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Floor Debate  
March 06, 2019

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SCHEER: [RECORDER MALFUNCTION] --the day of the One Hundred Sixth Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

ASSISTANT CLERK: There is a quorum present, Mr. President.

SCHEER: Thank you, Mr. Clerk. Are there any corrections for the Journal?

ASSISTANT CLERK: No corrections this morning.

SCHEER: Are there any messages, reports, or announcements?

ASSISTANT CLERK: Mr. President, priority bill designations. Senator Kolowski has selected LB619; Senator Blood, LB138. That's all I have.

SCHEER: Thank you, Mr. Clerk. We'll proceed to the first item on the agenda. Excuse me one moment. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR30, LR31, and LR32. Mr. Clerk, first item.

ASSISTANT CLERK: Mr. President, LB339 introduced by Senator Lathrop. (Read title.) The bill was introduced on January 16 of this year, referred to the Judiciary Committee. That committee placed the bill on General File with no committee amendments.

SCHEER: Thank you, Mr. Clerk. Senator Lathrop, you're welcome to open.

LATHROP: Thank you, Mr. President, and colleagues, good morning. I'm going to introduce LB339. This is a cleanup bill. Very, very simple. If we had a consent calendar, this thing would be on it. LB339 is a cleanup bill that addresses an oversight from last year's passage of LB697, which adjusted a few judicial district boundaries as recommended by the Judicial Resource Commission. Those changes should have included an adjustment to the membership of the judicial nominating commission that helped select judges for the various districts. LB339 makes a small change to alignment commission with the updated district boundaries that happened in that bill last year. That bill, which was LB697, moved Otoe County district court into the first judicial district, which covers most of southeast Nebraska. And out of the second district, which is Sarpy and Cass Counties. That change by design, did not include Otoe County's county court, just its district court. But there was an oversight and no one changed the makeup of the judicial

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nominating commission for the Otoe County district court to reflect its new judicial district. LB339 advanced from the committee on a 7-0 vote with no opposition at the hearing. Again, this is a technical change to cleanup an oversight in a bill that passed last year by this Legislature, LB697, and with that, I would encourage your support for LB339. Thank you, Mr. President.

SCHEER: Thank you, Senator Lathrop. Mr. Clerk.

ASSISTANT CLERK: Mr. President, I do have amendments to LB339. Senator La Grone would offer AM416.

SCHEER: Senator La Grone, you're welcome to open on your amendment.

La GRONE: Mr. President. Colleagues, I don't intend for any of these amendments this morning to pass. In fact, I would encourage you to vote them down when we get to them, and I agree with Senator Lathrop, this is a cleanup bill, and I am in support of the bill, but it does raise an issue that, I think, does not get addressed enough in this body and has gone long overlooked that I think we need to take a look at. And that is the transparency of our judicial nominating commissions. And so, essentially, I think the main issue is that I would submit that most people don't even know that these commissions exist. I think that probably a lot of members in this body this morning is the first time that they are hearing of these commissions. And if that's the case, I guarantee you that your average citizen also is completely unaware that these commissions are even out there. And I think that's a problem for a couple reasons. Number one, when we're looking at just the foundations of our government, which we'll get into more this morning, the whole point of a democratic system is that you have popular buy-in to the governmental institutions for all three branches of government. And we can cover that more in-depth. And if the citizenry isn't completely unaware of how our judges are selected, I think that decreases the-- it brings into question the whole goal of that process. And to be clear, we're going to hear a lot about the merit selection plan this morning, and I think that is the best way to select judges. That is what ensures that we have an independent judiciary. I just think that there's probably more that we can do in terms of ensuring that that process is functioning properly. And so how a judicial nominating commission works is, the Governor appoints four citizen members, and then you have four attorney members that are elected by the members of the bar. They're elected on a partisan ballot, and then you have a judge of the Supreme Court sit as the chair of the commission. And there's some more technical stuff about terms and term limits and items like that that isn't really relevant for this discussion, but essentially, the member-- the attorney members, are elected on a partisan ballot. But how that election occurs is they're elected to represent that party on the commission, but everyone can vote for both parties. What that means is all the Democratic lawyers can vote for the Republican members and all the Republican members can vote for the Democratic lawyers. And so that's specifically the issue this

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amendment calls into question, and again, that's a broader issue that we can talk about more later. And when we actually get to a vote on this amendment, I would encourage you to vote it down, because I think it would be better addressed as a stand-alone bill at another time. So that's the general makeup of a judicial nominating commission. Now, getting into exactly how that looks in terms of citizens and how they understand how this works, if you compare that to the federal system, obviously, the federal system, the President simply nominates a judge and then there's confirmation by the Senate. In our system, you have a judicial nominating commission for each judgeship and applicants for vacancy apply. Those applications go to the nominating commission, and then the nominating commission filters applicants, and then the Governor may pick from to nominate for that position. In our system, we have retention elections rather than a confirmation process through legislative body, so that's when you go and you look on your ballot and you see all these judges shall, judge so and so be retained, then you vote yes or no. That's how we do the check rather than a confirmation process. But with so much-- because the initial process is, really happens behind closed doors, and to be very clear, there's nothing-- I'm not implying there's anything nefarious going on, I'm simply saying it's difficult for the average citizen to understand the process. But since so much of it goes on behind closed doors, your average citizen doesn't a lot of times get to-- one, they're probably not even know where the commission exists. Two, they probably have no idea there's even a vacancy in whatever judgeship, and then finally, three, the proceedings of the commission itself are kept from the public. So that really raises a lot of transparency issues. But getting back initially into the foundation, so I think the best way to address this is first to look at the assumptions that underlie what we require in terms of public buy-in, a democratic legitimacy in our institutions. Then second, to look at how the de-evolution of judicial appointments in this country, and then finally, specifically how it applies to our process. So first, we're going to delve in slightly to the political foundations. And, obviously, I know that many people are, you know, in this body have seen a number of aspects of political theory about the need for buy-in from members of the public, and there's much literature that you can go into on that. But that, obviously, underlays the whole foundation of our country with the need for-- essentially when we broke away from the United Kingdom, the desire to have everyday citizens have a say in how their government operates. So, obviously, we have three branches of government. Legislature, I think it's pretty clear how you get public buy-in there. The executive, also incredibly clear how you get public buy-in there. In fact, the state level you even get more public buy-in than you do at the federal level. The federal level, obviously, a lot of the executive offices are filled by appointment and then confirmation. Here we have direct election for a lot of those offices, attorney general, treasurer, auditor, etcetera. When it comes to the judgeships, though, they do operate through that process that I was laying out earlier of the judicial nominating commission filtering the field and then the Governor making a choice. Now, I think that is a better process because a lot of states they have state elections for judges. Now, that creates, obviously, a lot of problems. You can have political influences insert themselves into those elections, which they inevitably do, and that really tends to politicize judiciary. You could have a judge as you saw over in Iowa make a ruling and then

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have that ruling be the issue of an election that next cycle, which may or may not have been a ruling based upon the merit of the case, but it certainly, if you have an election, is not a ruling that is independent of political pressures. Now, I want to talk a little-- now, we'll get into a little about how we came to merit selection plan in our state. And essentially what happened is, back when the foundation of the country, before the revolution even, how you got judges was they were purely appointed by the executive and that's, obviously, the mechanism that we still see used at the federal level and in some states. This, you know, back in England, they didn't have three branches of government. In fact, initially--

SCHEER: One minute.

La GRONE: --they only had two. Well, initially they only had one, and then eventually they got legislative and then the courts, their final court, the Law Lords really were part of that legislative branch. They actually didn't become an independent and separate branch until, I believe, the mid-90s when they were split out of the House of Lords, but certainly back in the late 1600s, early 1700s, when people started to come to the United States, which, obviously, then was not yet the United States, they were appointed by the king to handle various needs. Now it was actually one of the issues in the revolution, so it was just natural, as we became a country-- I'll turn my light on, Mr. President-- for those positions to still be filled.

SCHEER: Time, Senator.

La GRONE: Thank you, Mr. President.

SCHEER: Thank you, Senator La Grone. (Doctor of the day introduced.) Returning to discussion, Senator Matt Hansen, you're recognized.

M. HANSEN: Thank you, Mr. President, and good morning, colleagues. First of all, Mr. President, could I get a gavel? Thank you. Good morning, colleagues. I rise today in support of Senator Lathrop's LB339, but the point of discussion I wanted to make here is largely-- this is my first opportunity to speak since the events that ended our session yesterday morning. And I just wanted to kind of talk about this as a body. I know I sent out an e-mail to all of you referencing kind of my historical context for why I thought full and fair debate had happened. And I understand that we as a body get to decide every year anew with new members, our new norms, our new traditions, how rules are going to be interpreted and how rules are going to be applied, but I think we're at a fundamental inconsistency with how two rules can be applied and were applied yesterday. Yesterday, a motion to call the question was ruled lack of full and fair debate because there were 14 people still in the queue. I think that's a fair interpretation. I don't necessarily dispute that more senators starting to speak might be vindictive of a full and fair

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debate not having happened, but those 14 senators were never going to speak anyways. At most, two or three of them were, because we had another rule where a bill comes off the debate after three hours. So if we decided that three hours is as much time as we're willing to spend on a bill, I don't know how three hours of debate on that bill can't be considered full and fair debate enough for a motion to call the question. Colleagues, I'm happy to operate under whatever set of rules and whatever set of norms and whatever set of traditions we all operate under. I'm happy to do whatever we as a body, whatever we as this One Hundred Sixth Legislature, First Session, decide to do. But we should have some clarity and we should have some thought on what we're going to try and do. And now don't mistake this for sour grapes because it was the underlying bill was a bill I cared about and it wasn't moving forward. I knew when I called the question yesterday, I knew when we approached the three-hour deadline, it was going away one way or the other. So the end result didn't surprise me and it was not something that necessarily upset me because I had spent the morning preparing for it. It was the process that we got there at the end of the day that caught me off-guard and surprised me. As you know-- as you know, calling the question on the underlying bill is something we've done before. It's something we've had happen before. It is not an unusual tradition. It is not an unusual thing. That's, in fact, the purpose of the motion. And in past when things have been quote, unquote, filibustered or extended debate, as you want to call it, the tradition has been to file multiple amendments, such as Senator La Grone has done this morning with multiple amendments he's indicated he wants us to vote against, to prevent the underlying bill from having a question called and moved forward. Now, if we're going to kind of just move away from calling the question, that's something we can do as a body, but I just want that to kind of be in back of everybody's minds when somebody else wants to call the question later on a different bill and maybe we've had an hour and a half of debate and there's six people left in the queue, how are we going to rule then and how are we going to think then? Honestly, I think if you've got the five hands and it's something-- if you got the five hands, then you've gotten into the space where multiple people are speaking for the second and third time, that's probably a pretty good spot. Obviously, we have the rule there to protect people from calling the question immediately after an opening and things of that nature. So I do understand the need for discretion for the Chair, and I do understand each individual's situation. The Chair may change who exactly is sitting in the Chair and who is the presiding officer, and this is not a rebuke at any single one individual. But if we're going to have a rule that a bill gets three hours of debate--

SCHEER: One minute.

M. HANSEN: Thank you, Mr. President. If we're going to have a rule that a bill gets three hours of debate, finished, done, finito, and all of a sudden a higher vote standard applies, and then we're going to also acknowledge that three hours debate is not full and fair debate, those two things are incongruent in my mind. Those 14 people who still wanted to talk on LB627 were never going to get to talk on LB627 unless they started jumping up and doing it on other bills.

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And that's just something I think we're going to have to be conscious of in the future when future motions and future bills are debated, whether you support or oppose each individual bill, I would like you to have that in the back of your mind. With that, I support LB339, and thank you for your time this morning, colleagues. Thank you, Mr. President.

SCHEER: Thank you, Senator Hansen. Senator Lathrop, you're recognized.

LATHROP: Thank you, Mr. President, and colleagues. I'm not exactly sure why this is turning into three amendments to be honest with you, but it sounds like it's going to be used as an opportunity to talk about how we select judges. And I want to take this opportunity to talk to you about our system relative to the two other possibilities. You have the federal system that requires the Senate's approval, right? President nominates someone, they got to go through a process in the Senate, which we're all familiar with, and if they can make it through there, then they become a judge. There are other states that have elected judges. We do not want anything to do with that. Those guys are out raising money, they're fund-raising. As a lawyer, I can tell you, I've talked to lawyers that practice in those jurisdictions where the judges run on the ballot, it's a terrible idea to have a judge out soliciting donations and now you expect them to be completely neutral arbiter of decisions or disputes before them, and then we have Nebraska's system. Nebraska's system is called the Missouri Plan. Basically, the way the plan works is you have a judicial nominating commission. By the way, these people do not meet in secret. There are lawyers that choose who the lawyers are going to be, and there are civilians that are chosen, who are going to serve, so there's a mix of civilians and lawyers. All people interested in the process, they interview candidates. So that when there's an opening, let's say there's an opening for a district court judge, which there will be, hopefully, at the end of the session, the commission will meet and they will interview all the people that want to be a judge. There might be eight people that come forward, and the job of the commission is to determine who are the qualified folks whose names should be forwarded to the Governor. They listen to them, they take testimony, they hear their qualifications, they make a decision, they meet after they have heard people, pro and con, about each of the nominees. The commission, again, made up of lawyers and civilians, overseen by a Supreme Court justice, then forwards names down to the Governor for appointment, the Governor then interviews them. It's called the Missouri Plan. It is unquestionably, unquestionably, colleagues, the best plan in the country. And it's not unique to Nebraska. In fact, they call it the Missouri Plan, and it takes the politics out of these appointments other than the Governor gets to choose from among the qualified candidates who to pick. And typically, historically, but not always, they choose somebody from their own party. So it's not like the Governor's having to pick judges that he wouldn't like, doesn't like, don't philosophically align with the Governor, they get that opportunity after the field has been winnowed by this commission, and this stuff isn't done in secret. The fact that people don't participate or know about it isn't any different than when the Game and Parks Commission meets and you have four people in the room. So we do not want, we do not want to tinker with the system in place in

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Nebraska. It is the best of all three systems, and I'm happy to answer questions about it, and with that, I guess-- and again, the underlying bill here is a cleanup bill. It literally changes one numeral in a section--

SCHEER: One minute.

LATHROP: --and I'm happy to answer questions to the extent any of Senator La Grone's commentary this morning causes you any concern or leads to any questions about this process, I'm happy to-- happy to answer questions you may have, on or off the mike, thank you.

SCHEER: Thank you, Senator Lathrop. Senator La Grone, you're recognized.

La GRONE: Thank you, Mr. President, and I actually agree with 99.9 percent of what Senator Lathrop just said. The only thing I would disagree with would be the-- it's not any difference if people don't participate in this process, and that's what I wanted to get into a little bit. I do completely agree that it is the best way to select judges. I completely agree that it takes the politics out of it. I just think there are some transparency issues that have come up, not just in Nebraska, but with a number of states that use the Missouri Plan. And I think that we'd be wise to discuss those and see if there's a way that they can or that they should or can be addressed. Again, that's probably something that needs legislation as a separate bill next year, but I think it is important to take a look at it now. So last time I spoke I brought us to the point where we were essentially talking about how judges are appointed in their early parts of this country, times of this country. And now I want to look at the changes that happened with that. So, essentially, obviously, as the country grew older and more states were admitted, they each wrote their own constitutions. There were some variations in how that process took place. There are some that chose to elect judges. I agree with Senator Lathrop that that is a bad idea. And then there was some push for reform to go even further and take politics out of the process by looking for some merit-based method to select judges. And that really began with Missouri, as Senator Lathrop indicated, and just to give a little history on it, I'll just read from a Law Review article on the topic. So in 1940, state of Missouri reformed its method of selecting judges in its Supreme Court and other designated courts in an effort to insulate the judiciary from partisan politics and ensure judicial independence. The Missouri system proved to be an influential innovation that spearheaded broader mid-20th century court reform movement. Among its key features, Missouri's approach and trust in nominating commission the authority to recommend a slate of qualified judicial candidates, from which the state's Governor makes a selection. Other than one judicial member, no commission member is permitted to hold public office. And no member may hold an official position in a political party. And this is from Missouri's constitution, and this is talking about the chosen judge later runs in a retention election, in which the electorate registers its views concerning the judicial performance. Unless the majority of voters vote against the

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retention, the judge continues to serve a full term of office. In practice-- in a practice recently formalized by the Missouri Supreme Court rule, the public's decision on retention is aided by published data, and I don't-- would Senator Lathrop yield to a question?

SCHEER: Senator Lathrop, would you please yield, if you're on the floor?

La GRONE: If he's not--

SCHEER: I don't see him at this time.

La GRONE: Senator Hilgers, might be able to answer my question. Senator Hilgers, would you yield to a question?

SCHEER: Senator Hilgers, would you please yield?

HILGERS: I would.

La GRONE: Thank you, Senator Hilgers. So we know that in Missouri there's published data that goes along with these retention elections on the judge's decisions. If I'm-- correct me if I'm wrong, we don't have that in Nebraska with our judiciary retention elections, do we?

HILGERS: Don't have what with our judicial retention elections? I'm sorry.

La GRONE: In Missouri, the article I was reading indicated that they--

SCHEER: One minute.

La GRONE: --are required to publish data, evidence-based data regarding the judges.

HILGERS: Right, no, you're right, we don't have that here.

La GRONE: Okay. Thank you, Senator Hilgers. I just wanted to confirm that, as I passed over it. And so that's to insulate members of the judiciary from excessive-- from contested partisan elections. Embracing the Missouri Plan, as state's nonpartisan commission based method for selecting judges came to be known, 36 states, in addition to the District of Columbia, have adopted a form of judicial nominating commissions and of these jurisdictions, 16 also use



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retention elections. Obviously, Nebraska is one of those jurisdictions. The plan drew inspiration in turn from progressive-era, good government campaigns and their technocratic expert driven solutions to problems of public policy and administration. By removing the courts from the potentially corrosive effects--

SCHEER: Time, Senator.

LA GRONE: Thank you, Mr. President.

SCHEER: Thank you, Senator La Grone. Senator Chambers, you're recognized. Senator Chambers, you're recognized.

CHAMBERS: Thank you. Mr. President and members of the Legislature, I support this bill, and I'm not going to get in that part of the discussion, but since Senator Hansen, number one, as opposed to Senator Hansen our new one, yesterday, I did not vote to overrule the Chair. I was strongly and am always strongly in favor of what Senator Pansing Brooks's bill was attempting to do. But I listened very carefully to what the Speaker said, and for me, what he said was correct. I have to look, take the long-range view, the bill was not going to go anywhere. I will not vote a certain way just to impress other people, but I am concerned about our procedures, our processes, and I'm one who would be very, very offended if somebody could call the question at any point in the discussion and shut off debate. I'm so often on the small end of the vote that the only chance I have to even speak is because of the amount of time that we are allotted, and I don't like the Speaker's current program because I want the full eight hours on General File on a bill. Once we start, I don't want to see a vote allowed to move that bill or end debate until we've had the full eight. But what he has presented is better than nothing, and I do not want, and I will not support anything that makes it easier to shut off debate. There are too many times the rest of you, for whatever reason, have, if not unanimity, at least such a large consensus that you will easily have 25 votes. You could shut down everything. There was one occasion, I forget exactly what it was, but a former U.S. district judge in Nebraska had mentioned me by name in the context of legislative debate. And he acknowledged, not acknowledged, he just verified that in the Legislature is where there should be robust, untrammelled discussion of the issues. This is the only place it's going to be in a democracy, as you all call it. Although what the Constitution guarantees to every state is a Republican form of government and it mentions that word specifically, but not democratic anywhere, which shows that when we talk about civics, those of us who are on the floor discussing civics need to learn a little bit about the subject which civics embraces. And that will never happen. But I do know from experience that it is not a good practice to allow somebody to just call the question and get five people to agree. I might be the only one discussing an issue. That doesn't mean that I'm wrong. It doesn't mean that my discussion is not pertinent. The example I'll give is one that dealt with what was then called

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"late-term abortion." I was the only one who voted against the bill. I was the one doing most of the debating, but as it turned out, I, who was the only one voting against it, was the one who was correct. And that was confirmed by the district court of Nebraska, the Eighth U.S. Circuit of which Nebraska is a part, then the U.S. Supreme Court and all three of those courts--

SCHEER: One minute.

CHAMBERS: --made reference to some of the comments that I made during that debate. Whenever an attempt is to cut off debate too early, I will object to it, and if it does happen over my argument or opposition, then I will get my revenge. I will get my time on other bills, and I'm just saying that, and I did tell the Speaker that I listened to him carefully, and he swayed me. I was not going to vote, but I would have explained why I would not vote at all. I support the bill that we were talking about, but what's more important to me in the long run is our process, and I do support this bill. Thank you, Mr. President.

SCHEER: Thank you, Senator Chambers. Senator Hilgers, you're recognized.

HILGERS: Thank you, Mr. President. Good morning, colleagues. I appreciate Senator Matt Hansen's comments, and I actually appreciate that he opened the door a little bit. Before I comment on his comments, I guess I'll say something about LB339, which I certainly support, and I agree with Senator Lathrop's comments regarding, I think, the importance and value of our system, especially compared to systems in which judges are elected. One state that has elected judges is Texas, and I think it's a very, very bad system when you have-- when you think of your courtrooms as a place where you obtain justice and to have lawyers arguing in a particular courtroom, and those lawyers have contributed maybe significant sums of money to the judges, the judge who is deciding the particular issue at hand. So I think our system is far superior to those systems in which judges are elected. With that being said, I appreciate the comments from Senator Hansen this morning, as well as Senator Chambers, and I do think it's important and I read Senator Hansen's note that he sent around to the body yesterday with the transcript from a debate that we had in 2017, and I appreciate that we're having the opportunity to have this discussion on the mike this morning because this transcript may be read and hopefully will be read by either members of this body in the years to come or those who will replace us as we debate this question of when to call the question and under what circumstances. And I think the rule is pretty clear that we have given in our rules the discretion to the Chair when to determine that there is full-- there has been debate on the particular question at hand. And I think it was well within the President's discretion yesterday to determine that with 14 people still in the queue, that we had not had full and fair debate on that particular question. And the counterargument, as I sort of understand it is, well, if because of the three-hour rule from the Speaker, which actually is not a rule in our rule book, and there was no rule as far as I can

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remember that was proposed this year to the Rules Committee to either take that power away from the Speaker or to have some different rule, but because of that three-hour rule that would pull it off the debate, it's possible that those individuals would never have a chance to speak anyway, and so it's sort of incongruence. And I think what would certainly be true is if the motion to cease debate, the calling of the question, would have been successful, those people absolutely would not have had the chance to speak. So I think on the one hand we had certainty that those folks would not have had the opportunity to be able to be heard. On the other hand, it certainly is possible that there were on any particular question, there would be enough votes for the issue to be brought back to the floor where we could have further debate. I do think that ultimately the objection as I hear it is more towards the three-hour rule than it is to whether the question should have been called yesterday, and I think that as we operate under these rules and we have re-elected a Speaker and he was very transparent about the way that he was going to conduct business in this body, and he has throughout his tenure as Speaker, for the last two years and this year, as well, and I think has applied these rules very fairly and transparently. But so long as that rule is in place, had we overruled the Chair, I think what we would have done is what I mentioned yesterday which is essentially created the potential for a two-hour or two-hour, 45-minute cloture rule. And one that, in other words, you get to a vote to the underlying bill after two hours and 40 minutes because it might get pulled off after three hours. Now, you can avoid that, as Senator Matt Hansen mentioned, by filing dilatory amendments, but I don't think we ought necessarily be encouraging the filing of dilatory amendments two hours into a particular discussion. As I understand, I wasn't here on Monday, but at one point the queue was actually-- there were only a few people who were in the queue maybe on Monday, so it's possible it could have gotten to a vote. But if we're creating a system in which we're encouraging dilatory amendments to avoid calling the question after two and a half hours on the underlying bill, I don't think that's a good system. So, ultimately the rule worked as intended. I don't see any reason to deviate--

SCHEER: One minute.

HILGERS: Thank you, Mr. President. I don't see any reason to deviate from that rule. I will as a brief comment to the information Senator Matt Hansen sent around yesterday, and I read it briefly so Senator Hansen can certainly correct me, the issue of calling the question last time around was related to a pull motion where the Speaker had actually identified an hour window in which we were going to debate that issue and one way or the other we were going to vote on it after an hour, and ultimately Senator Burke Harr at the time who had a motion to overrule the Chair and he withdrew that particular motion. So I think that's a nice data point on this and I think the discussion-- I thank Senator Hansen for both taking the time to send around the research yesterday, having the conversation on the floor this morning. I think this is exactly the type of conversations we ought to have here in this body as we think about how to apply our rules. Ultimately, I think we made the right decision yesterday in not overturning the Chair's

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decision, which I think was right on, and with that I will yield my time back to the Chair. Thank you, Mr. President.

SCHEER: Thank you, Senator Hilgers. Senator Bolz, you're recognized.

BOLZ: Thank you, Mr. President. I wanted to briefly rise in support of Senator Hansen and his observations on our process and procedure. One of the things that I think is important to note, and important for us to think about, is that under our current process, if we have three hours of debate, the threshold for a vote to move a bill forward moves from 25, a simple majority, to 30 or 33 to get it back on the agenda. And I think there are some bills that are substantive. There are some bills that are meaningful that deserve significant debate. Yesterday, when we had debate on LB627, I thought it was excellent debate. There were sincere policy, data-driven questions brought up on the floor. I would still like to see more opportunity for debate on that substantive issue, and agree with some of the concerns brought up today. So I have had a conversation with Speaker Scheer about these issues. I do think that the more we talk to each other and look for opportunities to have sincere, substantive debate on the issues that are important to us and our constituents, the better for Nebraska. Thank you, Mr. President.

SCHEER: Thank you, Senator Bolz. Senator La Grone, you're recognized and this would be your third attempt.

La GRONE: Thank you, Mr. President. So getting back where we left off with Missouri Plan, and real quick, I just want to reiterate again, I completely agree with Senator Lathrop and Senator Hilgers, that this is-- that we do have the best method for nominating judges. My question is, can we make it more transparent and, thereby, better? So getting back into the article. Embracing the Missouri Plan as the state's nonpartisan commission-based method for selecting judges came to be known, again we covered that, 36 states, progressive era. By removing the courts from the potentially corrosive effects of electoral politics, this court reform initiative rejected the antiprofessional, antihierarchical ideology of the era of Jacksonian democracy that in the mid-19th century had advocated for the popular election of judges. And again, I think that Senator Lathrop and Senator Hilgers have done a good job of explaining why that's a bad idea. And I'll just keep going. In the steps taken to insulate the judiciary from partisan politics, both in initial designation and in retention to determination, the plan is frequently referred to as merit-based selection. And now the article starts to take a turn into what identifies as some concerns with the merit-based selection plan, and I'm not saying that these are all concerns with the plan, I'm simply pointing out that these are some that others have raised as concerns. When we get to the end, then I'll talk more about which ones I agree with and disagree with. In the 2010 U.S. election cycle, a campaign that identified judicial accountability as a key concern, altered tenor of nonpartisan judicial selection. Supporters of this campaign spent

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generously on heated retention election advertising to unseat incumbent judges on the basis of ruling consenter to be activists. These retention election expenditures and the intensity of the anti-incumbent messages they have underwritten are generally regarded to be unusual in the states that have adopted the Missouri Plan system. They exposed the judiciary to the very dynamics surrounding political processes that Missouri and other reform states had determined were a threat to judicial independence. Underpinning the anti-retention advertising that targets specific judges is a broader challenge to the methods of selecting state judges. Judicial accountability advocates favor modification of current methods of selecting members of judicial nominating commissions that accord lawyers a structural role. They argue that these changes would make the judges nominated through this process more responsive to the broader swath of the state's population. To this end they have launched ballot petition drives, commenced litigation, and proposed legislation to challenge nonpartisan judicial election methods, allegedly dominated by members of the legal profession and that reduce the input of the general electorate. And I want to be very clear. Again, I think that our system of having half the members of these commissions being lawyers elected by other lawyers is a good method to ensure that they do have the merits necessary. But I do think that there is some merit to ensuring that the general public has more buy-in and that these commissions might be not necessarily responsive to their political leanings, but more the public could be more aware of how the process works. The article--

SCHEER: One minute.

La GRONE: --and I'll just skip ahead here. This section describe-- so this section of the article that I'm going to get into now talks about the current landscape of judicial accountability advocacy. It talks about developments in selected Missouri Plan states, and talks about the measures that have been proposed in those. So some analysts of nonpartisan judicial selection highlight the mismatch that exists between the ideal of judicial independence and understanding of accountability linked to a democratic impulse. Under this view, judges who issue rulings with a gesture towards popular will, must manage what-- that impulse while recognizing the risk such a gesture presents to the independence needed to carry out the judiciary's unique role in interpreting law, including law that's unclear or ill-defined. Other commentators see complements, rather than conflict between these imperatives--

SCHEER: Time, Senator.

La GRONE: Thank you, Mr. President.

SCHEER: Thank you, Senator La Grone. (Visitors introduced.) Senator Matt Hansen, you're recognized.

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M. HANSEN: Thank you, Mr. President, and good morning again, colleagues. I appreciate the comments we've heard so far on this process, and since I was not necessarily planning on talking a second time, but since I've been mentioned a couple times, I thought I would. Throughout the past couple years, I have multiple times been a supporter of longer debate, just recognizing that there are issues on this floor that are substantive enough, complex enough, important enough, that more time would be necessary. I'm sure those of you who remember some of the budget debate we've had, I was criticized on this floor for indicating that a three-hour cloture rule on Select File was too soon. Multiple senators rebuked me for saying that, saying I was just trying to waste time and we just needed to move on. And then this year in Rules Committee we had some proposals to put some more time limits in the rules. And I supported lengthier time limits, and I would have supported Senator Chambers mentioned the eight hours in General File. That is a practice that I think worked well my first two years here, and I think there are occasionally issues that are complex enough and substantive enough that you could have multiple hours of true debate on the floor that we could do for this body. I think LB627 genuinely could have had more time for debate and discussion, and I have no problem having longer discussion and worry about it being arbitrarily cut off. But we have set some standards where it is arbitrarily cut off, just in ways that don't allow an up or down vote. And that's the part that I have an issue at, where we're saying it's full and fair debate, you can't call the question because full and fair debate is happening, but we're not going to reschedule that debate. But we're not going to allow Senator Pansing Brooks an up-and-down vote on her bill, which was discussed without amendment, without motion, without any added complexities on a bill that was near identical to bills that have been introduced in the past saying, no, this issue is still so complex and we're still debating it so significantly, a vote right now is improper. I don't think that the early calling the question on the underlying bill to Senator Hilgers' point, I don't think that's the thing that enforces an early cloture rule. I think it's that threshold to reschedule things for the agenda that forces kind of a de facto early cloture rule. And I know Speaker Scheer has indicated that's not exactly 33 votes, it's within sight of 33 votes or some standard that has a little bit of flexibility, but it's still more than 25. So Senator Pansing Brooks either was going to get an up-and-down vote by 11:23 yesterday or was going to need to show approximately 30 votes at 11:24 to get it rescheduled. That's the thing that's vote standard. That's the thing that changed how debate run. Now, I do think it was probably proper for the Speaker to rule that there was not full and fair debate yesterday at cloture-- sorry, not at cloture, when I called the question. And actually in retrospect, I don't know if I had to do it again today and I knew that's the way the ruling was coming out, I don't know if I would challenge the ruling of the Chair, because that was pretty substantial and could lay some pretty significant precedent. But in the moment, knowing that we had the opportunity for a vote and it was being denied because of one three-hour standard but not allowed because of a different three-hour standard, was just so surprising and confusing to me in the moment, I thought it was worth a discussion. I would have liked a little bit of more discussion on it yesterday before that vote, but I understand we were-- it was a confusing enough method. I do

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appreciate both Speaker Scheer and Senator Hilgers speaking on it at that time. I just want to come on and think about this as all of our rules--

SCHEER: One minute.

M. HANSEN: Thank you, Mr. President. --whether they're written, whether they're informal, whether they're norms, whether they're the Speaker's determination, all interact in concert. And if we're going to say that something with three hours is still having substantive, full and fair debate, with many senators being able to debate and discuss it, that's great, but then when it doesn't get scheduled again, that's the part that gets tough with me. And I'm okay with things coming off the agenda if our time is so important that three hours needs to be the rule, but then I have a hard time going the opposite direction saying we can't call the question at three hours. I just think us as a body need to have some discussion on which way we want to break on those two issues, because they're at some sort of-- some butting heads. And that's just kind of my thoughts to have everybody ponder as we move forward. We've got many more days in session to have some of these decisions, so with that, thank you, Mr. President.

SCHEER: Thank you, Senator Hansen. Senator Chambers, you're recognized.

CHAMBERS: Thank you. Mr. President and members of the Legislature, since we're on this tangent now, I may as well make it clear how I operate and how I will continue to operate. I had given the example of a year when my bill to outlaw mountain lion hunting was not being handled in the way that I thought, so what I did was have the exact text of that proposed bill drafted as an amendment to any number of other bills. And because I knew I wouldn't have enough votes to pass my bill, I wanted to have the opportunity to discuss it and put into the record my reasoning and anybody else who was not a member of the committee that killed that bill to have their opportunity to speak also. That can be done by anybody. There are going to be bills, and my colleagues know what those bills are, where you will never get 25 votes from the makeup of this Legislature. The most you can do is use the opportunity to convert the Legislature into what has been referred to, where Presidents are concerned, as the bully pulpit. In order to do that, you must find a way to bring your issue before the Legislature. If you tried to do it by discussing it while other bills are before us, as is happening with Senator Lathrop's bill here, you cannot focus as you want to, but if you use my methodology, your proposal is the one that will be before the Legislature. Now, as you witness, many of the senators will leave the Chamber, but when that occurs, it makes me no difference. My tactic is used to get my pound of flesh from the Legislature. When you have a finite or specific number of days in the legislative session, time is of the essence. Time is extremely important. Time is the most valuable commodity. No matter what the Speaker may put on the agenda, if a person is determined to use the time, that person will find a way to do it and will have the backbone, the nerve, the determination, to follow

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through on it. If you don't mean to follow through, don't do it. You'll be seen as somebody who makes pointless promises, pointless threats, pointless warnings when you're upset and in the heat of the moment. What you have to show is that you can be as calm as a pool of water on a windless day, but everything you say has as much meaning as if you were roaring like the waves on an ocean when there's a great storm. So, if this bill that Senator-- well, I won't say Senator, I don't know which one I have to call. The bill is Senator Pansing Brooks's bill. Senator Hansen has an interest in it. So I will identify it as the bill of the one who introduced it. If there is to be a vote on her bill, there's a way to get it but people can slide out of voting against the amendment by saying they're voting against the process that's being used.

SCHEER: One minute.

CHAMBERS: We all know that that's a sham but it gives the opportunity to present and discuss the issue. And I have a feeling that my mountain lion bill may have to stalk through this Chamber by way of the amendment process. I'm not sure, so I will not state at this moment what I will do if that becomes necessary. Should it become necessary, you will see it. The reason I'm saying this now is to let Senator Pansing Brooks, Senator Hansen, and others who feel deeply about the subject matter of her bill which did not get a vote, there are ways to bring it before the body, but it depends on how much will you have and how much the bill really means to you. Thank you, Mr. President.

SCHEER: Thank you, Senator Chambers. Senator Hilgers, you're recognized.

HILGERS: Thank you, Mr. President. Good morning, again, colleagues. I didn't intend to rise a second time on this particular issue, but I wanted to just maybe tie off a loose end or two from Senator Matt Hansen's comments, which I deeply appreciate. I do think that this is very important. Our rules, how they're interpreted, what precedence we have, really guides the work of this body. And I can't thank Senator Hansen enough for having this dialogue because in order to have any good process, having good transparent rules that apply in as many situations in which they can apply that may be possible, not all rules apply in all instances, that are known to the body I think are incredibly important. I don't think it does this body any good for some of the body to be uncertain about how rules will be applied, how rules even-- what rules exist, how they might be applied or in what circumstances and then what sort of actions you might take in response to those potential rulings or rules. And so I think this whole discussion is really important. I know we had the discussion yesterday on the underlying bill, but I think going forward how our rules are going to be interpreted in future context I think is very important. I do want to say-- I do want correct the record, given the importance of the record here this morning, I do want to correct the record relating to last year's discussion, or maybe two years ago, and I had said after the hour there was going to be a vote on the pull motion and that was incorrect.



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There was not-- there was only an hour scheduled for debate. And if you go back to the transcript, what was clear is the debate was only meant to be on the process of pulling the bill, not on the underlying bill, which is why one hour was scheduled. But there was no guarantee that there was gonna be a vote. And to that extent, I stated otherwise and that was incorrect, I do want to correct that. Ultimately, I think sort of my point on the sort of de facto filibuster, and this is why-- I know Senator Hansen and I may disagree, or maybe we don't actually, I just maybe, maybe we're talking past each other a little bit. What I'm suggesting is that if the Chair would have ruled otherwise and we would have ceased debate, one of two things would have happened. One would be, we would have essentially what, if there was a filibuster of the underlying bill, and remember, I think it's really important procedurally, there was no amendment on the bill and there were no motions on the bill. So the question that was being called was not on an amendment, which may have led to a different result, but it was on the bill itself. So what would happen is one of two things. And I think the second is more likely what would happen in the future. One thing that would happen is it would encourage short of using the calling of the question as an early de facto cloture vote. So instead of going six hours or whatever the time limit is, you would have a calling of the question, two hours and 40 minutes in. And even if there's 20 people who want to speak or ten people who want to speak, or it's very complex and there's a filibuster, you would get essentially a vote that would cease debate and go and you would vote on the underlying bill because that would be one likelihood. I think what would happen is those who are filibustering a bill would actually then file the dilatory amendment, file the motions, do all of those things and if we had ten hours and we're doing the debate and you really want to make that those filibustering a bill go through their paces to do that, I think that makes some sense. At the same time, it's not always clear an hour or two in if a bill is going to get filibustered. We've had in this body over the last couple of years instances in which it sort of feels an hour and a half in, two hours in, you got a lot of opposition, but then maybe it sort of fades on its own. But what I think this would do is in order to avoid having an early cloture, what would be a de facto early cloture vote, those who oppose a bill would just say, hey, let's get some things on the board and start fighting this thing, which I just think encourages some of those dilatory actions. And so ultimately, I appreciate Senator Hansen's comments. And I think his comment about saying, hey, if I were to do this again, I may not have done it differently, is exactly why we should be talking about it this morning because how these rules are going-- this rule may not come up again.

SCHEER: One minute.

HILGERS: Thank you, Mr. President. This rule may not come up again in a year. It may not come up again until next session when different members of the body are here. But I think these are-- to be able to talk through this, understand why we did it, understand what the Chair did, why the Chair did it, why some of us voted against overruling the Chair in that context and how that's separate from the bill itself, I think this thing could not be more important. And I would

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just say as maybe a public service announcement to my colleagues, that there is actually a book, you may not know, but there is a sort of book or set of precedents, I mean, it's not a legal precedent like we would think in the League Reporter. But the clerks over the decades, the Clerk's Office has tried to track, write down or record or keep a record of various decisions like this one where there's a debate on the floor, there's a point of order, there's a question that the Chair has to rule on, maybe there's a motion to overrule the Chair or some other issue of our procedure, and I've spent a lot of times in those precedents. I think it's very valuable, that kind of institutional knowledge, especially in the age of term limits for us to understand the procedure in process and rules and why we have them.

SCHEER: Time, Senator.

HILGERS: Thank you, Mr. President.

SCHEER: Thank you, Senator Hilgers. Senator Slama, you're recognized.

SLAMA: Thank you, Mr. President. I rise today in support of LB339. This truly is a cleanup bill and I encourage a green vote on it. Since today's discussion has veered into the events of yesterday, I thought it may be worthwhile to examine the value of transparency in our government. To do so, I'd like to reference a few articles I find to be of interest. I'm not sure how many of these we'll get to today or if I'll even get through the first one in my turns. The first article I'd like to reference is from the Utrecht Law Review which is entitled The Six Faces of Transparency written by Anoeska Buijze in July, 2013. This particular article was written in reference to the EU, but I think it represents several lessons that we can relate to yesterday's events. In this article, Buijze determined that there are six different ways in which transparency influences our government. The first reason he references is democracy. Of course, in the United States we have a democratic republic, but the point still stands. Democracy. First, transparency is said to contribute to democracy. The availability of information can fuel the public debate and helps with the process of will formation. In other words, it facilitates public decision making. It enables citizens to determine what they as a society want to do. In addition, transparency is considered a necessary, all be it not sufficient condition for participation, which allows people to exert influence on different types of governmental activities and for accountability, which ultimately allows people to judge government actions and attach consequences to them. The second theory that Buijze proposes in this article is increasing trust and legitimacy. Transparency is often thought to increase the legitimacy of government institutions, as well as the trust that citizens have in them. This in turn improves the efficacy of the institutions as people are more inclined to accept their decisions and enforcement costs will be lowered. Whether transparency actually has these effects is debatable but there is sufficient evidence to show that this is acceptable as fact. The third reason Buijze presents is quality of governance. Transparency is

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thought to contribute to the quality of governance in several ways. According to Addink and ten Berge, high-quality governance requires that the government fulfills its task in accordance with the norms of the rule of law and democracy and in an honest and impartial way. Transparency can contribute to the observance of the rule of law and promote integrity among public officials. The mere fact that officials know they are being watched and that the quality of their work can be checked is thought to improve their performance. On our end this means that I can wave hello to everybody tuning in on NET this morning. Transparency also enables the supervision of public officials, both by their superiors and by the courts. It makes it possible to impose consequences on public officials that shirk their duties or display other undesirable behavior. Enabling supervision is acknowledged by the commission-- so this again referencing EU government structure, but it's still helpful here --to be one of the purposes underlying the introduction of access to information in the member states--

SCHEER: One minute.

SLAMA: Thank you, Mr. President. --as it brings checks and balances that improve the control of government origins. It also played a role in the introduction of many transparency obligations in the union and in the interpretation given by the courts of particular transparency obligations. The argument plays a role in the supervision of administrative authorities by hierarchically superior authorities in review by the courts and by the addresses of decisions and stretches across many fields of law. Preventing arbitrariness and nepotism is an important goal of public procurement regulation and an important reason to introduce transparency in this field. The fourth theory presented by Buijze is economic performance and market efficiency. Fourth, transparency is argued to increase economic performance and market efficiency.

SCHEER: Time, Senator.

SLAMA: Thank you.

SCHEER: Thank you, Senator Slama. Senator Pansing Brooks, you're recognized. Senator Pansing Brooks, you're recognized.

PANSING BROOKS: Thank you, Mr. President. I just am rising to thank Senator Hansen for his courage yesterday. He was attempting to get a vote on the issue and most of us have experienced the aggravation on our bills when we get to a mark and we can't get to a vote. Now, I'm not critical of the Speaker because that's a rule that we have voted on. But again, this issue has been raised today because-- or yesterday, because at what point when there are 14 people in the queue, is there not enough-- there isn't full and sufficient debate to be able to call the question, yet we're five minutes away from being told you've had fair and full and sufficient debate and we can't

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have any more debate. It's getting pulled unless you have 33 votes. So again, this is a rule that the Speaker created and we have agreed to. But I do think that it's wise to look at it in the concept of reality. There was an article today by the Lincoln Journal Star editorial board criticizing our body for the lack of transparency and for the number of not voting votes, being present but not voting. Now, one of the things that the Journal Star left off was the fact that often the present not voting vote is a soft no. It's a way to be cognizant of a colleague's hard work and a desire to say no in a soft way. But by using this three-hour rule, we really are avoiding many of the tough stands. I believe that in a way we are avoiding-- we are not being transparent enough to the constituents to bring things to a vote. Again, Senator Hansen was brave to do this. On one hand we're being told there wasn't enough debate-- or there wasn't enough time to debate it, to call it to question. We were very careful about making sure that everyone that was still in the queue at that point had spoken. And I spoke with the Speaker and in the past, in our first two years here, that was a standard. Now the Speaker says that's not a standard. He just looks at the number of people in queue, not whether or not they have actually had time to speak previously. So again, this is confusing and I really think it was important to bring a vote and to act as if that's not part of our rules and regulations that we shouldn't have been bringing a vote, that we're threatened for questioning about bringing a vote, I don't think that's appropriate and I do think that we have to be cognizant of the fact that as we are representing ourselves and our constituents that our goal should be to vote. That's our ultimate goal. That's what we were put here to do. Soft nos, that is a type of vote. But again, we are avoiding some of the tough issues by that three-hour rule, so. And I understand the Speaker needs to move things along. So no one envies his job and we appreciate the work he's doing. It's just interesting to-- I want the public to understand what some of that discussion is about. Thank you, Mr. President.

SCHEER: Thank you, Senator Pansing Brooks. Senator Clements, you're recognized.

CLEMENTS: Thank you, Mr. Speaker. I'd like to go back to visiting this bill about the nominating commissions. Would Senator La Grone respond to a question?

SCHEER: Senator La Grone, would you please yield?

La GRONE: Absolutely.

CLEMENTS: Senator La Grone, it's been kind of noisy today. But maybe missed some of what you had to say about the nominating commissions. I had a question if you can tell me, how the people-- I heard the attorneys elect the attorney part. The laymen, how are they selected? Are they appointed or not?

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La GRONE: They're appointed by the Governor. And I forget the exact wording in the statute, but essentially, two of them-- no more than two of them can be from one political party. So essentially the most you could have is two Republicans and two Democrats or some other combination that leads to no more than two members being of the same political party of the laymen.

CLEMENTS: And are you comfortable with that or are you proposing something different should be done?

La GRONE: No, I think the membership of the commission is spot on. I think that it adequately addresses the problems that come with other selection methods that Senator Lathrop laid out. I'm just saying I think in the operations of the commission, which I'll get into a little later-- I won't do that on your time --there can be some more transparency in how we go about that.

CLEMENTS: All right. Do you mean as to publishing the votes that they take?

La GRONE: Actually there's a Supreme Court opinion on that. I think that might be-- and I say might, seriously there --might be one thing. There are reasons that some don't feel that that is a good idea and I think that's a discussion that needs to be had. I also think that issues-- there are issues in the election of the lawyer members could also lead to more transparency.

CLEMENTS: So their votes are not published at this time?

La GRONE: Well, I mean, you know who made it-- who got a favorable vote and who did not get a favorable vote. You do not know how the members of the commission voted.

CLEMENTS: I see. All right. I think that's all I needed, but I'd yield my time to Senator La Grone if he wants it.

SCHEER: Senator La Grone, 2:25.

La GRONE: Thank you, Senator Clements. And I'd been speaking with Senator Chambers off the mike and I'm going to ask him to yield to a question because there is a story he often tells that I think is really relevant when talking about the election of judges. So would Senator Chambers yield to a question?

SCHEER: Senator Chambers, would you please yield?

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CHAMBERS: Yes, I will.

La GRONE: So, Senator Chambers, real quick before we get into that since that's more of a discussion of a time I wasn't listening to you well enough and so I'm going to need you to fill in some of the details for me. I want to show that I generally do listen to you when you're speaking on the floor. So isn't it true in the past you have claimed that some people do not listen to you when you're speaking here on the floor?

CHAMBERS: Yes.

La GRONE: And do you remember, I believe it would have been the 2014 session when then Senator Beau McCoy was running for Governor, you indicated that you-- actually let me put it this way. Have you ever lost a wager that you have made on this floor, Senator Chambers?

CHAMBERS: I can't say for sure, but if I have lost it, I don't recall right now.

La GRONE: Well, I would submit that you have and that is because I believe-- correct me if I'm wrong here, but I believe in the 2014 session--

SCHEER: One minute.

La GRONE: --you wagered that had no member of this body who was then serving would ever serve as Governor. Is that correct?

CHAMBERS: Be elected to serve, right. And I know what you're getting at. That in the listing of the people who would be sitting in the Governor's Chair when the Governor and certain other people were not there, somebody who was running for Governor at that time might have sat there, but that person would not have been the Governor.

La GRONE: Okay. I thought that it was serve as Governor. The point being made there, we'll pass over that now and get to where I was going with this. When we're talking about the election of judges, the reason that as many have pointed out that that's a bad idea is if you-- they're supposed to uphold justice and yet when you have individuals outside contributing to them, it can be kind of like a bait and switch. And that kind of reminded me of the story you have often told of the turtle and the fence post. Could you refresh--

SCHEER: Time, Senator.

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La GRONE: Sorry?

SCHEER: Time, Senator.

La GRONE: Thank you, Mr. President.

SCHEER: Thank you, Senator Clements, La Grone and Chambers. Senator Pansing Brooks, you're recognized.

PANSING BROOKS: Thank you, Mr. President. I was just rising to add that after my comments thanking Senator Hansen, I also wanted to just say I stand in support of LB339. It's highly necessary. We heard the testimony and opposed to AM416. And with that, I'll give my time to Senator Lathrop if he wants it. You want time? Okay. Nope. I'm done. Thank you, Mr. President.

SCHEER: Thank you, Senator Pansing Brooks. Seeing no one wishing to speak, Senator La Grone you're welcome to close on AM416.

La GRONE: Thank you, Mr. President. Senator Chambers, would you yield to a question?

SCHEER: Senator Chambers, would you please yield?

CHAMBERS: Yes, I will.

La GRONE: Okay. Thank you, Senator Chambers. Right before we got cut off that last time, I had asked you about basically your bait and switch story about the turtle and the fence post. Could you refresh us on that?

CHAMBERS: And I'll do it rapidly 'cause it's on your time. There was a guy he wasn't too smart and he was walking down a country road and there was a turtle sitting on the fencepost and the turtle got this guy's attention and the guy looked because he had never heard a turtle talk before. So he went over and they had a conversation and the turtle said to this fellow, if you will take me down from this fencepost, I will grant you three wishes because I'm a magic turtle. And the guy thought about it. He said okay. And he took the turtle and sat him on the ground and the turtle started ambling away in the method that turtles use to amble and the guy said, wait a minute, Mr. Turtle. You said you're magic and if I'd take you off the fencepost, you would grant me three wishes. Well, aren't you going to do that now? He said, if I was magic, I wouldn't have been sitting on that fencepost that long.

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La GRONE: Thank you, Senator Chambers. And honestly, I think that really-- one, I like that story, but two, I think it's kind of similar to the election of judges in that-- oh, we'll be, you know, fair and balanced and then, oh, but you give us money and so then there's obviously a self-indication there. And actually I'm not going to take too terribly much longer because I think this brings us to the point of where we're currently at with Nebraska's judicial selection process. So I do have two more things I want to get into. That is something I spoke with Senator Clements about, the votes of the commissions, and then I want to touch on an article that was written by now Judge Grasz on the transparency issues that these face. I obviously won't have enough time to do that on this, but we'll get as far as we can and actually I don't think it's going to be necessary to take any of these amendments to a vote. But we'll get to that when we get there. So currently as I indicated, the votes of members of the commission are not how each commissioner voted is not made public. And that was the-- that was an issue in the case of Marks v. Judicial Nominating Commission for judge of the county court, 20th judicial district--

SCHEER: One minute.

La GRONE: Thank you, Mr. President. And as I indicated, I can get into this more on the time on the actual bill. So with that I'll withdraw all of my amendments.

SCHEER: To specify, you're withdrawing AM416, AM417, and AM418?

La GRONE: Correct.

SCHEER: Without objection, so ordered. Moving back to LB339. Senator La Grone, you're recognized.

La GRONE: Thank you, Mr. President. So again, just quickly, I think I can do it with my time on this bill. I want to get a little into the Marks case and then get into the article that Judge Grasz wrote. So essentially in Marks, what was at issue was it was a declaratory judgment on whether or not these votes were to be made public. The court held that-- well, the court said --we'll start with that and then get into the actual holding. So Section 24-801 to 24-812, I'll just read from the opinion. That will be simpler. There can be no question that 24-801 to 24-812 constitute a special independent legislative act complete in itself which is intended to cover the entire subject to the selection of nominees by judicial nominating commissions. It contains broad provisions concerning procedural methods to be used by nominating commissions in selecting judicial nominees. 24-809, in accordance with Nebraska constitution, provides in part in selecting or rejecting judicial nominees, said commission shall vote by oral roll call vote. It is of some significance that neither the constitution nor the statute provides that the vote shall be public or taken at a public hearing. Furthermore, 24-812 specifically provides that all communications



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between members of the judicial nominating commission shall be confidential. 24-810,(2) provides for a public hearing which any member of the public shall be entitled to attend at the hearing to express either orally or in writing his or her views concerning candidates for appointment to judicial vacancies. 24-810(3), provides in pertinent part, after the public hearing the nominating commission shall hold such additional private or confidential meetings as it determines to be necessary. Additional information may be submitted in writing. The judicial nominating commission at any time prior to its selection of qualified candidates to fill the vacancy. When read as a whole, the language appearing in 24-801 to 24-812.01 is plain, direct, and unambiguous. It provides the judicial nominating commission may select or reject judicial nominees after public hearing in a private or confidential meeting, provided the vote is taken by an oral roll call vote. In his petition, petitioner Marks prayed that the court find that the March 27, 1987 nominations made by the judicial nominating commission were void because of its failure to comply with the provisions of Nebraska Public Meetings law. In particular, Marks argues the Public Meetings law prohibits the selection of nominees in a closed session. Marks' contention in this regard fails for at least two reasons. First, it's clear that the judicial nominating commission sections are special statutes concerning selection of judges by nominating commissions. The Nebraska Public Meetings laws are general statutes relating to public meetings and obviously the general max in the statutory interpretation-- I'll spare you the analysis-- is that when there is two statutes on point, one general, one specific, the specific controls. 84-- I'll skip ahead so we can get past that. So essentially the court held that this vote does not have to be public. And so I think that creates an issue of transparency and the question of how did each commissioner vote. If these commissioners-- well since these commissioners are the ones that represent the public on these commissions, then that is the part that-- as Senator Slama so readily pointed out--

SCHEER: One minute.

La GRONE: --the need for transparency in all of our governmental institutions. They're the ones that effectuate that purpose as it relates to Nebraska's judiciary. I think that creates a bit of an issue. And it's led to a lot of speculation on what that issue-- why that is the case, which I will get into more deeply when my next time comes on. But essentially now Judge Grasz wrote a lengthy article on judicial nominating commissions and why some people are concerned about the lack of transparency and I'll cover some highlights from that on my next time on the mike. Thank you, Mr. President.

SCHEER: Thank you, Senator La Grone. (Visitors introduced.) Mr. Clerk, for items.

ASSISTANT CLERK: Thank you, Mr. President. Your Committee on Enrollment and Review reports LB8, LB124, LB127, LB139, LB156, LB160, LB195, LB319, and LB699 all placed on

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Final Reading. Your Committee on Enrollment and Review reports LB284, LB318, and LB443 all to Select File. I have a Reference Committee report for a gubernatorial appointment. New A bill. LB130A by Senator DeBoer would appropriate funds to carry out the provisions of LB130. And finally, a series of notice of committee hearing all from the Revenue Committee. That's all I have.

SCHEER: Thank you, Mr. Clerk. Returning to debate. Senator Bostelman, you're recognized.

BOSTELMAN: Thank you, Mr. Speaker. Good morning, Nebraska. Good morning, constituents. It seems like we're having a conversation about this going in several different directions this morning. So, something we talked about earlier with Senator Chambers, which was very interesting and Senator Chambers was also pretty knowledgeable or on this area when we're talking about our United Federation of Planets. And during some conversations I've heard Senator Chambers talk with Senator Kolterman and call Senator Kolterman a smart aleck. And I'm wondering if Senator Kolterman would yield to a couple of questions.

SCHEER: Senator Kolterman, would you be so kind to yield?

KOLTERMAN: I guess I will.

BOSTELMAN: Well, Senator Kolterman, thank you for yielding. And are you familiar with the United Federation of Planets?

KOLTERMAN: No, I am not.

BOSTELMAN: You know, we're talking Star Wars a little bit here. A little bit about Star Wars and futuristic things here in the past that some stories that are on-line. And I think some of them kind of apply to Nebraska and let me explain. This is my question. Nebraska is cold now, like ice planet Hoth, where tauntauns live and roam. Do you know what a tauntaun is?

KOLTERMAN: Is that something you eat?

BOSTELMAN: No. It's something-- it's a large creature. Tauntauns have white fur and down-turned horns. So they're a really large creature that you actually can ride on. They feed off of lichen, moss, and fungi found in the ice on the planet in the grottoes. They sometimes scavenge on frozen flesh and small rodents and they are the primary prey of the wampas. Do you know what a wampa is?

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KOLTERMAN: A llama?

BOSTELMAN: A wampa.

KOLTERMAN: A wamma?

BOSTELMAN: W-a-m-p-a.

KOLTERMAN: No, I have no clue what that is.

BOSTELMAN: Well, a wampa is like, I would call them like a Yeti or snow monster that lives in caves that actually eats the tauntauns.

KOLTERMAN: Are they still alive today?

BOSTELMAN: Well, yes, they are. They are on planet Hoth. So they are the primary, primary--primary of the prey animals of the tauntauns and they are used also as mounts. And mounts is like a horse, you're going to ride the horse. Do you know who actually rides the tauntauns?

KOLTERMAN: I have no idea.

BOSTELMAN: And you're the smart aleck in the bunch. I'm not understanding. Well, Luke Skywalker actually rode the tauntauns.

KOLTERMAN: Luke who?

BOSTELMAN: Skywalker. So they are used as mounts and the wampas are the carnivorous natives to Hoth and it's difficult for the riders to track the wampas because they want to keep the tauntauns alive because they don't want them to take their rides away or their means of transportation. Another question I have to you, that we have the banthas of Tatooine. Have you ever heard of Tanooine?

KOLTERMAN: Are we talking Star Trek or Star Wars? You said it was something about the Federation of Planets--

BOSTELMAN: Right. We're jumping between the two.

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KOLTERMAN: It's Star Wars, isn't it?

BOSTELMAN: Okay. Yeah, there you go.

KOLTERMAN: But I don't know--

BOSTELMAN: See, you are the smart aleck man.

KOLTERMAN: Yeah. But I don't know.

BOSTELMAN: You don't know what banthas-- banthas are a social creature and they, the Tusken Raiders, they're a band of people and they use them as mounts also. It's a large furry creature.

KOLTERMAN: Are they from Italy, Tusken?

BOSTELMAN: No, no, they're not. They are from the planet of Tatooine. Now the dewbacks are also reside on Tatooine and are large reptilian creatures and they're used as a beast of burden.

HUGHES: One minute.

BOSTELMAN: Do you know that?

KOLTERMAN: No, I do not. I never saw that movie.

BOSTELMAN: Well, we'll have to get those to you. And I thought as a smart aleck person within the body here, you would know, answer to some of these questions.

KOLTERMAN: Well, you picked a loser today.

BOSTELMAN: Well, thank you, Senator Kolterman. I guess we have some movies we need to watch together.

KOLTERMAN: Thank you.

BOSTELMAN: Thank you, Mr. President.

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HUGHES: Thank you, Senator Bostelman and Senator Kolterman. Senator La Grone, you're recognized.

La GRONE: Thank you, President Hughes. Just going back as I indicated, now Judge Grasz previously wrote an article on some of the issues that Nebraska's judicial appointment process. And one of the main problems with the lack of transparency is a lot of times it really breeds a lack of trust and there can often be speculation as to why that lack of transparency exists. And so now I'm going to go into the article by Judge Grasz and I think there's a few highlights I'd like to point out. And he says, however-- and this starts off with him quoting from another article, so this from another article. However nobly the Missouri Plan began, the current process is doing no favors to fairness or to justice. Missouri's courts are every bit as hung up in politics as they are in many other states. The difference is that Missouri, the process happens behind closed doors. The democratic system in choosing judges requires transparent process and accountability for those who make the choice. And then he goes back into his comments of some say that a number of recent members of the nominating commission have been partisan, which if true, could undermine the intellectual basis and policy justification for removal of the public's right to select judges and transfer of much of this power to a handful of members of the Bar Association. Now I'm skipping ahead. Most politically active and interested members within the Bar tend to be heavily invested in a single political party. Again skipping ahead. Unlike most elections in Nebraska, Bar Association members who are registered as members in one political party can vote to select nominating commission members who assertedly represent the other political party. In other words, the Republican commission members can be selected based on the votes of Democrats and the Democratic members can be selected based on the votes of Republicans. This design allows the dominant or best organized voting bloc to select highly partisan members to represent their own party, anomaly partisan or a political members to represent the other party. Such a process is intentioned with Nebraska's election statutes, including the Nebraska primary, which is currently a closed contest. So that's one of the issues that some people pointed to is it leads-- the lack of transparency can cause an assumption behind doors partisanship. Another issue that is pointed out in the article is the assumption that there might be some undue influence by special interest groups, and I'll quote from that section. Some who have studied the commission have pointed to evidence from reviews of recent nominating commission member rosters, interviews with judicial applicants and interviews with nominating commission members. There's significant level of influence by special interest groups on the commission members. Observers say there are a number of interest groups which potentially disproportionate influence, including the ACLU, Planned Parenthood, the Nebraska Association of Trial Attorneys, the Defense Counsel Association, and again, skipping ahead. Along those same lines, there is some concern that this tilts the membership towards one philosophical leaning. And again with that, I think that's a concern because I don't think that's the case. I think that our judges are selected in a very fair process. I think that opening it up and making it more transparent while keeping that same process could lend more trust to the process. And now

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jumping ahead again on transparency and openness in the judicial nominating selection process generally, Judge Grasz argued-- well, he was not obviously a judge then, but argued that reform is also needed in the areas of transparency and openness issues in the process. Although the system is promoted as a means to ensure that judicial selection is based on merit, some say that a degree of secrecy is so pervasive that it results in a process with little or no accountability, thereby facilitating influence that is hidden and behind the scenes.

HUGHES: One minute.

La GRONE: The judicial selection process takes place behind closed doors and the constitutionally required roll call vote is not only secret and that-- this is referring to the Marks case which I covered earlier --and unreported, but often a formality carried out following a series of secret straw votes by commission members who are encouraged to identify and promote candidates of their own choosing for a limited number of slots forwarded to the Governor. Skipping ahead again. The constitution provides that, quote, members of the nominating commission shall vote for the nominee of their choice by roll call, end quote. When this aspect of the process was litigated,-- and again, this is referring to the Marks case --the Nebraska Supreme Court relied on a statutory provision enacted to govern the judicial selection process.

HUGHES: Time, Senator.

La GRONE: Thank you, Mr. President.

HUGHES: Thank you, Senator La Grone. Senator Clements, you're recognized.

CLEMENTS: Mr. President. I did a little bit of research on this bill because I noticed that judicial District 2 was involved in this. And that's my district, which is Cass County, part of Otoe and part of Sarpy. I just wanted to ask Senator Lathrop a question.

HUGHES: Senator Lathrop, will you yield?

LATHROP: Yes, I'd be happy to.

CLEMENTS: I see that Districts 1, 2, 3, 4 and 10 are treated differently in this bill than the other districts and in how the commissions elect judges. Is it true that in those-- in 1, 2, 3, 4 and 10 that there are two different nominating commissions?

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LATHROP: Yes, one for the county and one for the district court.

CLEMENTS: In the rest of the state, how does it work?

LATHROP: Rest of the state, they have one commission that takes care of both the district and the county.

CLEMENTS: Thank you. And that's what I wasn't clear when I was reading the bill that that was true, but that is my understanding and this has a little bit of effect on my district. It's just a technical correction and I do support the bill and don't have any problem with it. I would yield my time to Senator La Grone if he still has more that he'd like to say.

HUGHES: Senator La Grone, you're yielded 3:25.

La GRONE: Thank you, Mr. President, and thank you, Senator Clements 'cause I'm looking again at this, I want to make sure I get a chance to get through it all and then recap on my last time on the mike and then vote in favor of LB339. So where we left out on that, was the quote from the constitution, members of the commission voting by roll call vote. When this aspect was litigated the Nebraska Supreme Court relied on statutory provisions, enacted to govern the judicial selection process, it did not analyze the meaning of the constitutionally mandated public hearing. The court stated that neither the constitution nor the statute provides that the vote shall be public or be taken under public hearing. The court did not discuss the purpose or utility of a constitutionally mandated roll call vote that's conducted entirely in secret following a largely perfunctory public hearing. According to critics, the state constitution requires the nominating commission proceedings afford a greater public-- afford greater public scrutiny and that roll call votes be made in public session. And that really gets to what I was speaking about earlier this year, too, with when you're looking at the notion of the rule against superfluities. When there is language, whether it be in constitution or in a statute, and more so when we're looking at constitution, that is in there-- it is presumed that no language is superfluous, that every word is given meaning. And so when you have language in there that seems-- would theoretically have meaning but serves no purpose, that can kind of lend itself to say this-- that might be viewing that language as superfluous, whereas if you look at it and afford it meaning it might require something else, in this case, a public roll call vote rather than a private one. And that's obviously something in the Marks case as the Nebraska Supreme Court has already made its interpretation clear on. I just think that as a policy matter, that is something that we as a body might want to look into in terms of--

HUGHES: One minute.

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La GRONE: --opening up the transparency of this process. And I understand their reasons that some wouldn't want that to be the case. And that often deals with the attorney members of these commissions. If you are voting yes or no on someone to be forwarded to be a judge, number one, let's say that you vote no and they are forwarded to be a judge. Then what is your relationship with the then judge going to be like in your practice? Or let's say that it does fail, you're still going to have to work with that individual in the legal community and then what is that relationship going to be like? So I know that there are some concerns there, but I do think that transparency overrides that and says that we should be taking a serious look at whether or not these votes should be public or not. With that, thank you, Mr. President. And I'll finish up on my last time on the mike.

HUGHES: Thank you, Senator Clements, Lathrop, and La Grone. (Visitors introduced.) Senator Blood, you're recognized.

BLOOD: Thank you, Mr. Speaker. Fellow Senators, friends all, I rise in full support of Senator Lathrop's bill and with that I would ask if he would yield to a question.

HUGHES: Senator Lathrop, will you yield?

LATHROP: I'd be happy to.

BLOOD: Thank you, Senator Lathrop. Senator, I've been listening very closely to what's been said on the mike and I'm a little confused about the shenanigans that are going on. Can you specify to me what you think the purpose is of what's being said on the mike. I'm a little confused. What does it truly have to do with your bill?

LATHROP: Well, I'm not sure.

BLOOD: Okay.

LATHROP: I'm not sure.

BLOOD: So I'm not the only one that's confused.

LATHROP: Honestly, I don't-- I know that Senator La Grone is discussing the judicial nominating process--



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BLOOD: Right.

LATHROP: --as he's reading some Law Review article or something done by somebody who is now a judge. But I'm not sure what the point is.

BLOOD: I wasn't sure about the point of the Star Wars, which I wish I'd been asked about it because I knew the answers. I appreciate that. Thank you, Senator Lathrop, because I want to know that I'm actually hearing what's going on correctly. With that, would Senator La Grone yield to a question?

HUGHES: Senator La Grone, will you yield?

La GRONE: Yes.

BLOOD: Senator La Grone, when I asked you why this was dragging on and on, you said that you thought it was important for the public to understand the process. Is that correct?

La GRONE: Correct.

BLOOD: So do you feel that the longer you go on and the more information that you put out, that that's going to clarify what you've already said?

La GRONE: I felt that there was certain information needed to be covered and as I indicated, I've pretty much-- well, covered it now. I'm simply going to recap that, which is why I pulled all the amendments because I had the opportunity to cover it all.

BLOOD: Fair enough. Thank you. I worry because we are well into our session and I certainly understand that everybody has the right to speak for or against bills, people have the right to filibuster bills, but I thought that this year's session got off to a really great start. We were knocking things out of the park. We were getting things said and done on this floor, and I feel that we're starting to go backwards with some of the shenanigans that are going on. And so I not only stand in support of Senator Lathrop's bill, but I just ask people to truly weigh the benefits of what is said on the mike, how many times it needs to be said on the mike, when you lose an audience's sense of wanting to pay attention to something. And I notice that during the last 20 minutes that it's gotten very loud on the floor, that the body is no longer paying attention as well. And so please take these things into consideration. You like a bill, you don't like a bill, you want to get things on the record, I respect that, but some of the shenanigans need to stop. Thank you.

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HUGHES: Thank you, Senator Blood, Senator Lathrop, and Senator La Grone. Senator La Grone, you're recognized and this is your third opportunity.

La GRONE: Thank you, Mr. President. And as I said, I just want to quickly recap. Again, the reason I'm speaking on this is because I do think that when we have a bill come up that raises a topic, that we rarely get to discuss and that often goes by the wayside, I think it's important to have a discussion on that to raise issues that might otherwise not get talked about. And I think the issue here is the full foundation of our judicial branch and that is how we nominate judges. And I think that it is important to have discussion about whether there needs to be more transparency in that. And having covered what I've covered today, there are really the two aspects that I think we could better in terms of transparency with our process. And again, I'm not saying there's any-- I think it is the best process for selecting judges that we have, but I think the two areas where we can improve and have more trust in the process is if we did have that roll call vote be public so that we knew who voted for whom whether they advanced, when they either advance or don't advance. And then also if we limited to the elections-- since there are partisan offices on this commission, if we limited the election for those offices to the members of that party so that in that position, they can-- we can be sure they're representing that party and not necessarily members of the other party who they may have been elected by to represent this other party, which is a very odd method for election. That's not even like an open primary. That's-- I can't think of any other type of election that even compares to it. So I think those are the two areas where we can have some reform, that can better transparency in this process and improve an already good process for selecting our judges to serve in the judicial branch of this state. And with that, I would encourage your green vote on LB339. It is a cleanup bill, and with that, thank you, Mr. President.

HUGHES: Thank you, Senator La Grone. Senator Hilgers, you're recognized.

HILGERS: Thank you, Mr. President. Just briefly, I think it's important to just make a point. I heard Senator Blood's comments and I respect my good friend and seatmate of Government Committee very deeply. I do think it's important to not necessarily say-- or at least for especially new members, there are issues that individual members are passionate about. They're excited about. They like to talk about. And they will talk about them. They should be able to talk about them. And just because they speak about them on multiple occasions doesn't necessarily mean that they should be discouraged from doing so now. In the abstract, could that impact someone's credibility? Potentially, it depends how often they do it, in what way that they do it. But I think-- I've known Senator La Grone for a very long time and it's not everyone's issue, but I know that he cares deeply about judicial nominating commission and he wants to get things on the record. Even if people-- some people don't listen to every word that we have here on the floor. I think they should. People out in Nebraska are watching what we say. They see what we're talking about. They read the transcripts later and as far as I'm concerned, Senator La Grone is making

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really good points about the judicial nominating commission, an issue a lot of people don't know about. And I appreciate him taking some time to go through it. And I think he has indicated on the mike and off the mike that the comments are wrapping up. We're going to take vote on this bill and so Senator La Grone certainly does not need me to defend him on anything. But I do think it's important to put on the record, and for the new members, if there's an issue you care about, you should feel free to talk about it. And with that, that's all I have to say. Thank you, Mr. President.

HUGHES: Thank you, Senator Hilgers. Seeing no one else in the queue, Senator Lathrop, you're welcome to close on LB339.

LATHROP: Well, this should probably be a simple close since it was a simple bill. It changed one numeral to correct an oversight last year in a previous bill that got passed. But I do want to respond very, very briefly. I didn't want to turn my light on every time I heard Senator La Grone say something I didn't agree with. So the process of setting up and the process of a judicial nominating commission is set forth in our Constitution in Article V. There are some statutory provisions, it doesn't work. I mean, there's no problem with it. It's not broke. I haven't heard anybody talk about a judge they didn't like, somebody that got through that shouldn't have. It works well. It works well and I'll stand on the floor and defend it forever. That said, this is very, very, very simple. It just allows us to fix a problem, a drafting problem previously, and I would appreciate your support. Thank you.

HUGHES: Thank you, Senator Lathrop. The question is the advancement of LB339 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk.

ASSISTANT CLERK: 37 ayes, 0 nays on the motion to advance to E&R.

HUGHES: The bill advances. Mr. Clerk, we'll proceed to General File, LB340.

ASSISTANT CLERK: Mr. President, LB340 introduced by Senator Lathrop. (Read title.) The bill was read for the first time on January 16 of this year and referred to the Judiciary Committee. That committee reports the bill to General File with no committee amendments.

HUGHES: Thank you, Mr. Clerk. Senator Lathrop, you're recognized to open on LB340.

LATHROP: Thank you, Mr. President, and colleagues, you'll understand if I'm a little nervous about this. This is a very simple bill. [LAUGHTER] I know you've heard that before and, in fact,

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you've already heard it this morning. This one is right up there with the last. And, hopefully, we can move through this bill quicker. I brought LB340 to address something that was brought to my attention by the Inspector General of Corrections. On a recent visit to the Work Ethic Camp in McCook, he learned that the facility has a room reserved for women despite it effectively being a male-only facility. He was told the current statute still allows judges to place women there, a law that goes back to when the facility was run by the probation administration. However, that's not been the practice for some time. The Work Ethic Camp is now run by the Department of Corrections and it's our understanding the department could use the room for other purpose. LB340 is a simple fix that strikes references to women in the facility from a pair of statutes. This doesn't-- this would allow the department to put the space to better use. LB340 advanced from the committee without opposition and with that, I would ask for your support of this bill and I'm happy to answer any questions you may have about LB340. Thank you.

HUGHES: Thank you, Senator Lathrop. Senator Bolz, you're recognized.

BOLZ: Thank you, Mr. President. Senator Lathrop, we're testing your patience on your bills today. You're trying to move things through your committee and I respect that, but I think that you concur with some of the concerns that I'm going to raise on the mike today related to the staff of our Department of Correctional Services, which is, in fact, related to the substance of the bill. The folks who are doing the work at the Work Ethic Camp. And I rise on the mike today to raise my concerns related to recent decisions made in our CIR process. Article from the Omaha World-Herald that I'd be happy to provide colleagues a copy of reports out the findings that a state labor court ruled that a raise in pay is not justified for Nebraska Corrections officers who have long complained about excessive overtime and high turnover and lower pay than county jailers. And the court also rejected the employees' request to, or in order, for step increases for longevity pay, which workers said would be key to stemming an exit of State Corrections officers to county jails which offer wage hikes for years of service. Colleagues, whether it's the Work Ethic Camp, or Diagnostic and Evaluation Center, or the Omaha Community Corrections Center, or any other aspect of our Department of Correctional Services, our workers are the heart of the work. And they are essential not only to keeping our system running under tough circumstances, but also to keeping our community safe. And that's not just my opinion. That is the finding of several reports that have been published by the Department of Correctional Services themselves. In 2016, they completed a study related to the culture of staff. The study found experienced staff members mentor and teach new staff the nuances of Corrections work that can only be learned from actually doing the job. They do this because they are teammates regardless of tenure and because it is how we keep each other safe. Compensation should be linked to the skills and knowledge to do the job effectively and safely. Another report from the Department of Correctional Services regarding overtime stated that keeping quality-trained staff is important for maintaining staff and secure prisons in Nebraska. Not only are staff responsible for keeping offenders and the public safe, they play a vital role in the rehabilitative process for offenders.

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Furthermore, the ability to retain trained professionals committed to the successful offender reintegration into society protects all Nebraskans. So, colleagues, I remain incredibly concerned about the decisions that were made in our state labor court. I have received some information that it is possible that the state will come back with one of their offers previously but has a 2 percent increase plus a .3 percent merit proposal for these correctional officers. It's my sincere hope that those decisions get made. But whether they do or they don't, it is time for us to pay more attention to the staff who have been working in stressful conditions for over six years. We have been overcrowding and understaffed for a significant period of time. The last time I checked, we were at 157 percent of capacity. So this is my opportunity to say what can the Legislature do? And one of the things that the Legislature can do is to take a hard look at my bill, LB109, which went to the Government Committee and would institute legislatively step raises for those Correctional officers who are working on the front lines, Corrections corporals, Corrections sergeants, and Corrections caseworkers. Colleagues, I think it's time for us to step up and lead on this issue. I think it's time for us to support the staff members that keep us safe. I think it's time for us to look at LB109, and I think it's time for the Department of Correctional Services and the administration to reconsider the 2 percent and the .3 percent for those officers.

HUGHES: One minute.

BOLZ: I appreciate Senator Lathrop's patience as I say my piece on what is only an aspect of LB340, but is an important aspect of LB340 to people who do the work. With that, I'll ask you to advance LB340, Senator Lathrop's bill. Thank you, Mr. President.

HUGHES: Thank you, Senator Bolz. Seeing no one else in the queue, Senator Lathrop, you're recognized to close on LB340. Senator Lathrop waives closing. The question is the advancement of LB340 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk.

ASSISTANT CLERK: 38 ayes, 0 nays on the motion to advance to E&R.

HUGHES: The bill advances. Mr. Clerk, we will now proceed to General File, LB141.

ASSISTANT CLERK: Mr. President, LB141 by Senator DeBoer and others. (Read title.) The bill was read for the first time on January 11 of this year and referred to the Judiciary Committee. That committee placed the bill on General File with committee amendments.

HUGHES: Thank you, Mr. Clerk. Senator DeBoer, you're welcome to open on LB141.

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DeBOER: Thank you, Mr. President. Good morning, colleagues. LB141 is a bill that addresses what I see as an inconsistency in our laws that impact, among other people, domestic violence victims. Currently, if the facts show that a victim has been strangled, prosecutors can charge the assailant with a felony. And if the only slightly different facts show that the victim has been suffocated, the assailant is charged with a misdemeanor. This bill would allow all assaults on a person's airways to be treated the same. In the Nebraska criminal statutes, the general crime of assault is split into three degrees. First, and second which are felonies, and third which is a misdemeanor. The difference between a felony and a misdemeanor assault depends on the type of harm which the victim sustains. So generally felonies for serious bodily injury or any injury with a dangerous instrument, and misdemeanor assault for menacing threats and/or a lesser bodily injury. In addition to these generic assault provisions, Nebraska statutes recognize certain specific types of assault with greater specificity. Assault by strangulation is one of those specifically enumerated assaults, and this bill would include suffocation within that specific assault. In part this specificity is necessary because of the unique nature of cutting off a person's ability to breathe. Unlike other types of physical harm whose severity generally corresponds to the injuries sustained, impeding one's airways leaves relatively little injury right up until the point of death. Without specific enumeration, a very nearly fatal assault involving preventing someone from breathing would likely only be chargeable as a misdemeanor. Nebraska's current law, however, recognizes the unique nature of airway assaults and 28-310.01 as currently in place provides for felony charges for strangulation. This bill would also include suffocation because of its similar nature and danger. To illustrate the difficulty in the current statute, charging assailants under the current law requires the application of pressure on the throat or neck of the other person. On the other hand, sitting on someone and crushing them to the point they can't breathe or holding your hand or a pillow over someone's mouth and nose, both acts of suffocation, are not covered by 28-310.01. And again while these could be charged as assaults with lesser penalties, this bill would allow for these acts to be charged in the same way as an assault by strangulation. This is a particularly interesting timing of this bill because I will point out that just last night my nephew got a water bottle cap lodged in his throat and luckily his teacher performed the Heimlich on him and was able to maneuver it enough that he could breathe to get to the hospital. And I want to thank all of the wonderful people at Emanuel and Children's Hospital who saved his life last night. But this pointed out to me in very clear detail how vulnerable human airways are and how much we need to make sure that we are protecting people from these kinds of assaults. Many groups testified in support of LB141 and it was passed unanimously out of committee. While the Nebraska Criminal Defense Attorneys Association testified in opposition to the bill initially, in part because of the intent standard in the initial bill, the committee amendment, AM145, addresses these concerns and they're no longer opposed. Thank you for your consideration of this important legislation, colleagues, and I urge you to pass LB141 along with committee amendment, AM145, on to the next round of debate. Thank you.

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HUGHES: Thank you, Senator DeBoer. As the Clerk stated, there are amendments from the Judiciary Committee. Senator Lathrop, as Chair of the committee, you're recognized to open on the committee amendments.

LATHROP: Thank you, Mr. President, and colleagues, good morning, once again. LB141 was heard by the Judiciary Committee on January 23 and was advanced to General File with committee amendments. Both the amendments, AM141, and the motion to advance to General File were on 7-0 votes with one member absent. The amendment is a white copy that replaces the original provisions of LB141. It adds suffocation to the events of strangulation and defines it as impeding the normal breathing of a person by covering the mouth and nose. Language is added that the offense does not require a visible sign of entry and we have removed "recklessly" as one of the intent elements in the original bill. The amendment also moves the pregnant women enhancement to Section 28-115 where other enhancements for offenses against pregnant women are located. I would urge your adoption of the amendment as well as advancing the bill to Select File. Thank you.

HUGHES: Thank you, Senator Lathrop. Debate is now open on LB141 and AM145. Senator Chambers, you're recognized.

CHAMBERS: Thank you. Mr. President, I was not present when this bill was voted on, so I did not have an opportunity to discuss the amendment, but I would like to ask Senator Lathrop a question or two if he would respond.

HUGHES: Senator Lathrop, will you yield?

LATHROP: Yes.

CHAMBERS: Senator Lathrop, would you look at the white copy of the amendment, and--

LATHROP: Okay.

CHAMBERS: --and I'm looking in line 2 at the original language.

LATHROP: What page? What page?

CHAMBERS: I have always wanted it to say knowingly and intentionally. You could know that you're doing something, for example, putting your hand over somebody's nose but it may not be

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with any intent to do any harm. On the other hand, you could intend to do something, that act, but you don't know that it's going to be hurtful. So what would you say to striking that "or" and substituting "and." I know that any number of statutes will have instead of the disjunctive, it will have the conjunctive "and".

LATHROP: I think that makes perfect sense.

CHAMBERS: Okay. And that's all that I would ask then. And here's why I'm saying that. Just to let people know that when I look at a word, it's not to nitpick or hurt the bill. You could put your hand over somebody's nose and mouth saying, shut up and they won't stop talking. So you put your hand over, and parents have done that with their children. They'll put their hand over the nose and mouth. Teachers have done it. So there should be an element of an intent to do some kind of harm, but you still don't have to have a visible injury. And since Senator Lathrop does not object, I will go ahead and offer that amendment, but I wanted the record to show why I was looking at it with reference to this bill. So I'd like to ask Senator Lathrop a question. Would you rather we just let it go and then this occur on Select File?

LATHROP: Well, it's Senator DeBoer's bill. I'm just introducing the amendment. I'll let Senator DeBoer make that judgment, Senator Chambers.

CHAMBERS: I would like to ask Senator DeBoer a question if she would respond.

HUGHES: Senator DeBoer, will you yield?

DeBOER: Yes, but you might have to catch me up because someone else was talking to me.

CHAMBERS: Well, here's all I'm asking. The amendment that I would offer is to strike the word "or" and insert the word "and". My only question is would you want to do it here or let the bill go and then it would be done on Select? It doesn't matter to me.

DeBOER: We can do it now.

CHAMBERS: Okay. Then somebody is going to say something to give me time to do that.

DeBOER: All right. Let's do it on Select then. [LAUGHTER]

CHAMBERS: Okay. Okay. That's all that I have then.



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HUGHES: Thank you, Senators Chambers, Lathrop, and DeBoer. Senator Ben Hansen, you're recognized.

B. HANSEN: Thank you, Mr. President. Just had a couple of questions pertaining to the amendment and the addition of certain language. And I think this would be probably best suited for Senator Lathrop if he would yield to a question, please.

HUGHES: Senator Lathrop, will you yield?

LATHROP: Yes, I will.

B. HANSEN: With the added amendment of increased-- if I remember right, increased repercussions if the female happens to be pregnant, that's correct, right?

LATHROP: Yes.

B. HANSEN: How far along does a woman have to be in her pregnancy to be considered pregnant, according to this law?

LATHROP: I'd have to jump over-- I'll have to leave the amendment-- do you know the answer? Senator DeBoer, I think has the answer for you.

B. HANSEN: Oh, thank you. Would Senator DeBoer yield to a question and the same one, please.

HUGHES: Senator DeBoer, will you yield?

DeBOER: I will. So your question was why are we moving the enhancement portion?

B. HANSEN: Not so much why, it's more just need a little clarification about it says-- I think it's right. If the offense was committed against a pregnant woman. I'm just kind of a little more curious about the terminology about how far along the female has to be along here pregnancy to be considered pregnant. Like if she's 20 weeks, would the offense be increased, or if it's after 20 weeks? If there's any-- just curious.

DeBOER: So this is actually part of the larger pregnancy enhancement statute which has been in place. The only thing which this amendment does and which my bill did was move it out of the

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strangulation special assault portion and move it over so that it was collected with all the other pregnancy enhancement statutes. So I actually don't know how many weeks it would be necessary, but I think that that's something that--

B. HANSEN: I didn't know if that might be in state statute somewhere or--

DeBOER: I'm sure somewhere with the pregnancy enhancement statute, if you want me to look that up I'll look for you but maybe we can talk about that between now and Select.

B. HANSEN: Okay. Thank you. With this addition, I do want to congratulate certain senators for adding a pro-life amendment to this bill because some might consider me, I am pro-life and so I do want to just personally thank all of the-- Senator DeBoer, and all of the cosigners, including Senator Blood, Bolz, Cavanaugh, Crawford, Dorn, Howard, Hunt, Lathrop, McCollister, Morfeld, Pansing Brooks, Quick, Vargas, and Wishart for the inclusion of this pro-life amendment. I think it's very important and I think it's justifiable, and I just want to congratulate them for adding this into the bill. So, thank you, Mr. President.

HUGHES: Thank you, Senator Hansen. Senator Hilgers, you're recognized.

HILGERS: Thank you, Mr. President. Good morning, colleagues. I rise in support of AM145, LB141 and the amendment that I think Senator Chambers-- the floor amendment that Senator Chambers I believe has now had time to submit. Senator Chambers and I had some conversation off the mike on this particular point, and I agree with him. And just for the records, clear, the way that-- the intent as I understand the bill is to ensure that there is still-- there is the assault for suffocation. We also have in our mind what suffocation would be, but what we have in our mind what the law says it is can be two different things and so I think the language here in how we define it and how it's pulled together is really important, I think. And what Senator Chambers identified was an issue, or maybe some looseness in language, or an issue in the language, that might reveal itself down the road and maybe create and make this bill be over-inclusive in a way that maybe we wouldn't want. We wouldn't think it would be today or we don't intend it to be today and so just to be clear when Senator Chambers was referring to the disjunctive, the way the currently, the book bill, and the white copy amendment on page 3, lines 3 through 7, right now there's an "or" on subsection A and B. It is other words, it's either one or the other and it just takes one. One is necessary and sufficient for the offense to be committed, and the suffocation definition is just impedes the normal breathing of another person by covering the mouth and nose of the person, which as Senator Chambers pointed out could be-- could occur in instances in which someone is not trying to actually suffocate as we would think as the sort of the lay definition or consideration of the word. And so, what I understand the floor amendment that Senator Chambers has submitted, which I support, is that the "or" on line 5 of page 3 that creates

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this disjunctive nature of the offense, it will be changed to an "and" so it will be conjunctive. So both A and B will have to now be present for this offense to have been committed which I think tightens it up and gets it-- both makes it-- ensures that we're not bringing in people that we don't intend to bring in while also ensuring that the intent of the bill and the change is manifested. So with that, I would urge your green light on the amendment and I think Senator Chambers amendment which he will put forward in a minute. I just wanted to make sure that the record was clear on this particular point. Thank you, Mr. President.

HUGHES: Thank you, Senator Hilgers. Mr. Clerk.

ASSISTANT CLERK: Mr. President, Senator Chambers would move to amend with FA19.

HUGHES: Senator Chambers, you're recognized to open on FA19.

CHAMBERS: Thank you, Mr. President. So the record is clear, on page 3 of the committee amendment in line 2, we would strike the word "or" and show it as stricken, and insert the word "and". Senator Hilgers' discussion, my discussion, Senator DeBoer's agreement makes it an amendment which I don't think requires anything in the way of additional discussion. Thank you.

HUGHES: Thank you, Senator Chambers. Seeing no one else in the queue, Senator Chambers, you're recognized to close on your amendment. Senator Chambers waives. The question is, shall the amendment to LB141 be adopted? All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk.

ASSISTANT CLERK: 42 ayes, 0 nays on the motion to advance the floor amendment.

HUGHES: Thank you. Seeing no one else in the queue, Senator Lathrop, you're welcome to close on AM145. Senator Lathrop waives closing on AM145. The question before the body is, shall AM145 be adopted to LB141? All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk.

ASSISTANT CLERK: 40 ayes, 0 nays on the adoption of the committee amendment.

HUGHES: Seeing no one else in the queue, the question is, shall LB141 be advanced to E&R Initial? All those in favor vote aye; all those opposed vote nay. Excuse me. Senator DeBoer, you're welcome to close on LB141. My apologies.

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DeBOER: Thank you, Mr. President. I just wanted to say, first of all, that I appreciate the floor amendment. This is a good amendment and makes the bill better, so thank you all for voting that on. And I did want to address Senator Ben Hansen's concern. The pregnancy enhancement statute has a burden of proof rather than a-- so it's a question of fact to be determined by the fact finder. The prosecution shall allege and prove beyond a reasonable doubt that the victim was pregnant at the time of the offense. It makes no further statement than that. And I do want to recognize that it is really important in these cases where a pregnant woman is concerned in some sort of physical assault, that she be given some extra protection in part because she is at a defensive disadvantage when she is pregnant in that situation, so I think recognizing the defensive disadvantage of the pregnant woman is one of the reasons that we have these pregnancy enhancement statutes. And with that, I'll urge your green vote on bill, LB141. Thank you.

HUGHES: Thank you, Senator DeBoer. The question for the body is the advancement of LB141 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk.

ASSISTANT CLERK: 45 ayes, 0 nays on the motion to advance to E&R.

HUGHES: The bill advances. Mr. Clerk, we will proceed now to General File, LB354.

ASSISTANT CLERK: Mr. President, LB354 introduced by Senator Pansing Brooks and others. (Read title.) The bill was read for the first time on January 16 of this year and referred to the Judiciary Committee. That committee reports the bill to General File with committee amendments.

SCHEER: Thank you, Mr. Clerk. Senator Pansing Brooks, you're welcome to open on LB354.

PANSING BROOKS: Thank you, Mr. President. Members of the body, LB354 sets forth automatic record sealing procedures so children can move on with their lives after they have satisfactorily completed their probation sentence or diversion program. Colleagues, children make mistakes. This fact should not be surprising to any one of us. Those of us who have raised children or remember our own childhood experiences can certainly attest to this. What may be surprising to some of us is that many children are not able to move on from those mistakes after they have paid their debt, endured their punishment, and been rehabilitated. That is because of serious loopholes in our juvenile sealing statutes that leave children vulnerable and subject to ongoing negative ramifications. Nebraska has made a number of juvenile justice reforms in recent years, thanks to this body, informed by adolescent brain research in response to studies which recognize that children need to be treated differently than adults. Youth are still in the

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process of development and are more prone to risky, anti-social behavior, more susceptible to negative peer pressure, more impulsive, and less capable of thinking through the long-term consequences of their actions. Our juvenile justice system is supposed to be rehabilitative seeking to, quote, hold juveniles accountable for their unlawful behavior in a manner consistent with their long-term needs, unquote, pursuant to Nebraska Revised Statute, 43-402. In 2017, I brought a LR216 as an interim study to examine the policies, practices and laws that govern the safeguarding and sealing of juvenile records. Nebraska does have a statute governing the sealing of juvenile records. In the context of LR216, I was able to speak with local juvenile justice stakeholders, county attorneys, judges, and others and gather input on the effectiveness of our current statute and whether the intent of the statute, as currently written, is used currently in practice. LB354 attempts to clarify the sealing process and make it less cumbersome. It also helps remove barriers that youth and families face when requesting their juvenile record be sealed. Nebraskans should not be defined by a lifetime of bad decisions they made as a teenager or-- excuse me, Nebraskans should not be defined for a lifetime by the couple of bad decisions they made as a teenager. However, our current sealing laws are doing exactly that. Dr. Anne Hobbs from the University of Nebraska-Omaha's Juvenile Justice Institute testified at the hearing and shared her staggering research. Her research clearly illustrates that sealing is not happening as intended. Of the 16,821 juvenile cases filed in 2017, 12,219 had closed and could potentially be sealed, but only a little over 20 percent of the cases had actually been sealed. Automatic sealing will fix this. Under LB354, youth who successfully complete probation or complete the orders of the court will be able to have their record automatically sealed upon successful completion of probation or court orders. The current confusing process requires the court to send notice to the youth when they reach the age of 17, whether or not the case has been closed, and then to initiate a process wherein a hearing is held to determine if the record should be sealed. This is an unwieldy and oddly-timed process and the experts testified as such. It also places a burden on both the court and the parties to the case. Providing for an auto-seal upon successful completion of probation instead will ensure that the juvenile who has demonstrated compliance with court orders and successful rehabilitation gets the benefit of a sealed record without this additional burden to all parties of further additional court proceedings. If the record is not automatically sealed, the juvenile or the juvenile's parents or guardian may file a motion to seal when the juvenile reaches the age of majority, or six months have passed since the case was closed, whichever occurs sooner. LB354 would also allow the state court administrator to permit viewing of sealed records for bona fide research. Failure to seal a record's youth when they have been assured it will be sealed can put them in an even worse position when they are applying for a job or college, or for a professional association while relying on the promises of our current statute to not disclose juvenile history. If a record is incorrectly left unsealed, the youth is not only seen as a criminal, but also viewed as dishonest by potential employers and landlords. The juvenile who has complied with what the state requires of them should not be expected to wear a lifelong mantle of public shame and punishment. We had a very good hearing on this bill. I was particularly pleased that the legislation had support from both the county attorneys and the

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criminal defense attorneys. I also want to thank the advocates, the criminal defense attorneys, the county attorneys, and the judges who initially brought me this bill. This bill advanced with seven votes in favor and one absent. I ask you to vote green on LB354 and the underlying amendment. Thank you, Mr. President.

SCHEER: Thank you, Senator Pansing Brooks. As the Clerk mentioned, there are amendments from the Judiciary Committee. Senator Lathrop, as Chair of the committee, you're recognized to open on that amendment.

LATHROP: Thank you, Mr. President. Good afternoon, morning, I guess still. Good morning, colleagues. LB354 was heard by the Judiciary Committee on January 31 and was advanced to General File with committee amendments. Both the amendment, AM112, and the motion to advance to General File were on 7-0 votes with one member absent. The committee amendment makes several small changes to the bill as introduced. It removes the section that would have prohibited any HIPAA information from appearing in the juvenile court public case file. The amendment addresses concerns raised by eliminating retroactivity-- retroactively sealing records in situations where the county attorney declined to file, offered pretrial diversion, or filed in juvenile court. For those that are allowed to access a sealed record, the committee amendment requires identity verification to allow access. It also changes the standard for improperly disclosing a sealed record from negligently, recklessly, knowingly, or intentionally, and makes it simply, knowingly. I would urge your adoption of the amendment as well as advancing LB354 to Select File. With that, I would appreciate your support, and be happy to answer any questions I might be able to answer.

SCHEER: Thank you, Senator Lathrop. Seeing no one in the queue wishing to speak, Senator Lathrop, you're welcome to close. He waives closing on AM112. The question before us is the adoption of AM112. All those in favor please vote aye; all those opposed vote nay. Have all voted that wish to? Senator Chambers, did you mean to vote? Thank you, Senator. Now has everyone voted? Please record.

ASSISTANT CLERK: 32 ayes, 0 nays on the adoption of the committee amendments.

SCHEER: AM112 is adopted. Returning back to LB354. Seeing no one wishing to speak, Senator Pansing Brooks, you're welcome to close. She waives closing. The question before us is advancement of LB354 to E&R Initial. All those in favor please vote aye; all those opposed vote nay. Has everyone voted that wish to? Please record.

ASSISTANT CLERK: 33 ayes, 0 nays on the motion to advance to E&R.

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SCHEER: LB354 is advanced to E&R Initial. Next item, Mr. Clerk.

ASSISTANT CLERK: Mr. President, LB449 introduced by Senator Walz. (Read title.) The bill was read for the first time on January 18 of this year and referred to the Health and Human Services Committee. That committee placed the bill on General File with no committee amendments.

SCHEER: Thank you, Mr. Clerk. Senator Walz, you're welcome to open on LB449.

WALZ: Thank you, Mr. President. LB449 is an act that would prohibit the practice of using needles, scalpels, or other equipment to produce a permanent mark in the human eye, otherwise known as scleral tattooing, except when performed by a healthcare professional in the scope of the healthcare professional's practice. Scleral tattooing is the practice of using a needle to inject dye between the two layers of the eye. This changes the color of the eyeball, and I have no idea why in the world you would want to do that. There has not been extensive medical or scientific study on the issue at this time and because it is not a traditional practice with tattooing, the individuals engaging in this practice are not likely to be trained to perform this task. Needless to say, there are a number of risk to an individual's health if they have this procedure performed on them by an untrained individual. With that, I would like to close, or wait for my amendment.

SCHEER: Mr. Clerk, for amendment.

ASSISTANT CLERK: Mr. President, Senator Walz would move to amend with AM349.

SCHEER: Senator Walz, you're welcome to open on your amendment, AM349.

WALZ: Thank you, Mr. President. The language in this change was brought to me by the Department of Health and Human Services. This amendment defines a healthcare professional in order to ensure that only a person licensed to practice medicine and surgery, or osteopathic medicine and surgery, are allowed to engage in this practice when this licensee is performing a procedure within the scope of his or her practice. It also allows for the department to apply civil penalties for violation of this act. With that, I would appreciate your support in advancing this bill on to Select File.

SCHEER: Thank you, Senator Walz. Senator Howard, you're recognized.

HOWARD: Thank you, Mr. President. I just wanted to rise in support of the amendment and the bill. This was by far the most disgusting bill I have ever heard in my committee and I've served

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on the committee for seven years. What I did want to mention, though, was that essentially the bill prohibits eyeball tattooing by someone who isn't a physician. So there are instances where a physician may want to tattoo or change the pigment of an eye. For instance, if an eyeball receives an injury, there can be a white spot on the eye that only a trained and licensed professional should be making modifications to the eye. So with that, I urge the adoption of the amendment and the underlying bill. Thank you, Mr. President.

SCHEER: Thank you, Senator Howard. Senator Hunt, you're recognized.

HUNT: Thank you, Mr. President. Would Senator Walz yield to a question?

SCHEER: Senator Walz, would you please yield?

WALZ: Of course.

HUNT: Sorry, I didn't give you a heads up. A question just occurred to me. Does this bill prevent people from doing it to themselves?

WALZ: This bill would--

HUNT: Their own eye?

WALZ: No, it does not.

HUNT: Okay, thank you. I yield my time to Senator Walz if she would like it.

SCHEER: Senator Walz waives the additional time. Senator Cavanaugh, you're recognized.

CAVANAUGH: Thank you, Mr. Speaker. Senator Hunt, if you would like some images, Senator Arch, I'm sure can share them with you. They're quite graphic and disgusting and I hope that everyone will vote for this quickly so that we never have to discuss this again. Thank you.

SCHEER: Thank you, Senator Cavanaugh. Seeing no one left in the queue to speak, Senator Walz, you're welcome to close on AM349.



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WALZ: Thank you, Mr. President. I don't really have too much else to say on this bill. With that, I'd like to ask you for your "eye" [LAUGHTER] vote on both of the amendment and the bill. Thank you.

SCHEER: Thank you, Senator Walz. The question before us is the adoption of AM349. All those in favor please vote aye; all those opposed vote nay. Has everyone voted that wish to? Please record.

ASSISTANT CLERK: 34 ayes, 0 nays on the adoption of the amendment.

SCHEER: AM349 is adopted. Seeing no one in the queue to speak, Senator Walz, you're welcome to close on LB449. She waives closing. So the question before us is the adoption of LB449. All those in favor please vote aye; all those opposed vote nay. Have all voted that wish to? Please record.

ASSISTANT CLERK: 40 ayes, 0 nays on the advancement to E&R.

SCHEER: LB449 does advance to E&R Initial. Items, Mr. Clerk.

ASSISTANT CLERK: Thank you, Mr. President. New A bill. LB354A introduced by Senator Pansing Brooks, a bill for an act relating to appropriations. Appropriates funds to aid in carrying out the provisions of LB354. Amendment, Senator Hilgers to LB617. Communication from the Governor addressed to the Clerk. (Read re LB1, LB2, LB3, LB12E, LB33E, LB33AE, LB49, LB67, LB77, and LB79E.) Amendment to be printed, AM614 by Senator Bolz to LB481. The Business and Labor Committee will hold an Exec Session at noon in Room 2022. Series of name adds: Senator Wayne to LB104, Senator Ben Hansen to LB304, Senator Cavanaugh to LB518.

And finally, Mr. President, a motion to adjourn by Senator Hilgers. Senator Hilgers moves to adjourn until Thursday, March 7, 2019, at 9:00 a.m.

SCHEER: Colleagues, you've heard the motion. All those in favor please say aye. All those opposed say nay. We are adjourned.