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LATHROP: [RECORDER MALFUNCTION] late. I got held up on the floor. Welcome. I have a little preamble that we read so everybody kind of knows what the rules are and how this is going to operate this morning. And it's not only for your benefit, but for the benefit of people who might be watching on NET so that they understand the options they have to communicate with the committee besides personal appearances. So we're going to cover that. It takes about five minutes and then we'll get on to Senator Aguilar's bill, which is the first bill up this morning. Good morning and welcome to the Judiciary Committee. My name is Steve Lathrop and I represent Legislative District 12. I also chair the Judiciary Committee. Committee hearings are an important part of the legislative process. Public hearings provide an opportunity for legislators to receive input from our fellow Nebraskans. This important process, like so much of our daily lives, has been complicated by COVID. To allow for input during the pandemic, we have some new options for those wishing to be heard. I would encourage you to consider taking advantage of additional methods of sharing your thoughts and opinions. For complete details on the four options that are available to communicate with the senators, go to the Legislature's website at NebraskaLegislature.gov. We will be following COVID-19 procedures this session for the safety of our committee members, staff pages and the public. And we ask those attending our hearings to abide by the following procedures. Due to social distancing requirements, seating in the hearing room is limited. We ask that you enter the hearing room only when necessary for you to attend the bill hearing in progress. The bills will be taken up in the order posted outside the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. The committee will pause between bills to allow time for the public to move in and out of hearing rooms. We request that you wear face covering while in the hearing room. Testifiers may remove their face covering during testimony to assist the committee and Transcribers in clearly hearing and understanding the testimony. Pages will be sanitizing this front desk where people testify as well as the chair in between testifiers. When public hearings reach seating capacity or near capacity, the entrance will be monitored by the Sergeant at Arms who will allow people to enter the hearing room based upon seating availability. Persons waiting to enter a hearing room are asked to observe social distancing and wear a face covering while waiting in the hallway or outside the building. The Legislature does

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not have the availability this year of an overflow room for hearings, which may attract a great number of testifiers and observers. For hearings with large attendance, we request only testifiers enter the hearing room. We also ask that you please limit or eliminate handouts. Due to COVID concerns, we're providing two options this year for testifying at a committee hearing. First, you may drop off written testimony prior to the hearing. Please note the following four requirements must be met to qualify to be on the committee statement. First, submission of written testimony will only be accepted the day of the hearing between 8:30 and 9:30 here in the Judiciary Committee hearing room. Number two, the individual must present the written testimony in person and fill out a testifier sheet. Number three, the testifier must submit at least 12 copies. And number four, testimony must be a written statement no more than two pages, single spaced or four spaces-- four pages, double spaced in length. No additional handouts or letters from other may be-- others may be included. This written testimony will be handed out to each member of the committee during the hearing and will be scanned into the official transcript. You got to meet the four criteria that I provided in order for that to happen. And as always, persons attending public hearings will have an opportunity to give verbal testimony. On the table inside the doors you'll find yellow testifier sheets. Fill out a yellow testifier sheet only if you are actually testifying before the committee and please print legibly. Hand the yellow testifier sheet to the page as you come forward to testify. There is also a white sheet on the table if you do not wish to testify, but would like to record your position on a bill. This sheet will be included as an exhibit in the official hearing record. If you are not testifying or submitting written testimony in person and would like to submit a position letter for the official record, all committees have a deadline of 12 noon the last workday before the hearing. Position letters will only be accepted by way of the Judiciary Committee's email address, which is posted on the Legislature's website, or if they are delivered to my office. But in either case, that has to happen before that deadline. Keep in mind that you may submit a letter for the record or testify at a hearing, but not both. Position letters will be included in the hearing record as exhibits. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally by anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by first

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giving you-- by giving us your first and last name and spell them for the record. If you have copies of your testimony, you can bring up 12 copies and give them to the page. If you are submitting testimony on someone else's behalf, you may submit it for the record, but you'll not be allowed to read it. We will be using a three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning. And when the red light comes on, we ask that you wrap up your final thought and stop. We will also this year be-- we have another rule that's time based and I'll share that with you. You probably all know this already, but because of the volume of bills that we have and the limited amount of time that we have to hear all the bills, 152 of them, we are-- the committee has imposed a 30-minute window for proponents and a 30-minute opportunity for opponent testimony. That includes questions from the senators. So when we begin with proponent testimony, I write down the time and 30 minutes later then we go into opponent testimony. That has only come up maybe in one or two bills so far this year. So hopefully that won't happen today. As a matter of committee policy, I'd like to remind everyone the use of cell phones and other electronic devices is not allowed during public hearings, though senators may use them to take notes or stay in contact with staff. At this time, I'd ask everyone to look at their cell phone and make sure it's in the silent mode. This is a reminder, verbal outbursts or applause are not permitted in the hearing room. This year, the Judiciary Committee has gone paperless, so you will see senators using their laptops to pull up documents and follow along with each bill. Finally, you may notice committee members coming and going. That has nothing to do with how they regard the importance of the bill under consideration. But senators may have bills to introduce in other committees or have other meetings to attend to. That's certainly the case at this moment. And with that, we'll have the committee members introduce themselves, beginning with Senator Slama.

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

McKINNEY: Terrell McKinney, District 11, north Omaha.

LATHROP: Senator Pansing Brooks, who is the Vice Chair of this committee and represents Legislative District 28, is currently under quarantine due to COVID exposure. She will be watching on NET and asking questions through me as they arise. That's going to-- yesterday

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was the first day of doing this. Apparently we have a time lag from the time I say something until it hits people's computers or their TVs. So we may have a little bit of a delay there to afford Senator Pansing Brooks an opportunity to submit questions. Assisting the committee today are Laurie Vollertsen, our committee clerk, and Neal Erickson, one of our two legal counsel. And our pages this morning are Evan Tillman and Mason Ellis, both good hands to have here and students at UNL. And with that, we will take up our first bill of the morning. That is LB603. Senator Aguilar, welcome to the Judiciary Committee.

AGUILAR: Good morning, Chairman Lathrop, members of the Judiciary Committee. My name is Ray Aguilar, R-a-y A-g-u-i-l-a-r. I represent the 35th Legislative District in Hall County. I'm here this morning to introduce LB603. I was asked to carry LB603 on behalf of the Nebraska Retail Federation. LB603 would adopt the Organized Consumer Product Theft Protection Act and require that online marketplaces collect and disclose identifying information on high-volume sellers using their platform from Nebraska. If I walk into a local retailer in Nebraska, whether it's a small family-owned business or a large national chain, that retailer goes to great lengths to evaluate the products they sell, verify their suppliers, and remove anything that has been deemed unsafe or has not met state or federal product compliance standards. Whether it's a toy, a battery, an N-95 mask, Nebraska retailers don't put stolen, counterfeit, or dangerous goods on their shelves, nor will they find them on their websites. But online marketplaces are a different story. While the ability of individuals to sell their products through third-party platforms online marketplaces offer connects legitimate small businesses to large growing pool of online shoppers, these same platforms have also become a favorite for criminals to unload counterfeit and stolen goods. Stolen, counterfeit, expired and defective products, goods made from unsafe levels of chemical substances, and items that do not meet the United States quality and safety standards have flooded online marketplaces in recent years. Let me contextualize the information gap that exists between in-person sales and online sales. If I am selling stolen or counterfeit goods at a flea market and someone is suspicious of me, that person already has many ways to collect identification information on me to help facilitate the investigation. They know my location, the goods I was selling, what vehicle I was driving, the license plate number, color of my hair, my size, my gender, the

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clothes I was wearing and the location of which I was conducting my business. There might be cameras around. If I'm selling them in my store, they'll know the name and location of my business. But online, all that person knows is that I'm an individual using the username "Puppy Lover36" to sell suspiciously cheap, new package power tools. In [SIC] the marketplace isn't to provide information to law enforcement that would identify me, any investigation may quickly come to a dead end. This information gap is a complex problem, but LB603 is a relatively simple bill that will help make a dent in the problem. It would require online marketplaces like Amazon, eBay and Facebook to collect six simple pieces of information from their sellers: name, address, phone number, email, tax ID, U.S. bank account. That's it. That's all a small business has to do to comply with this law, provide six simple pieces of information, information that can probably provide in 60 seconds. Don't let anyone fool you with arguments that this is too much red tape for small business. That's a red herring. The bill will require the marketplace to verify the information. Criminals trying to scam Nebraska families with fake, stolen, or dangerous goods won't be able to hide behind fake profiles and bogus business information anymore. No more hiding behind fake profiles and anonymous screen names, Amazon and other marketplaces will have to verify who is selling behind their platform. Sunlight is the best disinfectant, in my view. You expose those fraudulent sellers and scam artists for who they are and they won't be selling for very long. We have thousands of years of ethics and legal scholarship that have built our laws around the crimes of theft and sale of stolen goods and counterfeit goods. But in the grand scheme of things, the Internet is relative-- relatively new technology that has not been subject to the expectations and regulations we impose upon physical things, largely due to the anonymity it provides. However, as we see in our Internet sales tax law, we have the capacity to hold multivendor marketplace platforms, also known as marketplace facilitators, to the laws of our state. LB603 is an effort to close the inherent accountability gap between online and physical sales, and online marketplaces collect relevant information that would aid in the investigation and prosecution of those selling stolen and counterfeit goods online. In closing, I believe you'll find the issue of anonymous marketplaces enabling misleading or fraudulent sales to be a real issue and the intent of LB603 agreeable. If the committee finds the intent valid but disagrees with specific aspects of the bill, I am more than willing to work with you to find the compromise and changes needed to have this

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bill be respective of the needs of those making online sales while still respecting the intended purpose. With that, I'd ask that you join me in taming the Wild West that is online retail and support LB603. Thank you.

LATHROP: Thank you, Senator. Any questions for Senator Aguilar? I don't see any at this point. Are you going to stay to close, Senator?

AGUILAR: I think I will, yeah.

LATHROP: OK, terrific. Thank you. We will take proponent testimony. How many people just so we can let Senator Friesen know when to show up? How many people intend to testify on this bill, for or against? Is that two? OK. I always ask that question and then there's a page out in front of me cleaning the chair off. Anyway, OK, terrific. Welcome.

RICH OTTO: Chairman Lathrop, members of the committee, my name is Rich Otto, R-i-c-h O-t-t-o. I appear before you today on behalf of the Nebraska Retail Federation in strong support of LB603 and we thank Senator Aguilar for introducing it. The Nebraska Retail Federation represents merchants with Nebraska locations. These are businesses that employ local workers, pay local taxes, collect sales and occupation taxes across the state. And unlike many online sellers, they don't sell stolen or counterfeit merchandise. We are all aware of the exponential growth online sales has hap-- has happened and the devastating impact our communities, specifically local brick and mortar stores, have faced due to that. These stores are the very core of the business districts within our communities across the state. Most people don't realize that the vast majority of merchandise sold through major Internet marketplaces are sold by third-party sellers, with the platform receiving a significant percentage of the sale price. The majority of these third-party sellers are legitimate individuals and small businesses. But unfortunately, these online platforms have also become the go-to place for criminals to unload stolen and counterfeit merchandise while remaining practically anonymous. In the past, pawn shops and public markets were typical places that these items might show up. This isn't true today. Pawn shops gather much more information than online sellers are required and check lists of stolen property. LB603 requires that on-- online marketplaces collect simple information from their third-party sellers: name, address, phone number, email, tax ID and bank account information. It will take individuals or small business a minute or

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two to comply, and then the marketplace will verify this information. It requires a minimal level of transparency. Online marketplaces will have to verify and properly know who is selling behind their platform. It is the least we can do for Nebraska retailers and consumers. The online, or excuse me, the opposition testimony may try to wow you with what their platforms are currently doing, but in the end their only goal is to delay, delay, delay any regulation. I respectfully remind you that this is the same tactic Internet platforms used for over two decades to avoiding the collection and remittance of sales tax on their sales to Nebraska purchasers. Federal solutions, including streamlined sales tax, were developed and they fought them all. No federal said-- no federal solution was successful. Only when states passed it and took it all the way to the United States Supreme Court did it get reconciled. And even then, the platforms did not collect sales tax on their third-party sellers. Only once Nebraska passed LB284 by Senator McCollister did they comply. When we look back at Nebraska's strong sales tax receipts throughout this pandemic, I ask you to think where those receipts would be if we didn't pass LB284. With that, I open up to any questions.

LATHROP: OK. I think this is your first time in front of the committee, isn't it?

RICH OTTO: It is in front of Judiciary, correct, Senator.

LATHROP: OK, good. Good to have you here. I don't see any questions, though.

RICH OTTO: OK.

LATHROP: Thanks for being here.

RICH OTTO: Thank you.

LATHROP: We run a clean place here.

ANSLEY FELLERS: Fine by me.

LATHROP: Welcome.

ANSLEY FELLERS: Thank you. Thank you, Chairman Lathrop and members of the Judiciary Committee. My name is Ansley Fellers, A-n-s-l-e-y F-e-l-l-e-r-s. I'm the executive director of the Nebraska Grocery

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Industry Association, here today testifying in support of LB603, Senator Aguilar's bill to adopt the Organized Consumer Product Theft Protection Act. Like other retailers, supermarkets, chain drugstores, independent pharmacies, and convenience stores are increasingly affected by organized retail crime. It's become one of the most pressing security issues facing retailers and suppliers and accounts for anywhere from 15 to 40 billion dollars in retail losses annually. The economic impact, however, extends beyond the manufacturing and retail industry and includes additional costs incurred by consumers and taxes lost by states. The theft and resale of stolen consumable or health and beauty products such as infant formula, which may be repackaged, relabeled, and subjected to altered expiration dates, poses safety concerns for individuals unknowingly purchasing such goods. Organized retail crime is separate and distinct from petty shoplifting. It often involves professionals moving quickly from community to community and across state lines to steal large amounts of merchandise, which is fenced, then sold back into the marketplace. Organized rings are often involved in other crimes within the community, including narcotics, money laundering, and human trafficking. Petty shoplifting, on the other hand, is limited to items stolen for personal use or consumption. Organized retail crime is a threat to the economy, public health, and domestic security. It's a problem not only for retailers, but also for manufacturers, consumers, taxpayers and local and state governments. We thank Senator Aguilar for bringing this issue forward and ask the committee to advance LB603. With that, I'd be happy to answer any questions.

LATHROP: Any questions? Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Miss Fellers, for testifying today. Do we know what the scope of the problem is in the state of Nebraska?

ANSLEY FELLERS: I think the last number and we will get you-- we can get you numbers specific to Nebraska. I think if you extrapolate some of the numbers I pulled from the Congressional Research Service, you know, and you broke that out by state, I'm sure it's more in some states than it is in others. But I think at one point, Rich, who testified previously, said it's in the, you know, tens of millions for some individual stores and maybe possibly hundreds of millions just in this state.

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BRANDT: If you could just send that information to the committee,--

ANSLEY FELLERS: Absolutely.

BRANDT: --I'd appreciate it.

ANSLEY FELLERS: Yeah, thanks.

LATHROP: I just want to be clear about my understanding of the problem. The concern is that if I am one of these places like Amazon, I don't have a big warehouse of this stuff. I have people who are going to supply it, but they're going to buy it through my platform. Your concern is or the concern that's trying to be addressed by the bill is some of those people who are supplying the very products a place like Amazon is selling are going out and stealing iPhones and they become a retailer in the Amazon process.

ANSLEY FELLERS: Yes, a lot of times the third-party sellers are those what they call the fencers, the middlemen--

LATHROP: OK.

ANSLEY FELLERS: --that purchase the stolen goods and then resell it.

LATHROP: And that's what the bill is aimed at addressing. Here's my question for you, Ms. Fellers, and that is, is the federal-- is Congress doing anything about this? Because this is a lot of interstate commerce and--

ANSLEY FELLERS: So we're, yes, that's a really good question and I'm glad you brought that up. That's something FMI, who's the food industry, which is the food industry association nationally, national grocers and the National Retail Federation have been working on this at the federal level for more than 15 years. And some of the data, you know, some of the first reports that I pulled here go back to, you know, federal-- requesting federal action, looking for federal action since 2010. But I know all the way back to 2001 they've been talking about this.

LATHROP: Are they making any headway?

ANSLEY FELLERS: I would-- I think it's about as much headway as we did with the Internet sales tax federally.

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LATHROP: OK, OK. Any other questions? I see none. Thanks for being
here today.

ANSLEY FELLERS: Thank you.

LATHROP: Are there any other proponents? Anybody here to speak in
opposition to the bill?

***MARY JACOBSON:** Chairman Lathrop and Judiciary Committee Members, For
the record, my name is Mary Jacobson, a registered lobbyist on behalf
of Amazon. I am providing written testimony in opposition to
Legislative Bill 603. Amazon is committed to preventing all forms of
fraud and abuse from harming their customers, including from organized
retail crime. In 2019, Amazon invested more than \$500 million to
expand its global team that focuses on preventing fraud and abuse,
stepped up new capabilities to help governments prosecute criminals,
continued to pioneer industry-leading tools to support rights owners,
and provided unprecedented transparency to customers and brands into
the identities of selling partners in its stores. Amazon is an
industry-leader in verifying sellers. Amazon's processes are designed
to make it easy for honest sellers to set up an account quickly while
stopping criminals from doing the same. Amazon already has robust
practices to vet prospective sellers and stop bad actors and in 2019,
their proactive efforts stopped 2.5 million suspected bad actor
accounts. And last year, Amazon began validating prospective sellers'
identities via video conferencing to make it even more difficult for
fraudsters to hide. Amazon has partnered with law enforcement on
multiple cases in the last year alone to hold bad actors accountable
for fraud, and continues to support legislative and regulatory efforts
that will boost law enforcement resources to better combat organized
retail crime. This includes partnerships with state retail
associations and attorneys general to create and expand task forces
devoted to the investigation and pursuit of those responsible for
retail and package theft. This legislation, as currently drafted, is
not the right approach to fighting organized retail crime. Amazon
stands ready to work with the Committee to improve the bill and ensure
that bad actors are held accountable, while also protecting consumers
and honest entrepreneurs. Thank you for your consideration.

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LATHROP: Anyone here in a neutral capacity? Seeing none, Senator Aguilar, you may close. We do have position letters that have been received and written testimony. We have six position letters. Two of them are proponent and four of them are in opposition to the bill. We also have a letter in opposition from Amazon, Mary Jacobson on behalf of Amazon, in opposition to the bill. Senator Aguilar.

AGUILAR: Once again, LB603 is an effort to help close the information gap. We've seen the online marketplaces tell us to hold off or wait for the federal government to act before. The solution before was for states to hold to their federalist principles and take their own stand. In-person sales are not equal to online sales. We know that Internet selling is enabling fraud and crime by virtue of the anonymity it provides, and it's time to make an effort to stop it. I understand concern with specific components of the bills and want to make it very clear that I believe strongly in the intent, but am flexible with the language. I will work with the committee to make it work for you. With that said, it's time to close the anonymity gap that enables the usage of online marketplaces for crime in Nebraska. I'd like to say thank you to the committee. Thank you to Jim and Rich Otto with the Nebraska Retail Federation, to those who testified in support of LB603. With that, I end my closing.

LATHROP: Thank you. I don't see any questions, Senator. Thanks for being here and for introducing LB603. That will close our hearing on LB603 and bring this to LB621 and Senator Friesen. Welcome back, Senator Friesen.

FRIESEN: [INAUDIBLE]

LATHROP: Always a pleasure to have you in the Judiciary Committee.

FRIESEN: It's good to be back, Chairman Lathrop. So, yeah, we're going to hopefully have a good morning today. I do have a few handouts. Morning, colleagues. I'm Curt Friesen, C-u-r-t F-r-i-e-s-e-n. I represent District 34. I'm here to introduce LB621, the Social Media Fairness Act. I came up with the idea for this bill, partially in response to how the largest social media company has behaved before and after the November 2020 elections. These companies were suspending or banning accounts for certain words or phrases like "stop the steal," even silencing accounts of prominent elected officials in the name of public safety. While I understand the importance of preventing

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violence, unaccountable social media giants that ultimately answer only to their shareholders are not the right entities to make these sort of decisions, especially when these decisions can be made for any reason with zero due process or accountability. I believe continuing to allow social media companies to limit and ban accounts and suppress the speech of its users without any accountability will have a very detrimental effect on our society. I want to make it clear that this bill is not meant to specifically protect those on the right or those on the left. It is simply intended to ensure that all Nebraskans have a voice and can participate in the public discourse and are protected from private companies with private agendas that may wish to silence them and their beliefs. Currently, the First Amendment only prevents government actors like the federal, state, and local governments from suppressing or limiting speech. Social media sites such as Facebook, Twitter, and others can limit, control, and censor speech as much as they please. But in today's day and age, with more information being shared through the Internet than any other medium, these companies have as much or more power over speech than even government entities do. They are the most important platforms for the exchange of ideas, information, and communications, not only among families and friends, but between us and government officials and politicians. I think it's time to think about extending the reach of the First Amendment to cover these powerful, private, and unaccountable entities. The U.S. Supreme Court has recognized the vast power of social media companies they have in today's age, day and age. In 2017, *Packingham v. North Carolina* decision, the court described social media platforms as the most important forum for speech. I quote from that case: While in the past there may have been difficulty in identifying the most important places for the exchange of views, today the answer is clear. It is cyberspace. In the vast democratic forms of the Internet in general and social media in particular, social media offers relatively unlimited, low-cost capacity for communications of all kinds, and social media users employ various websites to engage in a wide array of protected First Amendment activity on topics as diverse as human thought. The court describes the increased power of social media as a revolution of historic proportions for communications. It is clear social media sites have now become the modern day equivalent to historic public forums. Your Facebook and Twitter feed now occupy the same space that once was filled by the town square or the public bulletin board. Allowing a private company to control who gets to be heard from these forums and what they are allowed to say has given

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them a power that historically only been held by government. A social media company banning a user's account because the company's CEO does not like what they are saying is very similar to a policeman in the early 1900s arresting an individual-- individual in the town square because the authorities did not like the message he or she was proclaiming. Both are suppressions of speech. The difference is that the government actors must give due process to individuals they silence and are held accountable if they violated the First Amendment social-- and social media companies do not. This brings us to LB621. And this bill would require dominant media-- social media websites, which are defined as those with at least 75 million users, to provide an explanation to Nebraska residents who have their accounts suspended, disabled, or censored. If it is found that the social media site's action would have violated the First Amendment had it been a government actor, the company would be fined \$100,000. I would guess there will be many critics of this bill, and these critics may point out that applying a First Amendment standard to a private company is unconstitutional. I don't believe this is true. The bill simply addresses a legitimate public policy issue that the federal government has not yet acted upon. There is a rational basis for us as a Legislature to prevent unaccountable international companies that don't care about Nebraska from censoring our citizens. In a January 29 article, former Nebraska Attorney General Don Stenberg weighed in on the article and agreed that this bill is constitutional. I have circulated that article. Other critics may point out that Facebook, Twitter, and other social media companies must moderate the content that appears on their website so as not to post violent, obscene, or illegal content. But since these types of speech are not protected by the First Amendment, their ability to do so would not be affected by this bill. Finally, it may be pointed out that making a law limiting the ability of social media companies to control what appears on their platform is actually a violation of the company's First Amendment rights by compelling them to allow speech they disagree with on their platform. I don't think this argument holds water. When someone makes a post on Facebook or Twitter, it is clear that it is a person speaking, not the company itself. Since the company is not the speaker, the First Amendment right does not apply. This is a simple bill. If it passes, I realize there will be a challenge involved with carrying out its provisions. The biggest social media companies have nearly infinite resources and will no doubt fight us every step of the way. I also realize the First Amendment is a nuanced and complex area

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of the law and capturing all of its intricacies in a short piece of legislation is nearly impossible. So I think the biggest issue here is we need to have this continuing discussion. I'm open to making this bill better, but only in ways that further the bill's current intent. We need social media to be a forum for diverse, robust, and open discussion. The best way to counter speech you disagree with is through discussion and debate. Silencing voices we disagree with almost never is the right answer. Let's allow everyone to be heard in the marketplace of ideas instead of allowing social media companies to pick who gets to be heard and who doesn't. Thank you for your time and I would love to answer any questions. One of the other handouts was a post that got banned and you'll notice it's a picture of onions. So something in it triggered the algorithms. And so, again, if you can-- you-- you look at I've got a list here of I think there's 20 pages of people who have been either banned or censored in some way or another. And you can go through that long list. And usually users who are-- you know, it says here and this was a, just a Google search and, you know, it says users are suspended from Twitter based on alleged violations of Twitter's terms of service, but they're usually not told which of their tweets were the cause. They just randomly censor them or ban them. So we've got Robert F. Kennedy, Jr., was banned from Instagram, something he put on about the coronavirus and vaccines. Again, we're not allowing that social discourse to happen, whether we agree with it or not. So that-- that is my main reason for this bill is-- is we need to have that discussion, I believe, in this day and age of the public square being these platforms that have been created. Thank you, Mr. Chairman.

LATHROP: OK. Senator DeBoer.

DeBOER: Senator Friesen, how would I know if I'm a company, one of these large, whatever the company is called, whatever you describe them as, the dominant social media website, how do I know what would be protected free speech and what wouldn't be protected free speech?

FRIESEN: Well, I think the free speech protections are pretty well laid out. And again, you're not-- all you have to-- the free speech protections I think everyone knows what they are. You can't incite violence.

DeBOER: I mean--

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FRIESEN: You--

DeBOER: I mean, the Supreme Court standard for obscenity is I'll know it if I see it. So how do I know what the Supreme Court will know whether or not it's obscenity or not?

FRIESEN: Those can all be argued over with. But when you look at what is the second, the First Amendment, I mean, I think you can go through and pretty well distinguish that. But again, this just allows you a place--

DeBOER: Well, it says I will have a \$100,000 fine if I violate the First Amendment.

FRIESEN: Again, if you violate it. So again, it'll go back. At least it gives you, the-- the user who has been banned, the opportunity to at least find out why you were banned and if it falls under that First Amendment.

DeBOER: So if it falls under the First Amendment or if we don't know, because it's a question of whether or not it's obscene for the First Amendment or not, right, because obscene material would not be protected, but not obscene, but nearly obscene material would be protected. And since the Supreme Court standard is I'll know it if I see it, how do I as a business know whether or not I've fallen within the Supreme Court's very case specific I'll know it if I see it or not?

FRIESEN: So the same thing happens today without this bill. I mean, they are censoring certain words, phrases. And again, there's a long list of things that do not fall under the First Amendment. And again, when you start to parse phrases like that, I can't answer. You're going to have to ask an attorney. But again, I do believe it just sets a standard to where you actually have finally a say in maybe how they're going to address [INAUDIBLE]

DeBOER: The notice requirement isn't a problem for me. The problem is this \$100,000 fine that they'll get for something that they don't know beforehand whether or not it's going to be considered within First Amendment purview. And also, I mean, these cases get argued all the time with whether something very fact specific is within the First Amendment or just outside of the First Amendment.

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FRIESEN: Again, I don't feel as though a \$100,000 fine will impact any of the decisions these companies make. And as time goes on, these questions would be moot.

DeBOER: I mean, would you like to get a \$100 fine? I don't think that'll affect your business very much as a business. But would you like to get one because some law somewhere said you can't figure it out, we might do it. We don't know.

FRIESEN: This is up-- this is up to the Attorney General to do, not just some random law firm.

DeBOER: But the Attorney General then is in charge of creating some kind of digest of First Amendment law that is then going to potentially change and also then the-- the Facebook or the [INAUDIBLE]

FRIESEN: Again, I'm just giving-- I'm giving the opportunity there for that discussion to happen.

DeBOER: OK, thank you.

LATHROP: I don't see any other questions for you.

DeBOER: Wait.

LATHROP: Oh, I'm sorry, Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Senator Friesen, for appearing today. Sort of the same question I asked in the other hearing. Do you know what the scope of the problem is? I mean, is it 1 percent, one-tenth of one percent? What percent of speech is blocked right now?

FRIESEN: I have no idea. I think all of us know someone who has content blocked on Facebook or Twitter. I know several of my friends have. I'm not a big user of Facebook and Twitter. I used to use it more. But since it's become so, I guess, angry voices, you really can't have a good dialogue on there. But I do know several of my friends, just because they reposted something, have been banned from-- from Twitter or at least censored temporarily. And so I do not know the percentage, no. The number of users worldwide and the hundreds of millions and I have no idea in other countries, again, how many people could have been affected by this.

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BRANDT: So do you know, is this legislation you're proposing unique to Nebraska? Do other states, have they already enacted this? Is there-- is there another proposal out there, something that's similar to this?

FRIESEN: I think this type of legislation is unique to Nebraska. We did look at-- there's a lot of other states attempting to do things. This is kind of a mix of what my legal counsel found that he thought would make it a better bill. So, you know, Andrew Vinton, my legal counsel, we-- we found links to other-- there's a lot of other states trying to do things like this. Some is just plain outright trying to pick one side or the other. And that wasn't my goal. When I-- when I brought this up, I wanted something that protected everyone's ability to use this as the public forum, so to speak. It didn't matter whether you're left or right or whether you agreed with an article or were opposed to it. I wanted you to be able to have that discussion on there and not be censored.

BRANDT: All right. Thank you.

LATHROP: Senator McKinney.

McKINNEY: Thank you. From what I've always understood, each social media platform or app has a terms and agreement, whether everybody reads it or not, they have one. Do you think it's the fault of the platform or the fault of the consu-- of the user for not reading the terms of agreement that you may be subject to being, you know, suspended or something if you say something out of bounds?

FRIESEN: I think if you look back and you would look that there's a lot of people who have been banned or censored, did not violate the terms of the agreement. The company in the end was allowed to censor or ban whoever it pleases. And so that-- there so far there has been no, I guess, past for you to contest that. Again, I don't think they always follow. I mean, you know, I think Jack Dorsey was even suspended for one of his tweets and they looked back and said it was a mistake with an algorithm got triggered. So [INAUDIBLE] that you're violating their terms of agreement there. They decide what those terms, what those violations are. And there is no set standard for you to appeal that. They just censor you.

McKINNEY: From what I do-- because I know a few people who have been suspended or banned or whatever, they-- I know Facebook has an appeal

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process that you could go through to try to get unsuspected. I'm not sure about Twitter or Instagram, but I know Facebook has it and Instagram is owned by Facebook, so I'm sure they probably have it as well.

FRIESEN: Take the case of the picture of the onion. Let's just say that you're a business and you were promoting a special event or something and suddenly you were banned from social media because of that or censored. By the time any kind of appeal process is allowed, your-- the whole idea of your-- your-- your Facebook post is now a moot point. Your time period is up. Now, there's no recourse. Yeah, they'll reinstate your suspension. But again, the reason for your whole ad or what you did on Facebook is-- the timeline is gone and then there's no recourse. They put you back on your account, but that doesn't give you any recourse, I guess, from what they've done.

McKINNEY: So is it better to just have a Wild, Wild West and have these social sites just send notices until something is taken down? Or is it better to take something down and then have an appeals process? Because I know situations where individuals have been attempting to commit suicide and things like that, and they've taken it down right away just to not have it on a platform. So then is it better to wait-- better for somebody to post a video, shoot somebody or killing themselves or posting a racist comment or a swastika, is it better to allow it and then say, hey, this is offensive, take it down? Or is it better to take it down and then have the appeals process?

FRIESEN: I think some of the things you mentioned are covered under the First Amendment rights. And so I guess from my standpoint, any time, wouldn't you have to agree that the more conversations we can have, the sooner we're going to come together? And, you know, hate speech, it's covered under different-- they have-- they have their algorithms to do that. But the times, times have changed. And this public voice that you-- this platform that you have now, if you start to censor one side or the other, I don't think that it furthers the public's ability to work through these problems. And so I guess always from my standpoint, whenever my voice is silenced or yours, you feel that your-- you don't matter. And so for now, for just allowing a company who-- who may be only interested in their shareholders is suddenly censoring something, one or the other, and silencing that voice because of whatever reason they need to determine that should be

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silenced, I feel that the more conversation there is, the better off
we are.

McKINNEY: I mean, both sides, from my-- in my opinion, have been
silent, like suspended at times for things they posted. And you can
make the argument on both sides that something on one of the sides
probably should have been taken down. I just think that, you know, we
went through a whole year of unrest because we've allowed so many
people to just post ignorant, racist things on social media and spread
propaganda. We have to do something about it. We can't just allow it
to be out there.

FRIESEN: I mean, I agree with you, I think both sides have been
censored. And that's why I don't think this is a right or left or--
both sides have been censored. And again, has it served the public
purpose when you have this public platform for this discourse to
happen? We've always said we don't condone violence. We don't
[INAUDIBLE] racist remarks. Those are all I think the society agrees
with. And you're going to have these outliers that always kind of
break the rules. But if you don't have that public discourse and you
just silence them and say you can't speak, I don't think it furthers
our community coming together.

McKINNEY: I mean, I'm all for a good discussion, no matter who it's
with. I just think it's a fine line, especially once you venture down
some roads and some stuff just shouldn't be said, but thank you.

FRIESEN: I will agree that it is a fine line and so I'm-- if there's
something that will make this bill better, I'm open to those
suggestions.

LATHROP: You put a limitation on this for only what I regard as the
bigger companies. How come? Why-- why are we not doing this to the
startups? Because there's-- there's got to be a startup or there is a
startup that doesn't have this many users that won't be bound by the
same rules.

FRIESEN: From-- from my perspective, I thought once you reach a
certain level where you can actually change the direction of society
and heading somewhere, when you reach that level of influence is where
you-- you matter. If you've only got 50 users, that's like having a
living room chat.

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LATHROP: Well, that's not even close to where your cutoff is.

FRIESEN: Right. I am-- I want it at that level to where you are large
enough that you are the public square.

LATHROP: OK.

FRIESEN: You've risen to that level.

LATHROP: OK. I don't see any other questions. I want to make sure
Senator Pansing Brooks doesn't have any. I don't see any. All right.
We'll look forward to the testifiers--

FRIESEN: Thank you.

LATHROP: --and your close. You're sticking around for closing.

FRIESEN: I will stick around.

LATHROP: OK, great. We will take proponent testimony at this time.
Good morning, welcome.

ANDREW BISH: Good morning. I actually didn't know I was going to
testify on this, but I'm glad Senator Friesen introduced this. I give
a unique perspective. I have been a--

LATHROP: Let's have your name and spell it for us, will you?

ANDREW BISH: Oh, sorry. My name is Andrew Bish.

LATHROP: Spell your last name.

ANDREW BISH: B as in boy-i-s-h.

LATHROP: OK, go ahead.

ANDREW BISH: So I have been routinely banned and let's see, censored
by social media companies because of a particular type of agriculture
I work in. I work in hemp. Most of us are aware of that. And did you
know that according to social media companies, I work in the drug
industry? I promote drugs. I promote trafficking of drugs. I do some
very, very interesting things, according to Facebook and Twitter. We
actually had been censored by YouTube because we were harvesting hemp
in a field with a tractor, you know, perfectly legal hemp. I want to

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remind everybody that the Farm Bill of 2018 legalized hemp federally. But yet today I don't have some of the same opportunities from an advertising or outreach platform that some other places have. We all know that barley is used to make beer, but I've rarely seen where people have posted barley photographs on the Internet and been censored in the same way that our business has been censored. We spent approximately \$10,000 running an ad in Times Square that we ran for six months asking Facebook to please stop censoring hemp. So when we talk about engaging in the conversation with the social media companies, I can tell you that my industry has been involved with engagement in the social media companies for the last several years to no effect. And they are not interested in any type of conversation about, you know, something different than what their current opinion is. I'm a legal citizen. I run a legitimate business. And ultimately I'm not being allowed the same opportunities because of this censorship that Senator Friesen was speaking about. I don't-- I don't make any hate speech. That's not anything that I'm impacted by this. And I'm sure that that's what a lot of people are, you know, what the general concern is, potentially. But I just wanted to share my perspective as I was listening to this, that you have a business in the state of Nebraska that absolutely is being impacted by policy set by social media that don't really align with reality. That's all I have to say. Thank you.

LATHROP: OK, well, we're glad you stepped up and gave us your thoughts. I don't see any questions for you this morning, but thanks for being here.

ANDREW BISH: Um-hum.

LATHROP: Next proponent. Anyone else here to speak in favor of LB621? Seeing none, anyone here as an opponent?

***SPIKE EICKHOLT:** My name is Spike Eickholt and I am the registered lobbyist for the ACLU of Nebraska. We are opposed to LB621. This measure raises important and complex issues including but not limited to the Frist Amendment, private speech, political speech, corporate speech, forced speech, corporate risk and liability, net neutrality, and federalism. We recognize that social media is one of the world's most important forums for the exchange of political and personal viewpoints. Social media enables users to communicate with one another with unprecedented speed and efficiency and has dramatically changed

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how people share and receive information. The ACLU has consistently pointed out that social media companies like Facebook, YouTube, and Twitter, are massive speech platforms responsible for the speech of literally billions worldwide. These issues impact speakers and speech across the political spectrum. The ACLU has consistently raised concerns that that these companies' content moderation policies are difficult to understand and frequently weaponized to censor speakers who hold unpopular views. When they censor speech, they often get it wrong and their rules are not transparent, they're not transparently applied, and there's no clear or accountable due process to correct errors. We appreciate that when the social media companies restrict or limit speech based on viewpoint or content, this is seemingly inconsistent with the spirit of free speech but nothing implicated by this measure is clear cut or easy. Generally speaking this proposal is government interference with free-speech and as such should be viewed skeptically. Anytime you restrict speech you have to be concerned about actual or unintended consequences related to government drawing the lines or picking winners and losers and chilling effects for any speech but especially controversial or unpopular speech that could result in members' accounts being suspended or restricted by companies. Moreover, the regulation of social media companies of the size targeted by this bill, and attendant hefty fines and other penalties, are most likely a federal matter. As a practical matter, Nebraska and other states are most likely preempted from imposing this type of statutory oversight on companies of this nature or of this type of internet activity. We pledge to continue to work with our federal delegation to update our laws to ensure our values of free expression are appropriately facilitated by the advent of new technologies. As such we urge the Committee to not advance the bill.

***KORBY GILBERTSON:** Chairman Lathrop and members of the Judiciary Committee, my name is Korby Gilbertson and I am testifying today on behalf of Media of Nebraska, Inc. in opposition to LB621. Media of Nebraska is composed of the following five organizations: Nebraska Press Association, Nebraska Broadcasters Association, Nebraska Publishers Association, Omaha World-Herald and the Lincoln Journal Star. The primary focus of this non-profit organization is to advocate for the protection of free speech rights, open meetings, and public records access. In part, LB621 states that "if the owner or operator of the dominant social media web site would have violated the First Amendment had the owner or operator of the dominant social media web

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site been a government actor, the owner or operator of the dominant social media company shall be fined one hundred thousand dollars per violation. Such action for a fine shall be initiated and collected by the Attorney General." We believe this bill is unconstitutional on its face and should not be considered by the Nebraska Legislature. The First Amendment prohibits Congress from abridging the right to free speech. This prohibition was extended to state and local governments via the Fourteenth Amendment. This protection extends to private entities and allows them to choose to limit the content they make available or allow others to make available on the platforms they control. The State may not restrict free speech rights, even by legislation that attempts to call it something else. LB621 is clearly designed to deter or punish individuals and private entities for exercising their First Amendment Rights, thus we are hopeful that the Judiciary Committee will swiftly indefinitely postpone the bill.

LATHROP: Anyone here in the neutral capacity? Welcome.

SAMANTHA FILLMORE: Hello. Thank you, Chairman Lathrop and members of the committee. Thank you for-- my name is Samantha Fillmore, F-i-l-l-m-o-r-e. I am a state government relations manager at the Heartland Institute. We are a 37-year-old independent think tank based out of the Chicagoland area. We provide policy solutions to lawmakers on every level nationally. First, I wanted to say thank you for holding a hearing today on LB621 regarding censorship or deplatforming of individuals from social media platforms. It is clear that these social media platforms have become ubiquitous and central to the political speech and discourse in our day. With the emergence of-- the emergence of these technologies have baffled those of us who remember the dial-up days in the predigital era. The emergence of these platforms promise the democratization of free speech in a way that was never imagined before. The ability for one to speak politically that only existed to partisans and political pundits suddenly became available to everyone. However, along with these newfound voices, there also come the ability to misinform, divide, and manipulate. I would like to draw attention to the fact that the amount of social media users is projected to hit 4.4 billion by 2025. A study shows that if an American teen were to create social media accounts at 16 years old, by the time they turned 70, they would have spent an average of 5.7 years on social media platform in that time, which is honestly sad. But that's my personal opinion aside. Furthermore, \$40 billion is spent annually in ad-- ad revenue in the United States for

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social media platforms. So it is clear that this-- these networks and these large big tech corporations have the ability to influence, whether it be corporate or small business successes and failures, but also the ability to shape political discourse. All of this is ample evidence to show that this is definitely an occurrence. And again, we've heard examples of the social media censorship and deplatforming of individuals. I think now we are here to possibly address big tech and challenge it for the state of Nebraska and what it means for Cornhuskers and residents of your state. Without getting into too many semantics of Section 230 of the Communications Decency Act, you-- the insulation of large tech is done in the sense that they are simply-- they claim to simply be a host. They do not have any editorial context. However, once you do begin to decide what can be there, removing is still a form of editing. These big tech companies are entering into an editorial context, and so de facto, they should start to lose the liability of the insulation of Section 230. So this is fixing a corruption in the market. I think that it-- certainly allowing individuals and sending the message to Nebraskans that they will have the potential to possibly question the censorship is very important. So LB621 is good legislation. I think that hearing it today is important and I'm open to any questions you all may have for me. Thank you.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Ms. Fillmore, for testifying today. Sort of what I asked Senator Friesen, are any other states doing this right now?

SAMANTHA FILLMORE: Yes, sir. I, again, we work nationally. I would say we've had four committee hearings just like this, this week in Utah, Montana, South Dakota. There are more slated for next week. They-- none have been formally filed yet. So I would say currently and again, we have a lot of boots on the ground, all together comprehensively there are 27 states that are working on legislation like this. Granted, it manifests in different ways based on what the sponsor legislators think might best work with the composition of their states and their state legislatures.

BRANDT: Has anybody successfully passed a bill yet?

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SAMANTHA FILLMORE: No, it has not gotten to that stage yet. We have had successful committee hearings and it will be sent to the respective floors of the House and Senate in different states.

BRANDT: And then to follow up again with what I asked Senator Friesen, and maybe you're in a better position to answer this, what is the scope of this problem nationally? Is it 1 percent, one-tenth of one percent, 10 percent? Do you-- do you have any evidence?

SAMANTHA FILLMORE: Unfortunately, I do not have a percentage number of that. Again, that is a very hard number to quantify. You would have to ask every person who's ever been on social media to report if they've ever been censored, how frequently, when. So that's very difficult to quantify.

BRANDT: OK, thank you.

SAMANTHA FILLMORE: Of course.

LATHROP: Senator Geist.

GEIST: Yes. Thank you for your testimony. And I'm curious if you know, since you're a national organization, the likelihood of Congress moving to remove immunity for big tech and calling them an editor? And do you have any pulse on-- on the likelihood of that?

SAMANTHA FILLMORE: So I work primarily with state legislatures, so I'm not super on the pulse of what's happening federally. However, it's-- based on the current climate, it probably does not seem like that would happen any time soon. No, ma'am.

GEIST: So this is needed in [INAUDIBLE] states.

SAMANTHA FILLMORE: I think, and this is, yes, I think this is needed in all states. I think it shares and shows a very important message to all of your constituents, all Nebraskans or Cornhuskers, whichever you all prefer, that they-- there is an ability to check the market. There is an ability. And what is important about this legislation is that it has Good Samaritan. We call it-- with this piece of legislation, we call it Good Samaritan rules.

GEIST: Um-hum.

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SAMANTHA FILLMORE: No incitement of violence, nothing pornographic in nature, etcetera. Those are in this piece of legislation and in legislation-- legislation moving through all the states. So I think, again, you would allow your citizens to have the ability to at least question why.

GEIST: Um-hum.

SAMANTHA FILLMORE: And if it were to get to a point of an attorney general calling it into court and say there was truly harmful, racist, violent, awful content, then obviously big tech would win the case.

GEIST: Um-hum.

SAMANTHA FILLMORE: But this would just allow if it was based purely on political speech or partisan affiliation, then that-- it would become clear and big tech would lose the case. I would also like to draw attention, sorry, to the fact that the minimum threshold for cross-state suits is \$75,000. So I think Senator.

GEIST: Would that be in damages?

SAMANTHA FILLMORE: So yes, that's in damages--

GEIST: OK.

SAMANTHA FILLMORE: --because that's in order to get it to federal jurisdiction. Yeah, that's the minimum threshold.

GEIST: Thank you.

SAMANTHA FILLMORE: Yes.

LATHROP: I have a couple of questions for you. You mentioned Section 230.

SAMANTHA FILLMORE: Yes, sir.

LATHROP: Is that an FCC regulation or where does that come from?

SAMANTHA FILLMORE: That comes from the Communications Decency Act federally.

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LATHROP: OK, the Communications Decency Act. That's the one the President wanted to see repealed.

SAMANTHA FILLMORE: Yes. Yes.

LATHROP: OK.

SAMANTHA FILLMORE: The President did do an executive order on that back in May 2020, which has since been undone, obviously.

LATHROP: Yeah, he was talking about that right up until, President Trump was right up until he left office.

SAMANTHA FILLMORE: Yes, sir, that is correct.

LATHROP: (Section) 230 is an immunity provision that makes it-- immunizes these same outfits we're talking about today from liability.

SAMANTHA FILLMORE: Yes, sir.

LATHROP: So if we have a federal regulation that immunizes them from-- from any liability, just gonna note that that's what happens when you immunize people, you can't-- you can't get your cause of action into the courtroom. But assuming that's still in place, can we pass this bill that has a provision for penalizing these guys--

SAMANTHA FILLMORE: Well--

LATHROP: --without offending Section 230?

SAMANTHA FILLMORE: Based on usage of your Attorney General within the state, you can and more importantly, the legs behind legislation like this in all states is sending a message.

LATHROP: Again, sending a message. And believe me, this is the committee that gets a lot of bills where people want to send a message.

SAMANTHA FILLMORE: Of course.

LATHROP: My question, though, is, are we offending Section 230? If we try to and let's say this passes, the Attorney General does what he does and-- and somebody files a suit in federal court with a value-- diversity claim with a value greater than \$75,000 we'll allege and

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don't we still run into you can't do that because there is immunity in
the federal law?

SAMANTHA FILLMORE: I am not an attorney, so I--

LATHROP: OK.

SAMANTHA FILLMORE: --don't feel like I'm best suited to answer this
question.

LATHROP: Well, Section 230--

SAMANTHA FILLMORE: Yes, it is-- it is federally.

LATHROP: --precludes anybody from bringing a lawsuit against these
companies.

SAMANTHA FILLMORE: It provides insulation currently based on their
regulations. Yes.

LATHROP: OK.

SAMANTHA FILLMORE: So you would-- you'd fall into a state suit and
everything. So, yes, federally you can begin to get caught up in this.

LATHROP: Yeah.

SAMANTHA FILLMORE: Yes.

LATHROP: So the preemption doctrine makes what we do in Nebraska,--

SAMANTHA FILLMORE: Yes, sir.

LATHROP: --we can't offend or go against something that's federal law,
whether it's in the Constitution, in a regulation, or in a-- in a bill
passed by the Congress, we can't do something that offends that
without violating the principle of federalism.

SAMANTHA FILLMORE: Under the--

LATHROP: True?

SAMANTHA FILLMORE: Yes, Senator, that's true.

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LATHROP: OK. And if we pass this and tried to enforce it, we would run up against Section 230, making this essentially something to send a message, but nothing we could ever employ.

SAMANTHA FILLMORE: I-- I would-- I would need to call some of my federal attorneys.

LATHROP: OK.

SAMANTHA FILLMORE: I don't, yeah, I don't want to permanently give a definitive answer on that.

LATHROP: OK.

SAMANTHA FILLMORE: That's a little bit outside of the scope.

LATHROP: OK and I'm not trying to put you on the spot.

SAMANTHA FILLMORE: No, no, it's certainly valid.

LATHROP: It sounded like you had some background on this topic. So we'll see if anybody else has a question. Before you get away, let me make sure Senator Pansing Brooks doesn't. I don't see one.

SAMANTHA FILLMORE: OK.

LATHROP: Thanks for being here today.

SAMANTHA FILLMORE: Of course. Thank you for having me.

LATHROP: Anyone else here to speak in a neutral capacity? Seeing none, Senator Friesen, you may close. As you approach, we have 13 position letters, 8 of those position letters are in oppo-- pardon me, as proponents; 5 of them are in opposition. We also have two written testimonies that were provided this morning, the first is from Korby Gilbertson representing Media of Nebraska, Inc. as an opponent; also an opponent, Spike Eickholt with the ACLU of Nebraska. Senator Friesen, you may close.

FRIESEN: Thank you, Chairman Lathrop. So, you know, maybe everybody just assumes the bill is dead already and they don't have to come discuss, but it's quite all right. So when I look at this, you know, and you talked about Section 230 and not being an attorney either,

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I'm-- I'm looking more, I guess, hadn't aimed really at that section. It was more like to me it was a breach of contract more than it was maybe with the-- that portion of Section 230 that holds them not liable. So, again, they don't have to notify you. They can seemingly censor you for almost no reason. And so there's been no path before that I've seen that anybody could take action to say that they didn't even follow their terms of their agreement in that aspect. That's the direction, but not being an attorney, I'm not going to get into that argument with anybody, I still look at it as once you've reached this level, I guess, of accessibility and building these platforms to where-- to where you become the public square and you can start to influence people's thoughts and processes by how you censor and-- and ban people, I do think that in the longer term it is not in our best interest. And so whether or not we can somehow pressure them to-- to act differently, I don't know. But I think it's a discussion we need to have, because, again, I know the-- the-- the possibility of having a good political discussion on Facebook is almost impossible. I have always tried to, you know, approach it with respect. And I respect other people's opinions. Others do not. I want to have that discourse and that discussion with them in order to further both of our understandings of how we get somewhere. And so without that discussion, I feel it hurts us in the longer term. And I'm looking for a way to approach that I guess that maybe leads us down that path.

LATHROP: It is certainly an interesting discussion that I think everybody has an interest in. This was so much easier when it was just people putting pictures of their cats on Facebook and their grandkids. Right?

FRIESEN: And that's where--

LATHROP: Getting complicated.

FRIESEN: That's where it started. And it was years ago when I first got on Facebook and Twitter, Twitter was my news account. I could go on there and I could pick and choose the content. And it was fast. It was fairly accurate. But again, just because it's on Twitter or Facebook doesn't make it true.

LATHROP: No, it doesn't.

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FRIESEN: And we don't censor because it's true or false. We just arbitrarily decide what we don't like is true or false because there's still a lot of false comments made on there. So I-- and it used to be that, yes, parents and grandparents could have a social media event there. They can follow their kids living in other states. And you can still do that if you limit yourself and do not stray off the path. But we've strayed off the path. And so I-- I [INAUDIBLE]

LATHROP: There's a lot of-- a lot of places to go when you stray off the path.

FRIESEN: Yes, there are.

LATHROP: OK, thanks, Senator Friesen.

FRIESEN: Thank you.

LATHROP: I don't see any questions. Thanks for bringing this here. I think this is an important conversation to have, and I appreciate the way people presented today.

FRIESEN: Thank you.

LATHROP: That will close our hearing on LB621 and bring us to the main event, judging from the number of people in the room, LB543. Before we begin, for those of you who have arrived later, how many people are going to testify on this bill or would like to as a proponent? Two, OK, how many as an opponent? OK, so we're probably going to be OK on the half hour thing. Just remember or be respectful of the fact that there's a number of people that want to speak today. Senator Brandt, welcome to your Judiciary Committee.

BRANDT: And thank you for having me. The pages are passing out the amendment which replaces the bill. Good morning, Chairman Lathrop and members of the Judiciary Committee. My name is Tom Brandt, T-o-m B-r-a-n-d-t. I represent Legislative District 32: Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster Counties. Today, I'm introducing LB543. LB543 would adopt the Agricultural Equipment Right to Repair Act, known as Right to Repair. It is the term used by customers, in this case farmers and independent mechanics, about having access to the tools they need in order to be able to repair equipment they already own, such as tractors, combines, center-pivots, robotic milking machines, livestock building controllers, telemetry

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systems used for guidance, and the list goes on. As we've seen with automobiles over time, ag equipment has become an elaborate web of software and sensors. While some of this software has increased the efficiency of some task, it has also allowed manufacturers to take increasing control of the repair process by restricting access to authorized dealers. Unlike the automotive industry that allows right to repair for owners and independent mechanics, LB543 only deals with agriculture equipment, not other machines that have been in other right to repair legislation. In a typical right to repair scenario, an electronic sensor notices an error and puts the machine into limp mode. The machine moves slowly but does not fully operate. When the problem is diagnosed and repaired, the error code is cleared and the machine can go back to working normally. This is what legislation like LB543 is meant to address by allowing the owner access to machine software to bring the machine back to the manufacturer's specifications. Serious repairs can still be fixed by licensed dealers. A simple fix today can start with a cost in the hundreds of dollars, but will quickly escalate to thousands of dollars after multiple farm visits by a dealership mechanic. When breakdowns happen during the narrow window of planting or harvest, they have a detrimental effect on the ag operation. Dealership mechanics can be swamped with work, and it can sometimes take days to make it out to the farm for what in many situations is a simple repair that could be performed by the customer, while precious time is lost. Original equipment manufacturers known as OEMs say the farmers have always had access to the tools they need to repair equipment and that right to repair bills would open up trade secrets and proprietary information. LB543 would not allow that to happen. Three years ago, OEMs said that by January 2021 farmers would have access to everything they need for equipment repairs. OEM staved off right to repair legislation around the country by promising to deliver access. And here we are three years later and the farmers are still struggling to get the tools promised in the agreement. U.S. Public inserts, excuse me, U.S. Public Interest Research Group, PIRG, recently published a report on Right to Repair that claims dealers and manufacturers have not held up their end of the bargain; and that it is still extremely difficult, if not impossible, for farmers to get diagnostic software tools or parts from dealers, as was promised. One example from the report is that a combine, which has 125 different computer sensors, if those sensors start showing an error code, the combine will not run, stopping harvest because the farmer does not have immediate access to the tools

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they need to fix the problem. Some farmers desperate for a solution have resorted to using software and tools of questionable origin to diagnose and repair their equipment. Others are buying 40-year-old tractors because they're more repairable than newer models loaded with software. This is getting ridiculous. I filed amendment AM284, which I passed out. This replaces LB543. We listened to the dealers and manufacturers to address their concerns, including removing language dealing with warranties, defining the term "fair and reasonable," clarifying what repair does not-- does not mean modify, and removing language allowing access to security locks. While working to address their concerns, there are still those manufacturers that will be against any right to repair legislation no matter what, and are using fearmongering about what LB543 does and does not do. Let me set the record straight. Number one, they say special interest groups that are behind this bill only want to be allowed to gain access to steal valuable source code. LB543 specifically disclaims any interest in source code. The only software requirement is the ability to restore existing embedded software back to its original state. Restoration is impossible without this access. Number two, they say farmers will use repair documentation to illegally tamper with emissions. The environment will be harmed and dealers will not be able to sell used equipment easily. Tampering with-- with emissions is not allowed in repair as defined in LB543. Tampering has been going on for years without access to repair materials and emissions tampering is illegal under federal law. It is not made legal by this bill. Number three, they say farmers will get injured repairing their own equipment. Not so. With the same tool-- tools and diagnostics is available to the dealership, farmers will be able to complete repairs the same as dealership technicians. It's insulting to farmers to say that it is unsafe for them to repair a piece of machinery they are familiar with, having owned it for years. Refusal to provide essential diagnostics only increases the incentive to find alternatives, possibly illegal. Number four, they say manufacturers already allow farmers to fix their own equipment and have for years. If this is true, why has right to repair legislation been filed in 21 states? The majority of these bills include farm equipment because farmers are exasperated. These bills would not be filed if farmers were not asking for help. If the tools already existed for repairs, farmer owners would already be using them and we would not be here today. LB543 is narrowly tailored, commonsense legislation meant to address repairs that farmers can do themselves and will save our farmers time and money and break the

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monopoly that manufacturers have over repairs. Right to repair is the very spirit of rural Nebraska. If you grew up or work on a farm or ranch, you're by your very nature an innovator. If it breaks, it is on you to fix it. LB543 has the necessary machinery Nebraskans require to fix the growing problem of repair isolation to solve problems on the farm in a timely manner. As a fourth generation Nebraska farmer, I would ask if the committee has any questions.

LATHROP: Senator Geist.

GEIST: You spoke just a second ago, you read my mind, about other states. You said 21 have filed--

BRANDT: Um-hum.

GEIST: --a bill similar to this. Have any been successful to date?

BRANDT: I don't-- I don't have that information per se. Anecdotally, I heard Vermont came out. I know Florida's is going forward. I know Montana is making a push. But outside of that, I can't tell you specifically. Maybe one of the later testifiers can answer that.

GEIST: OK.

BRANDT: We'll try and get that information to you.

GEIST: Thank you.

LATHROP: Senator DeBoer.

DeBOER: Thank you, Senator Lathrop. Thank you, Senator Brandt, for bringing this bill. If I'm a-- a seller of the original equipment, do I have to always be a parts seller then, too? Am I required to sell parts? What if I just want to sell the original equipment but I don't want to sell parts?

BRANDT: I'm sure that's your option. And I'm sure some of the opponents to this bill will represent the original equipment manufacturers. They could probably answer that better, but I don't know of any obligation to have to support the equipment.

DeBOER: OK. And then if they do sell parts or if there is someone who does sell parts, are they required, like what happens if I'm just out

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of a part? Is that a problem or-- or I don't have a-- I can't support
a certain kind of computer program diagnostic tool or something just
because I just don't happen to deal in that area. What happens to me
then?

BRANDT: In the bill, it says if-- if they no longer support that piece
of equipment, then they're exempt. But if they-- if they do support
the piece of equipment, those tools need to be made available to the
owner.

DeBOER: What does it mean "support the equipment"? Like if-- if I just
sell John Deere and there's Caterpillar, who I came up with another
brand, has a similar kind of thing but I'm a John Deere dealer and I
don't sell the Caterpillar and somebody comes in and I repair John
Deere, am I required to then repair--give them-- OK.

BRANDT: No, you just-- you just have to support what you sell.

DeBOER: OK, that's what I wanted to know. OK, thanks.

BRANDT: Yep.

LATHROP: Senator Slama.

SLAMA: Thank you, Chairman Lathrop. And thank you, Senator Brandt, for
being here and for carrying the torch on this bill. So just to clarify
your statement, so equipment that they support, if a piece of
equipment has been taken out of specs through a farmer repairing it,
shutting off the environmental stoppers, that sort of thing, would
they still be required to repair that piece of equipment, even though
it's out of environmental regulations or whatever standards
[INAUDIBLE]

BRANDT: And this is-- this is a big discussion on this bill, because
what happens today is called chipping.

SLAMA: Um-hum.

BRANDT: And so as an owner, a farmer may work with a third party to
increase horsepower on a tractor. That takes it out of manufacturer's
specifications.

SLAMA: Um-hum.

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BRANDT: And so if that souped-up tractor would come into the dealership, it's a safety concern for that dealership. And I hear stories of this all the time that maybe have 100 horse tractor, it's put out 150 horse, this thing could blow apart.

SLAMA: Um-hum.

BRANDT: What we're talking about here is-- is not about those illegal situations and particularly with exhaust. What we're talking about here is the 95 percent of the owners that want to repair their own equipment that they purchase. And what's fairly new phenomenon in farm equipment the last 20 years is all the electronics on the farm equipment.

SLAMA: Um-hum.

BRANDT: And I can tell you as a farmer, I'm overjoyed when I snap a piece of steel because I can get that off the shelf. I can fix that. But when I've got code problems, that's another story.

SLAMA: Yeah. And when it comes to LB543, do we specifically exclude those 5 percent that are souping up their tractors or getting around the specs?

BRANDT: You know, if it's an illegal operation, this bill does not condone that. You know, that's going to be up to the dealerships to handle on an individual basis.

SLAMA: OK, thank you.

BRANDT: Yep.

LATHROP: I do not see any other questions for you, Senator Brandt. I am confident you'll be around to close.

BRANDT: All right.

LATHROP: We will take proponent testimony at this time. Wendy, I'll be right back.

DeBOER: Go ahead.

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LANCE ATWATER: OK. Good morning, Judiciary Committee. My name is Lance Attwater, L-a-n-c-e A-t-w-a-t-e-r. I'm a farmer from Ayr, Nebraska, and I also serve on the Nebraska Farm Bureau Board of Directors. I'm here today in support of LB543 and the amendment on behalf of seven agriculture organizations, including Nebraska Farm Bureau, the Nebraska State Dairy Association, Nebraska Corn Growers Association, Nebraska Pork Producers, Nebraska Cattlemen, Nebraska Soybean Association, and the Nebraska Wheat Growers Association. LB543 addresses an ongoing issue of concern to farmers, whereby farm equipment manufacturers have maintained exclusive control over equipment, information and technology, in turn limiting farmers' and ranchers' ability to purchase information and tools necessary to repair their own equipment or turn to an independent third-party service technician. Production agriculture is a machinery-intense, time-sensitive business subject to Mother Nature and the needs of livestock. Equipment must work when livestock need fed and crops are ready to be harvested. Timely and cost-effective repair is vital to our members. LB543 offers a solution to this longstanding concern. However, it is important this committee know that Nebraska Farm Bureau has been and continues to be engaged in deliberations at the state and national levels with farm equipment manufacturers about addressing the right to repair issue through a private memorandum of understanding similar to the automobile industry. Due to these memorandums of understanding, vehicle owners and independent technicians can purchase information, diagnose equipment and parts needed to repair vehicles. Agriculture producers do have a great appreciation for the role that manufacturers and their local dealers play in our business and our rural communities. They're an important partner to us. With that in mind, our members feel strongly about having the same flexibility in farm equipment repair that's available in the automobile industry. Nebraska Farm Bureau and the other organizations I am representing today believe a private solution through a memorandum of understanding is better for all parties. However, such an agreement would need to be resolved before we would step away from LB543. Our members want to be able to do the same things for their own equipment that farm technicians can do to our equipment when we go to a dealer. We are not seeking the right to modify farm equipment, only to repair it. Furthermore, we are not interested in the broader right to repair discussions surrounding off-road vehicles and consumer electronics. In closing, I would reiterate that unless an agreement can be reached with the equipment manufacturers at the national level, LB543 is a

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solution we intend to pursue. We encourage the committee to support and advance the amended version of LB543 to General File to continue these important conversations. Thank you. And I'd be happy to take any questions regarding this or how this bill could impact my family operation.

LATHROP: OK. Any questions? Senator Slama.

SLAMA: Thank you, Mr. Chairman, and thank you very much for being here today, Mr. Atwater. I wanted you to provide a little bit more insight. So these groups would support a private memorandum similar to what the automobile industry, because this has come up before, specifically with the automobile industry and a private memorandum was established then. How would that directly relate to this issue and our farmers with like specific examples of how it would impact them through a private memorandum rather than LB543?

LANCE ATWATER: Well, so right now with-- so to go to the automobile industry, you can basically take your car if you need work on, you can basically go right down to your local mechanic instead of having to go to the dealership. So you have a Ford pickup, you know, you don't necessarily have to go to the Ford dealership to get that vehicle repaired. You can go to your local automobile, like I said, technician right down the street maybe. So with this in mind, with farmers right now, with our limited ability to be able to repair, diagnose our equipment, you pretty much have to go to, if you own John Deere or Case equipment, you've got to go to that dealership to have that repaired because of the technologies we have today. And so this memorandum is, again, similar to the automobile industry. But I'd also go back to what Senator Brandt said earlier. There was an agreement to try to have something in writing by January 2021. Unfortunately, we didn't get that met. And I think both sides could probably point the finger at each other on it. We know there's been a lot going on the last couple of years, but at that same point, it was January 2021. Everyone was aware that if we weren't going to be able to get to something, that we were going to pursue the legislative route. And I do say that what is in this bill and what's in the amendment that Senator Brandt has, really there's-- I don't see why the equipment manufacturers and dealers would be-- should be alarmed by what's in there, because basically this is what they'd put in a memorandum, if we could get that memorandum agreed to.

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SLAMA: Thank you.

LATHROP: OK, thanks for your testimony.

LANCE ATWATER: Thank you.

LATHROP: Good morning.

TOM SCHWARZ: Good morning. Senators, my name is Tom Schwarz, T-o-m S-c-h-w-a-r-z, and I'm a farmer from Bertrand, Nebraska. As a 60-year-old farmer, I've witnessed many changes in agricultural equipment repair. When I was young, my grandfather and father could deal with almost any repair that we needed. Over time, equipment became more complex and we turned to local dealerships and mechanic shops for more complex issues. I'm one of the lucky farmers in that I have an outstanding dealer within 25 miles of my operation. Many farmers and ranchers don't have that luxury, and mechanics may drive many hours to get to their places. We work in an unforgiving industry where weather rules our lives. A crop that's ready to harvest today may not be there tomorrow. Farmers and ranchers need the ability to have local mechanics help them with their equipment repairs. They need access to repair diagnostics and the ability to put used parts on machines and get the tractor or combine to accept them. Telling a small farmer that the company will give you access to this support, but it will cost \$8,000 a year really wouldn't help. It has to be affordable. Farmers don't need this so that they can bypass emissions or change the power settings on equipment. They just need to be able to repair it. I will freely acknowledge that if someone were to use these aids to make changes to the emission or power systems, the liability should lie with the farmer or rancher, not the original equipment manufacturer. Farmers have been taking responsibility for their repairs for years, and I don't see that changing. Manufacturers have essentially developed an unregulated monopoly on repair. I feel we can all agree that unregulated monopolies can be a bad thing. We in Nebraska don't let railroads or natural gas companies do whatever they want and charge whatever they want for their services. Why would we allow those things for equipment manufacturers? I don't even believe that it's in the best long-term interest of these equipment manufacturers to allow this to continue. A monopoly can be a great thing for a company in the short run. But over time, monopolies breed inefficiency, poor productivity, and higher costs as there is no motivation to do a better job. When copyright laws didn't go the way

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they wanted, these companies developed an end user license agreement. This beauty essentially says that when you turn the key on in the equipment, you're agreeing to this contract, one that you may not have had the opportunity to read, let alone negotiate the terms to. In other words, if any of you were to come out to my farm and turn on a piece of my equipment, you agree to this end user license agreement. Problems like I've talked about are going to get worse until someone stops in or steps in and stops it. I'd like to thank Senator Brandt for bringing this bill. And with that, I'll wrap it up.

LATHROP: OK, let's see if there's any questions. Senator Geist.

GEIST: I do. I-- and I will apologize for the elementary nature of my question. I'm not a farmer and don't pretend to be nor is anyone in my family. So if you-- now I understand if you change the-- the emissions and all of that, does that void a warranty?

TOM SCHWARZ: My understanding is, yes, that voids the warranty if you do that.

GEIST: OK, but these minor repairs that you're looking to be able to perform, would those void a warranty?

TOM SCHWARZ: No, because what I'm talking about here and I'm just going to give you an example, it may not be a perfect example, but let's say I've got a component on the tractor. Say the power takeoff which allows us to move power from the engine back to a machine that's behind the tractor, if the PTO goes out, I can buy a used PTO and put it in the tractor, but the tractor has to accept that new component.

GEIST: OK.

TOM SCHWARZ: It's got to be told, you know--

GEIST: It's compat.

TOM SCHWARZ: --it's OK, this thing's-- yeah, it's compat. It's going to run. And that's got to be done through a computer program.

GEIST: OK. OK, thank you.

TOM SCHWARZ: Um-hum.

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LATHROP: Senator DeBoer.

DeBOER: Couldn't resist asking a question of a farmer from Bertrand, which is where my mom's family's from so. You said when copyright laws don't-- didn't go the way they wanted, can you tell me-- I'm-- I'm not familiar with that. What happened with that?

TOM SCHWARZ: There was a-- a large disagreement or agreement, well, it's ultimately over who holds rights to-- to intellectual property. Now, this was actually generated by the movie industry and entertainment industry in a big way. And ultimately then equipment companies came into it as well. So that, you know, who-- who owns intellectual property and how long does it last? And essentially what happened was that was thrown into the Library of Congress, which seemed odd to me at the time. But I guess that's-- that's where it is. And the Library of Congress then ultimately said, OK, you know, farmers, you do have a right to repair your equipment. That shouldn't be taken away from you just because these people own this intellectual property. Well, the companies, of course, don't like that. They like their monopoly that they have and they want to see to it that it continues. And so one of the things that was brought out was an end user license agreement. I should have-- I should have, I apologize, I should have brought a copy. It's not really all that long of a piece, but what it does essentially says if you turn the key on of this machine,--

DeBOER: And you agree.

TOM SCHWARZ: --whether it's a combine, tractor, or whatever, you're agreeing to the terms of this. And again, literally, you could come to my farm. And if I had you take that off of the tractor, when you turn the key on, supposedly you're under the--

DeBOER: I appreciate that. I didn't realize that the-- that they had extended that to the-- the equipment manufacturers. Thank you.

LATHROP: OK, thank you for being here today, appreciate hearing from you.

TOM SCHWARZ: Thank you.

LATHROP: Next testifier. Good morning. Welcome.

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JACOB BISH: Good morning, Senators. Thank you for your time today. My name is Jacob Bish, J-a-c-o-b B- as in boy-i-s-h, of Giltner, Nebraska. I'm a third generation family business owner. We manufacture agricultural equipment, Bish Enterprises in Giltner, Nebraska. And I came to this hearing today to support LB543 to adopt the Agricultural Equipment Right-to-Repair Act. Four years ago, Senator Brasch introduced similar legislation to the state and was laughed out of the committee hearing with the quip, better luck next time. Two years ago, the Nebraska Farm Bureau was drafting legislation, but this legislation was killed by Bruce Rieker, who believes that the best solution isn't legislative or regulatory. It's parties working things out. While I support Mr. Rieker's magnanim-- magnanimity of the situation, it's time to stop being disingenuous. In late 2018, John Deere and other manufacturers did promise to provide these tools by January 1, 2021, and they have not held up their end of this bargain. Today, the Nebraska Farm Bureau supports the right to repair. Nebraska farmers support the right to repair. Small businesses support the right to repair. And Nebraska citizens, your constituents, support the right to repair. Today is the time to take genuine action to support our farmers, not tomorrow, not next year, not better luck next time. We must support our farmers, we must support the integrity of our nation's food security, and we must support the right to repair. Today, 21 states are debating some form of right to repair legislation. Nineteen-- 21 states have groups working to protect consumer rights, from consumer electronics to specialized equipment such as agricultural machines and medical equipment. John Deere, Apple, General Motors and many companies are working hard in those states to suppress our consumer rights. Nebraska needs to be the state to stand up and support our farmers' right to repair agricultural equipment. Thank you again for your time today. I support LB543 to adopt the Agricultural Equipment Right-to-Repair Act.

LATHROP: All right. Senator Slama.

SLAMA: Thank you very much, Mr. Chairman, and thank you very much, Mr. Bish, for being here today. Just to clarify on the numbers, I think this was raised as a question earlier. So 21-odd states have introduced this kind of legislation. Have we seen any states where it's passed?

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JACOB BISH: The only state I know of is Massachusetts, specifically in the automotive industry. I do not know of any states that passed agricultural or consumer electronics right to repair.

SLAMA: OK, thank you.

LATHROP: OK, thank you for being here.

JACOB BISH: Yes. Thank you for your time.

LATHROP: Next testifier. Welcome back.

ANDREW BISH: Yes, thank you. Good morning, Senators. Thank you for your time today. My name is Andrew Bish of Giltner, Nebraska. I'm a third generation family business owner that manufactures agricultural equipment. And I came to this hearing to support LB543.

LATHROP: Better spell your last name for us.

ANDREW BISH: B as in Boy-i-s-h.

LATHROP: OK.

ANDREW BISH: Adopting right-to-repair legislation in the state of Nebraska is essential to support farmers and small agricultural companies like Bish Enterprises that have operated in the state since 1976. To provide some perspective, my grandfather, Harv Bish, founded our business in 1976, creating a business modifying components on a John Deere header to fit a John Deere combine because farmers needed a solution to a problem that the big manufacturers were not resolving and only asking their customer to purchase newer and more expensive equipment, not better equipment, mind you, just newer and more expensive. My father, Brian Bish, continued in his path and took over the business about 20 years ago. Today I operate the business day to day and collectively we have over 120 different combine, combine header combinations that make it possible for today's producers to save money when they need a new combine or a header. Our business benefits the farmers of the state and most states, frankly, and we never negatively impact the manufacturers. Header adapters we make so that farmers can operate their preferred equipment choices, even if that equipment is not produced by the same manufacturer. We work with companies like Headsight Indiana to allow these different devices to communicate electronically despite being wired on two separate

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systems. Farmers do this because it is often more economical and less wasteful than the cost of purchasing new equipment when it is not necessary. Large agricultural manufacturers such as John Deere attempt to control private property after the sale of the item by restricting access to the diagnostic and repair information of this equipment. The restriction of data makes our job harder, and our partners' jobs more difficult, if not impossible, for them to perform, which ultimately means we cannot provide our customers with their preferred solutions. We cannot allow large agricultural manufacturers to control how farmers can produce crops and who is allowed to perform repairs. Without right-to-repair legislation, we would put our nation's food security into the hands of corporations and boardrooms. We must trust our farmers. We must trust-- we must support the right-to-repair legislation and make it illegal for large agricultural manufacturers to restrict diagnostic and repair information and tools. I've come today to the Capitol to support LB543 because I support Nebraska's farmers. I support Nebraska small businesses. And this legislation is needed for my business to support our customers and to employ our team. Thank you again for your time today, Senators.

LATHROP: I don't see any questions for you. Thanks for being here, Mr. Bish.

ANDREW BISH: Thank you all.

LATHROP: Good morning and welcome.

WILLIE CADE: Good morning. Thank you, Chairman. My name is Willie Cade, C-a-d-e. And thank you, rest of the committee, for the time today to allow me to testify. I'm a member of the Nebraska Farm Bureau and a board member of Repair.org, an international organization on right to repair. I'll keep my remarks brief. I'm also the grandson of Theo Brown, who was board member of John Deere for 30 years and headed the Research and Develop-- Development Department of Deere. During his lifetime, my grandfather earned 155 patents. One of his earliest patents involved the manure spreader. Some people think it went genetic. I have three concepts that I want to provide today. One, parties agree that farmers should be able to fix their own equipment. Two, now is the time to move on LB543. And three, we need your help to make this happen. Senator Brandt's statement of intent for this legislation "would allow farmers to fix their own machinery" is quite right and necessary I believe. The Association of Equipment

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Manufacturers and the Equipment Dealers Association also agree, as evidenced by their statement of principles posted on the Internet, where they say AEM and EDA reiterate their joint commitment to provide end users with the information and tools needed to maintain, diagnose, and repair their equipment from the-- from 2018, over two years ago. And this printout here of their principles on the back of my testimony. That same statement said that January 1 was the date. We have waited and they're still not provided the information. We're still waiting. In 2012, Massachusetts passed the right-to-repair legislation for automobiles. Only after that legislation was passed did the automobile manufacturers agree to a national plan to implement right to repair for automobiles, only after that legislation was passed. Please help us get a binding agreement with AEM and EDA. As opponents to this legislation present their side, please don't believe their sound and fury. In short, parties agree the time is now and we need your help. Thank you.

LATHROP: OK. Any questions for Mr. Cade? I do not see any. We have--

WILLIE CADE: Just one piece. There's 21 states who have legislation, 33 bills. Four of them are ag only.

LATHROP: Oh.

WILLIE CADE: That are currently--

LATHROP: A lot of them deal with autos and electronics then.

WILLIE CADE: A lot of them are general, yes.

LATHROP: OK, very good, appreciate that information too. All right. Next proponent. I appreciate two things: that we're doing this in an orderly way, and you guys have figured out how to do this. That doesn't always happen. And that you're observing the masks and we appreciate that courtesy as well. Good morning.

JERRAD STROH: Good morning. My name is Jerrad Stroh, J-e-r-r-a-d S-t-r-o-h, and I'm a farmer from Juniata, Nebraska, which is just west of Hastings. So my testimony is in favor of LB543. And it's probably more anecdotal because a lot of the things that the previous gentlemen have talked about, I've lived. So yeah, I simply want to have access to all the diagnostic features of the equipment to be able to-- to perform repairs in a timely manner. Farmers are inherently

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independent. And maybe I'm on the extreme end of that because after I graduated from engineering school, I came home to farm. And I-- that's-- that's the part that I enjoy is modifying and improving and adapting equipment to my-- serve my purposes. But when something goes wrong and you have to wait on a technician to come out and diagnose your equipment for you when it's something-- something simple, many times they've plugged in the-- the equipment diagnostic terminal and said, well, your fuel filters are plugged. Well, gosh, I could have fixed that on my own. So I've-- I've often wanted to have that ability. Like with an automobile, you can go to the parts store and buy an \$80 code reader and, you know, find out specifically, you know, down to what cylinder is misfiring. So I want that-- that detailed information when something goes wrong with my equipment. You know, during-- during the compressed seasons, there's not enough technicians to go around. And sometimes you're on a waiting list because of that. And I've often said with the cost of new machines these days, maybe that EDT ought to be included in that package. I wouldn't think it would be that much more expense and then to have the software updated to-- to be able to-- to do the diagnostics. Personally, I'm not looking to alter the performance of the equipment in any way, horsepower or emissions-wise. Like was mentioned earlier, third-party vendors are already doing that if somebody wants to have that done. So, yeah, I would like to be able to install-- there's also software updates on equipment. I'd like to be able to install those myself too. You know, our technicians are great. They're good guys. I value their opinion. But if I can take a little bit of the load off them and do that myself and save myself the expense, that would be a great deal. So I support LB543.

LATHROP: OK. Can I ask you a question?

JERRAD STROH: Sure.

LATHROP: If you-- if you're-- let's use your clogged fuel filter, for an example. You're driving your combine, you know, you have a window of time to get all the harvest done. Combine goes down. You call a service tech right now. Walk me through what you're paying. So are they charging you mileage to come out?

JERRAD STROH: Yes.

LATHROP: And some kind of [INAUDIBLE]

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JERRAD STROH: I believe there's a minimum fee and it varies from dealership to dealership. And pretty standard is \$180 just to walk out the door and come to your farm.

LATHROP: OK.

JERRAD STROH: And then there's mileage on top of that. So-- and then there's a trip back, too, so.

LATHROP: Do they charge you to plug in the monitor that reads the code that tells you the fuel filters [INAUDIBLE]

JERRAD STROH: I believe once they get there, it's-- it's-- that's not an extra fee. It's under the hourly service charge, which is probably \$130 an hour, \$120 an hour to do that.

LATHROP: OK.

JERRAD STROH: But what happens is you-- the machine will-- will give you a warning code. And a lot of times you can go look up that warning code in the owner's manual and it says, call your dealer. And then they plug in the EDT and say, well, low fuel rail pressure. You know, that-- that's something that could have--

LATHROP: You could buy the part and put it in yourself.

JERRAD STROH: Right or if they're on the shelf at home and I could just go get it and put it in.

LATHROP: Is this-- I'm a little surprised that this doesn't show up on your dashboard like--

JERRAD STROH: It does.

LATHROP: Does it say your fuel filters out or it just says like my car, check engine.

JERRAD STROH: It has check engine light and then normally a code will come up. And then you have to go to that code list. And it seems like the code lists are getting more and more diluted. And so they're not even giving you the most basic information for, you know--

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LATHROP: But you can't find that online. If you have a John Deere, you
can't go to their website [INAUDIBLE]

JERRAD STROH: Possibly if you go to like an Ag Talk website that
somebody has experienced it before, you can put it out there. But that
takes time to-- to find too.

LATHROP: Search.

JERRAD STROH: Yeah.

LATHROP: OK, well, thanks for answering that question. I don't see any
others. Thanks for being here this morning.

JERRAD STROH: Thank you.

LATHROP: Next proponent. We're going to have time for probably two
more proponents and then we'll go to opponent testimony.

KEVIN KENNEY: Thank you, Senator.

LATHROP: Welcome.

KEVIN KENNEY: Senator Brandt, thank you for introducing the bill. My
testimony has evolved just in the last half hour just listening to
everybody.

LATHROP: Let's have you give us your name and spell it.

KEVIN KENNEY: OK. My name is Kevin Kenney.

LATHROP: Could you spell your last name, Kevin?

KEVIN KENNEY: K-e-n-n-e-y.

LATHROP: Very good. Go ahead.

KEVIN KENNEY: So my testimony's evolved. I don't want to repeat
myself. I value the questions that were answered or asked and
answered, and I'm going to bring up some highlights of what got us
here and what I see as a solution. My background is I graduated from
UNL ag engineering and I worked probably 10,000 hours in the last 10
years on equipment systems on precision ag, and right to repair. So
ask me the hard questions, whatever, however you guys are interested.

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The-- the thing that I want you to point to is the spirit of the American farmer. I had a farmer send me a text this morning and he wanted me to read it. His name's Kellen Ryan [PHONETIC]. He's a West Point Academy appointee, Army. Now he's a farmer. So he said a quick Google search says 92 percent of Nebraska is utilized for agriculture. One in four jobs are ag related. Cash receipts for marketing contribute \$21 billion. I guess agriculture is important. And that's why I think that the senators should take time to look at this bill and he's for it. So-- and a lot of things we do in life, it's kind of like playing hockey, like you're Wayne Gretzky. It's not where the hockey puck is. He was successful. He skated to where the hockey puck was going to be. And part of-- the two issues I have the biggest problem with is that the AEM and EDA have put in papers that they don't like people messing with emission systems. The last I talked, any of these dealers, the people that have testified the prior two hearings don't have a patent on emissions systems. I do. The second thing is that they've accused right-to-repair advocates of wanting to go out and hack source code. My emails that I sent you this morning are complicated, but a lot of you folks are lawyers. Please double-check everything. I want especially the AEM and EDA to read this. We have open source software running tractors from Windows CE 2003, Bill Gates knew it was junk so he threw it in the ditch in 2005 and made it open source and they banned it in 2013. Our equipment systems in agriculture have not had a safety or security update in eight years and that's what they're accusing us of stealing. Hell, I wouldn't take it if it was given to me. You follow me? We need to wake up. This is a security breach, number one. Your computers at home wouldn't have something like that. If you've got Windows 10, you're getting updated every other time Windows wants to update it. Linux is updated. Your cell phones, they're all updated. We have rolling hot spots with tractors vulnerable to a cyberattack. And they accuse us of wanting this software to hack, to manipulate. So with that, I want to answer a couple of quick questions. Senator Slama said chipping, she was concerned about that. I am too. This isn't about chipping, but that is legal. The Copyright Office ruled farmers have the right on farm innovation to change anything they like and they could hire third parties to do it. And that was a letter from the Library of Congress. Senator DeBoer, she wanted to know about U.S. copyright concerns, modifying a combine by third parties, extended use license agreement. OK, this is about the software that-- that is called apps. The operating software, which I just explained, has to be run by the

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operating [INAUDIBLE] public source. That's free software that these
companies didn't even pay for. That's a real huge point to remember.
We want access to the code so we can put our own stuff on these
tractors and come up with our own products.

LATHROP: Mr. Kenney, we got one more person that's waiting.

KEVIN KENNEY: You bet. Any questions?

LATHROP: And we're trying to do this 30-minute thing, but we very much
appreciate your expertise and being here today.

KEVIN KENNEY: Yep. Thank you.

LATHROP: Thank you. Welcome.

VERN JANTZEN: Good morning, Mr. Chairman, members of the committee. My
name is Vern Jantzen, V-e-r-n J-a-n-t-z-e-n. I operate a farm outside
of Plymouth in northeast Jefferson County. I also serve as the vice
president of the Nebraska Farmers Union. Our president, John Hansen,
is not able to testify today in person. So he asked me to come out of
hibernation and offer my testimony as a representenant--
representative of our organization. The subject covered by this bill
as amended has been the subject of concern during policy debates
during our annual state conventions for many years. And we have an
item in our policy handbook that supports the fair repair and
right-to-repair legislation that would allow farmers and independent
mechanics access to diagnostic software, information, and other tools
in order to repair modern equipment. The farm equipment that you can
purchase today is often a complex piece of machinery that will contain
more than one computer, along with software monitors and sensors to
allow the equipment to be operated in the most efficient manner
possible. This is a marvel of engineering until something goes wrong
and the operator needs to figure out what is wrong. Many times there
will be a code displayed to indicate what the problem is. But without
a manual or diagnostic tools, the code-- code will mean nothing to the
operator. A call will need to be made to the equipment dealer for
assistance. Over the years, equipment dealerships have consolidated
and often there's only one dealer for the entire county. Depending on
your location, you will wait until a mechanic is available to come and
you will not only pay for the time he works on your broken machine,
you will also pay for his time and travel to your location and back to

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the dealership. Most farmers will tell you that downtime-- most farmers will tell you that downtime is money lost during planting and harvesting operations. This legislation provides the equipment operator or a local mechanic the ability to obtain the tools necessary to diagnose a problem and then repair can be made or more expertise can be called in. There are many farmers that are comfortable trying to diagnose equipment problems. If they have the proper tools or they have a neighbor or a local mechanic that would be able to fix a problem if they have the tools to figure out what is wrong. This legislation deals with the right to repair and not to modify, and that is an important distinction. The automotive industry has had to deal with this issue and agreements have been reached to allow nondealer mechanics to obtain the tools to diagnose and repair recent models of cars and pickups. I like the option to support my local repair shop with my business. One of the underlying issues that this legislation is attempting to address is what are your rights and your choices when you need to repair a piece of equipment? When you buy a piece of equipment, how much of this machine do you really own and control? Most of the manufacturers of farm equipment will inform you that all of the technology in your equipment is proprietary and they or their representatives are the only ones allowed to deal with the problem that occur. Is this interpretation acceptable or does this give the manufacturer too much control over how and when you use your equipment and the data that it can generate? I think this legislation is a good compromise and I would encourage the members of this committee to move this bill as amended to the floor of the Legislature for discussion. Thank you.

LATHROP: All right. Well, thanks for being here and standing in for the president or the-- John Hansen.

VERN JANTZEN: You bet. Thank you.

LATHROP: All right. It's good to hear from Farmers Union.

***EDISON McDONALD:** Hello, my name is Edison McDonald, and I am the Director of Government Affairs and Development at GC Resolve. We work with communities, non-profits, foundations, institutions, law firms, farmers, tribes and those that aim to advance good causes, and we believe increasing opportunities for family farmers to repair their own equipment is vitally important. Therefore, I am here to express GC Resolve's support for LB543 the Right to Repair Act. We support Right

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to Repair legislation that would allow farmers and independent mechanics access to diagnostic software, information, and other tools in order to repair modern equipment. In addition, current anti-competitive restrictions on the sharing of such information, parts, and tools slows the adoption of, or experimentation with, new technologies that could benefit farmers, open new entrepreneurial pathways for young adults, find new uses for renewable fuels, and benefit the environment. We appreciate Senator Brandt introducing this legislation and look forward to its passage so that Nebraskans can seek economic development solutions that build upon our long agricultural-based history, and create long-lasting and thriving communities.

LATHROP: We will now take opponent testimony.

GRANT SUHRE: Good morning, Chairman Lathrop--

LATHROP: Good morning.

GRANT SUHRE: --and members of the Judiciary Committee. Thank you for the opportunity to present today in opposition of LB543. My name is Grant Suhre. It's G-r-a-n-t S as in Sam-u-h-r-e and I am the manager of customer support for the U.S. and Canada within John Deere. So my team takes care of the dealer channel across that market. And with that, I'd like to share that I take a lot of pride in our team's focus on supporting customers and ensuring that they get the uptime that they need. It's absolutely essential that a farmer gets their crop in and they get their crop out and they take care of their livestock as it's required. So I'm also very thankful that we have 63 John Deere ag dealer locations across Nebraska with over 1,450 employees. So there's a pretty significant population of Deere dealers here that support the customers as-- as best as they can. And you'll hear from one of those dealers here shortly. And first and foremost, we support customers' ability to repair their machines. We-- we certainly understand that uptime is critical to farming and ranching. And we also know this is a competitive industry. If we don't take care of our customers, there are other manufacturers and other repair suppliers that will-- will provide that service for them. So-- so we certainly want to be attentive to our customers' needs. The challenge comes when we talk about right to repair versus right to modify. And I think you've heard that on several occasions, comments about modifying equipment. And we certainly provide all the tools that are required. That's the handout

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here. This is the response to the industry commitment. We meet that commitment today. The tools that are on here are available. Senator Brandt and several other of his colleagues were at a demonstration at the AKRS dealer recently that allowed them to observe all these tools in use. And the key thing about modification and the reason we have one exemption to this is reprogramming is that we're required as a manufacturer to protect the emissions controls. We're liable to the EPA under the Clean Air Act to ensure that the emissions controls remain functional and perform. We're currently under a degradation factor audit by the EPA and we have to go gather information off the machines with 8,000 hours on them, provide that to the EPA for their audit. And if we don't comply with their requirements, they can, up to and including stop us from building engines. So the-- the motto Nothing runs like a Deere becomes a bit of a moot point if there's no engine. And that's-- that's the things that are at stake, end use audits and degradation factor audits that are-- are enforceable under the Clean Air Act. OK? The other issue with-- with modification is safety. These precision ag machines are-- are self-steering. If you've been in a combine during harvest, you're riding along, the machine is adjusting itself and steering itself at the same time. If you have modifications that could affect those steering components as an example, that very large machinery could go places you don't want it to go. So-- so we take very seriously the safety of the operators and the safety of any bystanders around the equipment. That's the level of sophistication we're at today.

LATHROP: OK.

GRANT SUHRE: The other piece we have is reliability.

LATHROP: Hang on a second.

GRANT SUHRE: Yes, sir.

LATHROP: When that red light comes on.

GRANT SUHRE: Oh.

LATHROP: We've got to have you [INAUDIBLE]--

GRANT SUHRE: All right. So just to summarize, we-- we don't believe we need legislation to enable customers to repair their machines. We've already enabled that. And what we want to do is make sure that

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customers have good value from their machines and the follow-on
customers and others are safe and get good use from the equipment and
that we stay in compliance with existing law. Thank you.

LATHROP: OK. Senator McKinney.

McKINNEY: Thank you. Just I think a couple of questions. To be clear,
if you sell a combine to somebody and they have it on their farm and
they-- and they modify it, John Deere could still be held liable if
something they modify is not within EPA-- EPA regulations?

GRANT SUHRE: So let me make sure I understand the question. If a
customer modifies the machine,--

McKINNEY: Right.

GRANT SUHRE: --is the customer liable or is John Deere?

McKINNEY: Yes.

GRANT SUHRE: Ultimately, it depends whether you could prove who
modified the machine. And if you change the software, it's often not
even visible and detectable that it's been modified. So-- so you'd
have to go through some forensic analysis to understand it's been
modified by somebody other than, you know, the original equipment
spec-- beyond the original equipment spec.

McKINNEY: Are there currently situations where someone modify--
modifies something and it's not detected who did it and you've been
held liable because of that?

GRANT SUHRE: I'm aware of some unintended motion lawsuits that are
underway in states other than Nebraska currently. And that-- that's--
that's one of the issues [INAUDIBLE].

McKINNEY: OK, because I don't know, I just always thought if somebody
bought something and they owned it, they had the right to do whatever
they want-- wanted to it. I was just-- I'm not familiar with farming
like that out here, live in Omaha. So I was just curious about it.
Thank you.

GRANT SUHRE: One-- one thing that's interesting is farming equipment
is much more sophisticated. Think of it more like an aircraft than a

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car. The multiple functions that are controlled: hydraulic systems, steering systems, that's all highly automated today to ensure we have high productivity in the field and ensure that the producers get the highest yield from their crops, things like that.

McKINNEY: Thank you.

LATHROP: Senator DeBoer.

DeBOER: Thank you, Senator Lathrop. Thank you for being here, Mr. Suhre.

GRANT SUHRE: Suhre.

DeBOER: Suhre. So why not just give them, the farmers, a list of your codes? They're complaining that they get these codes, code 39, whatever. They don't know what the code means. They have the part at, you know, in their barn. They could just put it in. Why not give them those codes?

GRANT SUHRE: So we do. We make access to those through the displays on the-- on the complex equipment. And then if they look in the operator's manual and many of them that are relevant to [INAUDIBLE] time issues are already there. And if-- if they want to go beyond that, they can order the manual for the machine, the technical manual for the machine that has all of them, including the descriptions. So-- so there-- there is varying levels of access, up to and including the same access that the dealer has.

DeBOER: Why not just give them that-- that when they buy the equipment? I imagine it's a very expensive piece of equipment, because I know you guys make good things. Why not just give them the-- the-- the whole code list? I think that would solve some of, I mean, it wouldn't solve all of this. Certainly not. But it would help them.

GRANT SUHRE: So that again, the sophisticated equipment with the displays, the access is already there. They can access it, including a brief description of what the code means, what it-- what-- what the intention is. The reality is, is on this equipment there can be, you know, in excess of 10,000 codes. That's-- that's the level of sophistication that exists in this equipment.

DeBOER: OK, so what--

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GRANT SUHRE: They can access them today.

DeBOER: Can they do it online? I mean, could they if-- if they don't get enough information there, can they go online and put in this is my model, this is the code I'm getting?

GRANT SUHRE: In many times they can. They can go on to the John Deere App store. And there are various apps around that equipment that they can download and they can download, for instance, JDLink. And they can actually, excuse me, if their-- if their machine is connected, they can even see those codes remotely.

DeBOER: What does it mean, if their machine is connected, online?

GRANT SUHRE: So a lot of our production ag equipment have telematics on board called JDLink. And through the cell phone network, that machine will actually transmit the codes off board. And the operators can see that either through Operation Center, which is an app that they can use to manage their-- their farming operation, or they can look at the JDLink app and see what codes have been-- been fired [INAUDIBLE].

DeBOER: You said that in many instances. Tell me about the instances in which that isn't true, in which they cannot go and get that information.

GRANT SUHRE: Sorry, I missed that.

DeBOER: You said-- you said that in many instances they can go online and see those things or-- or they have access to them in some way. Tell me about the instances in which that isn't true. So you said in many instances there, that implies there's a remainder. What--

GRANT SUHRE: So-- so if you have a machine that's, say, more of a mid-level tracker that doesn't have the telematics gateway on it, the telematics access, you'd have to go to the machine and look at the display itself to see those codes.

DeBOER: So the-- so if I'm a farmer and I have a piece of your equipment, there will never be a time when a code comes up that I can't look up and find out what's wrong with my machine. Is that a true statement?

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GRANT SUHRE: There will never be a time that you won't be able to look it up if you have the right information. Not all of the codes will be in the operator's manual.

DeBOER: OK.

GRANT SUHRE: But you can certainly go on our Bookstore and get the manual that has all of those codes listed in that. Or you can get Customer Service ADVISOR, which would have all those codes on board as well, because that's an electronic repository of all of that technical information.

DeBOER: You heard the testimony earlier and that didn't seem to be what-- what's-- what the experience of your users, well, I don't know that they're necessarily John Deere users, but of-- of the users was. Is there-- is there a communication problem? What's-- what's going on there?

GRANT SUHRE: I-- I understand your perspective there. And I, too, am confused occasionally by that because we have this on Deere.com. You can go into our parts and services section on our website. And you can go to the Bookstore. You can go to the dealer. You can-- you can look at your operator's manual. You can go to the App Store on your-- on your phone and see the different options that are available for a operator to get information.

DeBOER: OK, thank you.

LATHROP: I see no other questions. Thanks for being here this morning.

GRANT SUHRE: Thank you, Chairman.

LATHROP: Next opponent. Welcome.

TREVOR MECHAM: Thank you. Good morning. Good morning, Senators. Good morning, Chairman. My name is Trevor Mecham, T-r-e-v-o-r, Mecham is M-e-c-h-a-m. I am the vice president of global technology and industry relations for Valmont Industries, representing Valley Irrigation. First off, thank you for the opportunity to be able to address my concerns regarding LB543, Agricultural Equipment Right-to-Repair Act. On behalf of Valmont Industries, then Valley Irrigation and the state of Nebraska, I'd first off like to just say thank you all for your public service. As you are aware, the agricultural industry is

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thriving and it is a business that continues to be at the forefront, influencing many sectors of economy, both locally and internationally. With the growing population diminishing land available today to feed that population, it's important to understand the current development and industry and how it will affect our production and distribution of food. So as a third generation family farmer and longtime industry professional myself, my career over the past 22 years has spanned the continual changes and advancements in agriculture that we now benefit from today. This, specifically, the advancements in agricultural technology has transformed many areas of farming, including irrigation. Whether the perspective of a farmer, a participating dealer, or a original equipment manufacturer, I have had the distinguished honor opportunity to be on each side of the table. As you may know, water is the foundation of many agricultural crops in the U.S. and worldwide. What you may not know is that it also consumes approximately 80 percent of all the water used in the United States. However, as with many consumer technology trends, we have been able to leverage many benefits into our industry that conserve water and energy resources. This also includes automation of center-pivots and remote access to turn them on, to turn them off, control the flow of water, how much it needed, how much is being used and receive notifications and alerts as a grower when there are issues regarding the machine and even the crop itself. They're the reason why we invest so much time and money into our dealer network, ensuring the proper training and certification is met to achieve the highest standards necessary for proper functionality. Amidst the thousands of connections growers have, enabling them to control a variety of devices remotely, there are safeguards in place to help assure the necessary water efficiency and power management. Make no mistake, we advocate for the farmer and we do advocate for the appropriate right to repair as needed, just as I did and our family farm did, looked to serve and save on operational costs year over year. Still, there were inevitably certain things that were understood I could not repair myself without creating more potential risk. As I stated earlier, the evolution of technology is continuous innovation beyond just a familiar sprinkler irrigation will soon include hardware applications with artificial intelligence, knowing when, where, and how much to spray for pest and disease. Naturally, such applications require a higher level-- higher level of expertise to troubleshoot. Giving uncertified access to independent third parties who have not gone through proper certification and training could materially and

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negatively impact growers' attempts to produce greater year yields with greater operational efficiency. From a consumer perspective, I'd just like to say also Apple and Android application as an example that we use daily on our mobile devices, developers across the world must still achieve a certain level of accredited competency in order to be a part of that ecosystem. In the ag ecosystem, the same principles apply.

LATHROP: We're going to ask you to wrap up.

TREVOR MECHAM: That's fine.

LATHROP: All right. We appreciate hearing from Valmont.

TREVOR MECHAM: Yeah.

LATHROP: We just got to enforce that light.

TREVOR MECHAM: Sure.

LATHROP: Or we're going to have opponents that won't have an opportunity to be heard.

TREVOR MECHAM: OK.

LATHROP: All right, let's see if there's any questions for you. I don't see any. We appreciate you being here.

TREVOR MECHAM: OK.

LATHROP: We appreciate hearing from Valmont--

TREVOR MECHAM: All right. Thank you.

LATHROP: --on this important subject. Thanks, Mr. Mecham. Next opponent. Welcome.

KEVIN CLARK: Good morning. Thank you, Mr. Chairman and the committee, for allowing me to testify today in opposition to LB543. My name's Kevin Clark, spelled K-e-v-i-n, last name C-l-a-r-k. I'm the CEO and one of the owners of AKRS Equipment Solutions. We're a large, obviously agricultural dealer. We have 26 John Deere stores located through Nebraska. We employ about 700 people in the state, mostly, obviously in rural areas. We take a lot of great pride in our service

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and commitment to those communities and the service we provide to farmers. One of the things that we look at doing is making sure that we bring value to all of our customers and we do that through a significant amount of investment, both in time, resources, and training for our technicians. We spend hundreds of thousands of dollars a year making sure that our technicians are well trained, particularly through John Deere's training school. We also spend a lot of money making sure that we've got a tremendous amount of parts in stock. We literally have tens of thousands of SKUs or different parts in stock available for purchase by customers, independent repair shops. We also make sure that we've got a subscription service called John Deere Service ADVISOR that allows customers to be able to look up and diagnose equipment for anybody that wants to be able to do that, as well as making sure that the diagrams, diagnostics, schematics, and part numbers are available online and really available through our customer port. Well, while we support the ability for customers to repair their own equipment, we do not support the ability for them to be able to modify the equipment for either safety reasons and for emissions reasons as well. You often hear these-- these situations where there's generalizations about codes or long wait times for service. Again, we take great pride in being able to service our customers. We answer our phone 24/7. We're able to get out to customers in a very quick manner, even when they're long distances away. We try to make sure to get back to them certainly within 24 hours or faster at their farm location. You also hear about the chipping [INAUDIBLE] of tractors. That's one of the modifications that runs rampant in this industry. And one of the reasons that we oppose this legislation is that by allowing access and unfettered access to the software or firmware, it allows that situation for that to continue unabated, which creates those safety issues both for the farmers as well as for-- for our employees and technicians that work on the equipment. Literally with hundreds of different repair shops outside the John Deere dealer network, there is ample ability to get equipment repaired throughout the state. This legislation really focuses on the ability to modify that equipment. And by having broad definitions around "fair and reasonable," it really opens that door for a scenario where you can have that unfettered access and modify equipment outside the original specifications. So with that, I thank everybody for allowing us to testify today and I'll open the floor to any questions you may have for me.

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LATHROP: I got a question for you. So I listened to Senator Brandt's opening and I listened to the proponents and they say to a person, we don't want to modify our equipment. If we want to chip our equipment, we already know how to do that. There's somebody that'll sell them whatever they need to chip their equipment. They say we don't want to modify our equipment. The opponents are saying this will lead to modifications of the equipment. My question, because this seems to be-- it seems to be like these guys are asking for something and you're saying we don't want to give it to you because they'll do something with it they say they don't want to do. My question is, there appears in this controversy an agreement to reach an agreement by January 1 of this year. Do you know why that didn't happen? Why are we dealing with legislation instead of a memorandum of understanding between the-- the parties to this dispute?

KEVIN CLARK: Actually, I think that's a great question. You hear a lot about the MOU process over the last few years. And I think there's two primary reasons for that. One is simply who's going to be signing the MOUs and who's agreeing to what on both sides of the issue? And the second piece is what actual issue are we trying to resolve through an MOU? So what are you going to put in an MOU? What-- what issue are you trying to resolve? You know, if it's a matter of right to repair, that already exists. You can already repair the equipment. Parts are readily available. Again, we stock tens of thousands of parts. Software codes are available. The diagnostic software is available. A subscription service is available. You can do it through mobile apps.

LATHROP: Mr. Clark, where's the-- where's the disconnect? I'm pretty smart guy, listened to a lot of evidence in 40 years of practicing law. And I don't-- these guys say we need some of this-- this code. And you say the code's already available. I'm-- I don't know about the other committee members, but I'm missing it.

KEVIN CLARK: Well, I think that's the exact reason why there hasn't been the MOU process that everybody's talking about is that, again, what issue are we trying to resolve? When the information's already readily available, what do you put in MOU related to that? And I have indicated personally to Farm Bureau that we're-- we're dedicated to working with them, as well as with the dealers, making sure that if there is an MOU that can be reached, we'd be willing to do so outside the legislative process.

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LATHROP: Does that happen-- have to happen across the country, that agreement, or can it happen in Nebraska?

KEVIN CLARK: I think another great question related to the MOU process is it goes back to which parties are agreeing to an MOU, is that the Nebraska Farm Bureau or the National Farm Bureau? And I certainly think there could be--

LATHROP: Can you reach a memorandum of understanding with respect to that would be applicable to Nebraska or does this have to be resolved on a national level?

KEVIN CLARK: I think it would be better to be served on a national level to try to get around the scenario we talked about earlier, there's 21 different states that are trying to get legislation around this. If there's a way to do a national MOU between the dealers and associations and customers and National Farm Bureau, I think that would be a better process than trying to legislate it through--

LATHROP: OK.

KEVIN CLARK: --a variety of different states.

LATHROP: It's almost always better done on a national level so there's uniformity. But can it be done on a state level? Is that where the-- where the negotiations were taking place and where they failed to reach an agreement? Or was it the negotiations and the failure to reach an agreement, did that happen on a national level?

KEVIN CLARK: My understand there was efforts on both the Nebraska side as well as the national side to try to-- try to accommodate that. I was not involved in all those discussions--

LATHROP: OK.

KEVIN CLARK: --between the dealers.

LATHROP: OK, I appreciate your answers. Anybody else have questions for Mr. Clark? I see none. Thank you for being here today.

KEVIN CLARK: Thank you.

LATHROP: We're trying to sort it out.

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KEVIN CLARK: Sure.

LATHROP: We do have a farmer on there, but he's the sponsor of the bill. The rest of us are just trying to catch up. We do have two senators that need to be at Exec Board. They are meeting at noon, and so it's not-- they're not leaving because they're no longer interested or they've heard enough.

SCOTT RABER: Understood.

LATHROP: They have other-- other things to get to.

SCOTT RABER: Good morning. Good morning. I think it's still morning. Chairman Lathrop and the committee, thank you for the time this morning. My name is Scott Raber, S-c-o-t-t R-a-b-e-r. I'm with Titan Machinery. We're a Case IH, New Holland, Case Construction dealer representing 16 dealerships across the state; employ around 400 individuals in various small towns across the state. First of all, I guess I would like to say, well, I'd like to thank the farmers in the room. I myself grew up milking 400-- 400 dairy cows every morning for many years of my life. So I appreciate what you do. From our dealership's perspective, it is our goal, and I think of any dealer's mission to be partners with our customers to make their lives easier, not harder. Their success and their satisfaction is critical to our success and our satisfaction, our successes. I have handed out the, I guess, the service tool that is available from Case IH or New Holland that is very recently available for consumers to purchase, whether that be a farmer or an independent repair shop. I, as you, I listened to all this testimony all morning, am somewhat confused. It seems like there's confusion in the marketplace on what is available, what's not available, what a customer does have the ability to do, what a customer does not have the ability to do. And I will say directly to your earlier questions, Chairman Lathrop, I believe that there's a, you know, probably been a poor or a breakdown of communication on what John Deere offers, what CNH offers and has available in the marketplace. If you do look under the electronic diagnostic tool portion of what I handed out, I think it addresses a lot of the concerns and really consternation that many customers have experienced over time. As equipment has evolved, we've all had to learn. I guess we are spending a lot of time talking about equipment that's 10, 15 years old. I can say from our perspective, technology is advancing very quickly. New equipment is not clearly always the answer. But

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there is a vast and quickly evolving technology advancements that's happening now where we have the ability or the customer has the ability of new machines to repair or see what's happening to them remotely, whether it be from a dealership seat or whether it be from a grower's seat. I guess in closing, it's our opinion and our hope that we are able to-- that we're able to resolve this without further legislation and really address it as a market-based solution. Thank you. And I welcome any questions.

LATHROP: OK. Senator McKinney.

McKINNEY: Thank you. Is there a limitation on what, well you say, like some machinery is 15 years old or older, do you stop providing information on those type of machinery after a certain time or is it always available?

SCOTT RABER: Yeah, I think that-- I think that from an OEM's perspective, there is a-- there's an obligation to provide repair parts and repair information for up to 25 years in that sort, Senator. There clearly is a sunset of that. But generally speaking, the machines that we're talking about, I think would fall in this-- this range of where there would be information available. Now, like I stated earlier, I-- I'll be-- I'll be one to admit, I think that the marketing of and, you know, the distribution of said tools, what you're looking at right here, this is something that has become available to us very recently. I mean, it wasn't available to us three years ago, that sort of thing. So some of this is pretty fresh. I will say that John Deere, with their Service ADVISOR tool, they've had it out there much longer than most manufacturers. And it is quite a robust tool if anybody's had an opportunity to-- to see it.

McKINNEY: OK. How-- how often does your company communicate with farmers? I ask this because do they just purchase the equipment and that's the end of the relationship, or is there a continuous communication--

SCOTT RABER: It is--

McKINNEY: --or emails or outreach or something like that?

SCOTT RABER: It is quite rare that we sell somebody something and we have limited to no communication in the future. Most of our-- most of

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our customers are in our communities. They're repeat customers. They're customers that we have longstanding relationships with. I will tell you, I sit in-- I manage a couple of different stores. But if I were sitting in my office in Fremont, Nebraska, there's maybe one time a day somebody walks in that I don't know who they are, I don't know their first name, I don't know their families.

McKINNEY: OK, thank you.

SCOTT RABER: You're welcome.

LATHROP: Senator DeBoer.

DeBOER: There was some testimony-- there was some testimony earlier about security updates being out of date, eight years out of date. Do you know anything about how the security updates are provided for your equipment?

SCOTT RABER: I can't speak to, I guess, the-- the level of industry security updates. You know, I do know that there are annual updates for our equipment. There are annual updates for our service tools. There are required updates that we are required to do to machines, basically from an obligation to our manufacturer. To speak to the eight years out of date, I don't know that I could speak to that, Senator.

DeBOER: How does the annual update process work? Do I have to bring my equipment to you? Do you send someone out to update it? Is it-- how-- how is that process done?

SCOTT RABER: Yeah. So generally with equipment that's not of, you know, some of the newer I guess within the last two or three years, we are able to update that equipment remotely or over the air per se. Otherwise, we generally update equipment when it comes in to us for repair. We have a maintenance and inspection program where we probably go through 200 to 300, you know, tractors and combines annually for our customers. They bring them to us for inspection and repair. We will do updates at that time as well.

DeBOER: So if I have a piece of equipment and I don't bring it in for repair so that my updating is behind and I would like to get it updated, what does that cost me to go take it in and have you update the software and that sort of thing?

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SCOTT RABER: So if you've got a piece of machinery that you want updated or you want inspected per se, we offer and many dealerships offer annual inspection programs where we haul your machine in, we do an inspection, we'll do updates, we'll clean it, we'll haul it back to you. And so say like a combine for us, that's \$499. And I assure you, we've got much more than that in hauling machines around, you know, from that side. But I will-- I will say with the EST or customer facing EST that I handed out to you, there-- there is a tremendous amount of function-- functionality available to a consumer there.

DeBOER: So on this newer equipment that is connected either through the cellular service or perhaps someday through the-- the broadband service, I'm on the T&T Committee.

SCOTT RABER: That would be great.

DeBOER: For those-- for those newer types of equipments that are connected, they can do some of that diagnostic and updating of software.

SCOTT RABER: Correct.

DeBOER: OK. But it's the older stuff that doesn't quite have that connectivity to it. Those kinds of things have to be brought to-- brought in, in order to get updated. Is that correct?

SCOTT RABER: Unless-- unless the customer has a customer facing electronic service tool.

DeBOER: And that costs something.

SCOTT RABER: Depending on how much of it you need to buy. If you don't have a computer, it's clearly going to cost more than if you do have a computer, anywhere from \$3,000 to \$5,000.

DeBOER: OK, all right. Thank you.

SCOTT RABER: You're welcome.

LATHROP: Thanks for being here.

SCOTT RABER: Thank you.

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LATHROP: We're going to take one more opponent, then go to neutral
testimony, if any. Good afternoon.

MARK HENNESSEY: Good afternoon, Mr. Chairman, members of the
committee, it's a pleasure to be here today. My name is Mark
Hennessey, M-a-r-k H-e-n-n-e-s-s-e-y. I'm the president and CEO of the
Iowa Nebraska Equipment Dealers Association, and you've heard from two
of our members of our association here today. I think what we are all
in this room trying to accomplish is the same thing. We don't want to
have a producer unable to be able to operate their equipment in the
field. We want them to be able to harvest. We want them to be able to
plant. And if they want to be able to repair their equipment, we want
to be able to support that repair. We're all after the same objective.
The question you raised earlier, Senator, was aren't they aware that
they can already do this? I think when you hear and you heard about
the products that are currently available in the market today,
producers can buy diagnostic tools, equipment software subscriptions,
much the same as an independent repair or a dealer themselves procure.
This is available for them to be able to do themselves if they so
wish. The question becomes, why aren't they doing it? Well, they can
if they desire. It really does boil down to an awareness issue. Are
they aware that these tools exist? Why are we needing to have
legislation for something that's currently on the market today? So I
think the crux of the matter to crystallize it is how do we create
better awareness? Do we do that through legislation or do that through
communication? What's the best way we can accomplish this objective?
Because we all are after the same thing. And that's trying to make
sure that our producers in Nebraska can be able to plant 24/7 or
whatever schedule they want to be able to get their crop in the field
or harvest on time. That's what our producers want to have. That's
what our dealers are striving for. That's what the OEMs have been able
to provide those tools and diagnostic capabilities for all of us to be
able to do. So I just want to close that we're all after the same
objective. We don't believe we need to have legislation to accomplish
the ability to right to repair because the products are available on
the market today. We don't need to have legislation to create
awareness. That's a challenge that we have to do and we have to do a
better job of. But that's where we'd really like to be able to step up
and make sure that we are looking at this bill from the lens of are we
doing the right thing? And if we can improve, we certainly are open to

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that. But we don't think legislation is needed in order to get that
accomplished.

LATHROP: So if this passes, tell me what harm there is.

MARK HENNESSEY: If--

LATHROP: I mean, I'm not-- believe me, if you were here earlier in the
week or last week, you-- you'd understand that I'm not in favor of
passing bills based on fear of something that doesn't exist. On the
other hand, if this passed, tell me what it would do to your industry,
because it sounds-- this is the struggle I'm having. I don't know
about the others on the-- on the committee, but the equipment dealers
are saying this isn't a problem. This is a solution looking for a
problem because we're already giving them everything they need. And I
suspect Senator Brandt will have a little rebuttal opportunity, may
have a different point of view. But before you get out of that chair,
I'm going to ask you if this passed, what's the harm?

MARK HENNESSEY: I believe--

LATHROP: What-- what are we going to-- what are we going to do that
you think is a bad thing if you're already-- if all we're doing is
memorializing current practice?

MARK HENNESSEY: Yeah, well, I guess my-- to answer your question,
enacting legislation for the purposes of doing something we currently
are doing today isn't legislation that's really truly needed because
we don't know where the future of legislation could go. We don't know
how it could be amended or changed or modified going forward. And so
there's always a question about where could this lead us? Is this
really the intended purpose of this legislation to begin with? Do we
want to pass laws that really are laws we're currently doing today?
What purpose do they truly serve?

LATHROP: So you don't think this would require you to do anything or
provide anything to the ag producer that you're not already providing?

MARK HENNESSEY: That's correct.

LATHROP: OK. Well, I got a question for Senator Brandt when he sits
down. Senator McKinney.

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McKINNEY: Thank you. So are you saying that this shouldn't become law because in the future, the circumstances of your relationship with farmers might change?

MARK HENNESSEY: I can't hear, sorry.

McKINNEY: So are you saying that you're opposing this legislation because some years down the line, the nature of your relationship with farmers might change? And if this is in law and say you stop providing these services, something can be amended to force you to do something more than you're not doing or? I don't know if I'm saying it clear. So basically what I'm trying to ask is, if not in law, some years down the line, you could potentially stop providing all these services and there's no legal really reme-- ramifications for farmers to look at to hold you accountable. But if it's in law, if you stop providing these services, you will be held accountable.

MARK HENNESSEY: Yeah, I think to answer your question, don't believe we need to have a law for something that currently is in place. There's a lot of things that we do in our daily lives that there's not laws for. We just do. We just live. And so it would be for our dealers to not be able to support the producers, that's-- that's not the business that they're in. They want to make sure that those producers can plant the field and whatever they can possibly do to assure that's going to happen, they do. And they take a great deal of pride in doing that. So to answer your question about I don't-- I don't believe we need to have a law for something that currently is in place. They can buy the products. They can repair those products if they show-- so desire or they can choose to have an independent repair shop do it or bring it into the dealership. Whatever they choose to do, it's already there.

McKINNEY: Is there a plan to work on improving the relationship with farmers? Because I don't believe that Senator Brandt would have brought this legislation if it wasn't an issue. So do you already have a plan in place to improve your relationship with farmers to ensure that their needs are being met?

MARK HENNESSEY: We-- we are constantly looking to improve. I mean, I think you heard some conversation about at the national level, could we see an MOU with the American Farm Bureau? We are currently and constantly looking for ways that we can improve the delivery of

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services. I'm sure there's always opportunities to continue to-- to grow in that respect. But like I said at the beginning of my remarks, we're all after the same thing. We are all after wanting to make sure that the producer get in the field. Ideally, it would be great to have a cell service that's accessible everywhere in Nebraska and so we don't have some of these-- these-- these gaps in coverage and that's being worked on today. And I think being able to have remote access to equipment is something we're going to see going forward and allowing for, whether it's independent or a dealer or whoever to-- to be able to support that remotely, I think we'll see that. But it's not here today due to some of the communication gaps that we're seeing, but it's going to continue to evolve.

McKINNEY: All right. Thank you.

LATHROP: OK. I don't see any other questions. Thanks for being here. We appreciate hearing from you.

***KRISTEN HASSEBROOK:** Chairman Lathrop and Members of the Judiciary Committee, my name is Kristen Hassebrook, and I'm here today on behalf of the Nebraska Chamber in opposition to LB543. LB543 would require that, for electronics-enabled agricultural equipment, the original equipment manufacturer make available for purposes of diagnosis, maintenance or repair to any independent repair provider or the owner on fair and reasonable terms documentation, parts and tools, including updates or embedded software. This type of legislation is known as a "right to repair" initiative. However, it is not as proponents state, merely a bill to allow farmers to fix their own machinery. LB543 would allow unfettered access to the software that governs safety, security and emissions technology in these highly technical machines. Providing access to the onboard software in tractors and combines by untrained personnel is a dangerous and risky proposition. LB543 runs afoul of applicable safety, security and federal emissions requirements by allowing modifications to the source code by untrained independent repair personnel. This bill also requires access to on-board software and safety systems that existing dealers do not have. These dealers have invested heavily in personnel training and provide some of the highest-pay/best-benefit jobs in small towns across the entire state of Nebraska. This legislation clearly puts the livelihoods of thousands of employees at risk. Most importantly, this proposed legislation puts dealers who subsequently trade-in or refurbish modified equipment for re-sale, as well as subsequent owners of that

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piece of used equipment at risk. When either party is unaware that the equipment has been modified, it potentially puts both of parties in danger should a failure occur. And giving access to the source code undermines manufacturer's intellectual property rights that eventually will stifle industry innovation. The Nebraska Chamber is opposed to LB543 and would encourage the Judiciary Committee to not advance the bill.

LATHROP: That will close the opponent testimony. Is anybody here in a neutral capacity? Seeing none, Senator Brandt, you may close on LB543. As you approach the record, I will complete the record by noting that we have five position letters, all five are proponents. We also have written testimony: a proponent, Edison McDonald from GC Resolve; and in opposition, the Nebraska State Chamber, Kristen Hassebrook. Senator Brandt.

BRANDT: First of all, I want to thank everybody that testified today. What's unusual in the farming community is that we really rely on our dealers. We wouldn't be in business without these guys. And so I think they realize this is not a poke at them. We're trying to work together on this to get this-- to get this resolved. There were some good points made, distance to dealerships. Senator Brewer is a cosponsor on this bill. When you're up in the Sandhills, you may live hour, hour and a half from a dealership. And if you've got somebody local that can diagnose this, that helps tremendously. A little different than consumers where you can go down to NAPA and you can buy a scanner for your car. I can tell you myself, as just a moderate or small farmer, I own 10 tractors and a sprayer and a combine. We own a lot of equipment. So this affects us in a big way, especially when you realize that 92 percent of the geographic footprint of the state of Nebraska is farm. This bill is not about the right to modify. People do that today without this bill. This bill is about the right to repair. It has nothing to do with emissions. You cannot modify emissions. That's against federal law. This is about right to repair. Senator DeBoer, on parts, a customer must buy those parts for the most part from an authorized dealer. There's some-- some equipment out there where there's third-party dealers. But by and large, that's how the-- the ag network works. Whether this bill would pass or would not pass, these dealers are going to sell the same amount of parts this year as they did last year, because that's where we've got to get our parts from. Senator McKinney had a question on liability on modification. That's pretty much on the guy that did the modification.

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Now, if-- if a dealer misses it on a trade-in and it's traded in, that dealer would have to bring that piece of equipment back to manufacturer specifications. And then it becomes an issue between the dealer and that customer about who would pay for that. And they would get a good attorney like those present in this room here today. So I think that's about all the points. I think Senator DeBoer brought up the Internet issue. A lot of the modern equipment automatically downloads, providing you have an Internet connection. And next year that's going to lead to some other things that we're working on.

LATHROP: Wrong committee.

BRANDT: What?

LATHROP: Wrong committee.

BRANDT: Wrong committee, T&T. So I guess we need to ask ourselves, would these farmers have driven here today if this was not an issue? Really? I mean, we've-- we've all got better things to do than appear before the Judiciary Committee as much as you guys enjoy listening to farmers. But I can tell you, they probably would not have shown up today if they didn't feel strongly about this. So what would a reasonable person do? You know, they talk about not needing this law. Nebraska has over 40,000 statutes. We don't need any of them if everybody didn't break the law. Why do we have a speed limit? I drive the speed limit. You drive the speed limit. We have a law because maybe she doesn't drive the speed limit. So I guess that's sort of how I view the world right now. And I would be happy to take any questions from the committee.

LATHROP: So I want to ask you a follow-up to the-- the last testifier. If-- what is it, because we had every person that is opposed to this bill say that the code is available, just go on the website. Look in the owner's manual. If you got an error code and it says your engine isn't running because of code number B25, there's a place to find out what that is. So do you disagree with them? Is there something you want that isn't publicly available already?

BRANDT: OK, using--

LATHROP: What will you get out of this bill--

BRANDT: OK. Using--

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LATHROP: --that you're not getting already?

BRANDT: First of all to the-- to the code question. My personal experience as a farmer, I have owned multiple lines of equipment and there are multiple levels of operator's manual. Some are very, very good. Some of them actually have in the operator's manuals the codes and what they are. A lot of these codes, like one of the testifiers said, is call the dealership. And it seems like the newer the equipment that tends to be more of what we see. We don't get that granular definition that said, it is the third fuel filter on your combine that's causing you the problem. And yet the computer system is good enough to tell you that it's the third fuel filter on the combine, but that information isn't getting back to the owner of the machine. So, yeah, there's a lot of frustration here on the part of owners, farmers, independent mechanics. So that's-- that's somewhat with the codes. So, yeah, Case IH has a different system than John Deere, than AGCO, than Cat and-- and those are just the major ones. There's thousands of original equipment manufacturers and they're all different. And now we're talking about robotic milking machines. We're talking about telemetry. We're talking about center-pivots. I mean, people go down the road. In agriculture, it's IOT, the Internet of things. Yeah. We only have a farmer every three or four miles. But to get between those farm places with connectivity, you may have driven past 20 pivots that are all connected or-- or tractors or combines or swathers or sprayers. So there's a very high degree of technology out in rural Nebraska that the owners would like to see access to.

LATHROP: OK. Senator DeBoer.

DeBOER: So you said that there are the codes, right? Let's talk about the codes again. You said that there are potentially codes. Sometimes they say call the manufacturer. They say, eh, that's not really the case anymore. So sure. I mean--

BRANDT: Maybe, OK, maybe an easier way to explain this is that there's Android phones and there's Apple phones or computers and they all are a little bit different.

DeBOER: Sure.

BRANDT: It's the same with original equipment manufacturers and codes.

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DeBOER: Sure.

BRANDT: They're all a little bit different.

DeBOER: Sure.

BRANDT: So John Deere, how they define code and what that customer does in Case IH and AGCO, in Valley and go on down the list of this is all a little bit different in what they define and what their processes are.

DeBOER: So how is-- how does this bill help that? Because what I hear is there's an overwhelming complexity of ways to access information about what that code means.

BRANDT: This bill simply is somewhat a bill of rights for the owner that says you have a right to access that code from that original equipment manufacturer if they still provide it for those machines. Now, if I have a 20-year-old machine and they've discontinued support for that machine, and I-- and I have some equipment like that, there is no obligation on their part to supply that.

DeBOER: So-- but if it's a bill of rights that you have the right to access that code or what that code means and the manufacturers are saying we already provide that information, albeit on these various platforms that are perhaps difficult to navigate, how does this bill help make that navigation process easier?

BRANDT: Well, I don't think it makes the navigation process easier. But let's say everybody, all the manufacturers in this room are the good ones. It's like every other bill we hear. It's the ones we need to address that aren't here. So if you have 10 or 15 percent out there, that's what the bill will address. This bill really won't affect the good actors. It's like most of the bills we hear. This just-- just puts a template in place that everybody knows what the rules are.

DeBOER: OK, that helps, thanks.

LATHROP: OK. Senator Brandt, interesting morning.

BRANDT: Yes, it was. Thank you.

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LATHROP: We appreciate everybody that showed up today, both opponents and proponents, gives us a lot to think about. And thanks for being here, taking the time to enlighten the committee and share your point of view. That will close our hearing on LB543 and our hearings for this morning. We will be back at 1:30.

LATHROP: I see frequent fliers in here and I see new faces, so I will tell you, I start out and kind of lay out the rules. It takes about five minutes, but I'm going to go through that and then we'll take up the first bill. Good afternoon and welcome to the Judiciary Committee. My name is Steve Lathrop. I represent Legislative District 12 and I am also the Chair of the Judiciary Committee. Committee hearings are an important part of the legislative process. Public hearings provide an opportunity for legislators to receive input from Nebraskans. This important process, like so much of our daily lives, is complicated by COVID. To allow for input during the pandemic, we now have some new options for those wishing to be heard. I would encourage you to consider taking advantage of the additional methods of sharing your thoughts and opinions. For complete details on the four available options, go to the Legislature's website at nebraskalegislature.gov. We will be following COVID-19 procedures this session for the safety of our committee members, staff, pages, and the public. For those of you who are here and wondering where is the committee, they know this takes about five minutes, so they've become-- they've developed a habit of showing up at about the time I get to the end of this. We ask those attending the hearings to abide by the following procedures. Due to social-distancing requirements, seating in the hearing room is limited. We ask that you enter only when necessary for you to attend the hearing under consideration. The bills will be taken up in the order posted outside the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. The committee will pause between bills to allow time for the public to move in and out of the hearing room. We request you wear face covering while in the hearing room. Testifiers may remove their face covering during testimony to assist the committee and transcribers in clearly hearing and understanding testimony. The pages will be sanitizing the front table and chair in between testifiers. When public hearings reach seating capacity or near capacity, the entrance will be monitored by the Sergeant at Arms who will allow people to enter the hearing room based upon seating availability. Persons waiting to enter the hearing room are asked to observe social distancing and wear a

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face covering while waiting in the hallway. For hearings with large attendance, we request only testifiers enter the hearing room. We also ask that you please limit or eliminate handouts. Due to COVID concerns, we're providing two new options this year for testifying at a committee hearing. First, and this is the new method, you may drop off written testimony prior to the hearing. Please note that the following four requirements must be met to be on the committee statement. First, the submission of written testimony will only be accepted the day of the hearing between 8:30 a.m. and 9:30 a.m. here in the Judiciary Committee hearing room. Two, individuals must present their written testimony in person and fill out a testifier sheet. Three, the testifier must submit at least 12 copies. And four, testimony must be a written statement no more than two pages, single-spaced or four pages, double-spaced in length. No additional handouts or letters from others may be included. This written testimony will be handed out to each member of the committee during the hearing and will be scanned into the official hearing transcript, only if all four of these steps are met. As always, persons attending a public hearing have an opportunity to give verbal testimony. On the table inside the doors, you'll find yellow testifier sheets. Fill out a yellow testifier sheet only if you are actually testifying before the committee. Please print legibly and hand the yellow testifier sheet to the page as you come forward to testify. There is also a white sheet on the same table if you do not wish to testify, but would like to record your position on a bill. This sheet will be included as an exhibit in the official hearing record. If you are not testifying or submitting written testimony in person and would like to submit a position letter for the official record, all committees have a deadline of 12:00 p.m., noon, the last workday before the hearing. Position letters will only be accepted by way of the Judiciary Committee's email address posted on the Legislature's website or delivered to my office prior to the deadline. Keep in mind that you may submit a letter for the record or testify at a hearing, but not both. Position letters will be included in the hearing record as exhibits. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally, anyone speaking in a neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you have copies of your testimony, bring 12 copies and give them to the page. If you are

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submitting testimony on someone else's behalf, you may submit it for the record, but will not be allowed to read it. We will be using a three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning, and when the light comes on red, we ask that you wrap up your final thought and stop. As a matter of committee policy, I'd like to remind everyone-- Senator Dorn, you might have been able to hear a bill over in Appropriations in the time it's taken me to read this-- as a matter of committee policy, I'd like to remind everyone that the use of cell phones and other electronic devices is not allowed during public hearings, though senators may use them to take notes or stay in contact with staff. At this time, I'd ask everyone to check their cell phones to make sure it's in the silent mode. And a reminder, verbal outbursts or applause are not permitted in the hearing room, nor expected this afternoon. Since we have gone paperless this year, Judiciary-- in the Judiciary Committee, senators will instead be using their laptops to pull up documents and follow along with each bill. You may notice committee members coming and going. That has nothing to do with how they regard the importance of the bill under consideration, but senators may have other bills to introduce in different committees or other meetings to attend to. With that, we'll have the committee members introduce themselves, beginning with Senator DeBoer,

DEBOER: Perfect timing. Hi, everyone. My name is Wendy DeBoer. I represent District 10, which is Bennington and northwest Omaha.

BRANDT: Good afternoon. I'm Tom Brandt, District 32: Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster Counties.

McKINNEY: Good afternoon. Terrell McKinney, represent District 11, which is north Omaha.

GEIST: Good afternoon. Suzanne Geist, District 25, which is the east side of Lincoln and Lancaster County.

LATHROP: Senator Pansing Brooks from Legislative District 28 and our Vice Chair is currently quarantined in her home due, due to a COVID exposure. She will be participating by NET. She's going to be watching on NET and if she has a question, she's going to be texting them to me. And I will tell you, there's a little bit of a time lag so I'm going to have to do that and if you see me looking at my phone, it's

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not me jacking around. It's looking for messages from Senator Pansing Brooks. Assisting the committee today are Laurie Vollertsen, our hardworking committee clerk, and Neal Erickson, one of our two legal counsel. Our pages this afternoon are Ashton Krebs and Noah Boger, both students at UNL. With that, we're finally ready for the first bill of the afternoon, LB102. Welcome, Senator.

DORN: Well, thank you and, and yeah, yours is a little longer than ours in Appropriations. I thought maybe we had a generic form, but I guess--

LATHROP: No, I got a lot of people I'm talking to, hopefully, that are watching and know that they don't need to run down here by the busload.

DORN: Yeah, that's-- thank you. Good after--

LATHROP: Welcome.

DORN: Yeah, Good afternoon, Chairman Lathrop and members of the Judiciary Committee. I am Senator Myron Dorn, M-y-r-o-n D-o-r-n. I represent District 30, which is Gage County and southeastern Lancaster County. I'm here today to introduce LB102. This bill, in various forms, has been brought to this committee over the years to look at placing the administration of the district courts under the jurisdiction of judges in the Court Administrator's Office. I became interested in this subject when serving as a county commissioner. I saw two court offices in Gage County and thought this created confusion and was an inefficient system. I wondered if there was a better way to still provide the services, but streamline the process, which then could lead to my second reason for my interest and that was cost savings to the county. I was frustrated that the county had to pay for a district court employee salary when we had no say in their duties or job performance. So with that in mind, I am offering LB102 as a solution. For background information, the administrator of a district court is a county office. It can be run by an ex officio clerk of the district court, which will be the elected county clerk with the additional duties of running the district court, or it is run by an elected clerk of the district court. A clerk magistrate is a state employee that has similar duties and is responsible for running a county court. First, LB102 would eliminate ex officio clerks of the district court and transfer their duties to a clerk magistrate over a

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two-year period to be completed in fiscal year '24-25. The administrative functions conducted by an ex officio clerk would transfer to the clerk magistrate. Clerk magistrates are employees of the Nebraska Judicial Branch and can, can provide more consistent delivery of the administrative functions in keeping with the education, training, and oversight requirements of the Court Administrator's Office. The State Court Administrator and the county board would work out the details of the transfer. Currently, a county clerk may perform the ex officio duties. The county clerk is an elected executive branch position and not accountable to the judiciary branch, which oversees the district courts. The only duties a county clerk would lose under this transaction is administrative duties relating to the district court. All other functions remain within the county clerk. I also think if this is confusing for the public who needs to access the district court and not sure who they would speak to, the other portion of LB102 provides the option for the local county board to eliminate the office of the elected clerk of the district court when either a vacancy occurs in the office of an elected clerk of the district court or when an incumbent clerk of the district court decides not to seek reelection. This is permissive legislation, legislation and leaves the decision up to the county board only when a vacancy occurs. Currently in state statute, any county may consolidate the office of various elected positions by a vote of the people. The current provision requiring an election do not work very well logistically because when an incumbent decides not to run again, another person would be running at the same time the voters would be deciding whether to retain the office or not. By giving this authority to the elected county board, the office would be vacant and no one would be in jeopardy of losing their position. If a county board decides to eliminate the office of the clerk of the district court, the county board will work with the State Court Administrator to transfer the duties to the clerk magistrate to fulfill the duties of the clerk of the district court. The employees of the clerk of the district court will have the option to become state employees and would not incur a loss of salary. The county board may request the State Court Administrator to review office space to determine if it could be reduced. However, the final decision on the office space is to be made by the county board. In many counties, the caseload of the district court is low and the clerk magistrate could perform the duties for both positions. In fact, under current law, it states that if the district court clerk or staff are temporarily unavailable, the

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clerk magistrate shall assist the clerk of the district court in the position of the district court services. In counties with 7,000 inhabitants or more, a clerk of the district court is required by law to be elected by the voters. In counties with less than 7,000 inhabitants, the county board and the district judge determine whether there should be an elected clerk, clerk of the district court. If a decision is made to have an elected position, the county clerk serves to not have an elected position. The county clerk serves as the ex officio clerk of the district court, taking on those duties in addition to many other nonjudicial duties. An interim study was conducted in 2015 on government efficiency. Nebraska was awarded a State Justice Institute Technical Assistance Grant, allowing the National Center for State Courts to deduct-- conduct an evaluation of county and district clerks' offices. The study was presented in January of 2017. The report found that consolidation usually resulted in more consistent practices and procedures. Court offices should be reconfigured to better serve the public with one point of contact for all services. Smaller courts provide a broader range of service with the same staff. After all of this and other bills introduced over the years to address streamlining administrative duties, the intention of LB102 is to encourage streamlining administrations of the court and transfer duties to the state judicial branch. There would be cost savings to the county government. As a former county commissioner, I did not like state mandates. LB102 gives the county board the decision-making authority to decide on keeping an elected clerk of the district court. We also do not want to cause any elected official to lose their position. That is why the county board decides whether to keep the elected position of the clerk of the district court when there is a vacancy or the incumbent decides not to run again for the office. LB102 would result in a more efficient and effective system for the administration of our court system. It makes sense to move judicial administrative functions under the state judicial branch and out of an elected county executive branch office. There is also a representative here from the Court Administrator's office, Amy Prenda, that will answer-- be able to answer a lot of the-- I call the technical questions involved with this.

LATHROP: Sure.

DORN: Yeah.

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LATHROP: Very good, any questions for Senator Dorn? I see none, you got through that well. I'll let the, the court-- that people talk--

DORN: A lot of legal terms in there.

LATHROP: A lot of legal terms, a lot of clerks.

DORN: We'll be around.

LATHROP: OK, thanks. I appreciate it, Senator. We will take proponent testimony. Welcome.

AMY PRENDA: Thank you. Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Amy Prenda, A-m-y P-r-e-n-d-a, and I'm the deputy administrator for court services under the Administrative Office of the Courts and Probation, testifying in support of LB102. We'd also like to thank Senator Dorn for introducing this legislation on our behalf. The Nebraska court system is consolidated and unified, almost. In 1970, the Nebraska Constitution was amended, resulting in several significant changes to the state court system. The amendment gave the Nebraska Supreme Court general administrative authority over all Nebraska courts, eliminated the constitutional basis for the justice of the peace, consolidated the local courts and the other courts of limited jurisdiction to form a uniform county court system, and created the position of State Court Administrator. This means the Chief Justice is the executive head of the judicial branch and its courts and the Court Administrator assists in the coordination of the administrative functions of the judicial branch and its courts. However, the Nebraska Supreme Court still does not have administrative authority over the clerks of the district court. For example, the way our current system currently operates, it would be similar if the Legislative Fiscal Office or legal counsel for committees were under the executive branch. The office of the attorneys still provides a service to the Legislature, but it is independent and the Legislature has no direct authority over the function of the office or the attorney. This legislation is not meant to be a criticism of the elected clerks of the district court or the ex officio district court clerks. The intent is to finally bring the functions of the district court clerks under the administration of the Supreme Court. We believe it will provide greater consistency in court administration and greater efficiencies in supporting judges and court staff, which includes uniformity in the mission-essential functions of

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the district court. We believe this is an access to justice issue because it is the best business model for ensuring attorneys and the public receive the same service across the entire state and in every county. Beginning in July of 2023, LB102 would begin to transfer the district court responsibility currently handled by the ex officio district clerks to the Nebraska Judicial Branch. This does not eliminate the elected county position. We do currently have agreements in a number of counties where we have assumed the responsibility of the district court: Garden and Deuel, Frontier, Greeley, Boone, and Polk. Under these agreements, the counties reimburse the Nebraska Judicial Branch for a portion of the cost. However, under LB102, the Nebraska Judicial Branch would assume 100 percent of the costs for managing the district court. As for the elected district courts, as Senator Dorn mentioned, LB102 provides the local county boards the option of whether to eliminate or keep the elected position. What we have now in Nebraska is a lingering anomaly of a prior action in 1970 that needs to be completed. So we ask for your support of LB102 and I'd be happy to answer any questions.

LATHROP: Very good, thank you, Ms. Prenda. Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Ms. Prenda, for appearing today. So it looks like, according to your map here, we've got three different colors.

AMY PRENDA: Correct.

BRANDT: I don't know if you have a copy of, of this?

AMY PRENDA: Yep.

BRANDT: OK, yep. And so at least in six counties-- what you're trying to do for the whole state is what you did in the six counties, would that be correct?

AMY PRENDA: That's correct.

BRANDT: How is that working out?

AMY PRENDA: It's working out actually fantastically. So right now we do have agreements in, in the counties that you see, which are our six counties there. I do know that, that a lot of the judges especially appreciate the consistency and the support that they're getting in

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those counties. It also has been a administrative relief for a lot of those ex officio district court clerks who obviously have other responsibilities and with smaller case filings in those court, it allows them not to have to focus on more complex litigation that's coming through the court system and trying to maintain JB hour-- JBE-- judicial branch education hours, sorry, and also keeping up to date with our case management system.

BRANDT: So is there anything in that model that wouldn't work for the other 87 counties in the state?

AMY PRENDA: I think it sort of transpires to all of the other counties, similar to what agreements we put in place here as far as collaborating with the local county boards and making those transitions and putting in place the, the support that those courts needed. So we feel really confident about what we've done in these six counties and would like the opportunity now to transition this to the entire state and give the local boards the option. They come to ask us-- they've asked us a number of times and where we can help in the ex officio county courts, we're unable to do that in the elected. So this puts at least a statutory process in place that, in those counties with elected officials, there would be an opportunity for them also to realize a transition of those district court responsibilities to the court.

BRANDT: All right, thank you.

LATHROP: OK. I don't see any other questions. Thank you for being here and for that explanation. Any other proponents of LB102?

***TIM HRUZA:** Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Tim Hruza (T-I-M H-R-U-Z-A) and I appear today on behalf of the Nebraska State Bar Association in support of LB102. LB102 would consolidate court functions in a way that can benefit the public and the Nebraska court system. Transferring the duties of County Court Clerks to the Judicial branch and away from an independently elected local office ensures the statewide functioning of the courts. This in turn ensure Nebraskans consistent and important access to justice. This transition has been occurring in various counties across the state to great success. The NSBA supports the Supreme Court's efforts to consolidate court functions for operational purposes and to ensure Nebraska's courts are

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operated consistently across our state. Thank you for your time and
attention and we ask for your support of LB102.

LATHROP: Anyone here in opposition? Good afternoon.

JANET WIECHELMAN: Good afternoon, Senator Lathrop and Judiciary
Committee members. My name is Janet Wiechelman, J-a-n-e-t
W-i-e-c-h-e-l-m-a-n. I am the elected clerk of district court from
Cedar County and also the legislative liaison for the Clerks of
District Court Association. I'm here for the association opposition to
LB102. Our associates consist of elected clerks of district court and
the county clerks, ex officio clerks of district court. LB102 brings
along new theory from past legislation for the clerks of district
court. This is the elimination now of the elected county office. LB102
brings two different processes for the elimination of the elected,
elected clerks of district court. The first one is if an incumbent
chooses not to file. The timeframe for filing for reelection is from
December 5 through March 5-- February 15 and the time for new
candidates is also December 5 to March 1. So technically, if a county
board was not aware that a clerk of district court was not filing for
reelection, from February 15 to March 1, it would be a two-week
timeframe that a county board would have to meet, put it on their
agenda, and make a decision whether or not to eliminate or retain the
elected clerk of district court. Does this two-week timeframe allow
enough process time for that? Secondly, the other provision for LB102
would be the elimination if there was a vacancy within that election
time period for clerk of district court, either through death,
retiring, or other particular reason. If a county board is being
required to make a decision to eliminate a county office, should it
not include a group of stakeholders to perhaps provide integral
information to the county board for making the decision whether or not
to eliminate or retain the office? County board members wear various
hats. They have their own job. They have their own road departments.
Also, they're on other committees within, within the county and also
on regional boards, which is the mental health or the health boards.
The county board only, as stated, has oversight over the budget of the
clerk of the district court. Some county board members have taken the
invitation by a clerk of district court to see the office and see the
functions of that office. However, there, there are some county board
members who have not been within the clerk of district court office,
even upon invitation to do so. Any other provision to eliminate the
clerk of district court is done by ballot, by the voters, either by

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provision [INAUDIBLE] must file a petition or the county board has filed a resolution for consolidation of the clerk of district court. Both-- in both occasions, though, it's done by ballot ballot of the people, not simply by a decision by a county board. With that being said, you'll find out from the letters that have been received-- you have received are from county board members of both parts, of the elected clerks of district courts and ex officios, who are in opposition to LB102. As far as the ex officios, that would be a-- streamed with-- from the two-year timeframe. A majority of those from the western part of the state is-- are still providing assistances to the public in accessing the, the court system. As Ms. Prenda said, there are some counties that have already transitioned to the clerk, clerk magistrate and we are aware that a couple of counties are also looking at that provision. My statement does provide other issues in LB102 that I wanted to identify. Our association is in opposition to LB102 simply for the provision that it's made a decision by a county board. I'd be willing to stop my statement unless there's any questions for me?

LATHROP: OK. Is that one from Senator Pansing Brooks? OK, just a second. No questions. I do not see-- I'm not laughing about you. We stopped to see if Senator Pansing Brooks had a question and it says no questions.

JANET WIECHELMAN: Good enough.

LATHROP: All right, so she doesn't have any questions and I don't see any others. Thanks for traveling all the way here and letting us know your--

JANET WIECHELMAN: Thank you, Senator.

LATHROP: --your point of view. Any other opposition testimony?

SHARILYN STEUBE: Hello, good afternoon--

LATHROP: Good afternoon.

SHARILYN STEUBE: --Senator Lathrom [SIC] and members of the Judiciary Committee. My name is Sharilyn Steube, S-h-a-r-i-l-y-n S-t-e-u-b-e, and I am the clerk of the district court for York County and I also represent the clerks of the district court as a NACO board member. I have submitted my letter to you in opposition of LB102 and attached to

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my letter is page after page of committees that clerks of district court serve on. Clerks of district court proudly work with the Administrative Office of the Courts by serving on various committees that work hard to improve the quality of service that we provide to the public. We serve on the following committees with state personnel: the education committee has already been discussed by that clerk in her letter to you, so I won't duplicate that. The forms committee for Nebraska trial courts, they work to create forms that are uniform between courts and accessible to the public. This benefits the judges, attorneys, and self-represented litigants. The Clerk of District Court Association manuals committee, they work with the Administrative Office of the Courts and Justice to create and update all manuals online for easy access by the court offices. The district court association records retention committee, this committee works with the Administrative Office of the Court in updating our retention schedules so courts have uniform guidelines to follow in disposing of court records. The access to justice commission, they work to provide equal access to swift and fair justice for all Nebraskans, regardless of their income, race, ethnicity, gender, disability, age, or language. The technology committee, they consider all electronic equipment and software needed for the court offices and courtrooms in providing efficient services to the judges, attorneys, and self-represented litigants. The self-represented litigation committee, they constantly study the challenges, which self-represented litigants pose for court staff, the judiciary, and attorneys and work to provide solutions to these challenges. Serving on these committees keeps us up to date on changes in court processes. In addition, we have legislative committee that is devoted to keeping our association informed as to all changes affecting the services we provide as well as court processes. In closing, I would submit to you that the clerks of the district court are very diligent in keeping our court processes efficient and up to date. I thank you for your time this afternoon.

LATHROP: Well, thank you for being here. I don't see any questions at this time. Let's make sure-- no questions from Senator Pansing Brooks, so we're good. Thank you.

SHARILYN STEUBE: Thank you.

JON CANNON: Good afternoon--

LATHROP: Good afternoon.

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JON CANNON: --Chair Lathrop, members of the Judiciary Committee. My name is Jon Cannon, J-o-n C-a-n-n-o-n. I'm the executive director of the Nebraska Association of County Officials, otherwise known as NACO. I'm here to testify in opposition to LB102. First and foremost, we'd like to thank Senator Dorn. As a former Gage County supervisor, he's always been a good, good friend of the counties during his tenure in the Legislature. In, in this particular instance, however, we, we just simply disagree on the best way to get to more efficiency within the court system. And we also do appreciate that-- and I want to note we also do appreciate the partnership that we have with the courts. I will note that the county seat is located in the county courthouse. We don't call it the county office house, so there is a, a necessary relationship that exists between the, the court system and the county governments. NACO believes strongly in the principle of local control. You've heard us say this time and time again. I, I, I won't belabor the point too much more than, than is necessary. And the reason that we believe in it, though, is because we feel we're in the best position, as the unit of government that is closest to our taxpayers, our citizens, that we're going to be more responsive to the needs of our communities, our individual communities. In this bill, for instance, these staffing decisions are reserved entirely to the courts. And so it's not out of the realm of possibility to imagine a time when you've got one, one employee that's servicing a number of, of different counties across the state or a large land area. I mean, that, that is something that's been, been discussed before in different contexts. And, and what I'll use as an example is we've seen this movie before. We tried this with county assessors once upon a long time ago. We got all the way to the magic number of nine counties, but it let the administrative function of the assessment office go over to the-- transfer over to state government and we got to a point where, for whatever reason, no other counties were, were signing on. And for what it-- for those reasons, we discontinued that program at about 9-- 2013. Again, the thought back then was we would be able to have regional assessment offices, but by virtue of the fact that we could not get to that critical mass, it just never simply materialized. We understand that the state has an interest and they are, they are understandably interested in efficiency across a broad and diverse state. The county is interested in serving the community and so the question for this committee is which interest is best served by the sort of organization that we have for our clerks of the district court? One other thing I'd, I'd like to bring up, which is a

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fairly delicate matter, is currently you have space in the courthouse, which is where, where rent is paid by HHS. And there, there is going to come a tipping point, if we go down this road, where we have to ask the question whether it's, it's fair to have that office space, which is pretty valuable real estate, if there should be some compensation to the counties for that space, which is occupied by the court system. And we, we have not heard that, that question answered at any time during any of these conversations. We'd certainly like, like to have that discussed or at least broached. I also wanted to mention that currently there is some litigation outstanding concerning election commissioners and it's in front of the Supreme Court right now. The question-- and, and oh, by the way, Article IX, Section 4 of the, the Nebraska Constitution says that "the Legislature shall provide by law for the election of such county and township officers as may be necessary." I'm out of time, so I'll just stop right there.

LATHROP: OK. Well, let's see if there's questions for you, Jon. Senator Morfeld.

MORFELD: I like that section of the constitution, so just enlighten me a little bit more on your guys' take on that part of the--

JON CANNON: Well, yes sir. And, and, and actually our take on that is we're actually on the, on the opposite side of, of the Attorney General on, on this issue. The Attorney General has said election commissioners should be elected because it's-- there's a-- that's an office that's provided by a law that the Legislature has provided for and therefore, they should be elected. Currently, we appoint the election commissioners-- the Governor appoints the election commissioners in the three largest counties and in counties over 25,000, the county board has the option of, of appointing the election commissioner there. There's currently litigation in front of the Supreme Court that is to determine whether or not the, the Attorney General's Opinion is correct or if-- whether or not the system that we have of appointing our election commissioners is legitimate. By virtue of the fact that that has not been resolved yet, you know, at the very least, I, I think it's worth waiting until the Supreme Court has resolved the question before we say, well, let's, let's have another county office that we're, we're going to, you know, submit to a, a, a different agency. So that, that's, that's my, my rationale for, for bringing that up, Senator. Thank you.

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MORFELD: OK, thank you.

JON CANNON: Yep. Thank you, sir.

LATHROP: I got two questions for you. Are the clerks of the district
court members of NACO?

JON CANNON: Yes, sir, they are.

LATHROP: OK. And the second question, you said that you, you are here
to-- because NACO believes in local control. This bill just gives them
the option of eliminating clerks of the district court. It doesn't
mandate it--

JON CANNON: Yep.

LATHROP: --or am I misunderstanding the bill?

JON CANNON: Yeah, you're, you're, you're correct, sir. And again, I
would go back to our experience that we had with the county assessors
once upon a time. The county boards had the option of, of transferring
the assessment function over to the state. Back then, we never really
achieved a critical mass as far as being able to have regional
assessment authority and so as a result--

LATHROP: Sure--

JON CANNON: --that transferred back.

LATHROP: --but we're not making, we're not making any county do this.

JON CANNON: No, we're not and, and-- but I would also--

LATHROP: Here's, here's my last question for you.

JON CANNON: Yes, sir.

LATHROP: This would result in savings to the counties, am I right? If
they elect to eliminate the clerk of the district court, that's a
decision made by the county board and on a county-by-county basis.
That responsibility and the cost is then absorbed by the Supreme
Court--

JON CANNON: That is correct, sir.

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LATHROP: --in an election. OK.

JON CANNON: Yes, sir.

LATHROP: I just want to make sure I didn't misunderstand because when you came walking up here, I was a little surprised that NACO was coming up to oppose a bill that would save money. I think I understand the dynamic.

JON CANNON: Yes, sir.

LATHROP: OK. Any other questions? I see none, thanks for being here today.

JON CANNON: Thank you very much.

LATHROP: Anyone else here to testify in opposition to LB102? Anyone here to speak in the neutral capacity? Seeing none, Senator Dorn, you may close. LB102 has generated 64 position letters, every one of them in opposition. There are 93 counties, so somebody was asleep. We do have a letter of support from Tim Hrusa, a proponent from and representing the Nebraska State Bar Association. Senator Dorn, you may close.

DORN: Well I, I didn't realize it was that popular because Department of Health and Human Services this morning, we only had 87 letters in opposition to that, so I came pretty close to that or whatever--

LATHROP: You did, you did.

DORN: No, I-- you know, this has been brought before. When they brought it to me with the possibility of introducing this bill, I said we needed to change some things because it probably wouldn't pass again. Part of what we did was we put that in there. And as you saw on the map, all the pink counties there have an elected clerk of the district court. This gives the option for that to be a determination by the county board. The, the unfortunate part about it is not by the elected officials, but like I said, when we have an election-- when there's an opening and you have an election, you have somebody running for that office and you have the people deciding whether or not to eliminate that office, so there's kind of a crossover there. This does a certain timeline for the county board to make that decision. They don't have to make that decision. They don't have to eliminate the

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clerk of the district court. So it gives them the option in all those pink counties. Three of these count-- some of these blue counties here that-- those are the ones with the ex officio clerk. The green ones, some of those counties already had a transfer made to the clerk magistrate before. Three of those now are new. Because of this bill, they've come forward and had discussion with the court system to transfer over. There are and will be savings for the counties. It depends on how many employees they have in that district court office and how many people there are working because the county picks up the salaries for those employees. It, it's an option for them. Some counties this will work good, some counties it probably won't, but part of my discussion with the, the court system was we needed to change something or we didn't need to bring it forward again. So we'll be willing to work and see if we need to change or make some more adjustments. This is a change, though, for the counties. I've had phone calls. I have had emails too. One of the phone calls I got was how could you ever do something this stupid and stuff? So I said, well, I said I ran for the office. I think that's somebody-- I think that's-- ranks up their high too or whatever, so-- but they-- we are here. We would be glad to visit. I know the court system will be glad to visit. We would be glad to try and work in some other things if we need to, but I think this, all in all, gives them some options and it also gives-- I know Senator Brandt is always interested in this. It does give some property tax relief. I had one county show me, though, it was only 0.71 percent of 1 percent that they would have a savings in their county budget. All those little things after a while do add up. If you don't believe that, I'll let you come over and sit on Appropriations and we have all those little requests. It does happen.

LATHROP: No, no, we like it here.

DORN: You like it here?

LATHROP: Thanks, Senator Dorn. I appreciate it. Now--

DORN: Thank you for taking the 150 bills on, so--

LATHROP: Yeah, no, that's no problem. We-- we're happy with the volume.

DORN: Thank you.

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LATHROP: That will close our hearing on LB102 and bring us to LB355.
That's my bill.

DEBOER: Welcome, Senator Lathrop, LB355.

LATHROP: Thank you, committee members. My name is Steve Lathrop and I'm here today to introduce LB355. I am Steve Lathrop, L-a-t-h-r-o-p. I represent District 12 and that includes Ralston and parts of southwest Omaha. LB355 is a cleanup bill brought to me by the judiciary. It simply seeks to harmonize the language in state statutes and update obsolete language. This committee considers bills like this regularly and they don't tend to contain anything controversial. As an example, the bill removes the requirement that adoption records be kept on microfilm, allowing instead that they could be kept on any appropriate media consistent with other essential records maintained by the state. There will be someone from the Court Administrator's Office who will go through the bill section by section and be able to answer any questions you may have.

DEBOER: All right. Are there any questions for Senator Lathrop? Seeing none, I'm assuming you're going to stay to close?

LATHROP: Yeah, I got the next bill. Yes, if I need to.

DEBOER: All right. Is there any proponent testimony?

ERIC ASBOE: Good afternoon, temporary Chair, Senator DeBoer, and committee members. My name is Eric Asboe, E-r-i-c A-s-b-o-e. I'm the administrative fiscal analyst for the Nebraska Judicial Branch and here in support of LB355. I'd like to thank Senator Lathrop for introducing LB355 and as he said, it contains five statute sections to be updated. So let me give you a brief summary of what they are. Section 1 relates to bonding procedures for counties. This statute includes county court judges and court clerk magistrates. Both are state, not county officials and are currently covered by the State Risk Manager. This statute reflects a time when county courts were county based, which is no longer the case. Section 2 relates to serving summons in replevin actions. It corrects a timing problem and moves the timeline for service more in line with existing statutes. For example, currently, it's possible that a person can be served one day before a scheduled hearing, obviously not allowing a reasonable time to respond. So now service must be within three days after

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issuance of the summons. Section 3 cleans up a statute that was amended last session that paves the way for electronic filing of small claims cases. However, another portion of that statute was not amended. That portion contains the requirement of a paper form, so LB355 amends the language to refer to forms that may be, not shall be, required. Section 4 relates to what Senator Lathrop just mentioned in terms of adoption records and it allows-- it deletes the requirement of microfilm, but instead allows a preservation duplicate that meets the standards set by State Records Management Act. And lastly, Section 5 relates to an issue brought up by the Auditor of Public Accounts regarding the use of the state's tax I.D. Basically it resolves confusion over which tax I.D. should be used for bank accounts related to specific court cases and the role of the State Treasurer in protecting state assets. So LB355 updates and clarifies these five statutes. The result will be small, but important improvements in court operations and LB355 is also an ideal candidate for a consent calendar. So in closing, I request that you advance LB355 and if allowed by the Speaker, that it be placed on consent calendar. Are there any questions?

DEBOER: Thank you very much. Are there any questions for this testifier? Seeing none, thank you very much for being here today. Are there any others who would like to testify as proponents? Any opponent testimony? Is there anyone here to testify in the neutral capacity? Seeing none, Senator Lathrop-- he waives closing. For LB50-- LB355, we have zero written testimony received, zero position letters, and that closes our hearing on LB355. The next hearing is on LB386. Senator Lathrop.

LATHROP: Thank you, Senator DeBoer, members of the Judiciary Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I'm the state senator from District 12 here today to introduce LB386. LB386, every-- for those of you that are new, every two years we set the salaries of the judges of the various courts in the state. We do that by setting the salary of the Chief Justice and the others are some percentage of the Chief Justice's salary and that's set out in statute. The bill sets the salary of the Chief Justice at \$192,647.09 beginning on July 1, 2021. This represents a 3 percent increase from the current salary. It then sets the salary at \$198,426.51 beginning July 1, 2022, also representing a 3 percent increase. This was-- this-- these numbers that are found in LB386 were worked through, in my understanding, by the Appropriations Committee and I think the executive branch, and for

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that reason, we don't have Xs in there, as we often do for a later determination after we work through it with the Appropriations Committee. I will say-- just a, just a little commentary on my bill and the judges' salaries, these salaries are pretty significant numbers if you take them in the abstract. It's important that salaries for members of the judiciary be competitive with what lawyers can make in the private arena so that we are able to attract and secure bright lawyers who will become public servants in this capacity. It's also important that we recognize we're in the political branch and they don't get to set their own salary or even have a vote on it. They rely on us being thoughtful in our approach to establishing what fair pay is for people who step away from the practice of law and devote themselves to-- at the pinnacle of their careers, most of them, and, and devote themselves to public service. So I would appreciate your support of the bill. I'm happy to answer any questions you may have on the subject of LB386 or judges' salaries.

DEBOER: Are there any questions? Senator Morfeld.

MORFELD: Thanks for bringing this, Senator Lathrop. Do you think, do you think that this is-- I'm a younger attorney, Senator, and I-- so I don't know what all the salaries are for a more senior attorney in many cases, but do you think that this is competitive or this is--

LATHROP: I don't think it's overly generous--

MORFELD: OK.

LATHROP: --for the Chief Justice to met-- to, to be set some number under \$200,000 and the other judges to be less than the chief, I don't think that that is-- as lawyer salaries go, for lawyers who are-- have been around a while, have established themselves in the practice, and, and demonstrated their competency to be appointed, I don't think those are--

MORFELD: Um-hum.

LATHROP: --like, we're not giving money away here. I think, I think this is, this is fair, but it's not generous.

MORFELD: Yeah, I know and the question I-- the reason I ask is I don't think they look outrageous either, based on what I know about what senior attorneys are making at-- in, in private practice. Sometimes I

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wonder, much like even our executive salaries, I think that those are
way too low, for Governor, Attorney General, all that. I just wonder
if sometimes we should have a, a higher bump and stop being so
incremental about it to make it so that it is a competitive.

LATHROP: Well, we, we, we want to be competitive so that we get good
applicants. I know that this can become an issue when we have an
opening and we get one or two people apply to become a district court
judge. I think salary can be an important part of that, probably hear
that from-- and you might be able to ask other questions--

MORFELD: OK.

LATHROP: --from the people who are here to testify in support, but--
no, I think the-- this 3 percent and giving them raises is, is
important and these numbers don't strike me as particularly generous.

MORFELD: OK.

LATHROP: I know that there are lawyers who are contemporaries of the,
the people who sit on the bench who are making more than the-- more
than \$200,000.

MORFELD: Absolutely, thank you.

DEBOER: Are there other questions for Senator Lathrop? Senator Geist.

GEIST: I did have a similar question in that not having really studied
this much before, is 3 percent what we typic-- is that a typical
year-over-year--

LATHROP: You know, I've done-- I've carried this bill a couple of
times and sometimes we've been at 2 (percent), 2.5 (percent). I think
we have done 3 (percent) before, but it's generally somewhere between
2 and 3 (percent). We've, we've also had some years where we have been
really, really tight and asked the judges to accept either no increase
or a very small one.

GEIST: Well, I'm glad we're not doing that, so--

LATHROP: Right.

GEIST: OK, thank you.

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DEBOER: I checked to see if Senator Pansing Brooks sent me any questions. It doesn't look like she has, but if she's watching and she would like to, then she can.

LATHROP: OK.

DEBOER: All right, thank you.

LATHROP: Thank you.

DEBOER: We'll start with proponent testimony. Welcome, Mr. Chief Justice.

MIKE HEAVICAN: Thank you. My name is Mike Heavican. Heavican is spelled H-e-a-v-i-c-a-n and I am the Chief Justice of the Nebraska Supreme Court. Senator DeBoer, members of the Judiciary Committee, thank you for your attention to, to today's judicial bills, especially the judges' salary bill, LB386. LB386 currently schedules a 3 percent raise for judges in fiscal year 2021-2022 and another 3 percent raise for judges in fiscal year 2022-2023, which you've already heard. LB386 changes Section 24-201.01 of the revised statutes, which in turn, triggers salary increases for all Nebraska judges. Salaries for judges of the Court of Appeals, district court, county court, Workers' Compensation Court, and juvenile court are set by a percentage of the Supreme Court salaries in other Section 24 or Section 48 statutes. This request is based on the need to attract and retain good lawyers for Nebraska's judiciary. We need to have judicial salaries remain competitive not only in comparison to salaries of other public employees, but also in comparison to private practice incomes so that we can attract diverse and qualified individuals to serve on Nebraska's bench. Candidates for judicial office typically, typically must make career and life-changing decisions at a critical point in their professional lives. If a lawyer chooses to become a judge and is so appointed, he or she, for all practical purposes, forgoes the opportunity to build a lucrative private, private practice or to resume leadership career track in another public sector position. Nebraska's judiciary is busy, innovative, and dynamic. Our judges are encouraged to become leaders in their courts and communities regarding access to justice, our Through the Eyes of a Child Initiative teams, which are focused on juveniles in the courts, guardianship conservatorship issues, criminal and civil justice reform, and a host of other justice-related topics. I especially call your attention to

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criminal justice reform. Our trial court judges, in conjunction with Probation, have successfully implemented many LB605 reforms by actively participating in community corrections programs. In adult criminal court, judges have taken on more of the up-front diversion and supervision of criminal defendants, as well as the supervision of recently released felons. I know particularly, problem-solving courts such as drug courts, DUI courts, veterans, veterans treatment courts, and most recently, reentry courts and a mental health treatment court. These programs have saved Nebraska taxpayers millions of dollars and at the same time, worked to make Nebraska's citizens safer. In my State of the Judiciary Address, I pointed out that an incarcerated felon costs Nebraska taxpayers approximately \$41,000 per year and that a felon diverted to problem-solving courts costs Nebraska taxpayers approximately \$4,000 dollars per year. Hence, further success of criminal justice reforms in Nebraska will lie significantly in the hands of Nebraska's judges. Likewise, our county and juvenile court judges assumed more responsibilities for the supervision of juvenile delinquents and for more careful monitoring of guardianships and conservatorships. Of course, Nebraska's judges will continue to solve Nebraskans' more routine legal problems and disputes, both large and small, and do so with patience and grace. Our judges decide child custody cases as well as thousands of divorce cases. They decide multimillion-dollar lawsuits as well as small claims court cases. Small claims court cases, of course, involve lesser amounts of money and seemingly less dramatic issues. Every case, however, is important to someone and every case is important to our judges. There is no better investment you can make in the future of state government than by investing in competitive salaries for a judiciary that will be in place long after most of us in this room have left public life and a judiciary, judiciary that is so key to so many critical issues facing Nebraska and Nebraskans. On at least four occasions in the last decade, not enough qualified lawyers, that means a minimum of two, applied for an open judgeship for the Governor to make an appointment for a judicial vacancy. While several, several factors have contributed to this previously unheard of occurrence, the need for competitive salaries is definitely one of those factors. I recommend the passage of LB386 and would be happy to try to answer any questions you might have.

DEBOER: All right, thank you very much, Mr. Chief Justice. I have a question from Senator Pansing Brooks, which I will read first and then

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we'll see if there are other questions. Senator Pansing Brooks says, Mr. Chief Justice, thank you for your testimony. I am wholeheartedly in favor of LR-- I think LB386. I am wondering how we could help judges across the state who have stated to me a need for law clerks. Just as the previous bill attempts to put clerks under the purview of the court, shouldn't we work out a plan to aid judges and help to provide law clerks for their important judicial work?

MIKE HEAVICAN: That is a marvelous idea. Some of our judges do have law clerks and that would be our, our trial court judges is, is, is what Senator Pansing Brooks is talking about, normally in Lancaster County and in Douglas County and perhaps in Sarpy County there are law clerks and, and perhaps in some of the other counties also. Those salaries are currently paid for, I assume, by the counties. So you are kind of getting into an area of how much of the judicial branch should be paid for by the counties and how much should be paid for by the state. And what has happened over the years is that all of the expenses for trial courts in the counties was paid for by county governments and paid for with property tax dollars, largely to take property tax burdens off of counties and for more uniformity. Gradually, over the last century, piece by piece, parts of the payment for the expenses of running the court system were moved to the state's budget and that includes salaries for judges. Now what remains with the counties is the clerks of the district court. That's the biggest part of the, of the judicial system that's not-- would be not funded by the state, but there are other expenses. For example, bailiffs for judges are expenses handled by counties. Law clerks would be expenses handled by counties at this point in time. And there are court administrators in Lancaster and Douglas counties and perhaps some other counties, too, that are paid for by county property tax dollars. An ideal system would shift all of those expenses to the state to pay for, including the law clerks. Those are policy matters you ultimately have to take up at some point in time. Those, those are-- I, I would argue those are property tax issues and it would be better that all of those salaries and expenses were actually handled by the state.

DEBOER: OK. Are there--

MIKE HEAVICAN: Long answer, sorry about that.

DEBOER: Are there other questions for the Chief Justice? Senator Morfeld.

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MORFELD: Thanks for coming in today, Chief Justice.

MIKE HEAVICAN: Um-hum.

MORFELD: Along the same lines that-- of the discussion that I was having with Senator Lathrop, one of the concerns that I have is sometimes we do this piecemeal and we don't just create more competitive salaries right away like we should instead of just, you know, slowly. And maybe that's more the Nebraska way, this-- you know, gradually increasing, but I guess my question for you is in the past, how many, how many applicants were there to fill judicial vacancies as compared to today? And I know that's tough because each vacancy is different.

MIKE HEAVICAN: I made some reference to that in my, in my presentation today. Typically, we have more applicants in Lancaster and Douglas Counties--

MORFELD: Um-hum.

MIKE HEAVICAN: --for a lot of reasons because most, most of our lawyers are in Lancaster and Douglas Counties, but what started to happen, I will guess about ten years ago, it became more and more difficult to get applicants in many of our rural districts. And as I stated, we had situations where we couldn't get more than one person to even apply, so there was no way that names were, were going to get to the-- were going to get to the Governor for an appointment at all. Now that was not happening when I first became the Chief Justice, which is now getting to be some time ago, at least 14 years, but it started to happen about ten years ago. And as I said, there are a lot of reasons for that, but competitive salary is definitely one of them.

MORFELD: OK. Yeah, I, I remain in favor of LB386. I'm just wondering if maybe we should do more, but I'm also [INAUDIBLE] lawyer, so--

MIKE HEAVICAN: I, I appreciate that.

DEBOER: Thank you, Senator Morfeld. Other questions? Senator Brandt.

BRANDT: Thank you, Senator DeBoer. Thank you, Chief Justice, for your testimony today. And right at the end of your testimony, you said salaries are definitely one of the factors. So representing a rural area in the state, first of all, are, are salaries the same for a

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judge in Lancaster as what they would be in Jefferson or is that prorated because it's a, a rural area?

MIKE HEAVICAN: No, absolutely-- all judges' salaries are the same across the state and all of the salaries, for example, of the Supreme Court are the same. All of the salaries in the, the trial court judges and the Court of Appeals are a percentage of what Supreme Court judges make and those percentages are in other statutes, so you don't have to change those--

BRANDT: OK.

MIKE HEAVICAN: --statutes, but they are-- for the Court of Appeals, they are 95 percent of Supreme Court salaries. For district court judges, Workers' Compensation Court judges, and juvenile court judges, they are 92.5 percent of Supreme Court judge salaries. And for county court judges, they are 90 percent of Supreme Court justice salary. So you don't have to change any of those other statutes. That percentage is already in place. But the definitive answer to your questions is if you're a district court judge in Omaha, you are paid the same as a district court judge in Fairbury or any place else in the state, same with county court judges and, and the other judges.

BRANDT: So what other factors would enter into this that we could help you with to, to recruit in the rural areas?

MIKE HEAVICAN: We need more lawyers in our rural areas and that is an ongoing kind of thing that we work with the State Bar Association and lots of other people. We, we just need to attract young lawyers to go to some of our more rural areas and that's not just to have future judges, although that definitely-- young lawyers are the people who will ultimately be the, the judges in all of our districts, but also we have lots of folks in rural areas that just need lawyers and they, they, they can't find the lawyers in rural areas. And quite frankly, many of them end up hiring law firms or lawyers in Lincoln, in Omaha, and that sort of thing.

BRANDT: OK, thank you.

MIKE HEAVICAN: Um-hum.

DEBOER: Other questions? Senator McKinney.

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McKINNEY: Thank you. Thank you, Chief Justice. My question, going back to your reference to saying it costs the state \$41,000 to incarcerate someone and \$4,000 for problem-solving courts, do you have communication with, you know, county attorneys and individuals from the Governor's Office to work on reforms that would cost the state less? Because they're proposing a new prison because we have a prison overcrowding problem. But if this is correct, wouldn't, you know, a better solution be to find more ways to divert individuals to problem-solving courts and to find ways to get individuals out on probation, things like that?

MIKE HEAVICAN: Absolutely and, and the history of that evolution or that process or those reforms is that if I had come and spoken to you 14 years ago and said we need more money for problem-solving courts, I suspect it would have fallen on deaf ears. But over the course of time, all of us, including me, have realized the value of programs such as problem-solving courts and our more intensive probation programs. And so we have all kind of simultaneously started to implement more of those kinds of things. Now judges don't have to do problem-solving duty. That's, that's-- when you sign up to be a judge, you don't ever have to be a problem-solving judge, but more and more of our trial court judges have agreed to do that. So yes, it definitely saves property-- or it definitely saves tax dollars and the important thing about problem-solving courts and, and our probation is that we have to make sure that at the same time that we divert people into these programs and we also protect the public. And I think we've got a pretty good record of doing that. And looking behind you is Senator Lathrop and Senator Lathrop and the Governor have been working with, with-- there's a Justice Department program, a federal Justice Department program to do studies of reform in the criminal justice system and that is going to happen here in Nebraska because of the work of Senator Lathrop and, and the Governor and others and it's a three-branch effort and, and the judiciary will be participating in that. So those kinds of discussions are going on.

McKINNEY: All right, thank you.

MIKE HEAVICAN: Yes, thank you.

DEBOER: Any other questions? Thank you, Mr. Chief Justice.

MIKE HEAVICAN: Thank you very much for your time.

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DEBOER: Are there other proponents testifiers? Welcome.

ROB OTTE: Senator DeBoer, thank you. Members of the committee, my name is Rob Otte, that's Rob, R-o-b O-t-t-e. I am a district court judge for Lancaster County. Many of you know me. I've practiced law for about 25 years and then have spent about ten years on the district court bench. I appear in favor of this salary bill. I-- you've heard a lot and you know a lot about what judges do, but you know that only a judge can grant a divorce or confirm an adoption, order termination of parental rights, enter a protection order, oversee administration of the estate, review the determinations of state agencies, review ballot initiatives, and protect our fundamental freedoms. Only judges provide [SIC] over juries that are impaneled to consider criminal charges, personal injury matters, or business and property disputes. Only a judge makes determinations for criminal penalties like probation, jail, or prison. Only judges preside over problem-solving courts. I and a former district court judge, John, John Colburn, preside over the Veterans Treatment Court in Lancaster County that I, I, I submit to you has been pretty successful. If your loved ones find themselves in a court, whether on a civil or criminal matter, whether a plaintiff or defendant, or a review of a matter affecting their business, what is the level of expertise you want sitting on the bench? State needs judges with diverse backgrounds, experience, and the right judicial temperament. I suspect you know all of that, but there's a disturbing trend and I think Chief Justin-- Justice Heavican touched on this. We have fewer applicants to the many judicial openings that there have been traditionally. Recently in Lancaster County, we just appointed a new district court judge that took John Colburn's place. Out of the more than 900 lawyers in Lancaster County, we had four applicants. That's, that's, that's significant. Only four applicants. Only two applicants from private practice. One applicant was a sole practitioner. One applicant came out of one of the medium-sized law firms. That trend should raise serious concerns for this committee. However, one of the things that makes a difference is the way judges see or prospective judges see over the course of time that salary have been increasing over time. There's no other way for judges to make any money. Judges from private practice understand that and they understand that prior to joining the bench. It was true in my case. There are tradeoffs, certainly, but a real sense of public service comes with your judges and the state needs to continue to foster the best candidates with rich and broad backgrounds. Having salary

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increases is just one piece of that. Thank you for your support of the bill and I'd also say thank you for asking trial court judges about procedures-- the impact your laws will have. The judicial code allows judges to address the administration of justice and we encourage you to reach out with questions, some of which we can answer. All right. Any, any questions?

DEBOER: Thank you very much for your testimony. Are there any questions for the judge? Seeing no questions, thank you very much.

ROB OTTE: Thank you.

DEBOER: Other proponent testimony?

LEE WILL: Senator DeBoer, Chairman Lathrop, and members of the Judiciary Committee, my name is Lee Will, L-e-e W-i-l-l, and I'm a state budget administrator of the Department Administrative Services' budget division. I'm appearing today on behalf of Governor Ricketts in support of LB386. LB386 is one of eight separate pieces of legislation introduced at the request of the Governor that contains his budget recommendations for the '21-23 biennium. The remaining bills, LB379 through LB385, have been referenced to the Appropriations Committee. The Governor's budget recommendations include funding to increase salaries of the Chief Justice and justices of the-- and judges of the Supreme Court, appellate court, district courts, and separate juvenile courts, county courts, and Workers' Compensation Court. LB386 is necessary because judges' salaries are specifically established in state law and this bill provides for a 3 percent increase on July 1, 2021, and another 3 percent on July 1, 2022. And with that, I'd take any questions you guys have.

DEBOER: Is-- are there any questions for this testifier? I see no questions, but thank you very much--

LEE WILL: Thank you.

DEBOER: --for coming down and testifying. Other proponent testimony?

BILL MUELLER: Madam Chairman, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today as the legislative counsel and the president-elect of the Nebraska State Bar Association in support of LB386. I also appear here on behalf of the Nebraska District Court Judges Association. I want to start out by thanking

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Senator Lathrop for introducing the bill on behalf of the judiciary and I also want to thank Governor Ricketts for including this budget-- or this salary increase in his budget. We're most appreciative. When Mr. Will stood up to testify, I wondered who this was coming up to testify on judges' salaries. And when he said he was with the Governor's DAS, I was very happy that I waited for him to stand up and testify. I, I, I do have some information in response to some questions that members of the committee have had. The State Bar Association did an economic study in 2020 and one of the series of questions we asked were about compensation of lawyers and specifically lawyers in private practice. The numbers showed-- we asked about lawyers in every part of practice. Those related to, to private practice showed that lawyers out ten years made an average of \$151,835 a year. Those out 20 years made \$202,000. Those out 30 years, \$226,000. Those out 40 years, \$237,000 on average. Of course every lawyer doesn't make that, but we did have a good response to the economic study, so I think that in, in response to your question, Senator Morfeld, the, the numbers that are in the bill providing for judges' salaries are certainly not out of line or excessive as it relates to lawyers in, in private practice. Historically going back-- well, I-- Judge, Judge Jim Doyle and I-- years ago when, when asked this question, went back and looked at the history of judges' salary increases-- and I, I have that and I'm happy to provide that to the committee, but going back 15 years, the increases that the Legislature and the Governor have provided: 3 percent, 3.25, 3.5, 3.5, 2.5, 2.5, 0, 2, 5, 5, 3.5, 3.5, 1 percent, 1.5 percent, 3 percent, 3 percent, 3 percent, 3 percent. The good news is, except for that one year, we have given salary increases. And I think all of us recognize it matters that you not fall behind on salary increases because you would never catch up. Having said that-- and, and Senator Lathrop doesn't give himself enough credit, his bill in 2013 provided for a 5 (percent) and a 5 (percent). It is probably past time when we look at salaries and, and make significant adjustments. Senator Morfeld, I could not agree with you more. We need to look at constitutional officers' salaries. It's too bad that we can't look at legislators' salaries other than by looking at the state constitution. But I don't remember the last time that we increased the salary for the Governor, the Lieutenant Governor, the Attorney General, the Secretary of State, the State Treasurer. It's time to do that. I see that my time has expired. I would be happy to answer any questions that, that the

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committee may have. We would urge your support in advancing LB386 to
the floor.

DEBOER: Senator Lathrop is going to have some words with me letting
everyone go over to the red light--

BILL MUELLER: And I apologize.

DEBOER: --so I have to start, I have to start enforcing that.

BILL MUELLER: I'm colorblind. Is that a defense?

DEBOER: All right. Are there questions here? Any questions?

BILL MUELLER: I can read, so I could see where, where they are.

DEBOER: All right, thank you very much.

BILL MUELLER: Thank you.

DON WESELY: Thank you, Senator DeBoer and members of the Judiciary
Committee. My name is Don Wesely, D-o-n W-e-s-e-l-y. I'm here
representing the County Judges Association. I have distributed a
letter from our president of the association, Ross Stoffer, in support
of this, this legislation. You've heard excellent testimony. There are
58 county judges who are very much supportive of this and recognizing
the need to-- adequate, adequate compensation for judges. You've heard
from the Chief Justice, Judge Otte, and the Governor. We also want to
thank Senator Lathrop and the Governor both for proposing this, this
change. The only thing I'm going to add, because you've got the
information, I think the case is strong that we should increase
compensation for judges. But you know, the last few months have seen
tremendous partisanship in politics at the national level in
particular and it's been the judiciary that was there that was held up
and was able to resolve many of those issues. It's at moments like
that that you realize good judges and a strong judiciary that's
independent and has integrity that's respected is so vital. We have
that in Nebraska. We need to keep it in Nebraska, so I'd ask your
support for the bill.

DEBOER: All right. Thank you. Any questions? Senator McKinney.

McKINNEY: Thank you. How diverse is the county judge population?

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DON WESELY: I would think the argument-- there, there is increased diversity, but there is not nearly the diversity we would all hope for. I, I don't know the breakdown in terms of gender or race, but I can tell you that I'm sure we need to do better.

McKINNEY: Are you doing anything to improve the-- improve diversity currently?

DON WESELY: We are not, not the County Judges Association, but I'm sure all of us that are involved in, in the judicial system are open to any efforts to try and do that. And I think the salary issue is one where you get a more diverse application group, you have more of a chance to, to perhaps diversify.

McKINNEY: All right, thank you.

DEBOER: Other questions? Thank you very much. Other proponent testimony?

***TIM HRUZA:** Good afternoon members of the Judiciary Committee. My name is Tim Hruza (T-I-M H-R-U-Z-A) and I appear today on behalf of the Nebraska State Bar Association in support of LB386. LB386 would update five provisions of Nebraska statute to allow for the better administration of Nebraska's court system. The changes proposed really to amount to minor, technical updates that will help the court function. The NSBA supports Sen. Lathrop's efforts and the Court Administrator's efforts and asks that you advance the bill to General File.

DeBOER: Is there anyone here who would like to testify in opposition to this bill? Is there anyone who would like to testify in the neutral position? Seeing none, Senator Lathrop-- while Senator Lathrop is coming up, we have written in lieu of in-person testimony from one proponent, Tim Hruza for the Nebraska State Bar Association, and zero position letters.

LATHROP: OK, thank you, Senator DeBoer and colleagues, thank you for your attention. I want to thank the people that came today to testify in support of the bill. It's, it's a consequential bill. I did step up because I wanted to answer Senator McKinney's question. And Don Wesely maybe isn't-- he's not a lawyer and not a member of the bar and I am, so I do have a little bit of background. So the diversity on the bench

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is a function of the number of lawyers in-- brown and black lawyers that-- actually it starts out in law school, right? So there were-- there weren't a lot of people of, of color in my law school class 40 years ago. That's probably not true right now. There's probably more diversity in the law schools. That turns into more diversity in the practice of law and then more opportunity. I think we're lagging behind, but the judges are appointed through a process-- it's called the Missouri process. There's a, a committee that meets and meets with the applicants and then sends names to the, to the Governor for an appointment. That process is, is out of the control of the judges that sit there right now, but I can tell you, as a practicing lawyer, the bar association and the courts are very involved in trying to create diversity in the practice of law, which I think at, at some point will allow for greater diversity. We do have judges of color who are-- who sit in Douglas County, good judges, and I think everybody in the bar and-- including members of the judiciary are anxious to see that-- see greater diversity on the bench. That's all I have.

DEBOER: Thank you, Senator Lathrop. Are there questions for Senator Lathrop? Seeing no questions, that end, ends the hearing on LB86 and we will begin with the hearing for LB316 and Senator John Cavanaugh and we'll turn it back over to Senator Lathrop.

LATHROP: OK, Senator Cavanaugh, you are good to open on LB316. Welcome.

J. CAVANAUGH: Thank you, Chairman Lathrop and thank you, members of the Judiciary Committee. I feel like it was just yesterday that I was here last.

LATHROP: You did what?

J. CAVANAUGH: When I was here last-- yesterday. It was a joke.

LATHROP: Oh, yes, no, you get to be a regular.

J. CAVANAUGH: My name is John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th Legislative District in midtown Omaha. I'm here today to introduce LB316, which is to clarify the date in which a one-year limitation for filing a motion for postconviction relief shall run. I brought this bill after consulting with Douglas County Public Defender Tom Riley and I believe you should have a letter of

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support from Mr. Riley. LB316 simply clarifies that the one-year limitation run from the date the Supreme Court of the United States denies a writ of certiorari or affirms the conviction appeal for the Nebraska Supreme Court. It simply clarifies-- provides clarity for the parties. As it currently stands, the defense attorney who has a client with a pending petition before the United States Supreme Court may have to advise their client to file a motion for postconviction relief while that action is pending. Because one of the grounds relied upon is often ineffective assistance of counsel, that means the defense attorney may, in effect, end up advising their own client to allege that they are not doing an adequate job while pending cert for the United States Supreme Court. We've worked with the County Attorneys Association. I actually have a proposed amendment to basically-- the-- they-- this may not be the final version. We've gone back and forth many times. Essentially, there's a question about the notice requirement to the County Attorney Association, which is-- well, to the, the state side and so just providing that, kind of showing where we're at. And if you take a look at Mr. Riley's letter, I think he can explain it well, the necessity for this and what problem this is trying to solve. But I appreciate your consideration and if you have any questions, I'm here to answer them. And I believe Mr. Eickholt is also here if you have any other questions. But with that, I appreciate your consideration.

LATHROP: Senator Cavanaugh, did I hear this right? You're still working on-- it's a work in progress?

J. CAVANAUGH: Well, that may be the final version. We kind of went through three iterations yesterday and so the county attorneys just haven't come back and said that they're great-- they're perfect with this one. They were-- we, we were about on the same page. It basically has to do just with the timing of the-- and exactly how the notice is effectuated.

LATHROP: OK.

J. CAVANAUGH: So I-- this may capture it, but it-- I brought it to show you generally where we're at on that, that suggestion. They-- it--

LATHROP: So just to be clear, you let us know when that's been resolved. Otherwise, I'm going to assume it's a hold for now.

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J. CAVANAUGH: That--

LATHROP: OK.

J. CAVANAUGH: --that is fair.

LATHROP: Perfect. Any questions for Senator Cavanaugh? All right, thank you, Senator. We'll take proponent testimony. Good afternoon.

SPIKE EICKHOLT: Good afternoon, members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association in support of LB316 and we want to thank Senator John Cavanaugh for introducing the bill. Senator John Cavanaugh explained what the bill does. It's really a pretty simple modification to the existing law with respect to postconviction actions. The law now provides for a year window, if you will, for a person who is found guilty of a crime, they're in custody, and they've exhausted their direct appeal all the way-- either to the Court of Appeals or the Supreme Court. They have one year, if they want to, to file a request with the trial court to ask for basically an opportunity to argue that their trial attorney or their initial appellate attorney was ineffective for whatever reason. That year is pretty strict in statute and the courts have made it even stricter for a variety of different reasons. There's a situation, though-- what happens if you go-- if you appeal all the way to the Nebraska Supreme Court and you want to try to see if the U.S. Supreme Court can hear your argument, if you think you've got a federal argument, if you think you've got a constitutional claim or something like that, there's kind of an interplay between our state court appellate rules and the U.S. Supreme Court appellate rules that creates this kind of problem. You have seven days after the U-- the Nebraska Supreme Court issues a decision to file what they call a motion to stay the mandate or a request to the Supreme Court that they not send the case back down. You have seven days to request that and one of the grounds you can give is that you are planning to file a petition for certiorari to the U.S. Supreme Court. However, you have, according to the U.S. Supreme Court rule, 90 days to request that following a state court final decision. So what happens sometimes is that your client won't say they want to go to the U.S. Supreme Court or what is more likely, 30 days after, for instance, the Nebraska Supreme Court issues its Opinion, you would read something in another circuit that addresses exactly what your client has just experienced

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and you may want to go to the U.S. Supreme Court. You file a petition for certiorari. The Supreme Court then gives the-- a lawyer who filed that petition basically a form where you are required to notify the state that you've done this and the state can respond to that. They can file a brief. Basically, you're pleading for the U.S. Supreme Court to take your case. That can take several months. Meanwhile, if you have not filed a motion for a stay, this one-year clock is ticking at the state level and then what you have is that you have-- this window is slowly shutting. You represent this client. They've got a year only to argue in the state district court that you were somehow ineffective in their initial case for whatever reason. And it could even relate to the same reason you're trying to get to the U.S. Supreme Court and that's why there's this issue. The bill simply says that if somebody does go to the U.S. Supreme Court, that year starts once the Supreme Court either denies the cert or rules on whatever-- if it takes the case and rules in whichever way. The prosecutors, I think, wanted to have a provision where if you do file a petition for certiorari, they want us to file-- the defense attorney to file notice in the original trial court at the district court level, that we've done that. Just so everyone is clear, as a practical matter, the Attorney General represents the state on appeal, but the prosecutor, the county attorney is at the trial level and that's why they may not realize it. I'll answer any questions.

LATHROP: Thank you. Any questions? Just as a matter of background, a lot of people who have-- a lot of individuals who have been convicted of serious crime, particularly death penalty kind of things, but very serious crimes, may want to allege that their lawyer didn't talk to all the witnesses. You've slept through the trial. You didn't do something that was obvious, should have objected when they didn't. All of that's brought up in a postconviction because they can't really complain about their lawyer when their lawyer is writing the direct appeal brief.

SPIKE EICKHOLT: That's exactly right.

LATHROP: Get done with the direct appeals, that's when you can say you know what? My lawyer did a lousy job and didn't live up to the standard of lawyers. Hard thing to prove, but, but this is just making sure the door is open for that if someone appeals to the U.S. Supreme Court and the timeline currently in statute doesn't close the door on their postconviction relief.

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SPIKE EICKHOLT: That's right. And this even-- this current scenario makes it even messier because if you do go to the U.S. Supreme Court and that case sits there for six months and the U.S. Supreme Court says no, that guy races into court and says, look, that same lawyer had me sitting around in front of the Supreme Court docket for nothing and that was one of the--

LATHROP: Now I can't complain about him.

SPIKE EICKHOLT: Right, that's exactly right. So this makes a clean break and has a new opportunity with a new lawyer if that person can make a claim and it's a, it's a very uphill-- it's a, it's a--

LATHROP: Are you involved in these conversations that Senator Cavanaugh is having with the county and counties?

SPIKE EICKHOLT: I am. Well--

LATHROP: Do they have a problem with the fundamental idea of figuring out how to leave the door open for somebody that appeals?

SPIKE EICKHOLT: I don't think so. I think they just wanted to make sure that the record was clear and I think because what happens-- and I can't speak for them and unfortunately they're not here, it doesn't look like, but as I said, the Attorney General represents the state on appeal and if it goes to the U.S. Supreme Court in some way. There's still a case number that's separate from the appellate number at the district court level. You file your petition for postconviction at the original trial court level and I think they just want to make sure-- because one of the first things they do when somebody files one of these petitions is--

LATHROP: Time it right.

SPIKE EICKHOLT: Exactly right. They want to kick it on time because it's outside of the year limit. Because a lot of these guys-- sorry, a lot of the defendants, almost all of them file it unrepresented. They file on their own. Sometimes a lawyer somewhere may help them sort of get started, but they file it themselves. If the judge sees they've got a meritorious claim, they can appoint an attorney to help with it or they can deny it outright. And one of the first things the state does at the district court level-- the county attorney does is say you're 18 months past your-- when the Supreme Court affirmed your

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conviction. Judge moved to dismiss. It's out of time pursuant to
whatever the statute number is.

LATHROP: OK. Nobody's getting some big jump on somebody else. This is
just taking care of sort of a--

SPIKE EICKHOLT: Right.

LATHROP: --a hole in the, in the process.

SPIKE EICKHOLT: That's right.

LATHROP: OK, that helped me. Any questions for Mr. Eickholt? Seeing
none, thanks for being here.

***TOM RILEY:** Dear Judiciary Committee, On behalf of the Nebraska
Criminal Defense Attorneys Association and the Douglas County Public
Defender's office, I urge the committee to advance LB316. LB316 is
simply an effort to clarify the time for which a person in prison has
to file a Motion for Post-Conviction Relief pursuant to Neb. Rev.
Stat. §29-3001 and following. Currently the statute imposes a one-year
statute of limitations that begins when the Nebraska Supreme Court or
Court of Appeals files an opinion denying the person's direct appeal,
Motion for Further Review or Motion for Rehearing. LB316 will provide
that the one-year statute of limitations will commence when the United
States Supreme Court denies a person's Petition for Writ of
Certiorari. Under the U.S. Supreme Court rules, a person must file a
Petition for Writ of Certiorari within 90 days of the state court's
issuance of the Appellate decision or denial of Motion for Rehearing
or Motion for Further Review. Typically, the attorney who represented
the person on direct appeal is the attorney that files the Petition
for Writ of Certiorari. Also typically, when a person is filing a
Motion for Post-Conviction Relief he or she must allege ineffective
assistance of trial and/or appellate counsel. As a result, when a
Petition for Certiorari is pending in the U.S. Supreme Court the clock
is ticking on the one-year statute of limitations. Under those
circumstances the client is currently being represented on the Cert
Petition by the same lawyer who he or she is forced to allege has
provided ineffective assistance of counsel. This makes no sense. LB316
simply makes it clear that in those cases where a Cert Petition is
filed the person's time for filing a Motion for Post-Conviction Relief
does not start until the U.S. Supreme Court resolves the application

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for Cert Petition. It should be noted that when counsel files a Cert Petition, the U.S. Supreme Court provides a form to the attorney and the attorney must forward the form to the opposing counsel, which in most cases is the Nebraska Attorney General. This form provides notice to the State that a Cert Petition has been filed and further provides the Attorney General's office an opportunity to file a brief in opposition to the granting of a Cert Petition. Therefore, there is no question but that once a Cert Petition is filed, the State has ample notice and can act accordingly as they see fit. This bill does not provide any additional procedural or substantive rights to an individual seeking Post-conviction relief. It merely clarifies the date upon which the one-year statute of limitations commences.

LATHROP: Anyone else to testify in support of LB316? Seeing none, anyone here in opposition? Seeing none, anyone here in a neutral capacity? I see none, Senator Cavanaugh, do you wish to be heard? He's going to waive close. We have no letters-- position letters and we have one letter in support. This was actually written testimony dropped off this morning from Tom Riley, the Douglas County Public Defender. He's speaking on behalf of the Nebraska Criminal Defense Attorneys Association as a proponent. That will close our hearing on LB316-- thanks, Senator Cavanaugh-- and bring us to the last bill of the day and Senator Wayne, LB548. OK, he'll be here momentarily. We were ready for you.

WAYNE: There we go.

LATHROP: Welcome.

WAYNE: Is this my last time here? I think so, I don't know. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is north Omaha and northeast Douglas County. Today I'm here to introduce LB548, which adopts the Nebraska Racial Justice Act. LB548 would allow a individual convicted of a felony to challenge their sentence or conviction through the admission of statistical evidence or other material on the basis of racial bias was a substantial factor in the outcome of their case. When thinking about how to introduce this bill, it reminds me back to our conversation we had actually on marijuana. And Senator Geist brought up her upbringing and who she was around and then another hearing where Senator McKinney brought up his upbringing and interaction with

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law enforcement. And I think that's exactly what this is-- bill is about. It's about the prejudices we sometimes bring to a hearing or the lack thereof. And when we look at statistical-- stats around the state, there are people serving in prison when there were no people of-- African-American who could serve on the jury. And LB4-- LB548 would permit someone to show racial bias through omitting type-- these types of evidence: explicit racial bias by an attorney, judge, law enforcement officer, or an expert witness or even a juror involved in the case, racial discriminatory language in the court during a criminal proceeding, intentional or not, racial bias in jury selection, which I'm going to talk a little bit more-- about more when it relates to how we all approach things in life, and then sentencing bias. And I'm going to just give you an interesting stat and let you ponder it. The law-- this law is not new or this idea is not new. In fact, I remember in high school, my senior year in high school, there was a shockwave going through Creighton Law School because I was actually up there thinking I wanted to be a lawyer. I don't know why I took that route, but everybody was talking about Kentucky passed this very similar act for those who were on death row and those who are with life sentencing. And they were the first one to pass it, Kentucky, which we would-- even a conservative state. And other states have passed it too, from North Carolina, which they repealed it and then brought it back in. And Texas has also introduced an initiative this year that is very similar along the lines that we're doing. But I want to talk about jury selection and the-- what we bring because in the 1800s across the country, I won't give a whole lesson here, but although we might have been free as people-- as a people, we were never allowed to be a part of jury selections. And in fact, it was until late '80s and '90s where we changed in Nebraska to-- driver's license away from voter registration, that we started seeing more. And if you talk to any criminal attorney or civil attorney-- they wouldn't be doing their job if they were representing a minority-- talk about whether they wanted to sue in federal court or state court, particularly on jury selection. Because federal court, you hardly get a minority on the jury. The reason why that's important is because jury selection often impacts the outcome of a case. People can see things differently. People can have different conversations on the jury panel in those closed sessions or closed rooms. And what we did find nationally, that people of color were two to three times more likely to be struck from a potential juror than a white person. Specifically, there was some interesting data that African-Americans

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have been struck for chewing gum, for having, having tinted glasses. One was because of low intelligence and one, actually from north Omaha, was stricken for having negative feelings. It's important because those are the bedrock of our criminal system. And I want to stress that this is not a bill to excuse any crime. We are saying that they have been convicted. They have been sentenced. But what we're saying is that somewhere along way, there might have been a racial bias. And one interesting stat in Nebraska is folks who get life with parole, so they're eligible for parole, black folks in Nebraska, particularly Douglas County, on average, are sentenced to 56 years. For their white counterparts, for life with parole, it's 14 years. That's a huge, significant difference and part of that is the, the judicial system and their inherent bias. Lancaster County, whites were given some of the lowest years on average, even as low as 20. However, black individuals for life sentences were given the average of 60 years. So there's a huge gap. Again, this is not about correcting or excusing a, a, a crime. It's actually giving a tool to the justice system to correct itself, to say that new judges-- in a motion for a new trial, new judges can look at this and say, yes, there clearly was some disparity in the sentencing when we look at the data. This is about the justice system correcting itself. So I wanted to give a hypothetical of why this matters. The hypothetical is if you were all in New York or Chicago or L.A. and it's late at night, 1:00 or 2:00 in the morning, and you're walking down an alley and it's pitch black, you hear footsteps behind you and you turn around-- those footsteps are coming closer and you turn around, what color do you want that person to be? And whatever color you pick that makes you feel safe is the implicit bias we all have. And not recognizing that sometimes-- especially in the 80s-- who are serving 40 to 50 years, 80-year sentences, without recognizing that, a judge may have increased their sentence inadvertently. We don't know, but this is an opportunity for that judge or maybe a new judge to weigh all of that evidence and say maybe there was, maybe we should resentence on the fact that-- of, of new data, new evidence and in light of maybe the, the Legislature. Now I do understand the county attorneys' concerns. I don't practice a lot of post-- actually, I don't practice any postconviction relief. So there is a issue of maybe putting it in the postconviction relief and I reached out to the county attorneys that we are trying to work on-- I was hoping they were going to be here to testify, they sent a letter instead-- so I can clearly understand that procedural part because I don't, I don't do a lot of it. But the point of it is that we still

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have people who are sitting in prison who their counterparts are out of prison and the only difference in the crime is one is white, this one is black. And we're just saying let the justice system correct itself. That's all this bill is doing. It's giving an opportunity for the justice system to correct itself. We are not excusing crimes. We are not giving pardons. We are not even saying that you get to go home free. We are saying correct yourself. With that, I'll answer any questions.

LATHROP: Senator Geist.

GEIST: Yes, I do have just a couple. I'll tell you the answer I would give to your question was female, so--

WAYNE: Well, here's what's interesting. My wife said the same thing, but I said, what color? She said, well, I don't know because I prefer to have a female.

GEIST: [INAUDIBLE]

WAYNE: But again, it goes to the, it goes to the prejudice, right? We-- just inherent.

GEIST: I just hope small female, so--

WAYNE: I understand, I understand.

GEIST: Anyway, but I do have a serious question. I'm just wondering about how-- now I-- not being attorney, don't, don't employ this thinking, but I'm trying to learn how to. Is this a high standard? I mean, this is-- isn't it a high bar to try and get into motivation of the judge or-- I mean, I understand that you're looking at the preponderance of the evidence, I'm guessing.

WAYNE: Yeah, so it-- I mean, so it has to be-- well, it has to be substantial to the, to, to the case too. So it can't be some nuanced thing that might have not had any impact. It has to impact the case. But where it does happen a lot and you can see on social media is you'll have the same judge in a matter of months for the same crime, have a huge sentence disparity. And so you say, well, why is that? But because of a U.S. Supreme Court decision about 40 years ago, they pretty much said race can't be the reason why. And so what states have done, like Kentucky and everybody else, have said, no, we recognize in

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the '70s and '80s, we might have had some people on the bench or some
juries that probably weren't the best.

GEIST: Well and is it OK to look at what-- like, many different cases
to judge one case?

WAYNE: Yeah, so, so part of the discretion that we give judges is we
say if a crime happens, you can get a "2 to 50." But we, we as the
Legislature and we as a community say it fits kind of the same, you
should treat them similar, the same. So what happens in-- around
Nebraska, we do what's called a presentence investigation for every
felony where the Probation actually goes through and interviews and
there's a set of factors about-- like-- ones like social behavior,
family, education, work. So it's a list of categories.

GEIST: Um-hum.

WAYNE: The problem is even Probation now wants to fix that because
those categories have nothing necessarily to do with that person. So
you get dinged because your parents maybe don't work and so there's,
there's been problems with this-- with it. So after all of that
evidence comes in, I think a judge can look at and say, no, it
doesn't, it doesn't meet the threshold or you know what? Maybe we
should look at resentencing this person. So it's just, it's just a
option.

GEIST: OK.

WAYNE: But it is a high threshold, I, I won't deny that. It's going to
be a higher threshold.

GEIST: Thank you.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Senator Wayne, for
bringing this bill today. Today, today we cannot do this. Today, you
have no basis-- using your example of 14 years and 57 years?

WAYNE: No, that, that is not a clear-- that is not a basis for asking
a court to revisit in a postconviction relief or, or set a new trial.

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BRANDT: So we have to put it into statute to say that this is an
acceptable--

WAYNE: Yes.

BRANDT: --basis?

WAYNE: So can I give you an example that recently came out on the
Supreme Court decision?

BRANDT: Please do.

WAYNE: So there was a judge who actually meant to check a box to say
concurrent versus consecutive. So what that means is they run together
or they run separately and it'll link a longer time. He realized he
made the mistake wrong once the person left the room. So he made his
announcement, checked the box, person left, and then later told
another judge I made a mistake. An attorney heard it, went to the
new-- went to his attorney, the guy who was convicted, and said the
judge gave you the wrong sentence. Everybody knows within in the
courtroom. It went all the way to the Supreme Court and basically it
says if the person leaves the room, the judge can't do anything. Only
thing you can do is seek a pardon. So even if it's-- so the point is
we have such restrictions on how to reduce sentences and give a
postconviction relief that it's-- you can't do it today, but even
that's the most extreme. When a judge makes a mistake, you still can't
do anything.

BRANDT: So we aren't looking just for judicial bias, we're also
looking for jury bias?

WAYNE: Jury bias, those kind of-- yes. So for example, if you, if you
had a juror and then you later find out on Facebook, they're super
racist the entire time, but during that time, you didn't know. I think
a judge may want to look at that. A judge may not, but a judge may say
that there was enough overwhelming evidence, it doesn't matter,
denied, or it might say, you know what? We need to pull the jury and
find out what was all said.

BRANDT: But, but surely in the case of the jury where you have 12
members, they would have to look at all 12 members, not just one.

WAYNE: Yes, a hypothetical. Yeah, theoretical.

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BRANDT: All right.

WAYNE: And, and again, I still have to work on the postconviction
stuff, so I wouldn't even ask you to advance it today--

BRANDT: All right.

WAYNE: --just because when it was written-- we got some quirky laws
that Spike will be able to explain a little better, but I'm working
with the, the D.A. on this postconviction part where, where it's at in
the statute. I guess it matters.

BRANDT: All right, thank you.

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

WAYNE: Thank you.

LATHROP: Thanks, Senator Wayne.

WAYNE: I will waive closing since I have to work on this.

LATHROP: You have to work on what?

WAYNE: No, since I have to work on this bill, I'll waive closing.

LATHROP: OK, OK. We'll hold it until we hear from you. Thanks,
Senator. We will take proponent testifiers.

SPIKE EICKHOLT: Good afternoon, members of the committee. My name is
Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on
behalf of both the ACLU of Nebraska and the Nebraska Criminal Defense
Attorney Association in general support of the bill. I didn't work on
the drafting of the bill, but I did talk to some of the people and I
think there's an, an entity or an organization, a coalition that's
work-- working on this, that's worked on this in a number of other
jurisdictions, a number of other states. And I think what they are
trying to address is very important, which is why we are here
testifying in support of it, and that is it's trying to somehow
identify and address the persistent problem of racial disparity in the
criminal justice system. We see it here. We can see it here really
from-- and I've made this point before-- from the beginning of a
criminal case all the way to the end. We know from racial profiling

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data that more people of color are more likely to be stopped, more likely to be cited, and more likely to be arrested. They're going to have a higher bond. They're going to be more serious charges. And that we also know at the end, just by looking at the daily prison numbers and daily jail numbers across the state, that there is a trend one way against people of color. This bill tries to address that and it's trying to provide a vehicle or a way where someone who is serving a sentence can show that during the process of their prosecution, that race-- racial bias was used against them. And whether that is statistical data based on the charge they're facing compared to other similarly situated people facing those charges or whether it's just the facts of the case itself during jury selection or something a witness said or something a prosecutor said or even maybe a, a judge or a defense counsel said or did that would be-- show racial-- non-neutrality or racial bias. This would amend our postconviction statutes to allow that person to file a postconviction claim, articulate how the racial bias was used against them, and then request relief, either a new trial or a reimposition of a different sentence. We know from the earlier bill that you have a year to do it. So to answer Senator Brandt's question, could it be done now? It could be. If the person is past a year and they find out somewhere along the line that a juror was posting on social media that they are a white supremacist and they can't wait to find this guy guilty or something like that-- and I'm just giving an example. If they're past the year, they can't do it. This bill would at least provide that example as a way to get in there until I think, September-- they anticipate, I think, the year-long date, September 15, 2022, to kind of open a window for just people who may be serving sentences. As Senator Wayne kind of intimated, this bill has worked better in other states because other states don't have that strict year. Justin-- Senator Wayne talked about that sentence where the judge imposed a sentence. Our-- I don't know if it's separation of powers issues, but our case law is pretty clear that once a judge pronounces a sentence and it's within the range and that's a valid sentence, that sentence is final. You can't go back a couple of weeks later and say, hey, judge, you know what? Is there any way you run these counts concurrent after all or give them different credit or maybe not give them that much time? It's just not possible. So disturbing these final sentences is a bit tricky. I think what this is-- this effort is-- though is really worthy of consideration just because of the underlying issues that it's trying to address.

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LATHROP: OK, I don't see any questions. Thanks for being here. Other
proponent testifiers? Good afternoon. Welcome.

ALEX M. HOUCHIN: Good afternoon. Thank you. Good afternoon, Senator
Wayne that has stepped out, Chair Lathrop, and other committee
members. My name is Alex M. Houchin, that's A-l-e-x M H-o-u-c-h-i-n,
and I'm here representing Nebraskans for Alternatives to the Death
Penalty. Today, NADP announces its support for LB548 and strongly
urges its smooth passage into law. In 1987, the U.S. Supreme Court
ruled in McCleskey v. Kemp the clear statistical evidence of racial
disparity in prosecution and sentencing was not enough to overturn
death sentences and that court challenges must prove, quote, racially
discriminatory purpose, end quote. The same decision also stated that
structural racial bias leading to harsher sentences for minorities is,
quote, an inevitable part of our criminal justice system, end quote.
Members of the Judiciary, I believe it's time for us to aspire to
better. As Nebraskans, we have an, an obligation to reject the idea
that such injustice is inevitable, especially when it comes to the
most severe punishment our, our laws allow. A study published in
September by the nonpartisan Death Penalty Information Center
documents the clear and overwhelming racial bias to the capital
punishment system throughout its history. Some brief highlights:
number one, a 2015 meta analysis of 30 nationwide studies showed that
from 1976 to 2013, the killers of white people were up to two and a
half more times likely than the killers of black people to face
capital prosecution. Number two, a study of 150-- 173 capital cases in
North Carolina from 1990 to 2010 showed that qualified black jurors
were struck from juries at more than twice the rate of qualified white
jurors. As of 2010, one out of every five of those on North Carolina's
death row were sentenced to death by all white juries and another 38
percent were condemned to die by juries with only one person of color.
Number three, since 1977, 295 African-Americans have been executed for
interracial murders of white victims, while only 21 white defendants
have been executed for interracial murders of African-Americans.
Number four, a 2014 mock jury study of more than 500 Californians
found that white jurors were more likely to sentence poor Latinx
defendants to death than poor white defendants. And number five,
exonerations of African-Americans for murder convictions are 22
percent more likely to be linked to police misconduct. That's why it
is perhaps even more important to note that implicit and structural
racial bias can manifest at every step of the legal process, from the

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investigation phase through charging, jury selection, prosecution, testimony, sentencing, appeals, and execution. Even the threat of pursuing a death sentence can affect how a case proceeds. While it is our organization's goal to abolish and replace the death penalty for a wide variety of reasons, its uneven application to minorities is perhaps its most unjust aspect. Although Senator Wayne's bill would not remove the stain of capital punishment from statute, we believe it would provide a bold new path forward to a more equitable and just Nebraska.

LATHROP: All right, good. Any questions? I don't see any. We appreciate your advocacy. Thanks for being here today.

ALEX M. HOUCHIN: Thanks very much.

LATHROP: Anyone else here to testify as a proponent? Anyone here in opposition?

***KATIE ZULKOSKI:** Chairman Lathrop and members of the Judiciary Committee: I am Katie Zulkoski submitting this testimony on behalf of the Nebraska County Attorneys Association. Please include this written testimony in the public hearing record. As you hear testimony today on Senator Wayne's LB548, it is important that you consider the comments below from Katie Benson, Deputy County Attorney in Douglas County: "I'm a Deputy County Attorney from Douglas County and am submitting this letter in opposition LB548 on behalf of the County Attorney's Association. By way of background, I have been a Deputy County Attorney for twelve years and have handled all collateral attacks, including postconvictions, during that time. Prior to that, I was a law clerk for the Douglas County District Court, which required me to analyze and draft orders regarding postconvictions as well. I am writing to specifically oppose the portion of LB548, which makes changes to the Postconviction Act, Neb. Rev. Stat. 29-3001. Specifically, that LB548 provides the remedy for violating the Racial Injustice Act to be contained within the Postconviction Act. I am not addressing the Act itself, I am opposing the inclusion of the remedy under the Postconviction Act. Postconviction relief is only granted when there is a "constitutional deprivation." The Racial Injustice Act is a state statute with a state remedy, so it is not appropriate to be contained within the Postconviction Act and would create confusion since it does not fit within the standard for postconviction relief. Including a remedy for a state statute that has a different burden in

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the Postconviction Act is like trying to fit a square into a circle. Rather than including within the Postconviction Act, the remedy should be contained within the Racial Injustice Act itself. For example, when Neb. Rev. Stat. 29-1819.02 was created to require judges to advise a person of immigration consequences at a plea, the same statute also said that violating this requirement would allow a defendant to withdraw his plea. Since Neb. Rev. Stat. 29-1819.02 is a state statute with a state remedy, it would not have made sense to put that within the Postconviction Act, as is being asked of LB548 to do with the Racial Injustice Act. I have reached out to Senator Wayne via email to try and resolve this prior to the hearing scheduled for February 25th, but I have not received a response as of the time of this writing. I know reaching out to Senator Wayne prior to opposing a bill seemed of great concern to the committee when I testified on another bill, so I want to make sure all are aware that was attempted here."

***ERIN TANGEMAN:** Senator Lathrop and members of the Judiciary Committee, my name is Erin Tangeman, and I am an assistant attorney general and Chief of the Criminal Appellate Section of the Nebraska Attorney General's Office. The Attorney General is opposed to LB548 for several reasons. First, the statement of intent indicates that LB548's purpose is to allow an individual convicted of a felony to challenge their conviction or sentence "on the basis that racial bias was a substantial factor in the outcome of their case." (emphasis supplied). While this is a laudable goal, the actual language of LB548 does not serve this goal. Specifically, § 4, subsections (1) through (3), make it possible for a prisoner to establish a violation even if racial bias had no effect on the proceedings. For example, if a prisoner convicted of first degree murder could show the arresting officer called the prisoner a racially derogatory term, the conviction would be void under § 4, subsection (1), of this Act regardless of the evidence presented at trial. This legislation could void a conviction where there was conclusive evidence of the prisoner's guilt, such as DNA evidence or a confession, based on a comment that had no effect on the proceedings. And as we read the Act, in such a case, there would be no possibility of curing the violation through a retrial because the violation occurred at the time of the arrest. Second, under §§ 3 and 6, the bill would apply retroactively, which would open up to challenge all prior felony convictions and sentences, regardless of how long ago they occurred. Considering past experience, this would likely result in a significant number of filings from prisoners, with

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the impact being felt most by prosecutors and trial courts. Third, LB548 requires that a prisoner's challenge be presented in an action for postconviction relief under §§ 29-3001 to 29-3004. That requirement is both unnecessary and potentially confusing. It is unnecessary because LB548 could be redrafted to create its own standalone procedure for presenting a prisoner's challenge under the Act itself, rather than under the Postconviction Act. And it is potentially confusing because the Postconviction Act, as it stands now, may only be used to address alleged constitutional violations. For the foregoing reasons, the Attorney General respectfully requests that the Committee not advance LB548 to General File.

LATHROP: Anyone in the neutral capacity? Senator Wayne has waived his close, so before we close the record, it will-- the record will reflect that LB548 has garnered 20 position letters; 17 as proponent, 3 in opposition. We also have letters or written testimony that was received on this bill. Katie Zulkoski for the Nebraska County Attorneys Association provided testimony in opposition and also in opposition is Erin Tangeman, T-a-n-g-e-m-a-n, Nebraska Attorney General's Office. With that, we'll close our hearing on LB548 and close our hearings for the day. Thank you.