

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 16, 2022

**LATHROP:** All right. You might be on TV right now. Anyway. Good afternoon, my name is Steve Lathrop and welcome to the Judiciary Committee. I'm the Chair of the Judiciary Committee. I represent Legislative District 12. Thank you. Committee hearings-- I got a little preamble that I read just to you-- everybody knows kind of what the rules are of these hearings in case you're new to the process. Committee hearings are an important part of the legislative process and provide an important opportunity for legislators to receive input from Nebraskans. If you plan to testify today, you'll find yellow testifier sheets on the table inside the doors. Fill out a yellow testifier sheet only if you're actually going to testify before the committee and please print legibly. Hand the yellow testifier sheet to the page as you come forward. There is also a white sheet on the table if you do not wish to testify, but would like to record your position on a bill. This sheet will be included as an exhibit in the official record. If you are not testifying in person on a bill and would like to submit a position letter for the official record, all committees have a deadline of 12:00 noon central time, the last workday before the hearing. Please note that there is a change this year in position letters to be included in the official record must be submitted by way of the Legislature's website at [nebraskalegislature.gov](http://nebraskalegislature.gov). This will be the only method for submitting letters for the record, other than to testify in person. Letters and comments submitted by way of email or hand delivered to senators will no longer be included as part of the hearing, though they may be a viable way of communicating your views with an individual senator. Keep in mind you may submit a letter for the record on the website or testify in person, but not both. 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 a neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you have copies of your testimony, please bring up at least ten 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 will not be allowed to read it. We don't do that, I came here and I'm going to read somebody else's letter. 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 will come on one minute before your three minutes are up. And when the red light comes on, we ask that you wrap up your final thought and stop. As a matter of committee policy, we'd like to remind everyone the use of cell phones and other electronic devices is not allowed during public

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hearings, though you may see senators on them taking notes or staying in contact with staff. Like to ask everyone to look at their cell phones and make sure they're in the silent mode. A reminder that verbal outbursts or applause, such things are not permitted in the hearing room. Since we've gone paperless in the Judiciary Committee, senators will 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 they may have other bills to introduce in different committees or other meetings to attend to. And with that, we'll have the committee members introduce themselves and we'll be underway shortly. Senator DeBoer.

**DeBOER:** Hello, everyone. Good afternoon. My name is Wendy DeBoer. I represent District 10, which is in northwest Omaha.

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

**MORFELD:** Good afternoon. Adam Morfeld, District 46.

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

**McKINNEY:** Good afternoon. Terrell McKinney, District 11, north Omaha.

**GEIST:** Good afternoon. Suzanne Geist, District 25, which is the southeast corner of Lincoln and Lancaster County.

**LATHROP:** Thank you. Assisting the committee today are Laurie Vollertsen, our committee clerk; Neal Erickson, one of our two legal counsel. Our committee pages today are Bobby Busk and Logan Brtek. And we thank them for their help and assistance today. And with that, we'll begin our hearing with LB745 and our own Senator Machaela Cavanaugh. Good afternoon, Senator, and welcome.

**M. CAVANAUGH:** Hello, Senator Lathrop-- Chairman Lathrop and members of the Judiciary Committee. My name is Machaela Cavanaugh, M-a-c-h-a-e-l-a C-a-v-a-n-a-u-g-h. I represent District 6 in west central Omaha, Douglas County. This is my last bill in Judiciary in front of you, Chairman Lathrop. And it is similar to how I started. I introduced a version of this four years ago and we passed it into law, but it was not signed into law, it was vetoed. So I am here to introduce LB745, updating state statute to be consistent with federal law by using gender neutral terminology on marriage applications and

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certificates. To some members of the committee, which is almost, I think, everyone except for perhaps Senator McKinney, you might be familiar with this bill. The Legislature passed in to law in 2019, but unfortunately the Governor vetoed the bill, saying that the goal of the bill, then LB533, could be achieved administratively. In the years that have passed, there are still issues with the language used in the administrative side of marriage. As we approach the seventh anniversary of the Supreme Court's Obergefell-- I'm going to say it wrong, Obergefell decision, that same gender marriages are a legal reality in all 50 states. Nebraska state statute does not reflect federal law. Current statute requires the officiant to instruct the two parties joining in union to declare that they take one another as husband and wife. LB4-- LB745 does not prevent any ceremony, religious or otherwise, from using the term husband and wife, but rather it strikes it as a requirement and instead changes the declaration to in marriage. Under current statute, an officiant would be in violation of the law if they were to use the commonly used term man and wife. In addition to the green copy of the bill, I offer an amendment, AM1855. In 2019, there was a committee amendment changing the word spouse to applicant. However, applicant did not seem fitting for the marriage certificate itself. AM1855 uses applicant when referring to the marriage license application, but uses spouse for the certificate of marriage. There was also discussion in 2019 at the hearing about the use of the word-- the term maiden name by Senators Brandt and Pansing Brooks. AM1855 addresses this concern as well by using the term legal name instead of maiden. In closing, I ask for your vote of LB745 and AM1855. I'm glad to take any questions.

**LATHROP:** Very good. Senator Cavanaugh, I don't see any questions.

**M. CAVANAUGH:** OK.

**LATHROP:** Are you going to stay to close?

**M. CAVANAUGH:** Yes.

**LATHROP:** Perfect. Thank you.

**M. CAVANAUGH:** Thank you.

**LATHROP:** How many people intend to testify on this bill? Three, four. OK. The reason we ask, by the way, is so we can alert the next introducer and they can be here in a timely manner. Looks like John Cavanaugh's next up. And with that, we'll take proponent testimony. So

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if you're here to speak in favor of the bill, you may come forward.  
Good afternoon and welcome.

**ARYN HUCK:** Hi. Thank you, Senator Lathrop and senators of the Judiciary Committee for the opportunity to provide testimony as part of the committee record. My name is Ayrn Huck, spelled A-r-y-n H-u-c-k. I am the community organizer with OutNebraska, a statewide nonprofit working to celebrate and empower lesbian, gay, bisexual, transgender, and queer and questioning Nebraskans. I'm here to both support LB745 as OutNebraska and as a Nebraskan who has been affected by the lack of action on this issue. OutNebraska supports LB745. This bill would finally update outdated language that currently denies LGBTQ couples' existence. With the U.S. Supreme Court's decision in Obergefell v. Hodges, same-sex marriage has been legal across the country since 2015. It is time for Nebraska's marriage language to reflect that reality. Support for same-sex marriage is broad. A 2019 study by Pew Research Center of Religion and Public Life shows about two-thirds of white, mainline Protestants support same-sex marriage, as do a similar share of Catholics. Under changes proposed by LB745, heterosexual couples would not be treated any differently. The update simply would reflect what has been the law of the land since 2015, that there are two spouses and not all couples will be a bride and a groom. This matters to Nebraskans. There are an estimated 67,000 LGBTQ Nebraskans living in our state, which is more than the entire population of Grand Island. I am one of those 67,000 LGBTQ people. In the summer of 2019, my partner and I went to the Lincoln marriage license office. We were getting married in the fall. The marriage license office is a cute little desk covered in hearts and signs welcoming couples. This small, legal step is oddly thrilling for couples in love, and it should be a positive experience. For me, this memory is bittersweet. My partner and I did not realize the forms were still gendered bride and groom. The clerk apologized to us, saying she was sorry the form wasn't inclusive for gay couples. We had to discuss our options right there in public. It was humiliating. Both my partner and I are nonbinary, and though I appear more in the masculine now, I did not at the time. We had to decide who would be safest for it to be the bride and who the groom. The document will follow us for the rest of our lives. It's used to confirm our legal marriage and for work benefits, health insurance. So we had to decide could I, who was already taking testosterone, afford to put my name under bride? Would it jeopardize my ability to change other legal documents to access healthcare? And as people, we would never be able to display our marriage license. For both of us, the gendered terms would deny our personhood and our experiences as transgender, nonbinary, queer

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people. Friends of ours are getting married this spring. They are two men. I warned them so they did not have to have the discussion in public. I want this bill to pass so no more couples have to debate this. We deserve to be respected and treated with dignity. This small change would reflect our lives and our truths. Thank you for hearing me today. We urge you to forward LB745 to General File and I am available for any questions if you have them.

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

**PANSING BROOKS:** I have--

**LATHROP:** Oh, we do. Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. Thank you for coming, Mr. Huck. I appreciate it. Which pronouns are you using? Sorry, I--

**ARYN HUCK:** You can use they them or he him. So Mr. Huck is OK.

**PANSING BROOKS:** OK, thank you.

**ARYN HUCK:** Yes.

**PANSING BROOKS:** So I agree this is embarrassing and, and hurtful for people to have to go and, and figure this all out as outdated forms. I, I don't say that I have a maiden name, I same I have my birth name.

**ARYN HUCK:** Right.

**PANSING BROOKS:** So I'm probably not a maiden to most people. So anyway, I just think that it's-- there's no reason not to be specific and, and forthright on what these terms are. So thank you very much.

**ARYN HUCK:** Thank you.

**LATHROP:** OK. I see no other questions. Thanks for being here.

**ARYN HUCK:** Thank you. Thank you for having me.

**LATHROP:** Appreciate hearing from you. Anyone else here as a proponent of LB745? Good afternoon.

**DAN ESCH:** Good afternoon. Thanks for having me, Senators. Dan Esch, I'm the Douglas County Clerk, D-a-n, last name, E-s-c-h. So I didn't get the letter submitted prior to noon yesterday. So I was just-- but I sent everyone a letter via email. I'll just, I'll just read, read it into the record. And I guess I'll just read the one I sent to you,

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Senator Lathrop. Dear Senator Lathrop, I'm writing to you to express my support for LB745, change and eliminate provisions relating to marriage. As the official charged with overseeing the marriage license process in Douglas County, I believe the proposed changes in LB745 would be beneficial to both county clerks and marriage license applicants. LB745 would also help our state law reflect federal law, and I believe it addresses all the concerns raised in similar bills that were previously introduced, LB533 in 2019 and LB785 in 2018. I appreciate your consideration and I hope you will vote to advance LB745 to General File. That's-- I don't really have much to add other than that what other folks have said. So thank you.

**LATHROP:** OK. I don't see any questions, but thanks. I appreciate you came down from Douglas County, this is-- I'm sure it's a kind of a big deal in Douglas County in your office, right?

**DAN ESCH:** Yes.

**LATHROP:** And you're the person responsible in Douglas County for the marriage licenses?

**DAN ESCH:** Yeah, me and my records team. Yep.

**LATHROP:** Yes. OK, well, we appreciate hearing from you and thanks for--

**DAN ESCH:** Yeah, thank you.

**LATHROP:** --being here today. Next proponent. Good afternoon. Welcome.

**SARA RIPS:** Good afternoon, my name is Sara Rips, S-a-r-a R-i-p-s. I am the LGBTQIA+ legal and policy counsel for the ACLU of Nebraska. Thank you to Senator Cavanaugh for bringing this bill and for the Judiciary Committee for their time today. I am here in support of LB745. Senator Cavanaugh's bill updates the provisions of our marital statutes to align with the Supreme Court's ruling in Obergefell v. Hodges, which extended the freedom to marry to more Americans. The court ruled that marriage is a fundamental right and that states must provide married same-sex couples with the same benefits they provide to other couples. The decision requires every state to license and recognize same-sex marriage. Same-sex marriage has been the law of the land for almost seven years. County clerks across Nebraska issue marriage licenses to same-sex couples. State agencies provide benefits and support to married same-sex couples, and our courts handle family law cases involving same-sex couples. Last year, I helped litigate and win a case called In Re Adoption of Yasemin S. before the Nebraska Supreme

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Court. In that case, a judge denied an adoption because of outdated statutory language describing married couples. I provided members of this committee with copies of the Supreme Court's unanimous opinion. I encourage you to look carefully at Justice Cassel's language. Outdated statutes do a disservice to all stakeholders. As such, the Legislature should update the language of our statutes to reflect the law and practice and to send an important message of equity and inclusion for all Nebraskans. In closing, I just want to say to all LGBTQ Nebraskans, the ACLU of Nebraska sees you, we hear you, and we will always fight for your constitutional rights and to be treated with dignity, equality, and respect. Thank you, Senators, for your time today, and I'm happy to answer any questions you may have.

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

**SARA RIPS:** Thank you, Senator.

**LATHROP:** Next proponent. Anyone else here wish to speak in favor of LB745? Seeing none, we'll take opponent testimony. Good afternoon.

**MARION MINER:** Good afternoon. Chairman Lathrop and members of the Judiciary Committee, my name is Marion Miner, M-a-r-i-o-n M-i-n-e-r, and I am here on behalf of the Nebraska Catholic Conference, which advocates for the public policy interests of the Catholic Church and advances the gospel of life through engaging, educating and empowering public officials, Catholic laity and the general public. I want to begin by emphasizing as well that the Catholic Church also regards every person, including those who would regard themselves as being in the LGBTQ community as being a valued member-- members of our society and worthy of dignity, being treated with dignity and respect. The conference opposes LB745 because it would engrave in statute the mistaken view of the reason the state recognizes, supports and solemnizes marriage as a public good. Marriage and family are the foundation and basic building block of society. Getting marriage wrong has large-scale consequences, and entrenching those mistakes in statute only deepens the effects. There are two principal ideas today about what marriage is: a conjugal view and a much newer revis-- revisionist view. The revisionist view imposed by Obergefell v. Hodges in 2015 deems marriage a public recognition of a committed relationship between consenting adults for their fulfillment. These commitments, of course, can be salutary and deeply meaningful, but it is a very recent thing to claim that they can constitute a marriage relationship without something more distinctive. In this revisionist view, what separates marriage from any other type of relationship is its unique emotional intensity. The conjugal view of marriage, often

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called "traditional" calls for permanent and exclusive union between a man and a woman with each other and any children born from their sexual union. Sex between men and women often results in children, and for these new and highly dependent people, these children, there is no path to physical, moral and cultural maturity without a long and delicate process of ongoing care and supervision. One to which men and women typically bring different strengths and for which they are better suited, the more closely related they are to the children. It is its link to the welfare of children that makes marriage unique among relationships and a public good that the state should recognize and support. LB745 would, as a matter of state public policy, abandon the conjugal view of marriage for a revisionist one, making very clear by its changes that the state's view of marriage has no link to sexual relationships and the children that result from those relationships. Opposition to LB745 may seem quixotic or like simple contrarianism to some, given the ruling of Obergefell seven years ago, but marriage is so fundamentally important that resistance to codifying that mistaken decision is imperative. We respectfully urge your opposition to LB745. Thank you.

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

**PANSING BROOKS:** I have a question.

**LATHROP:** Oh, I'm sorry. Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. I think you didn't come last year with, with Senator Cavanaugh's bill. I'm just wondering why, why you didn't do that?

**MARION MINER:** Yeah, I, I don't recall the circumstances there. It may have been because there was another hearing and I had forgotten to submit a letter. I'm, I'm not sure. I don't recall.

**PANSING BROOKS:** OK. And did you talk to Senator Slama about this bill or try to discuss with her how you felt about it or how you might come to some sort of agreement on how to, how to do it?

**LATHROP:** You mean Cavanaugh?

**PANSING BROOKS:** OK, I'm sorry, what did I say?

**MARION MINER:** Senator Cavanaugh.

**LATHROP:** You said Slama.



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**SLAMA:** I like to think we're different people.

**LATHROP:** Just wanted to clarify the question before.

**PANSING BROOKS:** Yes, I meant Senator Cavanaugh.

**MARION MINER:** Did discuss it with Senator Cavanaugh? No, I did not.

**PANSING BROOKS:** OK, thank you. Sorry.

**LATHROP:** That's OK.

**PANSING BROOKS:** Yeah. Thank you.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you for your, your testimony. So and while I agree with a lot of what you said, isn't this a secular form at a public courthouse?

**MARION MINER:** Uh-huh. Right.

**BRANDT:** So--

**MARION MINER:** So what I'm expressing here is not, you know, so-- so the Catholic Church, for example, has, in addition to marriage-- seeing, recognizing marriage as a public good as a civic-- civil institution, there's also the sacramental understanding of marriage. But that's not what I'm addressing here. What I'm addressing here is the, is the state's posture towards marriage as a public good.

**BRANDT:** From a practical standpoint-- well, let me back up a second. What is this form for at the courthouse?

**MARION MINER:** The form at the courthouse, so an application form. Is that what you're asking about?

**BRANDT:** Yeah.

**MARION MINER:** So that, I mean, that is an application for, for marriage, for-- under the, under state law.

**BRANDT:** Whether they're Catholic or Lutheran or Hindu or Baptist or atheist, right?

**MARION MINER:** Right. Correct.

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**BRANDT:** So, you know, putting applicant on there, I mean, my insurance form says applicant on it. I mean, are we going to go to the--

**MARION MINER:** Right.

**BRANDT:** --other agencies in the, in state government and put bride and groom instead of applicant?

**MARION MINER:** I'm not sure what the reason for that would be, because what we're talking about here is the institution of marriage as a public good. So with regard to other circumstances, say, in, in other situations, what we're not talking about is the state posture toward marriage. You're talking about the state posture toward an individual for insurance or what, what have you. Here we're talking about what is the state's understanding of marriage as a public good and why is it different from other types of relationships? What makes it different? What makes it worthy of recognition and support and incentivization and regulation? And that's what I'm addressing here today.

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

**LATHROP:** Senator McKinney.

**McKINNEY:** Thank you, Chair Lathrop. And thank you for your testimony. Wouldn't it be good public policy for the public good to accept every individual as they come, instead of saying that because you identify a certain way, it's not traditional? That it shouldn't be accepted or changes shouldn't happen?

**MARION MINER:** So thank you for the question. So the way I would answer that is to say yes, we should accept people exactly as they come, as they, as they present themselves to us, whatever their situation is. The question, though, is, is about, is about the institution of marriage and what that is and why the state specifically recognizes it, supports it, incentivizes it, regulates it.

**McKINNEY:** But isn't how you view the institution of marriage kind of your-- it's, it's not-- it's more based on religion and not just based on just-- because everybody has different beliefs on what the institution of marriage is.

**MARION MINER:** Sure.

**McKINNEY:** And I think good public policy would be to recognize that everybody has different beliefs and create public policy just because

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one certain group has this belief and exclude the rest of those indiv-- the rest of society.

**MARION MINER:** I under-- oh, I'm sorry. I didn't mean to interrupt.

**McKINNEY:** You're all right. Finish.

**MARION MINER:** Oh, sure. Yeah, I understand what you're saying. I appreciate that. So this view of marriage as, as a conjugal relationship and oriented specifically toward asserting the rights of children, which they cannot assert for themselves, their right to a permanent and exclusive relationship with their biological parents, that is something that is-- predates Christianity, you know, by thousands of years. So it's not specific to, say, for example, a Catholic or a Christian view of marriage. Now it's true that it's not the only view of marriage that exists now, but that is the view of marriage that was universal until very recently. And I think it's, it's worth grappling with the question--

**McKINNEY:** But the--

**MARION MINER:** Sir.

**McKINNEY:** --kind of-- it's not similar, but it kind of works. And the counter is slavery was viewed as a tradition for 300-plus years.

**MARION MINER:** Sure, it was all [INAUDIBLE].

**McKINNEY:** It was a tradition in this, in this country that was accepted by many. And eventually we got to a point where we, we understood that it wasn't acceptable or--

**MARION MINER:** Right.

**McKINNEY:** --you know, things should be changed and we should evolve as a society. And I-- we don't got to continue, but I just think we have to be open to more and we have to evolve. That doesn't mean change what you believe in or counter what you believe in, because I would never tell you to do that. But I do think as a society to, to make this country better, because we're in a horrible state on all levels, we have to evolve and be open to people and not always stick our feet in the sand just because tradition.

**MARION MINER:** Sure. And I agree with that 100 percent. Here's the distinction I would make between a couple of situations that you mentioned. Certainly, tradition for tradition's sake can be a bad

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thing, right? And you know, sticking your, your, your foot in the ground or your feet in the sand, as you said, can be, can be harmful to real, real progress. And that certainly is the case with the institution of slavery that existed for a long, long time, along with many other issues.

**McKINNEY:** But isn't it harmful for those individuals who go down to the courthouse and have to pick and choose whether they're going to be the bride or the groom?

**MARION MINER:** So I'll get to that in a second. Just to finish my thought, though. I think what we have to distinguish between is simply sticking with tradition for tradition's sake or the old way of doing things for the old way's sake and being willing to grapple with when we're presented with this, what some would say is an evolution toward a more just world, what some would say is not. We have to grapple with the merits of the thing, and it's, it's our position that the conjugal view of marriage is what makes marriage a unique sort of relationship and what makes it worthy of state recognition and support.

**McKINNEY:** All right. Thank you.

**MARION MINER:** You're welcome.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. So there's supposed to be separation of church and state. So I'm just trying to figure out why you think this is one place that the state has to impose some type of religious view.

**MARION MINER:** So this isn't a religious view. It's, it's a view of, of marriage as a public good, which again predates Christianity by thousands of years.

**PANSING BROOKS:** And what about-- so you talked about people being able to have children. What about impotent people? Or people who--

**MARION MINER:** Yeah, no, that's a good question.

**PANSING BROOKS:** Thank you.

**MARION MINER:** So with the, with the issue of infertility, right, that-- those marriages are not any less marriages than marriages that lead to children coming into the world. So and that's not inconsistent, and here, here's why-- I'll, I'll do my best to explain why. So the type of sexual relationship that a man and a woman are

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capable of having together is, regardless of what results at the end, whether or not after the fact a child comes into being, right, it is ordered toward bodily unity, reproductive unity, which cannot exist without both, right? And regardless of whether circumstances which are outside of that couple's control come to fruition to complete that, it is an act that in and of itself, right, is ordered toward bodily unity and reproductive procreation. And so because it is that type of act, it calls for a permanent and exclusive commitment. And that's the reason for marriage.

**PANSING BROOKS:** Promoting love and compassion for others is also a basic tenet of the church and what we should be doing, and I will just apologize for the actions of the state and others who attempt-- attempt to be helpful in a way that is hurtful to others. So thank you for coming here today.

**MARION MINER:** And if, and if anything that I have said or anything that I've responded to-- if the way that I have responded to questions or if I've said anything is taken as being hurtful, you know, I apologize for that, because that's not my intent. Because I agree with you that those values are something that we share.

**LATHROP:** Senator DeBoer.

**DeBOER:** So let me, let me understand. You don't want to be hurtful.

**MARION MINER:** Correct.

**DeBOER:** OK, good. Your argument is that because it is a public good to keep marriage the way you understand marriage and you've described it here, isn't the implication then that by trying to prevent this particular understanding of marriage to which you object is that that is somehow a public bad? Isn't that what you're saying?

**MARION MINER:** No, that's not what I'm saying.

**DeBOER:** OK. Good.

**MARION MINER:** If I, if I understand the question correctly, no, that's not what I'm saying. What I'm saying that marriage is, is a particular kind of thing. And because of the kind of thing it is, it is a public good. And because it's a public good, it is worth supporting. Now when we-- when we do away with our understanding of marriage as that type of thing which actually supports the public good, we're doing away with something that is supportive of the public good. I hope that makes sense. That's a little--

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**DeBOER:** Well, so I mean, I think the, the implication of that is that there's a, that there is some sort of bad that is done if that particular understanding of marriage is not upheld, is that what you're saying?

**MARION MINER:** So again, if I, if I understand this right, if I understand your question right, what I'm saying is that there is a reason that marriage has under-- been understood this way and, and, and there is a reason that the state should continue to hold that understanding of marriage.

**DeBOER:** I mean, this historical argument--

**MARION MINER:** Uh-huh.

**DeBOER:** --actually, the understanding of a monogamous marriage is, in the history of humans, if we're talking the whole history of humans as a legal or even religious understanding, is a limited, parochial understanding of marriage. You think about bigamy, that was a very traditional understanding of marriage. I suspect you're not here saying that bigamy would be a good way to do things. That we have applicant one, two--

**MARION MINER:** No, I'm not.

**DeBOER:** --three, right? Like I didn't-- I don't expect you would say that. So the historical argument is a little tricky, too, I think.

**MARION MINER:** Sure. There-- that introduces nuance into it. But still, in those cases, you always-- it's always male and female, and it's always because of the fact that sexual relationships between male and female often lead to children. That's the reason for the institution.

**DeBOER:** OK, well, I'm a little concerned that what we're saying to our brothers and sisters is that their-- somehow their marriage is not a public good as well. And I would want to make sure that we, we're clear with our brothers and sisters who may have a different understanding of marriage than you, that their marriage is good and a public good as well. That's what I want to say.

**MARION MINER:** I would-- thank you for that. I would add that there are all kinds of relationships that are not marriages that are public goods that are valuable in and of themselves. The question is whether they are truly marital relationships and what the state should recognize as marital versus-- versus some other type of relationship.

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**DeBOER:** Well, since it's a legal question, I think that's been answered by the Supreme Court. But thank you.

**MARION MINER:** Thank you.

**LATHROP:** I don't see any other questions. Thanks for being here.

**MARION MINER:** Thank you.

**LATHROP:** Any other testimony in opposition to LB745? Anyone here in a neutral capacity? Seeing none, Senator Cavanaugh, you may close. We do have position letters: 11 proponents, 10 opponents, and none in the neutral capacity.

**M. CAVANAUGH:** Thank you very much, Chairman Lathrop and members of the committee. I appreciate your attention to this and the questions asked and this passed out of this committee unanimous in 2019. It had no opposition. I was not contacted by the opposition in advance. I'm still unclear as to what their opposition is because it seems to be based on something that is not part of this bill, not defining marriage in any way. It's not defining the sanctity of marriage or what marriage is to any one person. The last testifier said the question is about the institution of marriage. That is not the question that is being answered by my bill. The question being answered by my bill is why should somebody whose pronouns are he/him have to say that they're the bride? They can say applicant on the form and it can say spouse on the marriage license, and if you want bride and groom, you or your church can create a very lovely marriage certificate that you hang framed in your home. There's nothing stopping that. This is just to make things neutral on a government form. And I would be remiss if I didn't say that I am extraordinarily disappointed that somebody would represent my religion the way that it has been represented this afternoon. I'll take any questions.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Can you clarify for me? Is this about the application or is this the marriage certificate?

**M. CAVANAUGH:** So with the amendment, it's both, because originally it just changes it to applicant. But upon further reflection and discussion with people, having applicant on the actual certificate felt a little stagnant to what the certificate symbolizes. So that would be spouse. So the application would be applicant one, applicant two, just like you would do on any other application for any other

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thing, if you were entering into a business and the marriage certificate itself would just list both individuals as spouse.

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

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. Thanks for bringing this, Senator Cavanaugh. I guess-- have, have you heard at all whether people could cross that off the bride and groom and put applicant one, applicant two? And I know that's not what we want, it's not our goal. But I sure as heck would be doing that and would tell any of my friends to do that. And if there were a law case and somebody denied it, the state would be held liable for denying a marriage license, in my opinion.

**M. CAVANAUGH:** I have heard that people have sometimes been instructed that they should just do that. Whether that makes the, the license valid or invalid, I'm not-- I don't know. I would say that this Supreme Court case in Nebraska clearly states that this is what we should be doing with our government forms.

**PANSING BROOKS:** Yeah.

**M. CAVANAUGH:** And this isn't intended to be a snub at any religion or the institution of marriage. It is simply to make a form as you are entering into a life together not traumatic. I mean, I don't, I don't know why anybody would want to traumatize people, even if you don't agree with them. They're going to do it. It's legal for them to get married. We don't have to misgender them.

**PANSING BROOKS:** And the, the U.S. Supreme Court and the Nebraska Supreme Court have spoken.

**M. CAVANAUGH:** Yes, two very conservative Supreme Courts have spoken.

**PANSING BROOKS:** Yes, thank you.

**LATHROP:** I-- oh, Senator Morfeld.

**MORFELD:** And maybe this is just a rhetorical question because I don't know the answer to this either, but we should look into it. Is this like a-- when you, when you sign this document-- I can't remember when I signed mine, but when I signed it, I don't remember if it's a sworn statement that you're making as to the truth and veracity of the document.



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**M. CAVANAUGH:** I'm looking at Mr. Esch--

**MORFELD:** OK.

**M. CAVANAUGH:** --to see if he is going to shake his head one way or the other.

**MORFELD:** Because there's a lot of government documents that you sign that--

**LATHROP:** Let the record reflect that the clerk is unsure.

**MORFELD:** OK. I don't know if that's great for the clerk, but the-- I just wonder, because there's a lot of government documents that we sign that you sign under penalty of perjury.

**M. CAVANAUGH:** Um-hum.

**MORFELD:** And one of my concerns is, is that if somebody is signing that they're the husband or the wife and that indicates male, female, they're essentially lying on a government document. And that's, that's concerning to me.

**M. CAVANAUGH:** Yes.

**MORFELD:** So anyway, that'd be something to look into and I'm happy to look into it.

**M. CAVANAUGH:** It's concerning to me as well. Thank you for being willing to look into it. I would say that-- this was years before same-sex marriage became legal, but there was an individual in Omaha, was very high profile, who had gender reassignment and got a new birth certificate. And so they were married to a woman and they were still married to a woman, but they were now also a woman.

**MORFELD:** Yeah.

**M. CAVANAUGH:** And so that caused all kinds of complications legally. And so that's another reason I would just reiterate that it says legal name instead of even birth name because people have changed their names--

**MORFELD:** OK.

**M. CAVANAUGH:** --perhaps for [INAUDIBLE].

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**LATHROP:** Before we stop, there's some question about whether the clerk, who is actually here, was shaking his head yes or no. So are we attesting when we fill out this application?

**DAN ESCH:** [INAUDIBLE] you raise your hand and you're asked [INAUDIBLE].

**LATHROP:** OK, OK, so I'm, I'm glad we had that clarification.

**M. CAVANAUGH:** Senator Morfeld doesn't have to do the research now.

**LATHROP:** He doesn't have to do the research. But the record should reflect that the, the clerk who previously testified, Mr. Esch, has indicated that when someone fills out this application, they are attesting to the truth of the matter as they are [INAUDIBLE].

**M. CAVANAUGH:** Thank you, Chair.

**LATHROP:** OK. I just wanted to clarify that and not to mislead the record or this committee. Senator Morfeld.

**MORFELD:** Thank you. I just wanted to say, for the record, I think that's really concerning in that we're forcing people to lie under oath in order to get married. And I think there's probably constitutional issues with that as well. Thank you.

**M. CAVANAUGH:** Thank you.

**LATHROP:** OK. I don't see any other questions. Thank you for being here.

**M. CAVANAUGH:** Thank you.

**LATHROP:** Senator Cavanaugh, thank you for introducing the bill.

**M. CAVANAUGH:** Thank you. Now you get the other Cavanaugh.

**LATHROP:** And for those of you who have testified here today.

**M. CAVANAUGH:** I'm so sorry that you have to deal with the other Cavanaugh.

**LATHROP:** Thank you, Senator Cavanaugh. That will bring us to LB1245 and the other half of the Cavanaugh family, Senator John Cavanaugh. Senator Cavanaugh, welcome.

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**J. CAVANAUGH:** Good afternoon, Chairman Lathrop and members of the Judiciary Committee. For the record, my name is John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h. And also for the record, this is my last appearance in front of the Judiciary Committee this session, this biennium. So I, I know you're all relieved to hear that. I represent District 9 in midtown Omaha, and I'm here to introduce LB1245, which updates terminology relating to parentage-- paternity and parentage in Nebraska law. Since the U.S. Supreme Court decision in Obergefell v. Hodges in 2015, Nebraska law has lagged behind other states in recognizing the legal status of all families. LB1245 is an effort to address this. It updates references in our statutes to make them more-- bless you-- more equitable and neutral for all families in Nebraska. I have had a few people contact my office with concerns over the language in this bill and perhaps some unintended consequences of the language in the green copy. I'm always willing to work with anyone in good faith to make a better bill. I view this bill as a conversation starter and will seek to continue the conversation. I ask the committee for your-- thank the committee for your time, would be happy to take any questions, and trying to be brief here, but basically go through-- this bill goes through a number of places and changes paternity to parentage and mother to birth parent so "degenderers" references to parentage in the statute.

**LATHROP:** OK. Any questions for Senator Cavanaugh? I see none. Thanks for presenting LB1245. We will take proponent testimony at this time. If you're going to testify, by a show of hands, how many people just so that we have an idea, hold them up there so I can see them, if you don't mind. Three, four, five, six, six. Oh, Senator DeBoer is next. Welcome again.

**ARYN HUCK:** Hello. Thank you again. The copies you have, have our executive director's name on there. But again, my name is Aryn Huck, spelled A-r-y-n H-u-c-k. I'm the community organizer for OutNebraska, which like last time, we haven't changed. We're still a statewide nonprofit working to celebrate and empower Lesbian, Gay, Bisexual, Transgender and Queer/Questioning Nebraskans. Thank you for allowing me to speak today. OutNebraska is in full support of LB1245 and the updates to language relating to paternity and parentage. Being properly recognized on legal records is vitally important and should not require complex legal navigation. These updates will benefit a variety of parents and families, including those of the LGBTQ community. Being a legally recognized parent impacts things like healthcare access, survivorship benefits, and custody and visitation rights during divorce. LB1245 ensures that legally recognized parentage is not a barrier for families that have a more complex path

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to becoming parents. And finally, we respectfully ask that you advance LB1245 to General File. If you have any questions, I'm happy to answer them.

**LATHROP:** OK. I see no questions, but thanks for your testimony.

**ARYN HUCK:** Thank you so much.

**LATHROP:** Next proponent. Good afternoon and welcome.

**ERIN PORTERFIELD:** Good afternoon. Thank you for the opportunity for speaking with you. My name is Erin Porterfield, E-r-i-n P-o-r-t-e-r-f-i-e-l-d. Changing language to parentage for birth certificates and similar documents corrects a roadblock for security and permanency of my boys and for our family, similar families to ours, it remedies an existing discrimination to our boys. Let me explain. My partner and I, both women, were a couple but not legally able to marry. It wasn't legal in Nebraska at that time, and we selected an anonymous donor with the help of our doctor to conceive a baby. We conceived two babies. She carried one. I carried the other, same donor. When our couple relationship ended years later, we completed a parenting agreement and continued equal custody of our boys. I followed the parentage agreement decree completed in Douglas County. It said: The parties further agree they will cooperate one with another in filling out applications for amendment of birth certificates. So that each of the two moms can be on the birth certificates. As we proceeded, HHS denied that. I asked for a grievance hearing, and the following was stated on August 30 of 2018: HHS is required to enter on the birth certificate any child born out of wedlock the name of the father with certified documents of paternity and a statement in writing from the parent having custody due to the statutory procedure. The parenting decree stated in locos-- in loco parentis does not make the other parent equal to a father, does not have the same rights as a biological or adoptive parent. Unlike a biological or adoptive parent, a parent standing in loco parentis is deemed to have rights that are temporary, flexible, capable of being suspended and reinstated. Since Kristin, my partner at the time, was not a biological adoptive parent, she wasn't permitted to be on the birth certificate. And the same would be me for Cameron that she had carried. The problem is that there's no solution for our family right now. We are two female parents of our boys. There's no known father. We chose an anonymous donor, both of our boys. Adoption was not available to us because it wasn't possible for us to legally marry. So right now, our kids are in a position of vulnerability not being able to have the legal position of their

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parentage represented. Especially when you think about the terrible circumstances in life where you need a document to verify parentage. I'm asking for your support to go ahead and pass this. That will be a remedy for my kids.

**LATHROP:** OK. Appreciate you being here.

**ERIN PORTERFIELD:** Thank you.

**LATHROP:** I do not see any questions at this time, but we appreciate your testimony.

**PANSING BROOKS:** I do have a question.

**LATHROP:** Oh, I'm sorry, hang on.

**PANSING BROOKS:** I'm so sorry.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** So what-- HHS said what to you? They said-- how are they treating heterosexual couples? HHS, are they requiring paternity?

**ERIN PORTERFIELD:** Yes.

**PANSING BROOKS:** They do require paternity from heterosexual couples--

**ERIN PORTERFIELD:** No, not for having--

**PANSING BROOKS:** --who are not married?

**ERIN PORTERFIELD:** No.

**PANSING BROOKS:** OK, because I don't think you got to that. So--

**ERIN PORTERFIELD:** Yes, thank you for pulling that out.

**PANSING BROOKS:** --so you're being treated differently as parents than heterosexual couples.

**ERIN PORTERFIELD:** We have to demonstrate paternity, but that is not asked of heterosexual couples.

**PANSING BROOKS:** Of heterosexual couples who are not married.

**ERIN PORTERFIELD:** Correct.

**PANSING BROOKS:** So that in itself is some discrimination and so also, could you just go-- I, I see at the end, you talked a little bit about some of the difficulties like end of life situations, Social, Social Security benefits if one dies. Can you explain that just a little bit more too?

**ERIN PORTERFIELD:** Yes. Thank you for the question. For example, I am not on Cameron's birth certificate. Kristin is not on Kadin's birth certificate. These are our boys. Should I die and I have set up inheritance for Cameron, he will be taxed at a stranger rate, Kadin will not. And that is because there isn't a demonstration of parentage on that certificate. Likewise, if when they're older and something happens to me and Cameron needs to make some decisions for end of life, there is no verifica--verification by way of a document that demonstrates the relation that he has with me. And these are the things that have to get corrected.

**PANSING BROOKS:** Having had my dad die when I was 14, I understand the importance of that and recognize that Social Security, all of those things helped me to go on and be a lawyer and to-- I mean, we're just making it way tougher on kids is what we're doing by this. So thank you for, thank you for being here today.

**ERIN PORTERFIELD:** Thank you for your question and your comments.

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

**ERIN PORTERFIELD:** Thank you.

**LATHROP:** --for being here. Any other proponent testimony? Good afternoon.

**KATIE VOGEL:** Good afternoon, Senators. My name is Katie Vogel, K-a-t-i-e V as in Victor -o-g-e-l, and I'm an attorney at the Koenig Dunne law firm in Omaha. Thank you for this opportunity to testify in support of LB1245. Koenig Dunne supports this bill as it is an important first step in updating Nebraska's parentage statutes to reflect Nebraska's families. As a law firm practicing almost exclusively in the area of family law, we see firsthand the problems that arise when Nebraska statutory structure fails to keep up with the changes in family structure. We believe the changes proposed in LB1245 to be important first steps to ensure that Nebraska's parentage statutes continue to protect important parent-child relationships. Using only gender specific relationships to establish a parent-child relationship are not inclusive of all family structures, and

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Nebraska's parentage statutes continue to use this language, which causes confusion for same-sex couples and creates legal obstacles that we, in the partnership with the ACLU of Nebraska, are currently trying to resolve through litigation. Significant rights and obligations attached to parentage presumptions and Koenig Dunne, on behalf of our clients, is invested to ensure that the parentage that is established appropriately. Clarity and alignment with modern family structures is needed within Nebraska's parentage statutes. Thank you.

**LATHROP:** Can I ask a practical question?

**KATIE VOGEL:** Sure.

**LATHROP:** If I'm-- who's issuing these documents, HHS?

**KATIE VOGEL:** Yes, this would be the language in the statute that would refer to paternity and it would say parentage. It would get rid of the gender.

**LATHROP:** So what are, what are they to-- what is HHS to do in the circumstance that we just heard in the last testifier, two women each have-- they are a couple unmarried, they have children while they're unmarried, and they want the other to be shown as the parent?

**KATIE VOGEL:** On a birth certificate?

**LATHROP:** Birth certificate and the documents that we're talking about today.

**KATIE VOGEL:** Correct. I'm going to defer to our ACLU partners--

**LATHROP:** OK.

**KATIE VOGEL:** --to comment more upon that.

**LATHROP:** I get the problem that it causes.

**KATIE VOGEL:** Yes.

**LATHROP:** I just don't know how easy it is to solve in that particular circumstance where I get it if the, if the couple are married, then these children were born--

**KATIE VOGEL:** There's a presumption.

**LATHROP:** --during the time of the marriage.

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**KATIE VOGEL:** Yes.

**LATHROP:** There's a presumption that they're--

**KATIE VOGEL:** Um-hum.

**LATHROP:** --one another's spouses. You and I would understand that. But to have two unmarried people of the same gender in a relationship when they have their children and do we just take their word for it?

**KATIE VOGEL:** Like I said, I'll let the ACLU--

**LATHROP:** OK.

**KATIE VOGEL:** --speak to that in more detail. But yes, clarity on the forms to take away from those gender identities would, would help solve that.

**LATHROP:** OK. Did you have a question?

**MORFELD:** I did not, just needed coffee.

**LATHROP:** Oh, I can't help you there. OK. Thank you--

**KATIE VOGEL:** Thank you.

**LATHROP:** --for your testimony. I appreciate it. Welcome back.

**SARA RIPS:** Thank you. It's been a long time. My name is Sara Rips, S-a-r-a R-i-p-s. I'm the LGBTQIA+ legal and policy counsel for the ACLU of Nebraska. You just heard from my client and you've heard from my cocounsel. The law in Nebraska does not protect unwed parents who have children through assisted reproductive technology. If it is a heterosexual couple and at the hospital the man signs a birth certificate knowing that he has used either a sperm donor or some other form of technology and he is not the biological father, he's lying under oath. The laws do not protect unwed same-sex couples, and there were many couples in Nebraska who prior to Obergefell chose to be in relationships, chose to have children together, paid for the costs, paid for every step of the way and yet are denied the right to be a parent. In loco parentis does not satisfy the statutory requirements for parentage in order to be recognized on birth certificates or in any legal matter. It is impossible for my client to become a parent to a child that she wanted. This state goes after people, after men who have children out of wedlock all the time to make sure that our children are provided for by this state, and that



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the parents, when available, help subsidize that cost. That is why we have all of these requirements regarding paternity to ensure that children have parents who can help support, care, and nurture them. These people, my clients and other similarly situated people, LGBTQ couples across the state do not have the ability to be legally recognized as the parents that they are. Senator Cavanaugh's bill is an important step in addressing this and making this correct. One of the things-- the only thing I handed to you was Justice Cassel's Opinion from *In Re Adoption of Yasmin S.*, and if you read that Opinion, you will see that he talks about the importance of updating and modernizing our statutes to ensure that the law is clear. According to the Williams Institute at UCLA, Nebraska ranks 44th in number of same-sex couples. However, it is 17th in the percentage of couples raising children. LGBTQ couples in Nebraska raise children, and they have the right to be the legally recognized parents to those children. Senators, thank you for your time and I'm happy to answer any questions.

**LATHROP:** I-- there's two parts to this. One is the problem. I recognize the problem. I, I see the problem and I agree with you that it is a problem. In the circumstance of two people who are unwed at the time a child is conceived,--

**SARA RIPS:** Um-hum.

**LATHROP:** --what's HHS supposed to do, just have the two of them come and say we, the two of us, want to be listed as the parents?

**SARA RIPS:** Well--

**LATHROP:** And what if there is a father somewhere in the, in the process?

**SARA RIPS:** Are you, are you saying if it's a same-sex couple who's unwed and goes to the DHHS? Right, that--

**LATHROP:** What's, what's the mechanics of this process and how do we know that it,--

**SARA RIPS:** Sure.

**LATHROP:** --that it doesn't leave a father out, perhaps,--

**SARA RIPS:** Sure.

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**LATHROP:** --or that it is done in a way that we can have confidence that, that, that the two of them want to be, that they will be, and that--

**SARA RIPS:** Sure.

**LATHROP:** --if there is a, a-- an end to that relationship that we can sort out the child support issues?

**SARA RIPS:** Yeah, there's a lot of, a lot of like answers that come from that. So first of all, I think the number one thing is Nebraska could adopt the Uniform Parentage Act. The 2017 edition includes language including topics like artificial insemination, which our statutes and case law do not cover. A quick Westlaw search will show you that most cases involving artificial insemination in Nebraska involve cows. So that's not helpful. The, the second thing is the issue of parents attesting parenthood. That is what a voluntary acknowledgment of paternity is. Title IV-D of the Social Security Act requires all states to have mechanisms in place to allow people to voluntarily acknowledge parentage. There-- and I worked at Legal Aid before working at the ACLU, and I had numerous cases where I worked to disestablish paternity in situations where men believed that they were the father. They signed this voluntary acknowledgment. They later learned that they were not the father and had to go through the steps of disestablishing. So we already allow heterosexual couples to voluntarily acknowledge parentage, even if just through, just through an affidavit done at the hospital on a DHHS form.

**LATHROP:** So you just think all we have to do is have two people come in that are not married, come in and attest to it, and then it should be [INAUDIBLE]?

**SARA RIPS:** Well, I'm just saying that currently is the situation for heterosexual unwed couples. Why-- you know, I, I think that, you know, that the department and the Legislature could develop clearer regulations. I think LB1245 is a good step to helping make those things clear. I think that people who say I want the burden of being a parent, I am in it, I am committed, that is not something that we should take lightly, which is why our state views voluntary acknowledgments of parentage as legal findings.

**LATHROP:** OK.

**SARA RIPS:** Thank you.

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**LATHROP:** Let me see if there's, let me see if there's any other questions. I don't see any.

**SARA RIPS:** All right.

**LATHROP:** Thanks for being here.

**SARA RIPS:** Thank you, Chairman.

**LATHROP:** Any other proponent testimony? Good afternoon.

**ANGELA DUNNE:** Good afternoon. My name is Angela Dunne of Koenig Dunne. One of my coworkers, Katie Vogel, testified prior and Erin Porterfield, our client, and our cocounsel, Sara Rips. I've been a divorce attorney for 23 years in Douglas County, Nebraska. And I really want to answer your questions about the process by which couples are able or unable to establish parentage, because I think that's what you're getting at, and I'm not sure that that's been answered.

**LATHROP:** Good.

**ANGELA DUNNE:** So right now, Sara spoke about what happens if you are a male, you can go in, you can sign an acknowledgment of paternity whether or not paternity has actually been established or not, and that operates as a legal order of parentage. Women don't have that option. You've got a biological mom and you can't just sign and say, you know, I'm, I'm the dad of a child. So options that clients have now they can go into court, which is what our clients did, and have the court make a determination that they are acting in the place of a parent, which is the in loco parentis doctrine. That's a temporary doctrine. So to the point of if you're moving into Social Security benefits after death or inheritance, in loco will terminate right prior to that--

**LATHROP:** I get that.

**ANGELA DUNNE:** Yes.

**LATHROP:** Yes.

**ANGELA DUNNE:** So they can litigate through that. Erin and her partner litigated and the court said, go and have the birth certificate reflect what I've ordered and DHHS can't do it or they're saying that they can't do it because of the statute requires mother and father. So if the language were gender neutral, they would be allowed to. So even

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though the court directed that that's the remedy under the law, DHHS is saying we can't do it because statutorily we're not authorized to.

**LATHROP:** Because it says father on the birth--

**ANGELA DUNNE:** Correct.

**LATHROP:** --certificate.

**ANGELA DUNNE:** Correct.

**LATHROP:** Well, that kind of, that kind of lends some support to the previous bill as well,--

**ANGELA DUNNE:** Correct.

**LATHROP:** --by the way.

**ANGELA DUNNE:** Yes.

**LATHROP:** But-- so all we have to do is change the form--

**ANGELA DUNNE:** Correct.

**LATHROP:** --or require that the form be changed. But will two women in the circumstance of Miss Porterfield have to go through the court process each time they want to do this--

**ANGELA DUNNE:** Not--

**LATHROP:** --or will acknowledgment be allowed in that circumstance?

**ANGELA DUNNE:** If there was an acknowledgment of parentage, they would not be required to go to court because that would operate as a legal order effectuating parentage. The only reason that if a father now signs an acknowledgment of paternity, they might end up in court because the couple's not getting along and they need to decide parenting time, child support, etcetera. It would be the same process that if you've got Erin and Kristin, they sign an acknowledgment of parentage and like what happened in their situation, they break up several years later. They need to establish child support, parenting time, etcetera. We just want to treat moms and dads similarly, we want parents to be treated equally.

**LATHROP:** So once we change the forms, then existing law takes care of the problem.

**ANGELA DUNNE:** That's correct.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. Thank you very much for coming in to clarify that-- this, Ms. Dunne. So because right now, Ms. Porterfield, there are two children--

**ANGELA DUNNE:** Correct.

**PANSING BROOKS:** --without parents.

**ANGELA DUNNE:** Without a parent. They are-- they each have one legal parent because biological father in this situation cannot be identified, so they each have one legal parent. They would say they have two parents, and we're trying to have the state recognize-- the court's recognized that they have two parents. Although the court's hands are tied in only being able to say you have one legal parent and one temporary legal parent. And this, this change to the statute would make it so that they could be two legal permanent parents.

**PANSING BROOKS:** And could you please speak a little bit to the, the legal issues that, that happen then as a result of only being able to have one parent because I know we're going to hear that this was ordained from a millennium ago, and I would like to talk about and hear about what is actually happening to the children.

**ANGELA DUNNE:** What actually happens to the children is very detrimental. So you have children who don't have access to two-parent financial support. Children don't have access to Social Security benefits. Children don't have access to inheritance benefits. And at last time I checked, I believe they get taxed at the 22 percent, I believe, instead of what a sib-- or what a blood-related child would be taxed at. And you have parents that are required to go into the court system whether it's amicable or not to even get an in loco parentis so their parents have to go to court. It delegitimizes their family. And I've spoken to Kadin and Cameron and they're brilliant young men, one's now in college and one's in high school, but they've talked about the trauma and the impact that had it being stigmatized that their family is not recognized as a whole unit.

**PANSING BROOKS:** Contrary to--

**ANGELA DUNNE:** Well, to the gentleman who was speaking about the conjugal nature of marriage, this goes to-- I, I think he and I would agree on the point of there are several heterosexual marriages where

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children are unable to be conceived and sex might even be an impossibility. He didn't kind of go that far, but if you're unable to conjugate or have conjugal impact in your marriage, he, he, he said this would be beneficial for children to protect and preserve family. So I don't see any difference between male-female marriage that is unable or unwilling to have children and same-sex parents who are able and willing to have children that we want to protect the family unit because ultimately that's just what's very best for children.

**PANSING BROOKS:** And to protect our Nebraska kids.

**ANGELA DUNNE:** Absolutely.

**PANSING BROOKS:** Yes.

**ANGELA DUNNE:** Yeah, absolutely.

**PANSING BROOKS:** Thank you.

**LATHROP:** I got one more for you.

**ANGELA DUNNE:** Yes.

**LATHROP:** And it's not that I'm opposed to this.

**ANGELA DUNNE:** Oh, no.

**LATHROP:** I get why you're, why you're doing it. But what if the same couple, whether they had one child or two, the two of them say, we are going to have a child together. They go through this process that's been described to have a child and they break up without ever signing one of these things. So now can mom one drag mom two into court to get child support?

**ANGELA DUNNE:** It depends. That's a great question. It depends on if they were married or not.

**LATHROP:** No, that's my hypothetical. That's not the case.

**ANGELA DUNNE:** So, so if they were not married, which mom, biological mom or nonbiological?

**LATHROP:** Biological mom is on the birth certificate, right? She says, you know what, we had a deal. We were a couple and we had this child together and we were going to raise this child together and now you're bugging out and--

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**ANGELA DUNNE:** Yeah.

**LATHROP:** --I think you ought to be paying child support.

**ANGELA DUNNE:** I think that's the rarest of cases, but I would love to talk about that. Most often what happens is biological parent says, too bad, I want you out. You have nothing--

**LATHROP:** Well, that's the other side of it.

**ANGELA DUNNE:** Well, you have-- so we had a case where two women, same exact situation they described, they hadn't-- they weren't able to get married, unmarried, have a child, they break up. Our client was nonbiological, nonadoptive parent file suit to establish her rights in loco parentis. Biological mom marries another woman because it's legal at that time and pushes through a stepparent adoption, thereby negating our client had been a parent for seven years and there was nothing the courts could do. So there's a lot of legally-- legal--

**LATHROP:** So you'll be back?

**ANGELA DUNNE:** Yes, I mean, there's legal maneuvering that can happen because of the way that we're not protecting that unit when it's initially formed. And so to your point, can a, can a biological parent say yes, come in? Well, the in loco parent has to put themselves in the place of that. And if they're saying, I'm, I'm checked out, I haven't seen this child in, in five weeks and I'm not providing any support, the court can't make a judicial determination that they're in loco parentis because it's up for that parent to assert their right.

**LATHROP:** OK, well, I have a feeling this is the first step.

**ANGELA DUNNE:** It is absolutely the first step and there are many more steps needed, but we very much appreciate that this is before the committee today to take these important first steps to pave the path for equality and for protection of children in Nebraska.

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

**ANGELA DUNNE:** Thank you. Absolutely.

**LATHROP:** And for your informing the committee. Any other proponent testimony? Anyone here to speak in opposition? Good afternoon.

**MARION MINER:** Good afternoon. Excuse me. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Marion

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Miner, M-a-r-i-o-n M-i-n-e-r. I'm here on behalf of the Nebraska Catholic Conference, which advocates for the public policy interests of the Catholic Church and advances the, the gospel of life through engaging, educating, and empowering public officials, Catholic laity, and the general public. The Conference opposes LB1245, which would amend 44 current statutes, replacing words with such clear meanings as mother, father, and paternity with respectively birth parent, other parent, and parentage. Other proposed changes explicitly deny that a person who gives birth to a child is necessarily a woman by removing she, her, and other sex-specific pronouns, and similarly that fathers are necessarily men. These latter changes especially seem to serve no public policy purpose other than in the words of Pope Francis to advance, quote, an ideology of gender that attempts to sunder what are inseparable aspects of reality, thereby eliminating the anthropological basis of the family. LB1245 would enact potentially sweeping changes in several areas of the law. The ripple effects the bill would have on public policies related to the relationship, responsibilities, and rights that unwed biological fathers have in relation to their children, to name just one area of the law impacted by LB1245 are difficult to fully understand. Senator Cavanaugh also alluded to this, but LB1245 also alluded specifically to concerns expressed with the language. So to that point, LB1245 also defines identical terms differently in different sections of the bill. In some sections, for example, other parent, which is made by LB1245 into a term of art, seems to be synonymous with father. In other sections, the same term means a parent other than the biological parent or birth parent. And in still others, it seems to mean simply the other parent. Similarly, biological parent in some sections means just that, a person who is biologically the father or mother of the child and in fact sometimes replaces the word father in existing statute, while in other sections it means only the biological mother. Far from simply updating language, LB1245 unnecessarily replaces language that has clear meaning with language that, in many cases, is almost impossibly opaque. The lasting consequences of such sweeping revisions throughout several areas of law relating to the relationships of children with their parents are, to say the least, unclear. The Conference respectfully urges that you not advance LB1245.

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

**MARION MINER:** Thank you.

**LATHROP:** Any other opponent testimony? Good afternoon and welcome.



**STEPHANIE BEASLEY:** Good afternoon. All right. Good afternoon, Chairperson Lathrop and members of the Judiciary Committee. My name is Stephanie Beasley, S-t-e-p-h-a-n-i-e B-e-a-s-l-e-y, and I am the director for the Division of Children and Family Services within the Department of Health and Human Services. I'm here to testify in opposition to LB1245, which will change provisions and terminology relating to determinations of paternity and parentage, birth certificates, and related matters. Nebraska has developed a complex set of interrelated statutes about who the legal parents of a child are and how those rights and obligations are established and enforced. Nebraska also has interrelated laws regarding the names and information that should be included on birth certificates. The changes proposed by LB1245 create ambiguities and potentially unintended consequences that impact DHHS and its ability to perform duties regarding child support enforcement and vital records. In-hospital acknowledgments and establishing support orders are some of the responsibilities of the department as the Title IV-D agency for the state. The department also has the responsibility to gather data and issue birth certificates. LB1245 would amend sections of Nebraska's paternity statutes. These statutes were written in a way that complies with federal requirements for states to have laws relating to paternity. They're specifically designed to identify the biological father when a child is conceived by and born to a woman who is not married. These statutes are also designed to establish and enforce the duty of the biological father to support the child and to maintain the birth mother's obligation to support the child as well. LB1245 would also amend Nebraska's maternity statute. The maternity statute currently in place was carefully drafted to address a specific, limited situation. It was intended to establish legal maternity when a woman acted as a surrogate for another woman who provided the egg. Under the paternity statute, the birth mother of a child born out of wedlock who joins in an acknowledgment of paternity remains liable for the child support. Under the maternity statute, a birth mother who is not the biological egg donor who joins in the acknowledgment of maternity is not one of the legal parents and not liable for the support of the child. Changing the paternity statute to be gender neutral, as well as the maternity statute, creates an ambiguity regarding the duty of the birth mother to support a child conceived through assisted reproduction. Both statutes require the hospital to present forms to the birth parent and biological parent, which is confusing and could lead to two different results depending on which form is signed. Under the current maternity statute, the rights and obligations of all the potential parties are resolved. If the current paternity statute is amended to be gender neutral, a biological egg

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donor could sign an acknowledgment of parentage without addressing the rights and obligations of the biological sperm donor or the duty of the state under federal law to establish paternity. LB20-- LB1245 also introduces the term other parent into sections of Nebraska's statute related to birth certificates, creating conflicts and inconsistencies. The Department of Health and Human Services respectfully request that the committee not advance LB1245. Thank you for the opportunity to be here today.

**LATHROP:** Is there a way to navigate the problems you just described?

**STEPHANIE BEASLEY:** Yes. So there is-- this creates one very specific situation that would be problematic for our determination of child support and who has the legal responsibility for the child. So in the situation where a birth mother is unmarried, this birth mother has received a donor egg and donor sperm, this bill creates ambiguity in that all three could be identified as legal parents and all--

**LATHROP:** Is there a way to fix that? I, I appreciate that you came in here in opposition, which is a lot better than having you come in here in neutral and then panning the bill. Right? But is there a way to, is there a way to resolve the problems that you have with the bill that you can work out with Senator Cavanaugh?

**STEPHANIE BEASLEY:** Any proposed fix to that, we would be happy to review and provide that feedback too.

**LATHROP:** That sounds a little bit like keep bringing me different versions of it, and I'll tell you when I-- when you've made me happy.

**STEPHANIE BEASLEY:** The specific issue with this bill is this specific scenario that gets created, the resolution to that because only two parents can be legal parents.

**LATHROP:** Right.

**STEPHANIE BEASLEY:** And so where we are specifically opposed is which two parents, which are the two legal parents in that scenario. This, this Nebraska statute that doesn't address intended parents. It looks for biological parents looking at the paternity statute and the maternity statute. So that's really-- that's the resolution that would assist us in determining who those two parents would be, who's responsible for the care and support of this child, which two people.

**LATHROP:** OK, let's say you and Senator Cavanaugh can work something out. Is there a barrier, I heard you bring up federal law and being in

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compliance with federal law, is there a barrier from a federal law perspective--

**STEPHANIE BEASLEY:** So federal law--

**LATHROP:** --to fixing the problem at the state level?

**STEPHANIE BEASLEY:** Federal law requires that we create paternity, that Nebraska have a paternity statute to address and ensure paternity of a child is established. So it's pointing us to-- so we're reviewing the statute. It points us in, in IV-D in child support enforcement, it points us to Nebraska statute. I can't speak to the details of the requirements of the federal law.

**LATHROP:** OK.

**STEPHANIE BEASLEY:** I can get some of those answers, but ultimately it directs states to have the ability to establish paternity and really was focused on unmarried women and establishing paternity for unmarried women so that there was somebody else providing for the care and support. Nebraska's statute don't-- does not address assisted reproduction.

**LATHROP:** OK.

**STEPHANIE BEASLEY:** So we point back to paternity and maternity statutes.

**LATHROP:** All right, well, we'll let Senator Cavanaugh have more conversation with you, I suspect. Are there any questions for the testifier?

**PANSING BROOKS:** I guess I have one.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** I just want to clarify. So they're-- you're talking about three parents, basically, so it shouldn't be that hard to figure that all out to determine which parents want to have control and custody over that child. I mean-- and so if it's determined and they can work it out, then, then what, what is the problem?

**STEPHANIE BEASLEY:** If there is conflict and you have a biological donor, you have the sperm donor, you have the egg donor, the birth mother, the birth mother is unmarried, if there is conflict, that's the question to be resolved.

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**PANSING BROOKS:** So how, how do you handle it with a heterosexual couple? Because you could have the same circumstance.

**STEPHANIE BEASLEY:** Heterosexual for an unmarried woman would point to the paternity established which DHHS does work with everything that we have to establish paternity for an unmarried woman. There are times where we're unable to do that, or there is a safety situation where family violence, where paternity would not be established, but our charge, and we're measured on this, is to establish paternity in the case where there is an unmarried woman under the Title IV-D laws.

**PANSING BROOKS:** Thank you.

**LATHROP:** It's all fine until people don't get along. Right?

**STEPHANIE BEASLEY:** Basically, Senator, yes.

**LATHROP:** And then some people don't want to pay and some people want to see the child when maybe they don't and it's-- well, I hope you and Senator Cavanaugh can sort that out. Thanks for being here.

**STEPHANIE BEASLEY:** Thank you.

**LATHROP:** Any opposition-- or other opposition testimony? Anyone here in a neutral capacity? Seeing none, Senator Cavanaugh, you may close. I do have position letters from five proponents and one opponent, and they'll be noted in the record.

**J. CAVANAUGH:** Thank you, Chairman Lathrop and members of the Judiciary Committee. I appreciate the conversation here. So what we heard in testimony today is that we have a problem and it's a fixable problem, but it is complicated. It is we're attempting to contemplate within the statute all of the different forms and shapes of families, and they can come in any-- I, I should have counted the number of different scenarios that were laid out by people testifying or even the, the Chair himself in terms of proposed hypotheticals. But-- and that-- those don't capture all of the potential possibilities. So this is a complex situation, and I appreciate the department's willingness to work on this. It is a solvable problem if you have the will to solve it. And just saying no is not going to be an answer. We have determined, the U.S. Supreme Court has determined that everyone has a right to be treated equally and our laws should reflect that and that our laws should protect families regardless of what shape they come in. Children deserve security, parents deserve security, and we're having a conversation, particularly on the floor in the Legislature today, about what drives people to a state or from a state. And I can

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tell you, if I were living in a state that made it difficult for me to be part of my kid's life, I would move to a different state. I would live in a state that ensured-- protected my rights to my children and protected their rights as it pertained to me. And so when we're having conversations about what makes a state a place where people want to live, this is one of those things. This is a question of protecting parents' rights and kids. And so this is-- it is complicated and I know and I wanted to give credit to Senator DeBoer, I think has attempted to tackle this issue and made some progress, maybe more so than I have on, on which I looked up LB245 and which fate would have it, this is LB1245. And so I thought that was a fitting-- I don't know what you call that, simile, syllogism. And as to the Catholic Conference's objections, you know, I'm a Catholic. I, I hear what they're saying. I appreciate their concerns about the importance of language. I saw an article this week where the Catholic Church in the state of Arizona kicked 20 years of people off of the rolls of that Catholic Church because they were baptized using the word we instead of I. And so sometimes I think our commitment to terminology, to language is certainly meritorious, and other times maybe that commitment is misplaced and that we should be more inclusive in our language. We should include everyone, not just one person. And we should contemplate every scenario, and we should make sure that everybody is safe, welcome, comfortable, protected. So this is a solvable problem. I will keep working on it. I will reach out to the, the department. I will talk to people. I will talk with Senator DeBoer about the solutions that she's worked on as well and find where we can get because this affects real people, this affects Nebraskans, this affects children, and this is something we should be doing. And so be happy to take any questions.

**LATHROP:** OK. Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Senator Cavanaugh, for bringing this. Are we the only state that has this problem?

**J. CAVANAUGH:** No, I don't think so. This is-- so this, this bill came out of, at least a part, I heard, know you heard reference to the Uniform Law Commission and those folks are working on it and they've got a proposal that I think-- my understanding is goes further than this proposal. And so this is an incremental step towards what's being proposed at a national level.

**BRANDT:** Have any other states solved this problem?

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**J. CAVANAUGH:** Yes. I have to find out which ones, but I think they're ones that are maybe a little less stuck in previous language-- commitment to the previous language.

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

**LATHROP:** I want to make a statement, and maybe it's for the benefit of the people that came down here today. I very much appreciate what you're-- the problem that you have and, and being here to try to address it, which is generally what we're here to do. And in modern life, it's important for us to figure out solutions to the kind of problems you present. I also, as a practicing lawyer, read the Advance Sheets and hopefully you are, too. And when I read those Advance Sheets every once in a while, we'll see a case come along where two people who thought they had a good adoption and somebody contests it and five years later they find out that there was a problem. And now the child is going back to somebody the child hasn't been with and it, and it's ripped from the parents' arms because there was something wrong with the process. And I, I know that we could solve your problem probably with this bill. But I want to make sure I'm not creating a circumstance where we have somebody who is believes they are, everything's locked down. We're the parents. And then there's some-- something we haven't thought through or fixed sufficiently and then a child goes back or is taken from a couple and goes back to somebody five years after a lot of litigation. And so that's why I'm a little, I'm a little careful with something like this. Sometimes HHS comes in and tells me about problems I don't really think that are really problems, and I can't sort that one off today, but, but let us know where you get with this. OK.

**J. CAVANAUGH:** Thank you.

**LATHROP:** Thanks, Senator Cavanaugh. That'll close our hearing on LB1245 and bring us to LB830 and Senator DeBoer. I will ask once again how many people are here to testify on Senator DeBoer's bill because Senator Wayne is the next introducer. OK, I'm going to have to have you hold your hand up with enthusiasm. Let's see them. Couple people. So you can let Senator Wayne know we have Senator DeBoer's bill and two testifiers. Senator DeBoer, welcome.

**DeBOER:** Thank you, Senator Lathrop. Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r, and I represent Legislative District 10 in northwest Omaha. I'm here to introduce today LB830 on behalf of the Nebraska Department of Health and Human Services. This legislation

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changes provisions relating to child support laws. Current law allows a court order to-- sorry, current law allows a court to order a parent to provide health insurance coverage for a child if the reasonable cost is below a certain percentage of that parent's income. The language puts this reasonable cost at 3 percent, which is no longer commonly used in child support cases. The Nebraska Supreme Court's child support guidelines now define reasonable cost as 5 percent of the parent's income. As a result, a majority of cases use this 5 percent standard. But because it's different from the statutory definition, this could conceivably lead to unnecessary litigation. Amending the statute to refer to reasonable cost as defined in the child support guidelines will solve this issue. It will also allow for regular adjustment to the contemporary economic circumstances as the child support guidelines are periodically reviewed and updated without requiring new legislation. DHHS will be providing support testimony and more details on the bill. So thank you. I'm happy to answer any questions. I will just say that this is to try and make what's in the statute match with what we're practicing in real life.

**LATHROP:** OK. I don't see any questions. Thanks, Senator DeBoer. Proponent testimony. Welcome.

**BO BOTELHO:** Thank you. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Bo Botelho, B-o B-o-t-e-l-h-o. I'm general counsel for the Department of Health and Human Services. I'm here to testify in support of LB830, which will allow the reasonable cost standard set by the Nebraska Supreme Court as part of Nebraska's child support guidelines to serve as the standard for court orders in Nebraska. DHHS would like to thank Senator DeBoer for sponsoring this legislation. Nebraska participates in the federal child support program under Title IV-D of the Social Security Act. Federal regulations require the state to include healthcare coverage in applicable child support orders if it can be obtained at a reasonable cost. The state is allowed to establish what is considered reasonable cost in a number of ways. It can be established by statute, regulation, court rule, or through properly adopted child support guidelines. Currently, the standard is set in Nebraska Revised Statute 42-369(2) and the Supreme Court child support guidelines. Until 2020, the standard in statute at 3 percent of gross income was the same standard as the guidelines. It's no longer consistent. Based upon the recommendations of the Child Support Advisory Commission, the Nebraska Supreme Court increased reasonable cost in their child support guidelines from 3 to 5 percent. The Supreme Court child support guidelines standard of 5 percent applies in judicial proceedings. Having a lower 3 percent standard in statute compli-- complicates

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administrative actions relating to the establishment and enforcement of healthcare coverage and medical support orders such as agency review of modification requests or the issuance of a national medical support notice. If an administrative appeal is requested relating to these administrative actions, the hearing officer must also give deference to the statutory 3 percent standard. Aligning the statutory standard with the child support guidelines will result in consistent and fair treatment for all the parties. In summary, LB830 will align the statutory standard with the child support guidelines. In essence making them the same resulting in consistent judicial and administrative treatment of the parties. Department of Health Human Services respectfully requests that the committee support this legislation. Thank you for the opportunity to testify today. I'd be happy to answer any questions.

**LATHROP:** Any questions for Mr. Botelho? I see none. Thanks for being here.

**BO BOTELHO:** Thank you.

**LATHROP:** Next proponent.

**TIM HRUZA:** Good afternoon, Chairman Lathrop, members of the Judiciary Committee. My name is Tim Hruza, last name spelled H-r-u-z-a, appearing today on behalf of the Nebraska State Bar Association in support of LB830. I don't have much to add in-- with respect to the prior testifier's testimony. The, the issue is what it is, right? We have a conflict right now with respect to two duly operating standards in how to set child support with respect to this provision. The attorneys who looked at this for the Bar Association believe that the consistency is valuable and that the Supreme Court's review process in terms of establishing its child support guidelines is effective. As, as you all know, the Child Support Advisory Committee meets on a quadrennial basis, reviews this. I think the last time we went through it was in 2018. Sometimes the Supreme Court takes the recommendations that are made by that committee. Sometimes they don't. But at least you have a regular routine review that is conducted, and it allows the statutory standard to adjust as necessary with respect to that. So with that, I'm happy to answer any questions. We support the change. And I thank Senator DeBoer for introducing it.

**LATHROP:** I see no questions. Thanks, Mr. Hruza. Next proponent. Anyone here in opposition to LB830? Anyone here in the neutral capacity? Seeing none, Senator DeBoer waives close, and we have no position



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letters on the bill. That'll close our hearing on LB830 and bring us to Senator Wayne and LB947.

**WAYNE:** Thank you, Chairman Lathrop and--

**LATHROP:** Good afternoon.

**WAYNE:** Good afternoon. Thank you, Chairman Lathrop and Judiciary Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is north Omaha and northeast Douglas County. I would just tell you the genesis of this bill. I don't know if the language completely represents the intent of this bill, and finding a vehicle might be hard at this point anyway. But if there is a committee priority that this can-- not this whole bill, but part of what I'm trying to do to catch a ride on, I greatly appreciate it. So I had an individual who worked for me for numerous years, and he kept paying child support on a kid that was in his care, and he had arrearages of about \$10,000. And I asked him one day, I thought the mother of his child had passed away, like, four years ago. And he said, yeah, it was like six. And I said, you had the kid since then. He was, like, yeah. I was, like, so why are you still paying child support? He's, like, I don't know. So I guess being an attorney, I thought I'd help him out. We went to court and underneath Nebraska law you cannot modify your arrearage, so you're still paying your current arrearage. The judges have no discretion to, to modify the arrearage and he continued to pay his arrearage. And at that point, it became an interesting senator question where I was like, well, where's the money going? Just a common question to ask and DHHS said it was going into a trust. And how do you access that trust? Well, you really can't, because it's in somebody else's name. There's never been an estate opened up. And so we would have to have this kid open up an estate. But even then, the beneficiary is the mother. So there's argument of whether debt and everything else would go first before it would go to the kid. So what I figured out is most of it just sits there and it's never claimed. And based off of the fiscal note, it appears to be about 29 people a year maybe will pass, so let's just say 10 or 15 percent of those have arrearages. That money just sits in an account, collects interest, and then hopefully one day goes to the Treasurer and gets claimed as unclaimed property. I don't, I don't know. So the intent of this bill was if somebody, if the custodial parent dies and somebody is paying, I would like to have it be automatically cut off. But if that can't happen, that's fine. But I think at some point we have to give judges discretion to look at arrearage and see if it still makes sense, such as maybe a show cause hearing or approve of hearing where the mother or father is questioning about support and

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things that they may have done offline out of the child support payment. And the judge can say, yeah, we can knock this arrearage down by, you know, half or maybe completely. I don't know. So this got convoluted when we started looking into it about whether there's a kid in the juvenile system, etcetera, etcetera. It became more complicated when you start thinking about parental, parental preference doctrine that if a child is in one custody and the parent has not been found to be neglect and the child is supposed to automatically go to the-- back to the original parent until proven otherwise. Well, that doesn't always happen what we found out in custody cases. There's a lot of Court of Appeal cases on it right now, where it may go to the grandmother or may go somewhere else. So in those cases, I can understand why child support would continue. But they still, as a state, we're not dealing with the parental preference doctrine where it's supposed to go back and then somehow be deemed one way or another. So the bill became really long and complicated, and I don't know why.

**LATHROP:** A lot of different scenarios.

**WAYNE:** Right. But, but all I'm trying to do is that at the end of the day, I think the easiest way to solve this is to give a judge discretion on arrearage and child support. Because if we give them discretion on arrearage, then all that minutia that might have happened or problems that happened in between when they get to court, they can at least fix it and go back. So that's my intent and what I'm trying to do.

**LATHROP:** OK. Senator Pansing Brooks.

**PANSING BROOKS:** Thank you for bringing this interesting bill. So it doesn't go to the child?

**WAYNE:** It, it does. But you can't write checks to the child, so usually you have to write the checks to the adult and the adult supposed to use it for the child.

**PANSING BROOKS:** Yeah.

**WAYNE:** But you'll hear in family law all the time that they-- my child support never goes to my kid. So it's not really a-- the child is not really a direct beneficiary in that sense. So--

**PANSING BROOKS:** But if it's sitting there and not claimed they must know where the child is.

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**WAYNE:** Yeah, but I don't know legally if they can. If I write a check in Senator Pansing Brooks's name and years later I don't know if Senator McKinney can claim that even if you guys are related. That's, I think, the issue from a, from a trust perspective.

**PANSING BROOKS:** OK. Thanks for bringing it. Interesting.

**LATHROP:** It might depend on if they're on public assistance and the money is actually owed to HHS.

**WAYNE:** That's where it got more complicated. Yeah.

**LATHROP:** Yeah, I can see where that would.

**WAYNE:** But in the meantime, as you know with child support in this committee, if you get behind, you can lose your license, you can go to jail. And so that's the drawback to just having this arrearage sit out there.

**LATHROP:** Right. Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Senator Wayne, for bringing the bill. For a layman, child support I understand. Arrearage is-- what's the definition of arrearage?

**WAYNE:** So if you owe child support monthly, and let's say you lose your job and you don't pay it at all or you only pay part-- partial-- portion-- partial of it, portion of it, that difference in your portion or the part you don't pay goes-- you still owe it. So it's a debt. And it's, it's, it's such an important debt that we actually put liens on people's homes. You can't sell your home unless you're current on child support. So there's a lot of things or you can get a waiver. There's a lot of issues that go into that. But yeah, so the arrearage is that gap where you didn't pay and you owe.

**BRANDT:** OK. Thank you.

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

**WAYNE:** Yeah, just because I don't know who's testifying in favor or not.

**LATHROP:** OK, we'll see. Proponent testimony at this time. If you're here in favor of the bill, you can come forward. Seeing none, opponent testimony. How many people are going to testify on this bill so we can

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let Senator McDonnell know? Call Senator McDonnell and tell them we have two testifiers, please. Welcome back.

**LINDSAY BELMONT:** Good afternoon, Chairman Lathrop, members of the Judiciary Committee. My name is Lindsay Belmont, L-i-n-d-s-a-y B-e-l-m-o-n-t. I am a partner at the law firm of Koenig Dunne in Omaha, Nebraska. I am here today representing the Nebraska State Bar Association. And respectfully, the Bar Association opposes LB947. Certainly hearing Senator Wayne's comments just now, there, there is a lot of area of agreement. However, as written, the Bar does see unintended consequences if this bill were to advance. We know that child support is for the support of the child and children-- we recognize in Nebraska children have a right to support and parents have a duty to support that child. And the issue with the way this bill is drafted is it, it would automatically terminate a payer's responsibility to pay child support in the event the custodial parent passes. Now, if the child is with a third-party payer or, excuse me, just a third party, arguably that person should be receiving child support to benefit the child who is in their custody. So an automatic termination as contemplated by this bill is not in the child's best interests and simply doesn't account for all of these different scenarios that could happen. There is agreement, I would say, with regard to if the noncustodial parent is the surviving parent and it is in the child's best interest to go into that parent's custody, that parent should not be paying themselves child support, they're caring for the child, arguably, as the child is living with them. And I would say the current scheme in, in that type of situation that noncustodial parent who, who is the surviving parent gets custody can certainly move the court for an order terminating child support. They can provide to the court evidence of the death certificate, how long they've had the child in their care, and the court would be able to order termination of the child support obligation at that time. For those reasons, the State Bar does oppose LB947 as it's written. Although I would say for the record, Senator Wayne's intentions seem to be in line-- in alignment with ours.

**LATHROP:** OK. Any questions? Senator McKinney.

**McKINNEY:** Thank you, Senator Lathrop. Thank you for your testimony. Is there a way-- so if I'm the, the surviving noncustodial parent, did you guys consider a way to make it less burdensome than having someone had to go through the whole court process? You know, because filing this paperwork and going through the court process, if you've got a job, it's kind of hard. If you don't got all the resources, it's kind of difficult. So is there another way to get to that without having--

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that would, that could be put in this bill to make it less burdensome, burdensome on somebody that has to deal with this situation?

**LINDSAY BELMONT:** Sure. Thank you for your question, Senator. Because child support is a court order, it would need to then have a superseding order or something from a court terminating that obligation. So I don't know that the Nebraska Child Support Payment Center or DHHS has the authority to simply terminate that court order on their own. So the surviving parent would have to seek that termination through the court process. I can also speak in my personal experience, having previously worked for Child Support Services in Douglas County, surviving parents can contact Child Support Services, advise that a parent, their co-parent has passed away and Child Support Services can assist in getting that child support obligation terminated.

**McKINNEY:** OK, so all right, because I'm trying to think so if, like, the mother of my child dies and I take custody, once I establish custody, shouldn't this go away?

**LINDSAY BELMONT:** I'm sorry, what was the last thing?

**McKINNEY:** Shouldn't the, the child-- once I established that I've taken custody, there should be a way for you not to have to completely go through the process once I establish I am-- so, you know, you, you get what I'm saying.

**LINDSAY BELMONT:** Sure. Sure. And yes, so procedurally, if the court order says that mom in that scenario has custody, mom passes, dad would want to get a court order that's reflecting what's actually happening as it pertains to custody. In that court order, it could also address, address termination of child support. So you can presume that a surviving parent who may not have physical custody in a court order would be going to court anyway to-- so there is a legal document that reflects the accurate custodial arrangement and then terminating child support at the same time.

**McKINNEY:** OK, so it might be difficult to avoid court.

**LINDSAY BELMONT:** Possibly.

**M. CAVANAUGH:** All right. Thank you.

**LINDSAY BELMONT:** Thank you.

**LATHROP:** I have an unrelated question.

**LINDSAY BELMONT:** Thank you.

**LATHROP:** We've had a-- we had somebody testify here about a year ago that when they get incarcerated, so they get a-- say, they get to pick up a five-year sentence and they have a child support obligation that by the time they come out it's some huge number and they're, like, why would I ever take a job in the economy that would allow me to be garnished at that point. So here's my question. If someone is incarcerated, do we suspend their child support obligation?

**LINDSAY BELMONT:** Respectfully, I think that goes into a big public policy question. If--

**LATHROP:** Well, it clearly does.

**LINDSAY BELMONT:** Yes.

**LATHROP:** And I'm just asking you what the rule is.

**LINDSAY BELMONT:** The rule--

**LATHROP:** So does that-- does one's child support obligation, do you have to go back to court or--

**LINDSAY BELMONT:** The incarcerated parent would have to take some type of proactive measure in order to suspend that obligation, it will continue running accruing interest. Our child support guidelines do contemplate scenarios where a-- an individual is incarcerated. Let's say they-- they're in jail and they want to reduce their child support obligation because they're not working. We do look at the best interests of the child. Is it in that child's best interest for one of their parents to reduce child support because arguably they've done something wrong? [INAUDIBLE].

**LATHROP:** They have zero capacity to pay it.

**LINDSAY BELMONT:** That would have to-- they could seek a modification.

**LATHROP:** You have to go through a modification process.

**LINDSAY BELMONT:** Sure.

**LATHROP:** And very briefly, so I'm not holding this up, can I do that from the Penitentiary or do I have to get a lawyer and then make a trip to the courthouse?

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**LINDSAY BELMONT:** An inmate can certainly petition this from the Penitentiary. Yes.

**LATHROP:** OK. Is, is-- does Child Support Services or whatever this group is you described earlier, do they do that for people that are incarcerated, if they ask?

**LINDSAY BELMONT:** If they ask for a modification, the Child Support Enforcement would do some type of review and modification where they're going to look at pay history, employment circumstances, and see if there is that rebuttable presumption under the child support guidelines to modify child support. So that would be whatever the number is now changes by either, I believe it's 10 percent or \$25, so an incarcerated person could certainly reach out to Child Support Services. Child Support Services could do a review and modification.

**LATHROP:** OK. I just wanted to know that there was a process--

**LINDSAY BELMONT:** Oh.

**LATHROP:** --where they can. I don't--

**LINDSAY BELMONT:** Sure.

**LATHROP:** --know how often that happens, but--

**LINDSAY BELMONT:** Sure.

**LATHROP:** --that's all the questions I had. Any other questions for this testifier? I see none. Thank you for being here today,--

**LINDSAY BELMONT:** Thank you.

**LATHROP:** --Ms. Belmont. Any other opponent or opposition testimony? Anyone here in the neutral capacity? Welcome back.

**STEPHANIE BEASLEY:** Thank you, Senator. Good afternoon, Chairperson Lathrop and members of the Judiciary Committee. My name is Stephanie Beasley, S-t-e-p-h-a-n-i-e B-e-a-s-l-e-y, and I'm the director for the Division of Children and Family Services within the Department of Health and Human Services. I'm here to testify in a neutral capacity on LB947, which terminates the duty of the noncustodial parent to pay child support upon the death of the custodial parent. The Child Support Enforcement unit within DHHS administers the federal child support program under Title IV-D of the Social Security Act. As Child Support Enforcement is the administrator of this program, it is

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important for the committee to be aware of some concerns with the bill as it is currently written. As written, LB947 conflicts with federal law. The state is required to establish support orders under Title IV-D and related federal regulations. Eliminating the duty of the obligor to pay support upon the death of the custodial parent would prevent the court from establishing a new payee should the child be in the custody of someone else other than the obligor. In other words, the child could be left without future support upon the death of the parent because terminating the obligor's duty to provide future support is not contingent on the obligor becoming the custodial parent. Long-standing Nebraska case law holds that child support payments become a vested right of the payee, not the child, as they accrue. Currently, unassigned child support arrears become part of the payee's estate and assigned arrears remain a debt to the state. Under LB947, the duty of the obligor to pay arrears assigned to the state as required by federal and state law would be relieved. The estate of the former custodial parent in the state of Nebraska would lose the ability to collect any past due support. And in some cases, federal law may require the state to collect that past due support. LB947 would require DHHS and the state court administrator to automatically terminate child support upon the death of a custodial parent. Nebraska is a judicial state, not an administrative proceeding state. Therefore, a court order for child support would need to be terminated through a subsequent court order, not an automatic termination upon the death of a parent. Thank you for the opportunity to testify today. I would be happy to answer any questions you may have.

**LATHROP:** I do not see any questions.

**STEPHANIE BEASLEY:** OK. Thank you, Senator.

**LATHROP:** Thanks for being here. Any other neutral testimony? Seeing none, Senator Wayne, you may close. We do have one proponent letter in support-- position letter I should say.

**WAYNE:** I did figure out the issue, the issue is on page 5, Section 4, line-- (2), which says: The obligor's duty of child support shall terminate upon the death of any custodial parent. That, that assumes all situations. But if you turn to the next page, section (4), is probably is the language that I really want, which is: If, as a result of a death, the obligor becomes the custodial parent. That solves all the issues. There's two conflicting lines in Bill Drafting. But at the end of the day, if that person becomes the custodial parent, they shouldn't have to keep paying child support. To answer your question, not on topic, 43-512, I think .15, that language has been interpreted



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that prison is involuntary reduction of your income, but you do have to petition and, no, the prisoner can not ask the state to do it because the state represents the state, he'd have to have his own attorney. But if DHHS, DHHS finds out that he's incarcerated or she's incarcerated, they are supposed to under that statute refer to the county attorney to file a modification. But that hardly doesn't happen. So you come out and you still owe money, and actually there are still judges who-- just last week there was a case and one case I was in the judge still ruled that the individual had to pay \$50 a month as a minimum while he's incarcerated. So it happens.

**LATHROP:** OK.

**WAYNE:** Thank you.

**LATHROP:** Any questions for Senator Wayne? I see none. Thanks.

**WAYNE:** Thank you.

**LATHROP:** Appreciate you being here today. That will close our hearing on LB947 and bring us to Senator McDonnell and LB1192.

**McDONNELL:** Thank you, Chairperson Lathrop and members of the Judiciary Committee. My name is Mike McDonnell, M-i-k-e M-c-D-o-n-n-e-l-l. I represent Legislative District 5, south Omaha. LB1192 proposes to amend the Parenting Act by providing a rebuttable presumption that joint legal custody and equally shared parenting time are in the best interests of the child. The bill is based on extensive research that shows shared parenting arrangements after parenting separation, parental separation provide the best child outcomes in most cases. The bill provides for a temporary injunction against both parties upon the filing of a complaint or dissolution of marriage or legal separation that shall be in effect until the final decree is entered, the complaint, the complaint is dismissed, the complaint, complaint is dismissed, or the court orders otherwise. The temporary injunction prohibits certain actions relating to the marital property, extraordinary expenditures, distributing the-- disturbing the peace of the other party, removal of a child from the state without consent, and actions that affect various policies such as health insurance, homeowners or renters insurance, auto insurance, and life insurance. The bill also provides that the court shall be allowed to take action based on preponderance of evidence as deemed necessary if a parent is found to have engaged in a pattern of willfully creating conflict, interfering with access to the child, or taking other action in an attempt to manipulate a proceeding under the Parenting Act or doing

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any other proceeding, proceeding that-- involving custody or parenting functions. Last, LB1192 provides that the state court administer [SIC] shall adopt a parenting time summary report from-- to provide for a reporting of a summary information that shall be filed with the clerk of the court by the party who initiated the case in every case in which parenting time is established or modified. Such information shall be compiled for the purpose of tracking parenting time awards and shall be published. I did hand out an amendment-- LB1192 that simply corrects a typographical error. The bill was presented to me by a constituent who has dedicated a great deal of time and effort in trying to shape this legislation. There will be testimony following me that provides a further explanation regarding the need to enact this legislation. I appreciate that this committee has heard discussions on this legislation before and what I'd like to do is make sure that you know that I'm open to ways to improve this legislation. And as long as I think we focus on fairness, which I think this committee does, we can probably come up with something that helps improve this legislation by working together.

**LATHROP:** OK. Any questions for Senator McDonnell? I do not see any. Thanks for presenting that, Senator McDonnell.

**McDONNELL:** I'm gonna head back to Appropriations, so.

**LATHROP:** You guys got something going on over there?

**McDONNELL:** We always have something going on. But again, I really believe this is probably the best committee and--

**MORFELD:** You said that last week,

**LATHROP:** Well done, well done. That's--

**McDONNELL:** Thank you.

**LATHROP:** --what everybody seems to say here. OK, we will take proponent testimony at this time. If you're here in favor of the bill, you may come forward. Good afternoon and welcome.

**JAMES BOCOTT:** Thank you, Chairperson Lathrop, committee members. Thank you so much. It's an honor and privilege to be a part of this very important process for our government. My name is James Bocott, J-a-m-e-s B-o-c-o-t-t, father of three and a 25-year veteran of domestic relations law in North Platte, Nebraska, testifying in favor of this bill today for three main reasons-- the three main public policy reasons that this bill helps the health and welfare of children

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in the state of Nebraska. First of all, with regard to children, we care about our children, that's already been testified to today, and it's important that we do things as lawmakers to promote the health and well-being of our children. Research has shown-- and rather than me giving you opinions, I've provided you the research in a very well-researched and thoroughly researched book on the benefits of shared parenting. Shared parenting situations involve less drug use for children, lower suicide rates for children, greater participation and graduation rates for children, less drug use for children. The benefits go on and on. And so I'm not going to try to give you my opinions on these things from a personal perspective as a practitioner, but rather have provided you with a resource where you can be prepared to learn about these things on your own. Second, a big public policy reason in favor of this legislation, constitutional rights of parents. There's been some people today that have made passionate pleas about the right to parent, the right to care and comfort and nurture your child. And it's something that, that, that we don't like to talk about, but it's very real and that is the disparate impact on parents in the family law system because of age-old parenting plans that have been fostered from generation to generation to generation. For instance, the every-other-weekend approach that still pervades parenting plans across the state, where the right to parent is based on four days per week for a fit parent. And so we're asking that two fit parents be able to have the presumption that they should both be able to parent the child equally. This also prevents fatherlessness. Fatherlessness creates the same problems that we've just discussed. So I've got a third, but I'm running out of time; judicial resources, I'll just say that. For a counsel like me, I have other things I can do than litigate custody cases. But I will tell you, no greater resources are poured into an all-or-nothing approach to the custody of children. And if you want to make a lot of money, you practice custody law. I'm sure I've earned well over \$1 million dollars litigating the custody of minor children in our all-or-nothing system. Finally, I'm just pleading for this committee to advance this. This is an important, important bit of legislation that needs to be debated, needs to be discussed, needs to be fleshed out for the benefit and the health and well-being of our children in Nebraska. Thank you and I'm happy to answer any questions.

**LATHROP:** OK. Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Mr. Bocott. Am I to understand you're an attorney? Is that correct?

**JAMES BOCOTT:** I am.

**BRANDT:** Can you help me understand this? Does the law just mandate that it's equal and that solves a problem that you have today? What does the-- what does this law-- what problem does this law solve?

**JAMES BOCOTT:** Certainly. Currently, the, the law uses a very nebulous and undefined standard of best interests of the children. In the best interest of the children, you have some judges that will start from a-- for instance, in Lancaster County-- kind of a basic-- I don't want to call it cookie-cutter approach, but a starting point of four days every two weeks for parenting time for children. And other parts of the state, there will be judges that do share parenting; seven days with one parent, seven days with another, unless there's a reason not to do otherwise. Some judges will do every-other-weekend parenting time, kind of an all-or-nothing approach. And what you have is you have different standards with different judges within different jurisdictions across the state that are all appropriate under the best interests of the child standard. And they're all upheld, but they're not consistent and you can get different results going by different jurisdictions. And all we're saying is if you have two fit parents, you should start with the presumption that they should each be able to equally parent the child. I'm not saying exactly 50-50 percent, but to within a reasonable degree, these parents should be able to coparent on an equal basis, not an all-or-nothing approach, unless it's warranted by certain circumstances, which of course, in cases now that already-- in jurisdictions that already have joint-parenting presumptions, those issues like domestic violence, for instance, already addressed and they're not problems in those jurisdictions. Does that answer your question?

**BRANDT:** I believe so. Thank you.

**LATHROP:** OK, very good. Thanks for being here today.

**JAMES BOCOTT:** Thank you.

**LATHROP:** Appreciate that. Next proponent. No other proponents. We'll take opposition testimony. Welcome back.

**KATIE VOGEL:** Good afternoon, Senators. Thank you. My name is Katie Vogel, K-a-t-i-e V-o-g-e-l, and I'm an attorney at the Koenig-Dunne law firm in Omaha. Thank you for this opportunity to testify in opposition to LB1192. Specifically, we do not believe that the presumption of joint legal custody with equally shared parenting time is appropriate. It assumes that equally shared parenting time is inherently good for all children without regard to what is actually

happening in the lives of the dissolving families. Creating this presumption of joint legal custody and equally shared parenting time will inappropriate-- inappropriately elevate the rights of parents, even bad parents, over the best interests, safety, and well-being of the minor children. This bill reaches a legal conclusion that unfortunately is not universally applicable. That is, that it is the best interest of children for the parents to have equally-- equal parenting time and this inappropriately shifts the burden to the parent who believes that joint physical custody is not in the best interests of their child. For example, even if the parent challenging the presumption does not intend to limit contact between the child and the other parent, the court might draw such inference from the challenge itself. Consequently, the very act of challenging the presumption can create the perception, whether real or imagined, that the challenging parent would prefer to limit rather than encourage contact with the other parent. That perception can be used against the challenging parent in the court's best interests of the child analysis. We believe, therefore, that LB1192 inappropriately places the weight of the law on the side of the parents and does not stay focused on the fundamental benchmark, which is the best interests of the children. I will speak real briefly to-- I would say that our experience has been that it is not common to hear those parenting plans that were just described by the prior speaker. If you have two fit parents, the natural outcome of the best interests of the child analysis is going to be equal parenting time. And so if that-- giving that presumption doesn't add anything to that analysis if we do have fit parents. Are there any questions?

**LATHROP:** Senator McKinney.

**McKINNEY:** Thank you. Who determines the best interests of a child? And I ask this question because I've, I've spoken to many men throughout my life and many-- most of them I've spoken to or almost all of them have said, you know, situations with custody between men and women in the best interest that a child always seems biased against the, the males--

**KATIE VOGEL:** Um-hum.

**McKINNEY:** --in those situations.

**KATIE VOGEL:** The best interests of the child is evaluated by the judge. I guess I can only speak from, from my experience. There are factors outside of even just the testimony of the parties, for instance, that can come into play during that analysis. Courts can

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look at other third parties that don't necessarily have a stake in parenting; counselors, expert witnesses. There are other individuals that can, that can weigh in on that, but yes, ultimately it's going to be a judge's discretion as to what is the best interests.

**McKINNEY:** Has there been any attempts in the recent history of, like, trying to decrease some of that bias in the process? Because a lot of men feel like it's biased and I'm, and I'm not up here saying that there's sometimes where some men probably are not-- it's not in the best interests because of different situations. But there's a lot that believe that the child support system as a whole is biased towards men, but definitely, these type of situations are biased.

**KATIE VOGEL:** I think that, you know, regardless of gender, the, the goal of what we would want the court looking at are what the parenting roles have been for the children. And when a, when a family is dissolving, there's a lot of flux going on. There's a lot of change happening. And so when-- what-- I guess just to speak to what may be perceived as bias is an effort, perhaps, to keep some continuity. But as a whole, you know, I, I guess speaking from my experience and the experience of practitioners within our firm, we are not necessarily seeing that bias against dads maybe that you are speaking of, if that answers your question.

**McKINNEY:** Yeah, thank you.

**KATIE VOGEL:** Um-hum.

**LATHROP:** Can I ask a couple of questions?

**KATIE VOGEL:** Sure.

**LATHROP:** And I'll, and I'll say let's try to-- well, I'll ask the question. When I started practicing law in 1981, I did some divorce work and back then, there was-- there may even have been a Supreme Court case that says there's a presumption against joint legal custody because somebody has got to be in charge and we saw the courts routinely be adverse to joint legal custody for that reason. We're talking 40 years ago. We've seen an evolution in decisions from the Supreme Court on this topic, more towards joint legal custody and joint parenting time--

**KATIE VOGEL:** Yes.

**LATHROP:** --have we not?

**KATIE VOGEL:** Yes.

**LATHROP:** So this evolution from the old days when I started practicing law 40 years ago to where we're at now, if there are two fit parents, they will generally end up with joint legal custody and some level of equal parenting time.

**KATIE VOGEL:** Yes.

**LATHROP:** Am I right about that?

**KATIE VOGEL:** Yes, you are correct.

**LATHROP:** Again, I read the Advance Sheets and I see this evolution happening.

**KATIE VOGEL:** Um-hum. You know, speaking as practitioners in primarily Douglas and Sarpy County, I would, I would definitely agree with that. There has been a transition since the early '80s of if both parents are fit parents, if both parents want to be involved in their children's lives, if both parents are showing a commitment to that, yes, I-- there is a greater likelihood, a fairly significant likelihood, I would say, especially in Douglas County, that you are going to end up with fairly equal parenting time.

**LATHROP:** But didn't we have a case where the Supreme Court pulled a case out of the Court of Appeals after the Court of Appeals had decided it, reversed the Court of Appeals, and sort of set down a marker that we're going to, we're going to be looking more closely and favorably at joint legal custody than they had in the past and joint parenting time?

**KATIE VOGEL:** I'm not personally familiar with, with that case, but as a-- yes, just like I said, as a practitioner practicing in this area, there-- I am not seeing every-other-weekend type parenting schedules coming in. There definitely is a definite push for if both parents are acting in the best interests of the children, that the court is reaching that conclusion that equal parenting time is appropriate. We're just-- our position would be is that we do not need to start with the thumb on the weight of that, that we need to come into the court neutral and that both parents should be able to present arguments, whatever it might be. And we may end up at that same place and we all hope that we will. If there's little conflict, no, you know, domestic violence history, then we are, in the analysis of looking at the best interests of the children, going to likely end up in that position, yes.

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**LATHROP:** OK. Thank you--

**KATIE VOGEL:** Yes.

**LATHROP:** --for your testimony. I don't see any of the questions. Any other opponent testimony? Good afternoon.

**NATHAN ARENTSEN:** Good afternoon, Chairman and members of the committee. Nathan Arentsen, N-a-t-h-a-n A-r-e-n-t-s-e-n. Thank you again for once again granting me a few minutes to request that you not silence child sexual assault survivors by enacting another harmful restriction on access to justice for child survivors and their families in our courts. Please oppose LB1192 and keep Nebraska's courts constitutionally independent, open to the full evidentiary weight of every survivor's account, and free from special interest restrictions on our judges' most vital function in our society: protecting children and their families from violence. LB1192 is not only terrible policy though. It also potentially sacrifices over \$100,000 per year in federal STOP grants for Nebraska courts, up to \$400,000 total, which could be used for training our hardworking, but sadly underfunded and overworked court staff. Those federal STOP grant funds would be available from 2023 through 2027 under the bipartisan Violence Against Women, or VAWA, reauthorization of 2022, now known as S.3623 in the U.S. Senate. It was introduced one week ago, February 9, by a bipartisan group of U.S. senators, including the chairman of the Senate Judiciary Committee, a bipartisan list of Senate Judiciary Committee members, and several other senior members of Senate leadership for both parties. The White House announced its full support for S.3623 on the day of its introduction and the House of Representatives has already passed its companion bill for the VAWA reauthorization, H.R. 1620. Therefore, in other words, it looks-- despite the partisan gridlock that we often see in Washington, it appears likely that S.3623 will pass Congress and be signed by the President. And I have a copy of S.3623 in front of you, specifically, section 1504, which I dog-eared for the relevant passage, and that authorizes up to a 10 percent increase in VAWA's federal STOP grant funds for all states which enact-- as page 311, which I highlighted there, paragraph 3, part A-- that's at line 9-- states a bill-- a law that ensures that with respect to a child custody proceeding in which a parent has been alleged to have committed domestic violence or child abuse, including sexual abuse-- and then the bill less-- lists several evidentiary factors of child abuse. And as I've highlighted, it shall be considered by the court. LB1192 would likely contravene, contravene the "shall be considered" language I highlighted in section 1504. If you look at LB1192 at page 7, line 5, it states, "there shall be a



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presumption--" as we've discussed here-- rebuttable by a preponderance of the evidence, that joint legal custody and equally shared parenting time are in the best interest of the child. If a deviation from equal parenting time is warranted, the court shall construct a parenting time schedule that maximizes the time each parent has with the child and is consistent with the best interests of the child. And I believe that the over \$100,000 of federal STOP grant funds, which would be conditioned on this language, would be crucial for further training and empowering our court staff. Therefore, in summary, LB1192 would not only be terrible policy by diminishing the evidentiary impact of each Nebraska child's account of sexual assault, it would also likely eliminate Nebraska's eligibility for that funding and I ask you to please oppose LB1192.

**LATHROP:** OK. I don't see any questions for you today. Thanks for being here--

**NATHAN ARENTSEN:** Thank you again.

**LATHROP:** --and your testimony. Any other opposition testimony? Good afternoon once again.

**LINDSAY BELMONT:** Good afternoon, Chairman Lathrop, members of the Judiciary Committee. My name is Lindsay Belmont, L-i-n-d-s-a-y B-e-l-m-o-n-t, and I am a partner with the Koenig-Dunne law firm in Omaha, where I practice exclusively in family law. And again, I am here today representing the Nebraska State Bar Association and we respectfully oppose LB1192. Within the provisions of LB1192, we can see contradictions with, with other areas of our domestic relations and Nebraska Parenting Act statutes. For instance, this bill includes provisions that arguably, arguably provide for a contempt-type action if one parent is complaining that the other parent is acting poorly or willfully violating something and this will LB1192 sets that standard as a preponderance of the evidence. It is clear in Nebraska law that under a contempt action, which is a similar mechanism to correct bad behavior, it is a clear and convincing standard. So the-- this being in direct contradiction is one reason why the bar opposes LB1192. Additionally, I would echo the sentiments of Katie Vogel, who spoke as to the best interests standard of the child and how that is clearly established law here in Nebraska, with our statutes setting forth a non-exhaustive list of what those factors are. What, what should a court be considering when it's determining best interests? And under that statute, a court can be well informed and make appropriate custodial determinations. A presumption without a court hearing any facts as to what's an-- what's actually in the child's best interests

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is not good public policy and certainly does not put the children first. Finally, I would like to address another portion of LB1192, wherein a requirement for parents to complete parenting time summary reports would be imposed, obligating parents to break down their parenting time schedules to the nearest decile regarding actual time spent with each parent, presenting that form then to the clerk, and then the State Court Administrator having duties to compile that information. We believe that this, this requirement in LB1192 does not promote judicial autonomy. It is overly burdensome and simply not necessary for parents who find themselves in matters relating to the custody of their children to have to complete. I would be happy to answer any questions.

**LATHROP:** Any questions? Senator Geist.

**GEIST:** I do. I have one. I'm curious-- I, I kind of feel like you're saying the same thing as the other side that you're opposing because if two fit parents are often going to have joint equal custody anyway, then wouldn't the findings come with the same result?

**LINDSAY BELMONT:** Yes. Yeah and that is, that is fair to say. It's that presumption of joint custody that is in opposition with the Nebraska Parenting Act and other statutes under domestic relations law.

**GEIST:** OK--

**LINDSAY BELMONT:** If, if after--

**GEIST:** --so where does the presumption begin? Like, when, when my husband-- ex-husband or whatever and I go into court, where is the presumption? Where does it start?

**LINDSAY BELMONT:** There is no presumption. We start from that best interests standard. So let's say we have parents who are divorcing. They've separated households and let's say dad is the one who primarily takes care of the children and mom is OK with that. This presumption isn't going to help them and now dad might be out of luck with getting full child support because when we look over to child support, he'd be receiving support under this joint custody calculation, which is lower than him being the actual custodial parent. Now, in this situation, the onus is now on dad to petition the court to change this presumption that's been put in place, get a further temporary order, and the parents may not even be in conflict. They're okay with how things are going. So this presumption has these unintended consequences. And if parents, if parents are not getting

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along, which I will admit we see plenty plenty of, we have the statute permitting motion for temporary orders and we can go into the court, there's no presumption operating, present affidavits to the judge alleging what is in the child's best interest from a client's perspective, opposing party certainly has their right to present affidavits, and now the judge has facts upon which to make that determination. Does that answer your question?

**GEIST:** Well, kind of. I still feel like the result ends up-- I, I understand what you're saying that if the presumption starts at equal, then it, it raises the bar for the side that wants the majority.

**LINDSAY BELMONT:** Correct.

**GEIST:** OK, but wouldn't-- if there's no presumption, wouldn't that still be the same?

**LINDSAY BELMONT:** It could be, it could be, yes.

**GEIST:** And maybe I'm just not quite getting the difference, but, but if there's no standard, I guess I tend to think-- and maybe it's because I'm old and-- that the presumption tends to lie with mom because that's what I see with a lot of custody cases as well, but, but I don't know. If there's no presumption, it seems like that's-- the result would end up the same as if there were equal. I-- and maybe I'm just not tracking--

**LINDSAY BELMONT:** May I respond--

**GEIST:** Sure.

**LINDSAY BELMONT:** --briefly? Yes, so currently, there is no presumption and why that is what's in the child's best interest is because we might not be dealing with two fit parents.

**GEIST:** Um-hum.

**LINDSAY BELMONT:** What this proposed legislation says is we're presuming both are fit, even if a parent is-- has filed divorce because there's been domestic violence in the home. That person then has to come in and rebut the presumption.

**GEIST:** So that raises the bar for that individual--

**LINDSAY BELMONT:** Correct.

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**GEIST:** --is that-- OK.

**LINDSAY BELMONT:** Correct.

**GEIST:** I track with that. OK, thank you.

**LATHROP:** OK. Senator DeBoer.

**DeBOER:** So I think what I understand the concern here is, is that if we create a rebuttable presumption, that actually changes it from balanced between-- and the balance is not between mom and dad. The balance is between already have this rebuttable presumption in place for you have to do the equal time to from what right now is the first order is the concern for the child.

**LINDSAY BELMONT:** Yes.

**DeBOER:** So the concern is that we would switch our outlook at this from right now, our first look is concern for the child to here we have this prepaid plan that's going to have to go into place unless we can show some other reason. So it's changing it from first, we'll just look at what's the best interest of the child to we have to do this unless we can prove otherwise. So it basically shifts the burden of proof onto we have to do this unless we can show otherwise.

**LINDSAY BELMONT:** Exactly and if I may briefly add, we-- domestic violence, child sexual assault survivors has been mentioned here today. But take, for instance, the-- a parent who works out of town all the time or, you know, we frequently see firefighter schedules where they have-- they're-- just different types of work schedules where equal parenting time is just not practical, given the parent's employment. Then putting this presumption in place could have the unintended consequences then leading to child support, where you have a parent who has more parenting time, but is not getting full support because of what would automatically be going into place upon filing.

**DeBOER:** All right, thank you.

**LATHROP:** These things are all unique. Senator McKinney.

**McKINNEY:** So-- and thank you. Thank you. If you say there's balance currently, why do so many-- I'll, I'll, I'll just base it off my opinion. I won't say it's fact because I don't have the data to say it's fact, but-- so I, I do believe many, many men feel like the system isn't balanced. So why, why do you think that is?

**LINDSAY BELMONT:** I can speak as my experience as a family law practitioner and one of the struggles when you are looking at these temporary orders, which are often set the tone for the remainder of the case is a judge is not seeing live testimony, they're reading affidavits and hearing argument of counsel. And that's just how, how those procedures happen. So based on what's presented to the judge in that hearing space, you know, the judge is going to make decisions based on what's been presented to, to them. In terms of a bias, I agree times have changed a lot. I echo my colleague, Katie Vogel, who said in Douglas and Sarpy County, we are often seeing joint custody being a temporary order of the court and ultimately being the final order of the court. So, so I can't speak as to why men may perceive there to be a bias. Historically, sure, that, that was, that was an issue, but the, the court-- or excuse me, Nebraska law has more or less done, done away with that or is supposed to and focus on the best interests of the child.

**McKINNEY:** Is there an outlined criteria of what is-- what do you-- this is what you look at when you determine the best interests or is it just subjective?

**LINDSAY BELMONT:** Thank you for the question. Under the Nebraska Parenting Act, there are factors, so we're looking at the health, safety, and welfare of a child. We're looking at the child's relationship with both parents prior to the filing. We're looking at has there been any domestic violence, any educational or special needs? Those are all enumerated in the statute. Then we can couple that with factors that the Supreme Court has noted in numerous custody cases, additional factors that, that courts should look to when determining best interests.

**McKINNEY:** What would be some of those additional factors?

**LINDSAY BELMONT:** Some additional factors, the, the courts can consider the age, sex of the child. The court can consider-- well, this is in statute, but if a child has a preference, that's a consideration. But generally the-- there are some other, like the, the moral-- moralities of the parent's home environments, those types of factors.

**McKINNEY:** So hypothetically if I was to go out with friends and drink and take a picture with a beer, could that be used against me?

**LINDSAY BELMONT:** Yes.

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**McKINNEY:** But see, that's-- that doesn't mean I'm an alcoholic or that I abuse alcohol. I just probably-- say, for example, the Super Bowl. It was my first drink in a year, but I took-- you know, and it can be used against you. That makes no sense.

**LINDSAY BELMONT:** And if I, if I may, that's exactly why we're opposing this bill because if you have this presumption of joint custody, you have a beverage, your co-parent sees it, and now there's going to be mudslinging. You-- if you're-- I don't want to say you, but the parent in your situation, nonalcoholic, has a drink, now we're back in court because you've done-- the parent has done something wrong and the statute says preponderance of the evidence. Judge, here's a picture of the drink that my co-parent had and posted on Facebook. Now we're just causing more conflict within the court system. If there's no presumption, sure. Could that be brought up? Yes, a party can bring that up.

**McKINNEY:** So either-- in both situations, it still could be used against me.

**LINDSAY BELMONT:** Yes, it could.

**McKINNEY:** All right--

**LINDSAY BELMONT:** Sure.

**McKINNEY:** --thank you.

**LINDSAY BELMONT:** Um-hum.

**LATHROP:** One beer is-- like, the judge is going to go, please. I don't need to hear about his beer at the Super Bowl.

**LINDSAY BELMONT:** I would agree with that.

**LATHROP:** The reality in these circumstances is the court kind of looks at what kind of a pattern did you two have with these kids before you started, right? Maybe, maybe dad works so much that he hasn't been involved with the kids and then the closer you get to even, it affects child support too. So it-- there's a lot of moving parts and sorting that out. Sometimes it takes the wisdom of Solomon to figure out exactly what to do. But generally, they look back and say, let's see what things looked like before you guys decided to split because you had it figured out or at least some understanding beforehand. I appreciate your testimony and as someone who is a recovering divorce lawyer-- and, and I've been 35 years, 30 years outside of that, but I

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still, as I've said, read the Advance Sheets. And for those of you that don't, the Court of Appeals puts its Advance Sheets out every Tuesday. The Supreme Court puts their Advance Sheets out on Friday. On Tuesdays, it's like all divorce cases, termination of parental rights, and post-conviction relief. That's what the, that people-- these are horrendously emotional, emotional conflicts. And believe me, when I talk to district court judges, they would love nothing more than to have this just somehow sort it out without them-- without their intervention. They hate doing this and as I hated doing it when I, when I practiced in that area. Anyway, good for you for doing it.

**LINDSAY BELMONT:** Thank you.

**LATHROP:** Thanks for being here today and sharing your thoughts on LB1192.

**LINDSAY BELMONT:** Thank you.

**LATHROP:** Any other opponent testimony? Seeing none, neutral testimony? This would be neutral, not rebuttal.

**JIM CREIGH:** What's that?

**LATHROP:** Is it neutral testimony?

**JIM CREIGH:** Yes.

**LATHROP:** OK.

**JIM CREIGH:** Good afternoon, Chairman Lathrop, members of the committee. My name is Jim Creigh, which is spelled J-i-m C-r-e-i-g-h. I'm a lawyer in private practice in Omaha and also a divorced father with shared custody of my children. For the reasons that I've shared previously with the committee, I'd encourage the committee to approve LB1192. I'm testifying in a neutral capacity so I can respond to some of the comments made earlier by opponents. I'd like to emphasize a couple of things about this bill. Several people have raised questions about, you know, that this would change the best interest of the child standard. Actually, it doesn't. The best interest of the child standard has been criticized by many people as being a standardless standard. In fact, the Nebraska Supreme Court in 1980 held a related best interest of the child standard unconstitutional because it was too vague. What LB1192 is trying to do is provide definition to the best interests of the child standard and potentially ward off a constitutional challenge to the Nebraska Parenting Act. In response to some of the earlier comments, you have in front of you right now a

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book by Professor Edward Kruk, who was one of the world's leading experts on parenting time. You previously received a-- an article that was published by the Nebraska Lawyer Magazine, which summarizes 60 medical studies that show a presumption of equal parenting time provides the best outcomes for children in almost all cases. So this is not a situation where an equal parenting time presumption is being proposed hypothetically. There are more than 60 studies that show this provides the best outcomes for children in most cases. In addition, the three major components of this bill have all been enacted in other states and have been in force for many years. The equal parenting time presumption, for example, is modeled on a presumption that was enacted in Kentucky five years ago. Since that time, the number of domestic violence cases has been reduced. It's been shown that an equal parenting time presumption reduces domestic violence. The number of post decree cases has also declined. There is substantial evidence that an equal parenting time presumption reduces the number of court cases. We've seen this in Nebraska as well. In response to a comment made earlier by Ms. Vogel that the natural outcome is 50-50, that's not actually true. In Nebraska, we have data from the Department of Health and Human Services, which shows that in divorce cases-- and the most recent year for which they were collected, which is 2020-- only 50 percent of divorce cases with children resulted in joint custody. That's only in divorce cases. There's also paternity cases and these days, there are more paternity cases than divorce cases and the frequency of joint custody in paternity cases is significantly lower than it is in divorce cases. So the assertion that the natural outcome is 50-50 is simply wrong. And then from a judicial resources perspective, which I know this committee is very concerned with, you might be interested to see that since joint custody outcomes in Nebraska became more common starting about ten years ago, the percentage of the district court caseload devoted to domestic relations has fallen from about 67 percent to 60 percent. The number of divorces on an absolute level has declined, even though the population has increased.

**LATHROP:** OK, let's see if there's any questions. Any questions for Mr. Creigh? I see none. Thanks for being here.

**JIM CREIGH:** All right, thank you.

**LATHROP:** Any other neutral testimony? Seeing none, Senator McDonnell waived close, so we do have two position letters; one opponent and one proponent. That will be noted in the record. And with that, we will close our hearing on LB1192 and our hearings for today. Thank you.