would probably have had about a zero deviation. And those deviations are important if we're going to respect one person, one vote. [LB699]

ROBERT BARTLE: I understand your concern, yes. [LB699]

SENATOR LANGEMEIER: Senator Conrad. [LB699]

SENATOR CONRAD: Thank you. Thank you. Just a quick question, Bob, and I don't know if you know off the top of your head, and if not, we can consult with staff. I don't have the existing district boundaries in front of me now, but can you just talk a little bit about how the proposal of the Nebraska Bar Association either more closely follows existing core of boundaries or districts or is disparate from the existing maps because that is one of our key principles for redistricting. [LB699]

ROBERT BARTLE: Sure. [LB699]

SENATOR CONRAD: And I just wanted to give you a chance to talk about that specifically. [LB699]

ROBERT BARTLE: Sure. And let me repeat, if I can, and address those factors. I think it's important to keep, for example, west Omaha within District 2. Our proposal does that. I think how we handle District 3 and not add, Senator Conrad, 290 Omaha lawyers but rather add counties more consistent with District 3, such as Merrick, Butler, Polk, and Hamilton Counties into that district, makes it more consistent and contiguous, if you will, with the character and the nature of the practice. I think it was important that we keep Bellevue, Papillion, and La Vista all within District 4. I think that's consistent with the character of that district. We do move a portion of Sarpy County, including Gretna, to District 5, but note that is the nature of a rural area of Sarpy County. I think maybe 70 lawyers are impacted there in moving that to District 5, and I don't think that impacts the character of District 5 nearly as much as, for example, moving 290 Omaha lawyers into District 3. We leave Cass County intact and have Cass County part of District 5, which I think flows more into their character. So if I understood your question, Senator Conrad, those are the objectives we looked at. [LB699]

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SENATOR CONRAD: Okay. And thankfully somebody did bring their existing map and so I just have a chance to review it here. But it looks like under the existing boundaries that essentially in Douglas and Sarpy County there's two districts, number 2 and number 4. And essentially under the Bar's proposal in Douglas and Sarpy County there would be four, parts of four? [LB699]

ROBERT BARTLE: Parts of four. [LB699]

SENATOR CONRAD: Because you'd have parts of 5, parts of 2, 4, 5, and 3. Is that right? [LB699]

ROBERT BARTLE: I think you are correct. [LB699]

SENATOR CONRAD: And that, I mean the population numbers are what they are. I appreciate that. [LB699]

ROBERT BARTLE: As Senator Avery alluded to, they are what they are. And we recognize change is hard and that's what we're all trying to deal with--change (laugh). Change is hard. [LB699]

SENATOR CONRAD: Right. Okay. And it seems to me that really under either the committee's proposal or under the Bar Association's proposal there's little, if any, change in terms of the western Nebraska district in District 6 and really those subject to the greatest potential change will be in eastern Nebraska. [LB699]

ROBERT BARTLE: Correct. But let me address something that I think represents, you know, my association. I'm a city lawyer. Most of my entire practice has been based in Lincoln and Lancaster County, but I grew up in the 3rd District, I grew up in Howard County. I know the Sandhills not nearly as well as Senator Fischer, and I obviously represent people in the Sandhills area and in greater Nebraska that get concerned when now with the rural...with the map existing now, I mean they're always going to have three districts that reflect greater Nebraska. And I think by dividing like Omaha three ways, the potentiality to have four of the six districts being city lawyers does cause us some concern. And I think our map tries to balance that more with what Nebraska is all about. We have a rural part of our state, a greater Nebraska part of our state as well as Lincoln and Omaha. And I think we did take that in mind, and my executive council members in the 3rd District, from the comments of the representative from Kearney as well as the representative from North Platte, expressed those concerns about the legislative proposal and are much more comfortable with the dynamics of what the Court of Appeals and the Supreme Court would represent with our proposal, reflecting that sort of balance we have now. That it would be unlikely that four of the six members of the Court of Appeals or five of the seven members of the Supreme Court would be

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essentially Lincoln or Omaha lawyers. That does give us some pause. And so that is reflective of the discussion I had with members of my executive council also. [LB699]

SENATOR CONRAD: Okay. Well, thank you for the thoughtful proposal and it's been the practice of the committee thus far to if and when possible sometimes combine different ideas. And so maybe this is a lot of food for thought as we move forward and thank you for coming in. [LB699]

ROBERT BARTLE: Can I answer any other questions? [LB699]

SENATOR LANGEMEIER: I do have one question. [LB699]

ROBERT BARTLE: Yes, Senator. [LB699]

SENATOR LANGEMEIER: And I'm going to sound brash I guess. You talk about the rural and you talk about the urban lawyers. When you got your law degree, did you get a rural law degree or did you get an urban law degree? [LB699]

ROBERT BARTLE: Not at all. And I'm proud to practice in both areas and continue to practice today. [LB699]

SENATOR LANGEMEIER: Okay. [LB699]

ROBERT BARTLE: But I do think that when you talk about the judges that have the penultimate authority over the rule of law in Nebraska, whether that's reflected through the Court of Appeals or reflected through the Supreme Court, it's healthy. And we've had a balance when we've had judges on our courts such as John Wright who practiced in the Scottsbluff area and understands the dynamics of that practice, judges on our court as well as John Connolly who knows the Hastings area, as well as Ken Stephan's knowledge of the urban practice in Lincoln; and the knowledge of Mike Heavican of both Lincoln and Omaha practice. So when I talked to my constituency about those judges reflecting the body politic, if you will, of judicial decision making, I think it's important for us to have geographic and practice, character of practice representation. The practice in the small offices I work with in Ord or St. Paul or McCook are different dynamics than the practice of the lawyers I work with in Omaha. And I think especially my brethren in greater Nebraska have a concern that they be represented also in the dynamics as we make up the districts. And that was why I answered the question the way I did, Senator. [LB699]

SENATOR LANGEMEIER: Okay. Thank you. Any other questions? Senator Nelson. [LB699]

SENATOR NELSON: Wouldn't you say it's true that by and large the Supreme Court

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judges and the appellate court are basically they've had a lot of trial experience and they're trial lawyers? [LB699]

ROBERT BARTLE: By and large there has been a trial bias. I would agree with that statement, Senator Nelson. [LB699]

SENATOR NELSON: Well, is it fair to...I'm going to say there's a lot more trial practice probably in the Omaha and Sarpy County than there is outstate. But is it fair to the other districts to draw the lines as you have here as far as affording trial attorneys in the other part of the state to be part of the process? Do you...? [LB699]

ROBERT BARTLE: We...I guess I tried to draw my lines, again, reflective as closely as I could to... [LB699]

SENATOR NELSON: Well, I mean trial practice in Norfolk is not that much different than it is in Omaha. I guess that's my point and you're going to get trial lawyer so. I'll be interested in seeing...you're going to have some figures on the distribution of lawyers in the various proposed districts. [LB699]

ROBERT BARTLE: Yes. I think Jane can speak to how our proposal is somewhat less disruptive of the particular lawyers and how we came to some of the decisions we did because she's been more intimately involved in it. But I guess what I was trying to reflect, keep in mind it's not just the trial practice when you talk about the decisions that are made by the judges of the Court of Appeals and the Supreme Court. They're making practice on landlord/tenant matters. They're making practice on probate matters. They're making decisions on guardianships and family matters. And those dynamics do vary by those experiences I talked about. That when Judge Wright out of Scottsbluff brings in experience in the probate and landlord/tenant area or the domestic dispute area, he or she brings a different experience than Judge Miller-Lerman who practiced in a big city, Omaha firm, and understands those dynamics as she sits on our Supreme Court. That was my point. It wasn't just trial lawyers, but the cases that reflect the type of practice all 6,000 of my lawyers do. And that's why we were trying to be as least disruptive as possible to the character of the districts. [LB699]

SENATOR LANGEMEIER: Senator Conrad. [LB699]

SENATOR CONRAD: Yes and just to follow up I guess the point would be then that judges have different backgrounds and different biases and different experiences... [LB699]

ROBERT BARTLE: Absolutely, absolutely, yeah. [LB699]

SENATOR CONRAD: ...as do all of we in the Legislature. [LB699]

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ROBERT BARTLE: Absolutely. [LB699]

SENATOR CONRAD: Absolutely. And, Bob, I do want to be clear and maybe just to foreshadow before Jane comes forward, because I think there may be some confusion amongst your testimony and what is about to be presented and the principles of redistricting that we're trying to follow in terms of...Senator Avery started talking about it with the deviations of population. And those deviations, of course, are important so that we can get as close as possible to one person, one vote. And we're talking about citizens as a whole and, of course, number of lawyers and where they practice and how they practice and the dynamic they practice within, I'm not even sure if it's relevant in terms of redistricting purposes as we move forward or not. So I wanted to make sure that that was clear so that you had a chance to respond or that Jane had a chance to prepare for that. [LB699]

ROBERT BARTLE: Yes. And to just kind of give her a little bit of introduction, I intentionally did not talk about how these districts impact the supportive work the Bar Association does because we are charged with, for example, forming the Judicial Nominating Commissions. We put the lawyers together on those and that changes dramatically as you change boundaries. And those are the persons that work with the four appointed by the Governor who must come from the geographic area to nominate the judges. That impacts us. Our various executive council relationship I alluded to impacts us. Now we can move along with that, but wouldn't it be I guess somewhat prudent to be as least disruptive as possible, reflecting the reality that Senator Avery points out, we have to count people here. And we understand that we may have to work with that, but at the same time trying to keep with the character of what the districts were as best we can and dealing with that reality. And so hopefully that sets up some of the particulars that maybe Jane can answer more completely than I. [LB699]

SENATOR CONRAD: No, I think that process component is important to understanding the relevance of those numbers. And they may be separate and distinct from redistricting principles, but if they can be accommodated, it's always about balancing interest. [LB699]

ROBERT BARTLE: Oh, yeah. [LB699]

SENATOR CONRAD: So appreciate that. Thank you. [LB699]

ROBERT BARTLE: Thank you, Senator. [LB699]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much. You did a great job. [LB699]

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ROBERT BARTLE: Thank you. Thank you. [LB699]

SENATOR LANGEMEIER: The first one up always gets to have the fun. [LB699]

ROBERT BARTLE: Only because I have a good woman behind me. [LB699]

JANE SCHOENIKE: Good afternoon, Mr. Chair, members of the committee. My name is Jane Schoenike, that's spelled S-c-h-o-e-n-i-k-e, and I appear today as the executive director of the Nebraska State Bar Association. What I did want to do is provide for the committee some of the considerations that have been discussed by Bob Bartle with respect to trying to balance not only the adjudicative role of the courts, but also the regulatory role. And it may not be something that many people are aware of, but the Supreme Court has a number of committees and commissions that regulate the practice of law and have a great impact on judicial administration and the administration of justice. And most of these commissions are set up based on a six-district model. So whether they are judges appointed, members of the bar appointed, or members of the general public appointed, we generally work in this six-district model. And so that when we look at, for instance--these are just some of the boards that I looked at after I had mapped both proposals onto a zip code map--I looked at a difference that would occur. We would be displacing incumbents basically in one district of the six on the Client Assistance Fund; two districts of the six on the Disciplinary Review Board, which is a disciplinary committee for lawyers who are charged with unethical behavior. On the first district Committee on Inquiry, which is also an ethics committee, we would be displacing possibly three members. On the Commission on the Unauthorized Practice of Law, we would have two commissioners in one district. That's where in the 5th and the 6th because of the movement of Phelps County we would have two members in the 6th District and disenfranchise the 5th. On the State Bar Commission, which does the bar exam and the admission and character and fitness backgrounding for lawyers to be admitted in the state, we would have the same situation--two commissioners in one district. The commission on MCLE, which approves appropriate education for attorneys; and then on the judicial nominating commissions, which we've mentioned. I think one of the things we can be very proud of in this state is we have public involvement in the entire spectrum of judicial selection and retention. That we have lawyers and lay people on every judicial nominating commission. We have them on the vote on the retention of the judges. And we also have lawyers and lay people on Judicial Qualifications Commission which disciplines judges, so that we have always respected the public input into the judicial selection and retention process, and we think that has a very positive effect on the administration of justice. And so those are things that I think we need to look at. And I've looked at the Supreme Court Judicial Nominating Commissions as they now exist, and the Court of Appeals, which are the only ones affected by the six districts, and on each one of those commissions but two, incumbents who were elected to serve on a nominating commission would have to either be replaced or special elections held. So that's where we are and this is one of the things that we've been

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asked to look at by the Supreme Court for the Court of Appeals District 2, which is Judge Carlson's district. Basically respecting one person, one vote, but with that regulatory and administrative role, I think it is important to look at whether or not we are respecting geographically important legal communities. And I think that's one of the reasons why District 2 and District 4 really have a much greater need to sort of keep into those geographical districts. Basically if you want numbers from the districts, when I looked at the proposal from the Redistricting Committee, we would have 1,290 members in the 2nd Judicial District; 800 in the 4th Judicial District; 291, as President Bartle has said, would be residents of Douglas County, but would be voting for purposes of retention, or not for retention but for nomination into the 3rd Judicial District. The total number of lawyers right now in the 3rd Supreme Court District is 337. So you can see what a huge impact that would have by moving almost an equal number of lawyers from western Douglas County up into the district that encompasses most of northeast Nebraska. And in District 5, we have 401. Now right now in the bar directory--I looked just before I came over--we have seven lawyers who say their practice is in Gretna, which is probably the largest metropolitan, if you call it that, city located in Sarpy County. I'd be happy to answer any questions. [LB699]

SENATOR LANGEMEIER: Very good. Are there any questions? We'll start with Senator Dubas. [LB699]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you very much for this information. It's very helpful. I'd like a clarification, though. When you talk about these various commissions and committees... [LB699]

JANE SCHOENIKE: Um-hum. [LB699]

SENATOR DUBAS: ...are those...are the makeup of those ruled by statute or rules and regs or are those internal type? [LB699]

JANE SCHOENIKE: Some are by statute. The judicial nominating commissions are by statute. Some are by court rule. [LB699]

SENATOR DUBAS: Okay. [LB699]

JANE SCHOENIKE: Unauthorized practice, admissions, the disciplinary committees are all created by court rule, but the nominating commissions are by statute. [LB699]

SENATOR DUBAS: Thank you very much. [LB699]

SENATOR LANGEMEIER: Senator Fischer. [LB699]

SENATOR FISCHER: Thank you, Chairman Langemeier. Thank you for coming in. I'd

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like to follow up a little bit on Senator Avery's question to the previous testifier. As I look at Districts 2, 3, 4, and 5 and the area specifically in Douglas and Sarpy County, I look at your deviations on those and they're large deviations. When this committee worked on those same areas, it's sometimes easier just to move a street or a couple streets and you can make those deviations closer. So I guess my question to you is what is your main guiding principle when you drew this up? Were you looking at the population, the whole population of the district or are you looking at the number of attorneys as you addressed in your statement? [LB699]

JANE SCHOENIKE: No. We were looking at the entire population. But we were also trying to make cohesive, contiguous, I think is important, geographic legal communities because of the regulatory aspect. [LB699]

SENATOR FISCHER: Then why...again, I'm just looking at Douglas and Sarpy County and those four districts specifically. Not being from that area, couldn't you just move a street or two and get your deviations closer to zero on this map without disturbing these geographic communities that you're referencing? [LB699]

JANE SCHOENIKE: Certainly. I would expect that with the mapping software which, you know, is in your tender care there, there are adjustments that could be made that could do these deviations. But what we'd like to do is see that Douglas County, where there is the most population, stays in basically the same legal community and separating west Omaha from downtown and the legal practice. [LB699]

SENATOR FISCHER: You would say then that the legal practices in west Omaha would be entirely different than the legal practices downtown? [LB699]

JANE SCHOENIKE: No. I would say they were similar. And so that if under the committee's proposal when you would take west Omaha and for many intents and purposes move those up into the 3rd Judicial District, we understand that some of Douglas County will have to be moved out of Douglas County. That's just the numbers. But if we can maintain integrity in those legal communities, west Omaha and downtown, because of business interests, because of courts, because of a number of other things, we think make more sense to stay in one appellate court district; the same with Sarpy County. What we've looked at is Bellevue, Papillion, La Vista, based on population but also recognizing that that is the more urban area in Doug...in Sarpy County, excuse me. And that... [LB699]

SENATOR FISCHER: What would be the difference between the city of Bennington and the city of Valley and Waterloo with their legal communities? [LB699]

JANE SCHOENIKE: I think that a large metropolitan practice, and those are smaller communities, I just think they are different. [LB699]

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SENATOR FISCHER: But you have Valley and Waterloo in with Dodge Street, with part of downtown Omaha, Military Avenue into Maple and 480. I'm just trying to... [LB699]

JANE SCHOENIKE: And I...and... [LB699]

SENATOR FISCHER: ...figure out why you do it a certain way. [LB699]

JANE SCHOENIKE: And, Senator, I will say that there's certainly refinements that can be made. We were just trying to use whatever we had available to make these districts more uniform. And if parts of...I mean, you're going to have to move population out of or take Douglas County population and put it into another appellate court district. Moving that, I think what we're trying to do is keep the city practices together. And if you have, as you have in southwestern Sarpy County, a much more rural environment, that makes more sense to have that in a district where the rest of the counties or communities in that district, in District 5, are either smaller towns or rural, and that there is a character to the legal practice. [LB699]

SENATOR FISCHER: So a driving principle in the drawing of especially those four districts then would...that you had when you drew these maps would seem to be the practices and the attorneys would influence you more on that than the population. [LB699]

JANE SCHOENIKE: I don't say that it influences it more. I mean that is the principle. But I do think that if you can balance the voting responsibility of the citizens and the regulatory aspect that comes with the unique role of the courts, that's just what we were trying to do. We may have done it imperfectly, but I think we tried. [LB699]

SENATOR FISCHER: Okay. Well, thank you. And I do appreciate you coming forward with a proposal. Thank you. [LB699]

SENATOR LANGEMEIER: Senator Avery. [LB699]

SENATOR AVERY: Thank you, Mr. Chairman. We are guided by principles and criteria that we adopted in the Legislature and debated and voted on and approved. And we must not violate those principles unless there is a compelling reason to do so. And we have worked hard to do that. And, of course, we've talked about these deviations. They don't have to be that big because, as Senator Fischer pointed out, you can move your line just a few feet one way or the other and you can capture a lot of people. And in doing so, you can reduce those deviations to nearly zero. But one of the things that we cannot do, and I hope that you understand this, that we cannot draw lines in order to create a district that includes certain lawyers who may wish to be on the court or any of the courts or to draw lines to exclude some that you may not want to be on the court. Do

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you understand that? [LB699]

JANE SCHOENIKE: I certainly do, Senator, but I assure you that had nothing to do with the way we took a look at the boundaries of the districts. [LB699]

SENATOR AVERY: I guess I have a fundamental objection to even implying that we ought to be drawing the lines based upon where lawyers live. [LB699]

JANE SCHOENIKE: And I would say that is not so much the reason that we suggest a different set of boundaries, but that as we represent our constituents and we want to make sure that we are doing the best we can and wanting to make sure that the lawyers in a community all have equal respect for the judges and the rule of law, that we are simply trying to make our best effort toward keeping practices, keeping community standards consistent within a particular set of geographic boundaries. And that was our desire. We understand fully that this is in the hands of the citizens. It is their right to vote, and they will vote on retention of judges. [LB699]

SENATOR AVERY: We heard a lot about the character of districts and the definition of character seemed to be the legal character or the judicial character or the makeup of the lawyer community describing the character or determining the character of that district. We have to be concerned with the community of interest of the population which includes lawyers, but it includes other people too. And that's something that I'm a little bit concerned that too much emphasis was given to the character of the legal community. [LB699]

JANE SCHOENIKE: Well, no, and let me rephrase that if that is the way it came across. What I meant to say or what I hoped that we were communicating to the committee is that in the work that lawyers do for people, for business, for government entities, that there is a particular character to the kind of work that lawyers do, not where lawyers live per se, but the kind of work that lawyers do, whether they're working for a large municipality or they're working for a smaller township, whether or not they're working for a major corporation or they're working for an agricultural entity, whether or not you're doing divorces and whether you're doing divorces in a metropolitan area where you've got kids going to different school districts and you're trying to work through, you know, joint parenting plans, there are different kinds of understandings, agreements. I think that the community representing their clients, representing the citizens have an understanding about how certain things work in certain areas. And that's...and so if I meant...if I expressed it as we're concerned about the lawyers, we are not concerned about the lawyers, We're concerned about the type of practice and the practice as it affects their clients. [LB699]

SENATOR AVERY: Thank you. [LB699]

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SENATOR LANGEMEIER: Senator Fischer. [LB699]

SENATOR FISCHER: As I compare the map that you brought forward to the map that the committee sent out,... [LB699]

JANE SCHOENIKE: Uh-huh. [LB699]

SENATOR FISCHER: ...I see that Douglas County we had three judicial districts in Douglas County and Sarpy. The map you propose has parts of four districts in...judicial districts in those two counties. Obviously one of your points would be to have a part of another judicial district in that area. Correct? [LB699]

JANE SCHOENIKE: Um-hum. [LB699]

SENATOR FISCHER: Could you explain to me why you changed some of the shapes of the districts from the original map? I guess I'm asking you what don't you like about the original map? [LB699]

JANE SCHOENIKE: Well, I think one of the first things that we wanted to confirm and to explore further is why it is you separated western Omaha from downtown? There is a very metropolitan feel. It's part of the city. As it moves west, I think there's ever more community of interest in the people that live in that area. When you look at Sarpy County, Sarpy is probably a little more diverse in terms of rural practice, what I would call city practice, or suburban practice. And again, what we were trying to do is keep communities together so that we have in one Judicial District Bellevue, La Vista, Papillion, Ralston. The map that the committee came forward with didn't have that same, I don't think, congruity with those metropolitan areas. And as I said, we can refine this to get those deviations down. But I think what we wanted to show to the committee was a concept that there is a difference that we think is important in keeping a metropolitan area in one area...in one Judicial District as opposed to splitting it three different ways. The numbers are the numbers and we have to be accommodating of that. [LB699]

SENATOR FISCHER: Okay, thank you. [LB699]

SENATOR LANGEMEIER: Very good. Senator Avery. [LB699]

SENATOR AVERY: I'm sorry, but I do have to ask one more question. Thank you. I'm looking at the cutout here of your... [LB699]

JANE SCHOENIKE: Yes. [LB699]

SENATOR AVERY: ...the blowup of Sarpy and Douglas. And you cut right down Pacific.

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I mean I'm not from Omaha, but I know where Pacific Street is, and it cuts right through the center of Omaha and you divided north and south right along Pacific. [LB699]

JANE SCHOENIKE: That is part of the old district, Senator. I mean we had previously a dividing line between 2 and 4 when 2 was all of Douglas County but for a slice of the southern part of Douglas County south of Pacific that was moved into District 4, which at that time was all of Sarpy County. So ten years ago when the redistricting was done, it was Pacific north and south that was the dividing line. That's a familiar line based on the districts we have right now. That's where Pacific came from. [LB699]

SENATOR AVERY: Yeah. I see the old line, the old district lines. And it used to be that District 4 was all of Sarpy County. [LB699]

JANE SCHOENIKE: That's correct. [LB699]

SENATOR AVERY: And we know that the growth in the area is Sarpy County and that's where you have to do a lot of the... [LB699]

JANE SCHOENIKE: Juggling. [LB699]

SENATOR AVERY: ...juggling of numbers and district lines. But you made the point, though, that what our map does is that it divides west Omaha from downtown Omaha. [LB699]

JANE SCHOENIKE: Yes. [LB699]

SENATOR AVERY: It looks to me like yours does too. [LB699]

JANE SCHOENIKE: Well there, yes, there is a portion of Douglas County and, again, that's trying to keep as much of the old boundary line as we could. I mean there are certainly an infinite number of ways to move these lines around. But trying to keep what was familiar... [LB699]

SENATOR AVERY: And that is one of our criteria to try to preserve existing boundary lines to the extent that's practicable. Thank you. [LB699]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, very good. Thank you very much. [LB699]

JANE SCHOENIKE: Well, thank you very much and thank you for the opportunity to submit the proposal. We do appreciate it. [LB699]

SENATOR LANGEMEIER: We're learning. Thank you. Further testimony on the

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Supreme Court redistricting maps? Is there anyone else here in Lincoln that would like to testify? Seeing none, we'll jump back. Is anybody in Scottsbluff after that decided they want to testify? No. They're shaking their head no, I can see. And no one arrived at Omaha, no new testifiers there? [LB699]

NICKI AUMAN: No. [LB699]

SENATOR LANGEMEIER: Okay. And seeing none here before us in Lincoln, that will conclude the hearing on the judicial maps. And we'd like to thank everybody that participated in both locations, and we want to thank our two proctors that sat in for us in Scottsbluff and Omaha. We greatly appreciate it. Thank you. [LB699]