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Transcriber's Office

Revenue Committee
January 24, 2018

[LB730 LB738 LB789]

The Committee on Revenue met at 1:30 p.m. on Wednesday, January 24, 2018, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB730, LB789, and LB738. Senators present: Jim Smith, Chairperson; Curt Friesen, Vice Chairperson; Lydia Brasch; Mike Groene; Burke Harr; Tyson Larson; Brett Lindstrom; and Paul Schumacher. Senators absent: None.

SENATOR SMITH: Good afternoon. We're going to begin our Revenue Committee public hearing for the day. My name is Jim Smith, and I'm the Chair of the committee. I represent the 14th Legislative District in Sarpy County. The committee will take up the bills in the order posted on the outside of the room. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation that's before us today. To better facilitate today's proceeding, I ask that you follow these procedures. First, if you would please turn off your cell phones and other electronic devices, or turn them to silent or vibrate, so as not to interfere with testimony. As you are wanting to testify, we appreciate it if you would move toward the front of the room so you're ready to move into the testifier's chair when it comes your time. If you will be testifying, please complete the green form and hand that to the committee clerk when you come up to testify. If you have written materials that you would like to distribute to the committee, please hand those to the page when you come up to testify. We will need 11 copies for all of the committee members and the staff. If you need additional copies, let the page know as soon as possible and they will...the page will help you get those photocopies for distribution. When you testify, please start out by stating and spelling your name so that we can get it correct for the record. And the microphone may not project your voice, you will need to make sure the folks hear, behind you. The microphone is to capture your testimony for the transcriber. We're going to be looking at the number of people that are here today, we're going to use the lights on the testifier's table. We ask that you limit your testimony to five minutes. So, the green light will be on for four minutes of your testimony. If you are still going at that time, it will turn to amber for one minute, during which time we would ask you to wrap up your testimony. And then at the conclusion of five minutes it will turn to red. If your remarks were reflected in previous testimony or if you would like your position to be known but do not wish to testify, we offer that you sign the white form that's in the back of the room as it will be included in the official record. And I'd like to introduce the staff here. To my immediate right is legal counsel Mary Jane Egr Edson. To my immediate left is research analyst Kay Bergquist. And to my left, at the end of the table, is committee clerk Krissa Delka. And I'm going to allow the committee members to introduce themselves. And Senator Harr will be joining us here shortly. [LB730]

SENATOR SCHUMACHER: Senator Paul Schumacher, District 22, that's Platte and parts of Colfax and Stanton Counties. [LB730]

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SENATOR BRASCH: Lydia Brasch, District 16, that is Burt County, Cuming County, and Washington County. [LB730]

SENATOR FRIESEN: Curt Friesen, District 34, Hamilton, Merrick, Nance, and part of Hall County. [LB730]

SENATOR LINDSTROM: Brett Lindstrom, District 18, northwest Omaha. [LB730]

SENATOR GROENE: Mike Groene, District 42, Lincoln County. [LB730]

SENATOR SMITH: And then, also absent, is Senator Tyson Larson. The senators may come and go during the hearing as they have responsibilities in other committees. So we appreciate your patience with us on that. Our page today is Heather Bentley from Miller, Nebraska. Heather is a junior at UNL, majoring in agricultural economics. And with that, we're going to get started and we will start with LB730 to be introduced by Senator Wayne. It relates to adopting the Ammunition Excise Tax Act. Welcome to Revenue Committee, Senator Wayne. [LB730]

SENATOR WAYNE: Thank you, Chairman Smith. Again, my name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e. I represent Legislative District 13, which is north Omaha and northeast Omaha. Last year, when we were on the floor talking about Internet sales tax and other taxes, it occurred to me that, oftentimes, I believe, as a body we started getting confused on what a tax increase is, what is a new tax, and what is not a new tax. And so, looking at a way to make a point, to looking at a way to throw every option as we have a shortfall into the mix, I looked at other states and found Tennessee, Alabama, and about 11...actually about another 20 states who have similar excise taxes as the one I'm proposing. If you look at the fiscal note, we'll gain about \$4 million and we use that money to help crime prevention, Violence Prevention Cash Fund, and Wildlife Conservation Fund. However, after seeing the schedule of this year on the floor agenda--and this is not a priority bill for me--and after talking to many other committee members and the committee Chairman, I don't think this will make the priority list for the committee. I would ask that you guys take this under consideration. We'll talk about it on the floor a little bit, the concept, but I am not looking to pursue and push this anymore than the conversation that we just started. I think we'll have more conversations as we look at all revenue taxes...and all revenue streams and taxes. And also, as we look at ways to fund violence prevention funds and help with the crime across Nebraska, this is just one idea and it was a conversation starter. So those who are behind me who...which I thought would be triple this, who may be testifying in the negative, I am putting on the record that this was a conversation starter. We are not looking to push this anymore than to make sure all revenues are on the table and at least to have a conversation about the issue for this period. [LB730]

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SENATOR SMITH: Thank you, Senator Wayne. Do we have questions from the committee? I see no questions. Senator Wayne, I do appreciate your willingness to explore new ideas. And this committee is going to have a retirement of the "Professor" here later this year. And, you know, Senator Schumacher does bring a lot of ideas to this committee. So you may want to consider a career in Revenue. (Laughter) [LB730]

SENATOR WAYNE: I do like talking about some of his bills, so. Again, I appreciate the committee's time and appreciate the conversation that many of the committee members already had with me regarding this and look forward to further debate about how we can increase revenue streams and have a conversation about violence prevention on the floor. [LB730]

SENATOR SMITH: Thank you, Senator Wayne. Will you remain for closing? [LB730]

SENATOR WAYNE: Yes. [LB730]

SENATOR SMITH: Thank you. And we have been joined by Senator Tyson Larson and Senator Burke Harr. We now move to proponents of LB730. Those wishing to testify in support of LB730. Okay, seeing none, we invite anyone wishing to testify in opposition to LB730. Those wishing to testify in opposition. Welcome. [LB730]

SCOTT SMATHERS: Welcome, Chairman Smith, thank you very much. Members of the committee, I am going to make this short. I am Scott Smathers, S-c-o-t-t S-m-a-t-h-e-r-s. I am executive director of the Nebraska Sportsmen's Foundation. We are a 501(c)(3) educational unit for the outdoor traditional (inaudible) bullet crowd in the state of Nebraska with membership basically roughly 13,000. I'm also filling in today for the Board of Nebraska Firearms Owners Association, which were unable to attend due to work schedules. Senator Wayne, I appreciate your desire to have a conversation. I always enjoy conversations with you, even when we're on the opposite ends of the spectrum. And I appreciate you looking to help a fellow taxpayer to help offset our deficits. However, you obviously understand where our position will be with our member base in the Nebraska Firearms Owners Association, that an additional 10 percent excise tax on top of already the Pittman-Robertson of 11 percent federal excise tax is looking at a harm to the users. I don't want to belabor the point that poor pity the average hunter or the average shooting enthusiast, but I ask you to think about the simple fact is that there is a tremendous amount of school programs that are not recognized as athletic programs or sponsored or financially for those programs. Those are trap teams, and they have grown tremendously in our state over the last five to ten years under the mentoring and tutelage of a lot of my organizations I represent and work with and other organizations. And that represents a wide range of students around the state, both metro and rural. If you have ever been out to Doniphan for the state high school trapshoot there is a large number of folks from around Nebraska in the state and for those

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clubs that are sponsored by parents' money, 90 percent of the time, small sponsorships from "Jim's Insurance Company," "Frank's Ice Company," whatever, to add additional tax to the number of shells that they do shoot each year would be a detriment to that organization. Would they make it up? Yes, they would. Let's be honest about it, they'd make it up. They'd find a way, another parent would write a bigger check. But how does that play with the average person on a daily base when we write another check for another part of taxes? I appreciate the opportunity to look at taxes in our state, we obviously have to. I'm also a member of several other organizations where we work with the state agencies on budget control as we have for the last couple of years and 4 percent keeps ringing through my ears. So 10 percent seems a little high to me. So, I appreciate the opportunity and opportunity to visit with Senator Wayne, as he knows, and any member of the committee. I appreciate your time and look forward to answering questions. [LB730]

SENATOR SMITH: Thank you, Mr. Smathers. Senator Groene. [LB730]

SENATOR GROENE: It says here that 50 percent of the such proceeds shall be credited to the Violence Prevention Cash Fund. Are those high school students violent that are on the trap team? [LB730]

SCOTT SMATHERS: (Laughing) I can't speak to that, Senator. [LB730]

SENATOR GROENE: Are most gun enthusiasts violent? [LB730]

SCOTT SMATHERS: I'm sure there are tendencies at times that they have. But when I speak to them, but no, they're not usually on the trap team very long if they... [LB730]

SENATOR GROENE: I'm assuming that when we tax cigarettes we help them to stop smoking, help the smokers. So, I'm assuming the intent here is to help all these violent hunters control their temper. [LB730]

SCOTT SMATHERS: (Laughing) I'll leave that up to your judgment. [LB730]

SENATOR GROENE: Thank you. [LB730]

SENATOR SMITH: Senator Friesen. [LB730]

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SENATOR FRIESEN: Thank you, Chairman Smith. I guess a question I have, what kind of taxes are already on ammunition? [LB730]

SCOTT SMATHERS: Pittman-Robertson. [LB730]

SENATOR FRIESEN: I mean, you already pay sales tax I take it, then there are some other excise taxes, or... [LB730]

SCOTT SMATHERS: The federal law is Pittman-Robertson Act, 1978. Produces 11 percent excise tax on firearms, handguns, and ammunition for both...11 percent...excuse me, 10 percent...11 percent, 11 percent on archery equipment. And that is then distributed back through a formula to the states on each level. It has to be used for said purposes of wildlife management and enhancement and it is based upon your population of your state, of the percentage of the money that you will receive back. But that is automatic on the top in addition to city sales tax and local excise taxes, any local bonds are issued that are existing. [LB730]

SENATOR FRIESEN: None of that can be spent for violence prevention? [LB730]

SCOTT SMATHERS: Not one dime. [LB730]

SENATOR FRIESEN: Thank you, Mr. Smathers. [LB730]

SENATOR SMITH: Senator Harr. [LB730]

SENATOR HARR: Thank you, Mr. Chairman. And thanks for coming, Mr. Smathers. And thank you for your concern for our high school shooters. If we took some of that tax dollars instead of have it divide 50/50, but instead said 20 percent goes to pay for firearms and ammunition for high school trap and shoot teams maybe even some to universities, would you be okay with that? [LB730]

SCOTT SMATHERS: (Laughing) Would have to see the bill in the entirety, Senator, as you know. [LB730]

SENATOR HARR: Okay, thank you. [LB730]

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SENATOR SMITH: Any additional questions from the committee for Mr. Smathers? I see none. Thank you, Mr. Smathers, for his testimony. Appreciate what you and your organization do for our sportsmen and women in our state. [LB730]

SCOTT SMATHERS: Thank you, Senator, I appreciate that. [LB730]

SENATOR SMITH: Next opponent of LB730. Welcome, Mr. Mach. [LB730]

COBY MACH: Thank you. Good afternoon. I, too, will be very brief. My name is Coby Mach, C-o-b-y M-a-c-h, today here on behalf of the Lincoln Independent Business Association. We believe that this bill would hurt small Nebraska businesses that sell ammunition and give customers another reason to go shop on-line rather than support local retailers. One of our LIBA members is Lincoln Trap and Skeet. At Lincoln Trap and Skeet, they told us that they use approximately one million clay targets every year. That means over, if you shoot like I do, over one million shotgun shells that are needed to shoot those one million clay targets by area residents, by senior citizens, as well as the kids shooting with their trap and skeet clubs. There are thousands of kids just in the eastern part of the state, from Wilber to Waverly, from middle schools in Lincoln to Wahoo who are members of shooting clubs who will either pay the tax or might consider going to the Internet to find cheaper prices. Nebraska businesses already compete, as you all know, with on-line retailers for their business. We would ask that you not advance LB730. Thank you. [LB730]

SENATOR SMITH: Thank you, Mr. Mach, for your testimony. Senator Harr. [LB730]

SENATOR HARR: Thank you, Mr. Mach, for coming here. First of all, thank you for your support of the collection of on-line sales tax. I do appreciate that quite a bit. [LB730]

COBY MACH: Actually, we do support that. [LB730]

SENATOR HARR: Yes, you do. You came to testify to that... [LB730]

COBY MACH: Yes, I have. Yes, I have. [LB730]

SENATOR HARR: ...I actually wasn't being facetious. (Laughter) [LB730]

COBY MACH: I appreciate it. [LB730]

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SENATOR HARR: But... [LB730]

COBY MACH: I thought I'd clarify it for everyone else in the room. [LB730]

SENATOR HARR: ...now I will be. (Laughter) [LB730]

COBY MACH: Okay. [LB730]

SENATOR HARR: Would you be okay with this bill if we said a certain percentage of the tax went to pay for those high school programs and children's shooting clubs that you mentioned in your testimony? [LB730]

COBY MACH: Well, if you're going to do that, then where does it stop? If you want to...this bill raises money for wildlife conservation. We're not putting a 10 percent excise tax on canoes. We're not putting one on fishing lures, or fishing poles...no, we don't favor a 10 percent increase. [LB730]

SENATOR HARR: Fair enough, but you understand the dangers of a bullet and/or shotgun as opposed to a lure? A lure is intended to kill a fish, a shotgun or a bullet, intent can be much more deadly. And I think that's what Senator Wayne is getting at, is, what are we going to do to try to stop this violence in our streets? And I commend him for coming with this idea. I like Chris Rock, too. But that being said, I see where you're coming from, but do you have any other suggestions, maybe of what we can do to get rid of this violence on our streets? [LB730]

COBY MACH: If... [LB730]

SENATOR HARR: Because what Ronald Reagan used to say to me; if you want to get rid of something, tax it. (Laughter) [LB730]

COBY MACH: Senator, we are always willing, as an organization, to sit down and talk about removing violence from our street. Our organization actually, four years ago, led the charge to start adding more police officers to our streets in Lincoln. We want to have a safe community just as much as you do. And so we are always willing to come and sit down at the table. And if that means higher taxes, let's have that discussion. [LB730]

SENATOR HARR: Okay, thank you. And thanks for coming today, always appreciate it. [LB730]

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COBY MACH: Thank you, sure. [LB730]

SENATOR SMITH: Senator Groene. [LB730]

SENATOR GROENE: So, you've been very successful in Lincoln, I believe there hadn't been a single homicide in Lincoln last year, right? [LB730]

COBY MACH: We did not last year, correct. And we have been successful in convincing our mayor and our city council to add new police officers to our streets as well. [LB730]

SENATOR GROENE: So the citizens of Lincoln don't need a tax to prevent violence. We've done a pretty good job. [LB730]

COBY MACH: Senator, we have a fund today that is working toward that. I understand that Senator Wayne wanted to add to that. I think that's a good goal. We oppose the mechanism by which we would add to that fund. [LB730]

SENATOR GROENE: But do you think bullets cause violence? [LB730]

COBY MACH: I do not think bullets cause violence. [LB730]

SENATOR GROENE: So why would...cigarettes cause lung cancer, I can understand the connection there. I'm trying to figure the connection between somebody buying a bullet to go skeet shooting, a constitutional right, and violence. I don't see the connection, do you? [LB730]

COBY MACH: I would have you ask the senator about that. [LB730]

SENATOR GROENE: Thank you. [LB730]

COBY MACH: Thank you. [LB730]

SENATOR SMITH: I see no additional questions. Thank you, Mr. Mach, for your testimony. [LB730]

COBY MACH: Thank you. [LB730]

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SENATOR SMITH: Next opponent of LB730. Welcome. [LB730]

SARAH CURRY: (Exhibit 1) Thank you. Good afternoon. I'm here to testify in opposition to this bill. In recent years our country has been shaken by the horrors of gun violence in America. [LB730]

MARY JANE EGR EDSON: Can you spell your name? [LB730]

SARAH CURRY: Oh, I'm sorry. Yes, Sarah Curry with the Platte Institute, S-a-r-a-h C-u-r-r-y. And the gun violence in our country has become a discussion and gun control debates have led to numerous policy suggestions at our nation's capitol and in the states. One of those suggested policies is exactly what LB730 is proposing, to create a state levied ammunition excise tax. The federal government already levies the Firearms Ammunition Excise Tax, as Senator Friesen talked about earlier. The tax on that is 11 percent, and this bill would add an additional 10 percent to that excise tax. Ammunition is already subject to the state sales tax. Regular purchasers of ammunition buy based on the price per round. For example, a .223 rifle ammunition is about 30 cents per round. When we add the sales tax, it increases to about 32 cents. Now add the 10 percent excise tax proposed in this bill and the final cost will be around 35 cents. Now that doesn't sound like a whole lot, but many people buy ammunition in bulk, and sometimes up to 1,200 rounds at a time, so the cost increase will be significant. When you increase the cost of an item, whether it be via the producer or the tax, the law of demand must be taken into account. Some buyers will be deterred from paying these exorbitant rates to purchase ammunition, but it's more likely that business for ammunition will cross our borders and purchase ammunition in neighboring states or purchase it on-line to circumvent the tax. This was proven when the city of Seattle passed a tax on the sale of all firearms and ammunition in 2015. According to a news story in the local paper, the owner of a large outdoor store which sold firearms in Seattle said that store-wide sales were down 20 percent and gun sales plummeted 60 percent after the tax went into effect. This employer had to lay off employees and make up for the lost revenue. Another gun dealer left Seattle and moved his store to a nearby city and said business could never have been better. Sound tax policy is having a broad base and low rates. Ammunition and firearms should be subject to the state sales tax, which they already are. Sound tax policy also states that excise taxes or special taxes on certain products be used sparingly. Excise taxes were started to compensate society for the external costs of using a product. In economic terms that's called externalities. For example, if you smoke and you get sick and the public pays for your healthcare, the excise tax on cigarettes is justified. In this case, no excise tax is justified on ammunition based on externalities. Yes, people use guns in violent crimes. But the majority of ammunition is used by sportsmen and hunters and will not be used in a violent crime. Thus, there is a very weak argument for ammunition externalities. It's a horrible act when innocent lives are taken due to gun violence. And there is sensible policy to address violent crime. But today we're talking about the tax code and an excise tax. It's not good public policy to

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use the tax code to curb our gun violence problem. Thank you for the committee's time and I appreciate any questions. [LB730]

SENATOR SMITH: Thank you, Ms. Curry, for your testimony. Questions from the committee? Senator Harr. [LB730]

SENATOR HARR: Thank you. Ms. Curry, do you go hunting very often? [LB730]

SARAH CURRY: I did more when I was younger, but I haven't as an adult, no. [LB730]

SENATOR HARR: Okay. Well, I do. And I'm not a very good shot. And you know what I usually say after I miss something?... [LB730]

SARAH CURRY: A bad word? [LB730]

SENATOR HARR: ...shotguns are the...the shells are the cheapest part of this day. So I'm not sure that the extra 10 cents is going to necessarily deter anyone from hunting. I mean, at the end of the day, even if I am...I may...even if I go to a place like Pheasant Bonanza where, definitely, the shells are the cheapest part of the day, I'm never going to use more than probably 12 or 13, maybe 15, shells. So I'm not sure this will have that same deterrent effect on hunting that you're concerned about, or others. But the cumulative effect of helping our inner cities...we have a real problem of violence. And we've got to do something. And I appreciate your coming up against this, but it's easy to say no, it's hard to say yes. I hope in the future that the plan is to come with solutions on how to address gun violence because it is having an effect on our taxes. And that's the real shame. That was being facetious, by the way. Violence is a real shame. [LB730]

SARAH CURRY: Well, and violence is a very serious problem. Where I used to live the violent crime was much higher than it is here. So I'm very glad to be in the state of Nebraska, where it's much safer to live. But as far as the shotgun shells you're right. Some ammunition is extremely inexpensive. Some people manufacture their own. We do that. My husband likes to go target shooting and I don't like paying prices for a premade so we'll do it ourselves. And I think that's a way to circumvent the tax. Really, the issue is we have Cabela's here in Papillion and it's very easy for people to drive over the river and go buy their ammunition at Bass Pro in Council Bluffs. And so that's some of the business that we saw leaving the state. And there are issues with violent crime... [LB730]

SENATOR HARR: Didn't Cabela's already leave for Bass Pro? [LB730]

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SARAH CURRY: Yes, well, technically. So the rest of the sales tax revenue won't go to Papillion, it'll go to Council Bluffs. But there are issues of violent crime and I think that that's something that we'd be happy to weigh in on. Unfortunately, that's not what we're discussing today. Right now we're talking about the tax code and we just didn't feel that the tax code was an appropriate venue to address that. [LB730]

SENATOR HARR: So you don't think high taxes deter activity? [LB730]

SARAH CURRY: I think if you're going to commit a violent crime, you're going to do it regardless of what the taxes are, which is why in certain places where gun restrictions are higher, the criminals still get the guns. I think this tax is unfairly affecting the people that legally abide by the law, such as hunters and sportsmen as our high school trapshooters. [LB730]

SENATOR HARR: So how do you obtain shells illegally? [LB730]

SARAH CURRY: I don't do illegal activities so I wouldn't know. [LB730]

SENATOR HARR: How would one obtain shells illegally? [LB730]

SARAH CURRY: I guess they could steal them. [LB730]

SENATOR HARR: All right. [LB730]

SARAH CURRY: So then we have a shoplifting problem as well. [LB730]

SENATOR HARR: I mean, where do you draw the line? I'm a big fan of the guy, Ronald Reagan--I don't know if you heard me earlier--the guy used to be President of the United States. And he'd always say if you want to get rid of something, you tax it. [LB730]

SARAH CURRY: And I understand that logic. I will say, you know, we tax cigarettes but that doesn't mean that if you're addicted to cigarettes you're going to stop smoking them. So I don't think it always works. And I know that's a healthcare example, which doesn't necessarily play in with this situation but... [LB730]

SENATOR HARR: But if you look...and we haven't in Nebraska, but in states where they have increased the cigarette taxes, the usage of cigarettes actually decreases. [LB730]

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SARAH CURRY: Or the smuggling rate increases. [LB730]

SENATOR HARR: But the...you would agree with me that the use of cigarettes also do decrease? [LB730]

SARAH CURRY: I would say that people look for alternatives. But I know, like, in New York they raised the cigarette tax... [LB730]

SENATOR HARR: Let me ask you a direct question then and if you don't know the answer that's fine. The question is, when the increase on tax...when you increase the tax on cigarettes, does usage go up or down? [LB730]

SARAH CURRY: I haven't looked at the studies to know. [LB730]

SENATOR HARR: Okay, thank you. [LB730]

SENATOR SMITH: Senator Schumacher, then Senator Groene. [LB730]

SENATOR SCHUMACHER: Just a follow-up question. So are you saying that it's not good policy to send money over the bridge to Council Bluffs? (Laughter) [LB730]

SARAH CURRY: In our current budget situation, I would say, no, it's not. You should buy your cars in Omaha, too. [LB730]

SENATOR SCHUMACHER: Thank you. [LB730]

SENATOR SMITH: Senator Groene. [LB730]

SENATOR GROENE: Are we getting a little confused here? We're talking about the Second Amendment of the constitution of people's rights. And we've got a senator here talking about raising taxes to discourage people taking part in their Second Amendment. What would you think if we put a poll tax on voting again? I mean, to me, that's a comparable issue. Second Amendment was in the constitution well before most of the voting rights. So I'm concerned here about why would anybody argue about skeet shooting or violence or cigarette smoking, which I made the mistake of referring to. And why wouldn't we be worried about deterring young people from their full rights of the Second Amendment by taxing to discourage their Second Amendment rights? [LB730]

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SARAH CURRY: I just don't feel like the tax code is the proper way to do that. If we want to talk about education funding and violence prevention in the schools...I mean, I was a member of different programs in high school to help deter us from doing drugs and other types of things. I think that's a valuable conversation. But right here just focusing on the ammunition excise tax and the impact it would have, I don't think that the intended consequence of lowering our violent crime would be a direct correlation to increasing the tax on ammunition. [LB730]

SENATOR GROENE: To restricting your right? There's no relationship between, to me, a issue about violence and restricting somebody's constitutional rights. There's no relationship. They should never be tied together. And we'll have a poll tax, and then use the money to encourage kids to be good citizens and vote? To me, it's the same thing. Anyway, excuse me. [LB730]

SENATOR SMITH: I see no further questions. Thank you, Ms. Curry, for your testimony. [LB730]

SARAH CURRY: Thank you. [LB730]

SENATOR SMITH: Next opponent to LB730. We do have letters for the record that were...oh, is this opposition? [LB730]

GEORGE MERITHEW: Opposition, yes, sir. My name is George Merithew, M-e-r-i-t-h-e-w. George is common spelling. I'm a member of the Omaha Police Department. I am not here testifying on behalf of the Omaha Police Department or the city of Omaha. I'm a 22-year veteran of the police department. I am a 34-year veteran of the United States Army Reserves. I am both...currently active in both. I came up here to testify because Senator Harr brought up some things that I think really confuse this issue. That it's a small number of shells that the hunter uses or the trapshooter uses. That's irrelevant. I'm a police officer. I buy ammunition in bulk, thousands of rounds at a time because I need to be extremely proficient when I employ a firearm at my job. But I also know a lot of recreational shooters that do the same thing. It's not unusual for a recreational target shooter who has never had a hunting license to go to a range and expend 2 to 1,000 rounds in a single day. And I guarantee you these people will go out of state and buy their ammunition. They're not going to stop buying ammunition. And we're going to lose all the sales tax revenue for the large sales at Cabela's. It's irrelevant to hunting. This is not a hunting issue. And I agree with Senator Groene, it's a Second Amendment issue. I'm a...how old am I? (Laughter)...I am a 40 plus-year member of the NRA. I completely disagree with this as being a hunting issue or a criminal issue. This is...the ability to tax, quite simply, is the ability to prohibit. And when you start taxing a constitutional right in the ammunition, it's a serious violation of our rights. Subject to your questions, that's all I have. [LB730]

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SENATOR SMITH: Thank you for your testimony. Senator Harr. [LB730]

SENATOR HARR: Thank you, Officer...is it...? [LB730]

GEORGE MERITHEW: It's Mr. George Merithew. [LB730]

SENATOR HARR: What's that? [LB730]

GEORGE MERITHEW: I'm not here testifying as a police officer. [LB730]

SENATOR HARR: Okay, what's the last name? [LB730]

GEORGE MERITHEW: Merithew. [LB730]

SENATOR HARR: Okay, thank you. So and I appreciate you taking the time to come down here. And you work for the Omaha Police Department, is that correct? [LB730]

GEORGE MERITHEW: I do. [LB730]

SENATOR HARR: Okay. And what is your title on that job? [LB730]

GEORGE MERITHEW: I'm a lieutenant. [LB730]

SENATOR HARR: Okay, and you've worked streets? [LB730]

GEORGE MERITHEW: I do not, not right now... [LB730]

SENATOR HARR: You did? [LB730]

GEORGE MERITHEW: ...I have, yes. [LB730]

SENATOR HARR: You did, yes. Are you in a CIB, or where...what do you do as a...? [LB730]

GEORGE MERITHEW: I'm an administrative assistant to a deputy chief. I write policy for our department. [LB730]

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SENATOR HARR: Okay. So...but you've worked the streets? [LB730]

GEORGE MERITHEW: Uh-huh. [LB730]

SENATOR HARR: And you understand that the gun violence is a problem in Omaha. [LB730]

GEORGE MERITHEW: It is a problem in Omaha, yes. [LB730]

SENATOR HARR: Yes. And so, you understand we're trying to find solutions down here, right? [LB730]

GEORGE MERITHEW: I do understand that, but this isn't the way to do it. [LB730]

SENATOR HARR: Okay, well, at least in your opinion. [LB730]

GEORGE MERITHEW: Well, you're penalizing people who have nothing to do with gun violence. The vast majority of ammunition sales in the state of Nebraska, and I can't give you the exact number, but I guarantee you it's 90 percent or higher do not go to anyone who ever commits a crime with guns. [LB730]

SENATOR HARR: But...and I own guns and I do do target shooting. I would gladly pay 10 percent more if I thought it cut down on gun violence. And that's my opinion and I'll just let you in on it. But I'm going to take strong umbrage at your statement that this is a Second Amendment issue because I once read the Second Amendment and it mentions the right to own and carry firearms. Doesn't mention anything in there, as near as I can tell, about ammunition. And ammunition is already taxed. And so I'm not sure...I understand the effect on it, Officer. But I don't think at the end of the day it is a Second Amendment issue. And I've never...I mean...you've been an NRA member longer than I have, but I've never heard and maybe you have, that this is a Second Amendment issue that I'm sure the NRA would bring up, the taxation on ammunition... [LB730]

GEORGE MERITHEW: Not to interrupt, but how long have you been an NRA member? [LB730]

SENATOR HARR: What's that? [LB730]

GEORGE MERITHEW: How long have you been an NRA member? [LB730]

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SENATOR HARR: I said I wasn't. [LB730]

GEORGE MERITHEW: Oh, you're not? Okay. The NRA is... [LB730]

SENATOR HARR: I said that's why I'm asking based on your experience as a 40-year member. [LB730]

GEORGE MERITHEW: The NRA has brought this up on multiple occasions, in multiple locations, that the ability to tax, especially on ammunition. There was a proposal in California several years ago where they wanted to tax ammunition at the rate of \$1 per round. Again, the ability to tax is the ability to prohibit. [LB730]

SENATOR HARR: Yes, that's exactly right. [LB730]

GEORGE MERITHEW: And so I don't see how it's not a Second Amendment issue. A firearm is worthless without ammunition. To say that the Second Amendment does not contemplate ammunition is a gross perversion of what a firearm is because a firearm is nothing more than a club without ammunition. [LB730]

SENATOR HARR: Thank you for coming down here. [LB730]

GEORGE MERITHEW: Thank you. [LB730]

SENATOR SMITH: Senator Brasch. [LB730]

SENATOR BRASCH: Thank you, Chairman Smith. And thank you, Mr.... [LB730]

GEORGE MERITHEW: Merithew. [LB730]

SENATOR BRASCH: ...Merithew. Am I saying that right, Merithew? [LB730]

GEORGE MERITHEW: Yes. [LB730]

SENATOR BRASCH: Thank you for coming here and taking the time. I know your background in law enforcement, whether it's administrative or community involvement, would give you a very close relationship to crime and youth in trouble. And I think you've made some very

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valuable points. And as I'm hearing someone say, well, I would like to, you know, have this go towards crime and I don't mind paying the extra dime or whatever. Are there many very effective youth groups that they could just write a nice check to available? Are there any clubs or...that...? [LB730]

GEORGE MERITHEW: Oh, absolutely. Multiple clubs. For example, in Omaha we have PACE, Police Athletics for Community Engagement. The entire goal of that is to keep children off the streets and give them something else to do rather than participate in gang activity. And we focus heavily on inner city youths. I'm a large proponent of PACE. I work with them, coach some of the youth leagues. Absolutely, they can use all the money they can get that goes back to the children. We have other...the Omaha Boys' Club has after-school (inaudible). The Boys' Club in... North Omaha Boys' Club. We have lots of youth organizations designed to keep kids out of that type of stuff. We have...it drops off a little bit for adults. It's not quite the same. But we have a lot of programs to try and keep our kids out of that crime environment and stop the perpetuation of violence. [LB730]

SENATOR BRASCH: So that would be a direct path to youth at risk and not jeopardize our Second Amendment? [LB730]

GEORGE MERITHEW: Absolutely. [LB730]

SENATOR BRASCH: Very good. I thank you for coming here and please come back again. [LB730]

GEORGE MERITHEW: Thank you. [LB730]

SENATOR SMITH: Senator Friesen. [LB730]

SENATOR FRIESEN: Thank you, Chairman Smith. I was curious if the police department data would show that people who buy lots of ammunition are more prone to violence than those who don't. [LB730]

GEORGE MERITHEW: No, because we don't track purchases of ammunition. That's just way outside the purview of the Omaha Police Department. I would guess that if we actually did that-- and I base this on my experience as an NRA member, my experience on the people who buy bulk ammunition--we don't arrest them, plain and simple. If I put...I could bring in 20 police officers in here and every one of them would have bought over 1,000 rounds of ammunition in the last year. [LB730]

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SENATOR FRIESEN: So, I mean, I get the smoking argument, because the more you smoke the more the chance that you could get lung cancer, things like this. But when you...if you're one who happens to buy excess ammunition, there's really no correlation to how much violence you might commit? [LB730]

GEORGE MERITHEW: I would say that it's the exact opposite, because most of the violent criminals that we deal with couldn't hit the broad side of a barn which means they're not practicing much. We've had...just in the last three years in Omaha, we've had three homicides because they couldn't hit their target. [LB730]

SENATOR FRIESEN: Okay. Thank you. [LB730]

SENATOR SMITH: Senator Groene. [LB730]

SENATOR GROENE: Thanks, Mr. President...Chairman. So we keep talking like violent crime is only with guns. Is there a lot of violent crime out there that doesn't involve a gun? [LB730]

GEORGE MERITHEW: Yes, and I don't have the statistics on that. Those numbers have been going down. So has gun violence in Omaha...has been going down. Trending quite a bit. Last year was the lowest number of homicides we've had in quite some time in the city of Omaha. But, yes, violent crime doesn't go down. And, again, I don't have the exact figures, but in England, when they outlawed all the private ownerships, violent crime with other weapons actually went up. [LB730]

SENATOR GROENE: So violent crime...what percentage of those individuals that are involved in that, would you say, are under the influence, heavy influence, of alcohol or drugs? [LB730]

GEORGE MERITHEW: I would have no way of telling that. Even in violent crime in Omaha when we find it, they generally get arrested after the fact, especially in homicides. And we would have no idea if they were under the influence at the time of the shooting or the violent crime. So I honestly could not give you any kind of an idea. [LB730]

SENATOR GROENE: My local sheriff says it's about 95 percent. So, I guess... [LB730]

GEORGE MERITHEW: It's possible. [LB730]

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SENATOR GROENE: ...what causes the violence, the bullets or the alcohol and the drugs?
[LB730]

GEORGE MERITHEW: And that's very possible. [LB730]

SENATOR GROENE: Anyway, thank you. You're very eloquent. [LB730]

GEORGE MERITHEW: Thank you. [LB730]

SENATOR GROENE: You said it better than I did in defense of the Second Amendment.
[LB730]

SENATOR SMITH: Senator Schumacher. [LB730]

SENATOR SCHUMACHER: Thank you, Chairman Smith. Thank you for your testimony. Do you happen to know at what point in history the cartridge shell and the shotgun shell came into existence? [LB730]

GEORGE MERITHEW: It would have been shortly before the turn of the century, and I could not give you the exact time. The Peacemaker was one of the first. It was originally a rimfire firearm rather than a primed firearm, which most modern larger caliber firearms are primer-driven. It gives a better burn and a more even burn than a rimfire. Most rimfires are...the most popular ones are .22s, obviously, and the .17 HMR is very popular right now. Those are rimfire cartridges, they don't use a primer. Those are very difficult to reload because the primer...the cartridge itself is destroyed in the firing of the round. Those are all cartridge ones. Prior to that it was mostly black powder. Even during the Civil War, the majority of them were black-powder type rifles not cartridge rifles. Some of them were, they were just coming about in that time period. So it was shortly before the turn of the century, of the 19th Century...19th to 20th Century.
[LB730]

SENATOR SCHUMACHER: So about 1900-ish? [LB730]

GEORGE MERITHEW: Roughly, roughly. [LB730]

SENATOR SCHUMACHER: And the Second Amendment being about what time frame?
[LB730]

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GEORGE MERITHEW: It was in the Bill of Rights, the first ten, I think it was four years after the constitution. Sorry, I'm not... [LB730]

SENATOR SCHUMACHER: The prior century? [LB730]

GEORGE MERITHEW: Oh, yes. Yes, sir. In the 1700s. [LB730]

SENATOR SCHUMACHER: Okay. So when the Second Amendment came around, we didn't know about cartridges and shotgun shells? [LB730]

GEORGE MERITHEW: Well, we did, but not for smaller firearms because originally the Second Amendment included artillery shells and all of that. It was firearms, it was any weapon. [LB730]

SENATOR SCHUMACHER: Black powder and you set it in... [LB730]

GEORGE MERITHEW: Right, but they did have some...there were some artillery rounds that used cartridges, even back then, yes. [LB730]

SENATOR SCHUMACHER: So the constitution must be a living document that... [LB730]

GEORGE MERITHEW: Absolutely. [LB730]

SENATOR SCHUMACHER: ...changes in interpretation over time? [LB730]

GEORGE MERITHEW: Absolutely. [LB730]

SENATOR SCHUMACHER: Thank you. [LB730]

SENATOR SMITH: I see no further questions. Thank you, Mr. Merithew, for your testimony. [LB730]

GEORGE MERITHEW: Thank you. [LB730]

SENATOR SMITH: (Exhibits 2-6) Remaining opponents to LB730? We do have letters for the record that were submitted in opposition to LB730: Janice Barnason; Wanda Simonson from

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Seneca, Nebraska; Charlie Munn; Twyla Gallino from Valentine, Nebraska; and Charles Bressman, Jr., from Omaha, Nebraska. Those letters were submitted for the record in opposition to LB730. Anyone wishing to testify in a neutral capacity? Neutral. Seeing none, we invite Senator Wayne back to close on LB730. [LB730]

SENATOR WAYNE: Thank you, and I'm probably the only one who got Senator Harr's Chris Rock joke (laughter) because as a comedy he talks about violence. And there's this sketch where he's talking about, if ammunitions cost too much there wouldn't be, as the officer explained, random drive-bys, because it would cost too much and people would not want to pay that much for to hit the wrong person. And that's what the joke was about, and it was actually pretty funny. I'm glad that we're having this conversation because it's going to mimic what happens this year on the floor. And I'm glad we're starting to have it now because in no way, shape, or form can we compare this to a poll tax, Senator Groene. Poll tax was used for discriminatory purposes and that was the reason behind the poll tax. And to say that we don't tax our fundamental rights is flatly untrue. Senator Groene, half of the education budget, in many of the smaller cities, are mainly taxed on a fundamental right. One that's in our federal constitution is the right to own property. We tax that to pay for education. We tax many other fundamental rights to pay for things. So I look forward to having more conversations about this because--as Senator Harr pointed out and as this committee deals with on a regular, not just here but at the federal level--tax code is often used to shape what we want in our society. We have the Nebraska Advantage Act to draw more businesses in. If we want to do something maybe one day about crime, this is an option that needs to be on the table. It's a way to shape our public policy. We also have a fundamental right in our Nebraska Constitution, the right to hunt, Mr. Smathers reminded us of. But we have a fee on that, you have to pay a permit. And not all that permit goes to the administration of that, it goes to other things, too. So there is a fee, and I believe fees are oftentimes hidden taxes too. So my point is, is we have these conversations, we will continue to have this conversation. I wanted to make sure everything was on the table. It brings in \$4 million. But let's not make this about the Second Amendment and a fundamental right, because we tax fundamental rights. In some places, if you talk to rural Nebraska, that's all I heard about this year when I traveled the state was property taxes. And, again, that is in our constitution--the right to own property. So I look forward to this conversation. And, again, with the short session, to much of Mr. Scott's (sic) dismay, this probably will not be passed this year or heard on the floor. Because of the short session, this is not a priority. But I do appreciate Chairman Smith allowing me to have this conversation early in the session, allowing us to have this conversation on the floor, not with this bill, but when our taxes are up. This committee at least heard some things from me, already. And so I appreciate that. And I appreciate having the hearing, like I said, early. But we will continue to have this conversation about revenue streams, and we will continue to have this conversation on property taxes. And we will continue to figure out ways to help our state. Thank you. [LB730]

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SENATOR SMITH: Senator Brasch and then Senator Friesen. [LB730]

SENATOR BRASCH: Thank you, Chairman Smith. And thank you, Senator Wayne. An awesome closing. I've not heard you in a courtroom and I can see you have a good comeback. However, I did want to go on record that when you mention property taxes it is driving people to give up their property, to move to another state. It doesn't make it right on what we're seeing today. And I don't think driving up the price of ammunition is right because we have the right to bear arms and to defend ourselves. But the property tax situation, you know, compared to almost every other state, with the exception of a few, it's outrageous. And it's keeping people from being property owners or keeping their properties at this point in our history. But, good closing. Thank you. [LB730]

SENATOR WAYNE: Just for the record, and to respond to that, Chairman Smith. One, I am a firearm owner and have multiple weapons. And, in fact, when I went turkey hunting last year I bought a new shotgun and, yes, I spent a lot of money on shells. But I will agree with Senator Harr that shells and the gun are actually cheaper than everything else that I bought that day. But I do want to put on record that property taxes in District 13...I have one of the oldest historic areas, historic Florence, and there are a lot of retirees who still own their homes who are having the same problem that rural Nebraska is having where they can no longer live in their house. And, in fact, many of them are renting their house from the government. And that's what I say because when they bought the house their income...their mortgage payment was less than what their property taxes are now. So, again, I look forward to that conversation, but I also have a duty for my community to bring out all revenue streams that we can find and ways to prevent some of the things that are happening in my community. So I do want to say, on the record, I understand the property tax issues and I look forward to that conversation. [LB730]

SENATOR BRASCH: And I would like to add that our houses are taxed exactly the same as everyone else's house. It's just that our houses sit on our jobs. We can't keep our jobs, not just our houses. So there's a double dilemma there. Thank you. [LB730]

SENATOR SMITH: Senator Friesen. [LB730]

SENATOR FRIESEN: Thank you, Chairman Smith. Thank you, Senator Wayne. I'm always looking for revenue, too. The problem I'm having, I guess, is I've been very reluctant to raise the cigarette tax because we're going to take and use it for property taxes. And I look at it as though I'm going to go after a minority group that can't defend itself, and I'm going to tax them to break their habit and fix my problem. So I've always said if I can raise taxes to go towards medical care for them, I'm okay with that. But I've been reluctant to raise that cigarette tax to fix my property tax problem. So I guess here, I'm asking, I guess, is there data showing that, you know, is there

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more violence...is violence...is ammunition the cause of...help of...more violence? Is there a relationship? Is there a...the more ammunition sold in Omaha, the more violence there is? I understand where you are coming from, in a way, but I'm trying to get the relationship because of the way I think of how I apply tax policy. And I agree, we use tax policy to shape how we do things. But, again, is the ammunition the cause of the violence or do we have some other issues out there that we should be looking at to help your violence problem? [LB730]

SENATOR WAYNE: I think we need to continue to have more conversations. And that's the second benefit of this bill being in Revenue because we often don't hear about crime. And this is an opportunity for this committee to hear more about violence. But I will tell you that we do this...no, to answer your question directly, no, I don't know a causal relationship. But we also put things in, for example, gambling. We use money to put into gambling to help people who have gambling addiction. And I think the same argument can be made that just because gambling, some gambling is illegalized (sic) in some parts and we use the funds from lottery and everything else to go there. Does the gambling itself cause the addiction? Does bullets themselves cause the violence? No, but we still help the areas that we see that could have the socioeconomic impacts from it. [LB730]

SENATOR FRIESEN: But you'd have to say that gambling does cause a lot of other social issues that come with losing all your money and not being able to provide for your family. So, I mean, there's... [LB730]

SENATOR WAYNE: So I would introduce... [LB730]

SENATOR FRIESEN: It may not be the addiction because I can go gamble. And I gamble a small amount and I walk away. [LB730]

SENATOR WAYNE: Well, I can say that if a...somebody shoots somebody and they die or they're in the hospital for a long time, I can think of many social issues that come from, not only some of the clients that I have represented, but the families who are on Medicaid now who lost another family provider. I can make the argument and I can give you data and go through my own caseload and figure out how much money the state is paying right now, whether it's childcare, whether it's Medicaid, whether it's surgery because they didn't have insurance. I can give you that argument. [LB730]

SENATOR FRIESEN: So there's other things, though, you're saying, that causes this violence, whether it's the lack of jobs or...whatever else, lack of education. Go down a long list, there's a lot of things that are causing this violence. Would you agree? And I... [LB730]

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SENATOR WAYNE: Yes, to answer your question. If we create more jobs...which this committee had a bill last year that I introduced. If we can create more jobs, naturally violence goes down in the communities where people have good jobs. [LB730]

SENATOR FRIESEN: Thank you, Senator Wayne. [LB730]

SENATOR SMITH: Senator Groene. [LB730]

SENATOR GROENE: To clarify, I did not advocate for a poll tax. I was comparing that I did not have advocate for a tax on my Second Amendment rights, either. Some in the room don't want a poll tax, but they want to tax...restrict Second Amendment rights. I don't want to do either. And reference was made, Senator Wayne, to the point that...it was Ronald Reagan, that if you tax something high enough, you change behavior. So what I inferred from that was, we want to raise the taxes high enough so people...to restrict the Second Amendment rights. That's what I got out of that conversation. Also got the conversation that a limousine liberal can afford the guns, but will tax it high enough the poor people on the street can't afford the ammunition. I've heard that argument quite a few times in these halls. So, no. I understand violence and that we need to stop it, but there's no relationship to my...to anybody's Second Amendment rights. That's the point I was trying to make. Don't tax the voting, don't tax the Second Amendment rights. Thank you. [LB730]

SENATOR SMITH: Additional questions from the committee? I see none. Thank you, Senator Wayne, we appreciate... [LB730]

SENATOR WAYNE: Thank you. Let me know when you guys Exec and...nevermind. (Laughter) [LB730]

SENATOR SMITH: I take it you have not changed your mind. (Laughter) Thank you, Senator Wayne. And that was the closing on LB730. We now transition to our next bill, LB789, to be introduced by Senator Ebke to eliminate the marijuana and controlled substances tax. Did...you missed out on our Second Amendment discussion. [LB730 LB789]

SENATOR EBKE: I heard part of it. I came over, thought you were about done and you were. (Laughter) [LB789]

SENATOR SMITH: Welcome. [LB789]

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SENATOR EBKE: (Exhibits 1-3) Thank you, Senator Smith and members of the Revenue Committee. For the record, my name is Senator Laura Ebke, that's E-b-k-e. Thank you for the hearing today on LB789. LB789 repeals the Drug Tax Stamp Act in Nebraska. Now contrary to what you might have heard from the bill's opponents, this bill will not legalize the use or sale of any drugs in the state of Nebraska. This bill will not prevent law enforcement from seizing drugs or the proceeds derived from illegal drug activities. This bill will not prevent nor will it inhibit law enforcement or prosecutors from holding criminals accountable for their crimes. Make no mistake, I believe that criminals should be held accountable for their crimes and this bill is consistent with that belief. I brought this bill to begin a conversation about how we handle tax policy, how we can come up with new ways to address our prison and criminal justice crisis, and how we address the ever-growing bureaucracy of government. Let me provide just a little bit of history here. The first drug tax stamp law enacted in the United States was the federal Marihuana Tax Act passed into law in August 1937. This federal law was the first federal law relating to the prohibition of cannabis. About 30 years after it was enacted, the Supreme Court of the United States found, in Leary v. United States, that enforcement of the law violated constitutional protections against self-incrimination. The 1937 tax stamp law was officially repealed the year after the Supreme Court's decision by the Comprehensive Drug Abuse Prevention and Control Act of 1970. Say that all in one breath. However, in the 1980s and early 1990s, nearly two dozen states enacted drug tax stamp laws as part of a nationwide escalation of the war on drugs. In 1990, Nebraska joined nearly two dozen other states in implementing a drug tax stamp bill when the Nebraska Legislature passed Senator Gerald Conway's LB260 and Governor Kay Orr signed it into law. The bill imposed an excise tax on marijuana, controlled substances, and imitation controlled substances. It provided criminal penalties for failure to pay the tax and created financial incentives for county involvement in enforcement by directing that a substantial part, 47.5 percent to be exact, of the proceeds from such tax collection be directed to the county, quote, from which the proceeds originated. We are 1 of 18 states that have such a law in place that is being utilized. There are ten states that have passed but repealed a drug tax stamp law or their law has been found unenforceable in whole or in part by the courts: Arizona, Indiana, Florida, Kansas, Maine, Montana, New Mexico, North Dakota, Tennessee, and Wisconsin. So you can see it's quite a spectrum of states from population, geography, and general ideological makeup. Most of these states have repealed their drug tax stamp law after courts have determined their state's tax stamp law to violate constitutional protections against double jeopardy or self-incrimination. Now here are the arguments for repeal and why we should eliminate it in Nebraska. First of all, arguably, the law violates the spirit of the constitutional right against self-incrimination. The law violates the spirit of the constitutional right against double jeopardy. The law arguably constitutes entrapment by estoppel. The state is charging a person with a crime for a thing they were seemingly given permission to do. The law exacerbates prison overcrowding, resulting in incarceration of nonviolent offenders or increasing the penalty for those who have been found guilty of trafficking in drugs. Tax laws should exist, I think you could argue, to raise revenue deemed necessary for the operation of related public programs, not as a way to pile on to

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criminal defendants. I've described the history of this law and the principles that it runs afoul of. I would also like to address the practical implications of the bill. According to the Nebraska Department of Revenue, from October 1991, when this bill went into effect, to October 2017, \$13,110 was collected from tax stamp sales. That's in 27 years. A total of \$1,472,187.25, an average of approximately \$56,600 a year, has been distributed by the Department of Revenue under the state law, the vast majority of which was collected via enforcement actions against individuals found not to have complied with the tax. So in other words, people who hadn't purchased their tax stamp and had cash on hand as a result of drug trafficking. The money was seized and then it was distributed. I would draw the committee's attention to the fact that the State Patrol and Department of Revenue fiscal notes disagree significantly on the annual impact on State Patrol, and that both estimates wildly outstripped the historical data provided by the Department of Revenue on October 24 in response to my office's public records request. I've provided a copy of that, the department's correspondence, to committee members. There's really no evidence that this law has reduced illegal drug use in Nebraska. What it has done is provide the threat of additional punishment beyond that deemed appropriate for drug trafficking. This causes a further strain on our corrections system, which you all know is fairly significant. I can't imagine illegal drug users and dealers actually going to the State Office Building to purchase this stamp for their illegal drugs. Can you? In fact, the only purchases of the stamp seem to be to people...for...by people who purchase it purely for novelty purposes. If you'd like to see one, I actually have one in the drawer in my office, so stop on by and you can take a look. Lawmakers should really not enact a law unless their intent is that the public comply with that law. Do we expect drug dealers to comply with this law? I don't think that was really ever the intent of the Drug Tax Stamp Act. So, I realize that many opponents will state how important this is to the enforcement of our drug policy. I think that's somewhat debatable. I think this is a paltry, inconsistent revenue stream no matter what your thoughts are on drug use and drug-related crime. It's clear to me that revenue from this tax is minimal and I would suspect that it is offset by additional cost to our judicial and corrections system when you add on extra time for prisoners. Let's punish drug trafficking as drug trafficking and stop playing the tax stamp game. I think this is a common-sense repeal that really needs to happen. And I'd be happy to try to answer any questions you might have. [LB789]

SENATOR SMITH: Thank you, Senator Ebke. Let me ask you a question here. So at...the person that owes the drug tax, as what was handed out here, a dealer that illegally acquires, possesses six or more ounces of marijuana. [LB789]

SENATOR EBKE: Uh-huh. [LB789]

SENATOR SMITH: So what would possession, if someone is found to have possession of six or more ounces of marijuana, what...where... [LB789]

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SENATOR EBKE: And they haven't purchased the drug tax stamp? [LB789]

SENATOR SMITH: Yeah, forget the drug tax stamp for a minute. [LB789]

SENATOR EBKE: Oh. [LB789]

SENATOR SMITH: What would happen to them? [LB789]

SENATOR EBKE: I honestly don't know what six ounces is. There's lawyers going to be talking after me. [LB789]

SENATOR SMITH: Okay. [LB789]

SENATOR EBKE: I don't remember. I think that's probably...help me out. [LB789]

SPIKE EICKHOLT: By possession (inaudible) zero to 20. [LB789]

SENATOR EBKE: Zero to 20? [LB789]

SENATOR SMITH: Zero to 20. [LB789]

SENATOR EBKE: Okay, there you go. [LB789]

SENATOR SMITH: Okay, zero to 20. But not having a tax would be a Class IV felony punishable up to five years. [LB789]

SENATOR EBKE: Uh-huh. [LB789]

SENATOR SMITH: So... [LB789]

SENATOR EBKE: So you add that on. [LB789]

SENATOR SMITH: Yeah. Okay. [LB789]

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SENATOR EBKE: And five years, we've determined that five years in prison is going to run us about \$150,000, about \$30,000 to \$33,000 per inmate per year is what we know. So we're not making our money back on the tax stamp. [LB789]

SENATOR SMITH: Okay. All right. Senator Friesen, then Senator Groene. [LB789]

SENATOR FRIESEN: Thank you, Chairman Smith. Thank you, Senator Ebke. I love tax policy. We just got done talking about we shape behavior by tax policy and obviously now that we've got a drug tax stamp and it's also illegal to have the drugs and yet we have not wiped out marijuana use. [LB789]

SENATOR EBKE: That's correct, we have not. Our drug tax stamp has done nothing to stop marijuana use or any other drug use. And in fact, the people who are buying...you know, the people who are buying the drug tax stamps are not the people who are dealing drugs... [LB789]

SENATOR FRIESEN: But if I wanted to put... [LB789]

SENATOR EBKE: ...but they're supposed to be. [LB789]

SENATOR FRIESEN: ...if I wanted to so-call protect myself a little bit, I'd go buy the drug tax stamp and so they couldn't get me on that charge, right? [LB789]

SENATOR EBKE: I suppose you could but nobody is because there's some self-incrimination involved there. [LB789]

SENATOR FRIESEN: Well, let's say they're not very smart because they could have saved themselves a few years. [LB789]

SENATOR EBKE: Well, if you're not very smart I suppose that... [LB789]

SENATOR FRIESEN: But...so even if we raise the fee of the drug tax stamp, you don't think that's going to impact policy and... [LB789]

SENATOR EBKE: No. [LB789]

SENATOR FRIESEN: ...and somebody using drugs. [LB789]

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SENATOR EBKE: Because I believe that drug traffickers in and of themselves don't think they're going to get caught and they aren't going to go out and buy a tax stamp and risk...even though the Department of Revenue is not collecting names, we know that the state will see, you know, has photographic images and things like that. If I were a drug dealer, which I'm not... [LB789]

SENATOR FRIESEN: Have they come and checked your stamp? [LB789]

SENATOR EBKE: Uh, no, but it's just sitting...it's not even...unstuck. But you know, if I were a drug dealer, it's only \$10 so don't think that...if I were a drug dealer I wouldn't go into a State Office Building where there is security and security cameras. I would not go in and purchase \$50,000 worth of drug stamps or whatever. [LB789]

SENATOR FRIESEN: How many...what does one stamp cover? [LB789]

SENATOR EBKE: Well, you can get \$10. We have to have the stamp, I don't know what the percentage is, but you have to have the adequate stamp to cover the amount that you have. So you can buy them for as little as \$10. [LB789]

SENATOR FRIESEN: So actually, the cost is fairly high. [LB789]

SENATOR EBKE: Yeah. [LB789]

SENATOR FRIESEN: Okay. [LB789]

SENATOR EBKE: All right. Would you go buy a stamp if you were a drug dealer? [LB789]

SENATOR FRIESEN: Well, I'm just...I'm trying to weigh the things out here. I'm trying to determine, you know, what best to do. I'm working on shaping state policy. [LB789]

SENATOR EBKE: Sure. [LB789]

SENATOR FRIESEN: Because if we tax something high enough, we said it will go away. [LB789]

SENATOR EBKE: Doesn't seem to happen, does it? [LB789]

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SENATOR FRIESEN: Okay. All right. [LB789]

SENATOR EBKE: Here's what I would argue, that, you know, we talk a lot about operating government like a business. This is a failed program. It's not raising money. It's not doing what we want it to do. So what would we do if we were a business? You know, you'd probably discontinue the program and that would be what I argue we should do. [LB789]

SENATOR FRIESEN: Thank you, Senator Ebke. [LB789]

SENATOR EBKE: Yes. [LB789]

SENATOR GROENE: I was...I had my hand up. [LB789]

SENATOR SMITH: Senator Schumacher. Oh, I'm sorry, Senator Groene, then Senator Schumacher. [LB789]

SENATOR GROENE: Thank you, Mr. Chairman. It says here that it's up to five years in prison, not five years. [LB789]

SENATOR EBKE: Sure. [LB789]

SENATOR GROENE: I mean earlier you... [LB789]

SENATOR EBKE: For which? [LB789]

SENATOR GROENE: For not having the drug stamp. [LB789]

SENATOR EBKE: For not having the drug tax stamp. [LB789]

SENATOR GROENE: Zero to 20 he said for six ounces of marijuana but up to five years, so really they're...or \$10,000 fine. So really, they're not adding five years, every judge, on a prison term. [LB789]

SENATOR EBKE: But the point is they could. [LB789]

SENATOR SMITH: Could. [LB789]

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SENATOR GROENE: They could. It could go 20 years, too, without the stamp. [LB789]

SENATOR EBKE: Sure. [LB789]

SENATOR GROENE: Do you think maybe...it's worked for the federal government. Do you think if we put it voluntary? Federal government does it on our income tax and they seem to get pretty good compliance. Maybe we could put the word "voluntary" drug stamp. [LB789]

SENATOR EBKE: I don't consider any tax as voluntary. [LB789]

SENATOR GROENE: Federal government does. [LB789]

SENATOR EBKE: Well,... [LB789]

SENATOR GROENE: Your state, your federal income tax. [LB789]

SENATOR EBKE: Well, you know, I think that we could all end up in Leavenworth but they've got a prison problem too, right? [LB789]

SENATOR GROENE: Thank you. [LB789]

SENATOR SMITH: Senator Schumacher. [LB789]

SENATOR SCHUMACHER: Thank you, Senator Smith. Thank you, Senator Ebke. I was looking at this stamp. Now I know the Judiciary Committee holds a lot of hearings and learns a lot about drugs and things, but one of the things in the skull's mouth is a syringe. Have you learned how people inject marijuana? [LB789]

SENATOR EBKE: I do not know how people inject marijuana but I think this is a general drug tax, so it can apply to anything. [LB789]

SENATOR SCHUMACHER: Do we have...but the tax we're working on today is just marijuana. [LB789]

SENATOR EBKE: No, it's any. It's a general drug tax so any...if you're going to purchase any drugs... [LB789]

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SENATOR SCHUMACHER: Is the other thing in the mouth an ear of corn? (Laughter) [LB789]

SENATOR EBKE: I'm not responsible for the design of the stamp, but I do think that we probably paid somebody to design that 25 years ago. [LB789]

SENATOR SCHUMACHER: Can we get a refund? [LB789]

SENATOR EBKE: We should. But they're actually...they're actually very pretty stamps if you take a look at them in color. I should have brought mine along. Stop on by. [LB789]

SENATOR SCHUMACHER: But the thing, I mean we all laugh about this... [LB789]

SENATOR EBKE: Yes. [LB789]

SENATOR SCHUMACHER: ...and...but we are in a different changing climate and we have any number of states who have out-and-out legalized marijuana. They're getting a huge amount of revenue off of it. And we are engaged in the same debate as we had 40 years ago of what might be worse, booze or marijuana. It's a losing battle. It's a gateway. By making it illegal we have a situation where you introduce people to drug pushers who may be pushing the really bad stuff that we really want to have illegal and we don't laugh about. [LB789]

SENATOR EBKE: Uh-huh. [LB789]

SENATOR SCHUMACHER: So what you're raising in this bill is a big issue, not so much of \$13,000 worth of tax over who knows how many years or the cute little stamp that they have, but whether or not we're approaching the entire issue of drug control realistically. And we've been fighting this war on drugs with gosh knows how many police, prosecutors, defense attorneys, courts, probation officers, and everything else for 40 years and we have not made a nick in it. So it may be time--fortunately, I won't be here and neither will Senator Harr--for those of you stuck with the job for a few more years--and neither will Senator Brasch and Senator Larson and Senator Smith--to take a look at how realistic the approach of 40 years ago is to the drug problem. [LB789]

SENATOR EBKE: Sure. No, I think that that's... certainly we have seen a lot of changes occur over the course of my lifetime and we need to, as a greater society, we need to talk about that and as a Legislature we need to talk about that. But really, all I'm trying to do is get rid of a useless stamp. [LB789]

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SENATOR SCHUMACHER: It should. [LB789]

SENATOR EBKE: It should be gone. [LB789]

SENATOR SCHUMACHER: Either that or get a prettier one. [LB789]

SENATOR EBKE: Yeah. Well, whatever. You know I think that, you know, I've come to the Revenue Committee twice I think, maybe three times, and every time it's been to get rid of a tax. So there's this tax, my inheritance tax that I tried to get rid of a couple of years ago. I think there was another one. But I like to get rid of taxes or at least suggest that we ought to. [LB789]

SENATOR SCHUMACHER: Thank you. [LB789]

SENATOR SMITH: Senator Harr. [LB789]

SENATOR HARR: And I guess the first question is have you ever thought of getting rid of taxes on movies? [LB789]

SENATOR EBKE: (Laugh) Some. [LB789]

SENATOR HARR: But in seriousness, I want... [LB789]

SENATOR EBKE: But you know, it really is a wonderful life. [LB789]

SENATOR HARR: Yeah. (Laugh) [LB789]

SENATOR SCHUMACHER: First Amendment. [LB789]

SENATOR HARR: Yeah, First Amendment. We can't tax movies. It's a First Amendment right. Thank you for bringing...I know you have a lot of bills in Judiciary this year so I want to thank you for bringing a Judiciary-type bill to Revenue. Tax stamps are serious. I understand you want to eliminate it, but what is the whole policy reason that we originally had the tax stamp, if you know? [LB789]

SENATOR EBKE: Well, I think originally, back in the '30s when it originally started, it was a way to keep the...it was a way to tamp down nylon and things like that... [LB789]

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SENATOR HARR: Right. [LB789]

SENATOR EBKE: ...that hemp was going to be...that hemp was competing with, as a way to eliminate competition. You know, I think that once you move into the, you know, '70s, '80s, '90s, and all and so forth, I think that it took a turn towards sort of the war on drugs, get tough on crime type of stuff. [LB789]

SENATOR HARR: Okay. Thank you. That's what I was trying to get at, that it was originally different. [LB789]

SENATOR SMITH: So, Senator Ebke, I think in your remarks, you know, I'm not certain if you mentioned this in your opening or not, I thought I heard this, about relating it to the overcrowding. [LB789]

SENATOR EBKE: Uh-huh. [LB789]

SENATOR SMITH: Do you believe that the failure to have a stamp, not the crime of possessing the drugs but the failure to have a stamp, does that lead...is it documented that that leads to the overcrowding problem in any amount? [LB789]

SENATOR EBKE: Well, I mean it's anytime that you...I don't know if we can put a quantitative number on it, but certainly if you have somebody who is charged with the crime of trafficking and gets, let's just say for example, say, five years, and then they get another year added on for failure to have a drug stamp, that...that diminishes the amount of time...it decreases the time...or increases the time until they are eligible for parole. It increases the amount of time that they're going to be in prison and it increases the cost on society so...or at least potentially so. Do I think that having the stamp is going to fix our prison problems? No. But I think that we need to be looking as a Legislature at anything that would chip away at it. [LB789]

SENATOR SMITH: All right. [LB789]

SENATOR EBKE: I don't know if I answered your question, but I tried. [LB789]

SENATOR SMITH: Very good. [LB789]

SENATOR EBKE: Thank you. [LB789]

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SENATOR SMITH: Thank you, Senator Ebke. I see no further questions from the committee. Are you going to remain for closing? [LB789]

SENATOR EBKE: I've got seven bills going on in my committee right now (laughter) and I think Senator Morfeld is chairing Senator Pansing Brooks's bill so I will waive. Thank you. [LB789]

SENATOR SMITH: Yes. Good call. Thank you, Senator. We now move to proponents of LB789. Welcome. [LB789]

TINA MARROQUIN: Thank you. Good afternoon, Chairman Smith and members of the committee. My name is Tina Marroquin. That is spelled T-i-n-a, last name is M-a-r-r-o-q-u-i-n. I am the public defender in Seward County and I am testifying on behalf of the Nebraska Criminal Defense Attorneys Association in support of this bill. And I thank Senator Ebke, who I think has already stepped out, for introducing this bill. I just wanted to address a couple of things that just came up before I go into any further testimony, that the felony level offense that this is, is a Class IV felony. It now carries zero to two. That was changed by the Legislature just a few years ago so it's a not a five. It's a zero to two just when you're speaking about the penalty that it carries. Directly to what was also asked about, who's going to go get this drug tax stamp? When somebody comes in and, believe me, we have a lot of trafficking that goes on, on I-80 and cases that come in for this kind of thing or even local users who are in addiction, have possession of drugs, they don't think to go get a tax stamp. And so that goes to, what's the purpose of the law? And the purpose of criminal statutes is to deter criminal behavior, that's why we have them in the law, or to stop some sort of community harm. And so I think we all want to stop the drug trafficking and we want to stop addiction and we want to hinder all of these types of negative things that we see in our communities. The problem is, is that there is absolutely no indication that putting a state-issued tax stamp on top of those drugs does that. And the reality is it's because nobody knows that they're committing a crime, nobody knows the law even really exists when they're possessing the drug. So the law itself is not serving any effect and that's one of the biggest problems with it, it serves no effect. There's just no evidence, no study, nothing that taxing the drug makes them safer to the public. So that's one important thing that there's really no impact here. I think that tax laws, you know, we want to enforce tax laws and we do enforce them by criminal sanctions at times and ensuring that there's consequences for people who aren't paying their taxes. The thing is that personally I have never had a case where a prosecutor has sought to collect the tax or the penalty. There's a tax and then there's a penalty. It's 100 percent. And never have I had a case where the prosecutor has sought to do that. So they have the ability to do that. I mean when you have a theft case, someone has lost something, when someone has damaged property, prosecutors routinely are going to go and seek restitution orders. So what is happening is that these...it kind of tells you what the purpose the charge is being used for if they're not actually seeking to collect in the course of the criminal case. And that's really also

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what I want to get at is these charges are really just tagged on, piled on charges, and they put defendants at a disadvantage because the state already has a lot of advantage when we talk about plea negotiations and trial. And there's really no intent to collect it or really prosecute it. I have three cases right now that are in Seward County. Let me just tell you what the charges are. The first one is State v. Hendershot. First count, possession of controlled substance with intent to distribute marijuana. That's a IIA felony, okay? So someone had a significant amount of marijuana. They're charged with a IIA felony. That carries zero to 20 years of incarceration--substantial charge. Count two, possession of controlled substance without a tax stamp. Second case, same exact charges: zero to 20, another possession of this tax stamp. These are pending right now so this is used often. This is filed often. Third case is possession of methamphetamine in excess of 140 grams. That's a 20 to life. It's a IB felony--significant penalty, up to life in prison. Count two, possession of controlled substance without a tax stamp. The reality is that the prosecutor, without me even going to their desk, is going to call and say: I'll dismiss count two, they can plead to the big one. And so it's a throwaway charge. And the problem with that is it puts the defendant, who's already at a disadvantage, at a bigger disadvantage. It makes the state not have to be held to their burden of proof because it's a extra threat of a felony, a serious conviction, another serious conviction if they go to trial because they're looking at more time. If they have a legitimate defense on the merits of these other charges, they still have this felony tax stamp that they have to deal with. So this is causing a really unfair balance even in the criminal justice system and that's another reason we'd like it repealed. I am so sorry I did not see the light. I'll stop. [LB789]

SENATOR SMITH: It just turned. [LB789]

TINA MARROQUIN: Okay. [LB789]

SENATOR SMITH: Do we have questions from the committee? Senator Groene. [LB789]

SENATOR GROENE: Thank you for testifying. [LB789]

TINA MARROQUIN: Uh-huh. [LB789]

SENATOR GROENE: Didn't the individual put themselves in an unfair disadvantage by their activity? [LB789]

TINA MARROQUIN: I think they put themselves in a position to be charged with a crime potentially. [LB789]

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SENATOR GROENE: So they put themselves in that unfair position. [LB789]

TINA MARROQUIN: Well, what you've asked them to do with the tax stamp is to self-incriminate themselves in some way, but I don't disagree with you. I don't disagree that they're in a precarious position because of alleged acts that they did. But the playing ground should be fair, that if the prosecutor is really seeking out a conviction, I'll be honest, I've never seen a conviction. I feel like these are typically charged up as just ways to get the upper hand in a case. [LB789]

SENATOR GROENE: Well, doesn't it help you, as a lawyer, to say...to justify your wages by saying you plea bargained down and you got rid of it? Isn't that how the legal system works? They hire you. You go to the prosecutor. You come back to your client and say, I plea bargained down so what I'm charging you is worth it? [LB789]

TINA MARROQUIN: Well, I'm a public defender so I don't get paid that way. [LB789]

SENATOR GROENE: So you don't get paid. (Laughter) [LB789]

TINA MARROQUIN: And I guess I have a little more confidence in our criminal justice system that lawyers are actually representing their client's interest. [LB789]

SENATOR GROENE: I know you're not a tax lawyer or anything, but maybe if we got rid of this unfair tax then these drug dealers, they'll be paying more income taxes, wouldn't they, because their profits would be higher? I'm sure they all file income tax returns. [LB789]

TINA MARROQUIN: I'm not sure many of them are residents of the state of Nebraska. [LB789]

SENATOR GROENE: (Laugh) All right. Anyway, you get my point. [LB789]

SENATOR SMITH: Senator Brasch. [LB789]

SENATOR BRASCH: Thank you, Chairman Smith. And thank you, Ms. Marroquin. [LB789]

TINA MARROQUIN: Yes. [LB789]

SENATOR BRASCH: Are you here representing an organization? [LB789]

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TINA MARROQUIN: Yes, the Nebraska Criminal Defense Attorneys Association. [LB789]

SENATOR BRASCH: Okay. And are...is it your group that brought this bill to Senator Ebke to introduce? [LB789]

TINA MARROQUIN: Yes. [LB789]

SENATOR BRASCH: And are there other states that have eliminated their drug tax? Are other states doing this? Unless of course if they legalized recreational drugs, I suppose they would not have the stamp. But how many other states have this? How many other states have... [LB789]

TINA MARROQUIN: I'm not familiar. I really can't answer the question how many other states have this. Obviously, in states where marijuana has been legalized for medical, medicinal,... [LB789]

SENATOR BRASCH: Obviously, yeah. [LB789]

TINA MARROQUIN: ...or recreational use, there's a tax on it and that, obviously, we're not opposed to that sort of taxing. But I'm not familiar with the number of states. I'm sorry. [LB789]

SENATOR BRASCH: And then I'm not an attorney but I watch movies (laugh) sometimes. And wasn't Al Capone captured because of tax evasion? Couldn't this be a tool perhaps to get a drug dealer by saying we believe you're dealing, you haven't paid your tax, and then they open the room up and there's the grow house or whatever? [LB789]

TINA MARROQUIN: My understanding of that was that was money laundering, which would be completely different. I don't think you can actually do a...you've already found the drugs at this point. It's more of a possession case rather than a...we don't have anything. You have to have found drugs or money and know that the tax stamp is not affixed to them. So I don't think so. I think... [LB789]

SENATOR BRASCH: But if someone said, I bought this little bit of drugs from this big drug dealer and so you'd have a suspicion that they didn't pay, this big person didn't pay their tax. So you can go and say, you didn't pay your tax and it would be a discovery path to (inaudible)? [LB789]

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TINA MARROQUIN: I don't think it could work that way. I think you'd have to first have the actual contraband to actually have this charge filed. And you know, interestingly enough, when you talked about that six ounce, the marijuana piece, someone could legally buy that in another state, bring it into the state of Nebraska, and then be charged with these same zero to 20 with the tax stamp on top of it here in Nebraska. So it's affecting...it's an interesting issue for the entire nation, I think. [LB789]

SENATOR BRASCH: Okay. I have no other questions. Thank you. [LB789]

SENATOR SMITH: Senator Schumacher. [LB789]

SENATOR SCHUMACHER: Thank you, Chairman Smith, and thank you for your testimony. In my days of prosecuting, I can't remember ever charging anybody under this. It was enough to put them away for whatever it was we put them away for. But you did raise an interesting issue. Obviously, there is a lot of money made selling drugs and that money, some of it, goes to the income of people in the state and some goes to whoever they're getting the drugs from out of state. In...has the prosecutors in recent times, as part of a plea agreement--and we're talking about money here--said, look it, we'll lower the charge or drop the charge but you have your client sit down with the Revenue Department so we can build a case against "Mr. Big" somewhere else and assess a humongous income tax for the drugs sold in Nebraska? [LB789]

TINA MARROQUIN: I didn't see that coming. I was thinking you were going to have them turn over someone for actual contraband or something. But, no. [LB789]

SENATOR SCHUMACHER: We're about money here. [LB789]

TINA MARROQUIN: Yeah, right. No, I have not had that proposed by a prosecutor that they are going to seek out. I don't feel that prosecutors have any thought of actually going through with a conviction or getting the tax stamp recovered or getting someone higher up who hasn't paid taxes on a drug. I don't think that's the purpose of the filing on any of these charges. [LB789]

SENATOR SCHUMACHER: We'll just put an idea in your head for an offer on a plea bargain. [LB789]

TINA MARROQUIN: I'll bring that up the next time. [LB789]

SENATOR SCHUMACHER: Okay. Let's see. [LB789]

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TINA MARROQUIN: I'll take this back. [LB789]

SENATOR SCHUMACHER: Let us know what you hear. [LB789]

TINA MARROQUIN: I'll let you know. (Laugh) [LB789]

SENATOR SCHUMACHER: Okay. Thank you. [LB789]

TINA MARROQUIN: Yeah. [LB789]

SENATOR SMITH: I see no additional questions. Thank you, Ms. Marroquin,... [LB789]

TINA MARROQUIN: Thank you. [LB789]

SENATOR SMITH: ...for your testimony. Next proponent of LB789. Welcome. [LB789]

SPIKE EICKHOLT: (Exhibit 4) Thank you. Good afternoon, Chairman Smith and members of the Revenue Committee. My name is Spike Eickholt. First name is S-p-i-k-e, last name E-i-c-k-h-o-l-t. I'm appearing on behalf of the ACLU of Nebraska in support of LB789. We do thank Senator Ebke for introducing it. You've got a copy of my written testimony. I'm not going to restate it. I think that both Senator Ebke and Ms. Marroquin explained at least some of the issues relating to this bill and our proposal to and our support of striking the drug tax stamp law. Maybe I'll just respond to some questions. As Ms. Marroquin explained, the purpose of this, or at least the functional purpose of this law really is something that's used by the prosecutors and maybe to a lesser degree by law enforcement as well. It is a charge that is added usually as a secondary or a third-type charge in addition to other charges that are out there. I practiced criminal defense. I actually practiced in Lancaster County. And all the time that I was the public defender in Lancaster County and even now I'm private practice I've never had one of these charges. And I knew other counties across the state charge this. I saw Pat Condon who's here today. He's chief deputy--I'm surprised to see him--he's the chief deputy for Lancaster County and he tells me that they are now charging it there. And I don't know if I just had never had a case because I was just lucky and they always have, but I...my experience from seeing it from other jurisdictions is that, as Ms. Marroquin explains, it is something the prosecutors use to negotiate a plea agreement on a charge, principal charges that they actually care about. Now you might think, what's wrong with that? And in response to Chairman Smith's question about how many people are serving time in prison, I would submit probably none or very few because that's not the purpose of the charge. It's not to get a conviction. It's not to get a sentence. It's to get a conviction for another charge and a sentence for another charge. If you're involved in the criminal system--Senator

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Schumacher could explain this--almost 90-some, high 90 percent of your cases are resolved in plea agreements. The parties are not equal in that setting. Having charges like this...and there are other ones on the books. There's a charge of possession of money when you're violating a drug law. There's possession of drugs in a school zone. There's use of a weapon when you're committing a drug offense. There's all these pile-on, overlapping charge. When you have that be on the table in negotiations, what that does, it artificially boosts whatever a person is actually convicted of and it necessarily artificially boosts the type of time that they serve in prisons and jails. You have a prison...the problem in the state is not that you don't have enough crimes. Okay, that's not the issue. We have enough crimes to charge. You can charge someone up and you can overlap charge, you can enhance them, you can have them consecutive with mandatory minimums and all those things. You can put somebody away for really as long as you want to and that happened incrementally in this state. And it's our suggestion, it's our recommendation that to get away from that, that change needs to be equally incremental. This is not going to solve the prison population because there's not one solution for that. It built up slowly, it's going to have to get built down slowly. And one way to do that is to look at some of these criminal laws and think is it serving a purpose, as Senator Friesen asked. It doesn't collect tax. It doesn't control tax purchasing policy or tax payment policy. It doesn't even deter crime because drugs are not any less addictive if they got a stamp on them. People who are dealing or possessing know the drugs are illegal. They don't know anything about a tax stamp that's supposed to go with it. It doesn't serve that purpose. In response to what Senator Brasch asked, other states have repealed this. Other states, as Senator Ebke indicated, have looked at their criminal laws, particularly their drugs laws, and either lessened penalties or outright repealed them. Attached to the testimony that I distributed is an article in The Texas Tribune, I think was the paper, that explained that in 2016 Texas repealed their drug tax stamp law, which was very similar to ours. They outright repealed it. I attached that article because I do reference another article that was just published last week in the Houston Chronicle that talked about how Texas has now got the lowest crime rate since 1967, and in the last seven years they've closed eight prisons. Other states have handled their overcriminalization of laws. Other states have dealt with their mass incarceration problems and we should at least follow them. And Texas has repealed theirs and we would urge the body to advance this bill from...or the committee to advance this bill to the general body and to support it. [LB789]

SENATOR SMITH: Any questions from the committee? Senator Brasch. [LB789]

SENATOR BRASCH: Thank you, Chairman Smith. I apologize for asking this question, but when you said Texas, they do have capital punishment... [LB789]

SPIKE EICKHOLT: They do. [LB789]

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SENATOR BRASCH: ...and they do have executions. Correct? [LB789]

SPIKE EICKHOLT: Absolutely, they do. [LB789]

SENATOR BRASCH: And then they have the lowest crime? What did you say? The lowest crime? What did you say? [LB789]

SPIKE EICKHOLT: They have the lowest crime rate of all crime. [LB789]

SENATOR BRASCH: Oh, okay. [LB789]

SPIKE EICKHOLT: And I don't know how that compares with the capital type offenses. [LB789]

SENATOR BRASCH: All right. No, I was just...you made me think about Texas and capital punishment... [LB789]

SPIKE EICKHOLT: I understand. [LB789]

SENATOR BRASCH: ...and execution and so...and you clarified it. And I thought you, for one, would know. And as far as when you're talking about judges and this is many of our eighth year, but we have enacted quite a bit of legislation and revenue to...for the judicial system on recidivism, on drug courts, and etcetera, tools that a judge would have to not apply this stamp or the maximum sentence, that would naturally take care of anyone incarcerated that is there for a drug addiction versus behavioral health versus...would you agree with that? [LB789]

SPIKE EICKHOLT: I would agree that the Legislature has done some things. I think the most comprehensive things the Legislature did--and I know that you supported it--was LB605 in 2015. In '16 there was a follow-up bill. That was done with the leadership and cooperation of the Council for State Governments and they had a plan, if you will, to address some of those issues, just like you said, and also to deal with our prison overcrowding problem. Unfortunately, the plan was only partially implemented and the anticipated results really have not come to be yet. We are considerably behind what CSG, the Council of State Governments, told us we would be at with the groups. So I do acknowledge the Legislature has done some things. [LB789]

SENATOR BRASCH: And the Probation Office also received a lot of revenue... [LB789]

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SPIKE EICKHOLT: They did. That's right. [LB789]

SENATOR BRASCH: ...and staffing and that we are trying to work on the front end. [LB789]

SPIKE EICKHOLT: That's right. And this is a front-end solution. This is a front-end... [LB789]

SENATOR BRASCH: By removing this stamp? [LB789]

SPIKE EICKHOLT: By repealing the law that provides for that felony level penalty. [LB789]

SENATOR BRASCH: That only has a zero to two and is rarely applied. [LB789]

SPIKE EICKHOLT: That's right. [LB789]

SENATOR BRASCH: Okay. [LB789]

SPIKE EICKHOLT: And I know that seems counterintuitive because that is one thing. If somebody is looking at a zero to 20 and they got a zero to 2 charge, the prosecutor will drop the zero to two. If the prosecutor didn't have that other charge to throw away, and that's what it's for, then they start at zero to 20. Then you negotiate that down. Most defendants are going to get convicted of something. They're going to do some time. And if it's doing five years instead of perhaps three years, that...if you do three years instead of five years, that's going to have a measurable impact on your prison population problem. It's a matter of degrees. And I know a lot of people, most of my clients, who end up going to prison, right, they learn a lesson and they can learn that lesson and they do rehabilitate. They do get treatment. And it doesn't necessarily take them five or six years. [LB789]

SENATOR BRASCH: But aren't they typically...treatment is usually the first option? I think that sentencing... [LB789]

SPIKE EICKHOLT: Not with a mandatory minimum, even if the judge wanted to. That's what some people criticize about a mandatory minimum. [LB789]

SENATOR BRASCH: Okay. [LB789]

SPIKE EICKHOLT: Most judges consider drug trafficking, most prosecutors do, kind of a serious thing that deserves some time in custody. You're not going to necessarily just get

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probation when you're caught on the interstate with a significant amount of marijuana or other drugs. You're going to go to prison for a while. [LB789]

SENATOR BRASCH: And I think "significant" is the key word here... [LB789]

SPIKE EICKHOLT: That's right. [LB789]

SENATOR BRASCH: ...versus...I have no other questions. Thank you so much. [LB789]

SENATOR SMITH: Senator Groene. [LB789]

SENATOR GROENE: Thank you, Mr. Chairman. So what you...let me interpret what you said. [LB789]

SPIKE EICKHOLT: Sure. [LB789]

SENATOR GROENE: The plea bargaining is on the zero to two and then they get zero to five. You want the zero to two to go away on a drug stamp so they can plea bargain on zero to five to zero to three. [LB789]

SPIKE EICKHOLT: Right. [LB789]

SENATOR GROENE: So the attorney...defense attorney gets their little piece of pie, the judge gets it, and then the prosecutor gets reelected because they threw somebody in jail. Isn't that the way the business of lawyers work? [LB789]

SPIKE EICKHOLT: I mean, bluntly speaking, perhaps yeah. I mean you are dealing with a negotiation process and really the only thing the defendant has got is the Hail Mary, go to trial, maybe I'll win, right? And that really doesn't work out the way that it is. So, ultimately, what you do is you just essentially plead to what the prosecutor wants. And you're right. A question you asked before, the only one person, the only person that put that person there is the defendant. But there ought to be some sort of proportional response as a matter of state policy because, great, you put them in prison for a while. If they're driving through the state, you put them in our state prison now at our cost, and that's the result we're dealing with now with the prison pop. [LB789]

SENATOR GROENE: Yeah. Take this with a little humor,... [LB789]

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SPIKE EICKHOLT: Sure. [LB789]

SENATOR GROENE: ...but how cold does it got to get before the ACLU comes up here and defends somebody's Second Amendment rights like the last bill? [LB789]

SPIKE EICKHOLT: (Laugh) Colder. (Laughter) [LB789]

SENATOR GROENE: Thank you. [LB789]

SENATOR SMITH: I see no additional questions. Thank you, Mr. Eickholt, for your testimony. Next proponent, supporter of LB789. Seeing none, we move to opponents, those wishing to testify in opposition to LB789. Welcome. [LB789]

TERRY WAGNER: (Exhibit 5) Thank you, Senator Smith. Members of Revenue Committee, my name is Terry Wagner, T-e-r-r-y W-a-g-n-e-r. I'm the sheriff of Lancaster County. I'm here in opposition of LB789. And I just want to be very, very brief, but this tax, as you know, has been in effect for 28 years. It provides an added tool for us to combat drug dealers. Assessing a tax to those who possess significant quantities of marijuana and other dangerous drugs that are clearly intended for delivery makes sense. Drug dealing is to make money. That's the purpose of it. And if those real proceeds can be reduced by using the drug tax stamp, then I think it's served its purpose. And it's a "de-incentive" for dealers. I can't believe that if there were constitutional issues with the drug tax stamp that those wouldn't have been addressed in the past 28 years that this law has been in effect. We have the same sort of tax on liquor and alcohol, an excise tax, and I think it's structured the same and serves the same purpose. In 2017, we issued 24 citations for people evading the drug tax stamp, and that was as a result of the seizure of about 1,100 pounds of high-grade marijuana, 18 or so ounces of THC-infused edibles, 236 grams of THC oil, 13,457 grams of marijuana "shatter," which is the new butane hash oil reduction method that creates a, if you know what "shatter" is, it's almost the consistency of peanut brittle--a thin layer of amber-colored hard stuff that you light and smoke. It's about 95 percent pure THC. And so that's kind of the newest thing out of Colorado is butane hash oil, and "shatter" is the by-product of that. So only 24 people were charged or cited by our deputies for violating the drug tax stamp. You know, you can see by the quantities that we're encountering on the interstate--I know there are several senators here that have Interstate 80 run through their jurisdictions--the drugs coming through, the drug tax stamp is being used appropriately to address those large quantities that dealers bring into Nebraska. And I would say that for a final thing I think that if Nebraska is ever going to legalize medicinal marijuana or recreational marijuana, the reduction, the elimination of the drug tax stamp has to come first or those folks that deal with the drugs when it becomes legal would not have the profits that they have. So I would urge you to vote against LB789 and not advance it to the floor. I'd be happy to answer any questions you might have. [LB789]

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SENATOR SMITH: Thank you, Mr. Wagner. Senator Schumacher. [LB789]

SENATOR SCHUMACHER: Thank you, Senator Smith. And thank you, Sheriff, for coming today. Of all this marijuana and marijuana-related stuff that was seized, how much did the state get paid in tax revenue? [LB789]

TERRY WAGNER: I don't know. [LB789]

SENATOR SCHUMACHER: Probably nothing. [LB789]

TERRY WAGNER: I don't have the answer to that question. [LB789]

SENATOR SCHUMACHER: So the tax, this is the Revenue Committee,... [LB789]

TERRY WAGNER: Right. [LB789]

SENATOR SCHUMACHER: ...so the tax, as a revenue raiser, is zilch. [LB789]

TERRY WAGNER: You know, there are people following me that I think can testify... [LB789]

SENATOR SCHUMACHER: Okay. [LB789]

TERRY WAGNER: ...to those facts and I don't know those facts. [LB789]

SENATOR SCHUMACHER: Yeah, and I guess if it amounts to any money we'll hear about that. But what this is, is as it's being used is not for revenue, not for collecting any money but as an additional lever in plea bargaining and in moving all the stuff that you as a law enforcement officer, the prosecutors have got to move through the system because we made a lot of stuff illegal. And you got a job to do so you have another hammer that you use to get a plea and get the case off your desk. But as a tax matter, you know, we'll listen, I guess, to hear how much revenue it brings in. Thank you. [LB789]

TERRY WAGNER: Okay. Thank you. [LB789]

SENATOR SMITH: Additional questions from the committee? I see none. Thank you, Mr. Wagner, for your testimony. [LB789]

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TERRY WAGNER: Thank you. [LB789]

SENATOR SMITH: Next opponent of LB789. Welcome. [LB789]

PATRICK CONDON: Thank you, Chairman Smith. Members of the Judiciary (sic--Revenue), my name is Patrick Condon, P-a-t-r-i-c-k C-o-n-d-o-n. I am the chief deputy Lancaster County Attorney. I'm also a member of the executive committee for the Nebraska County Attorneys Association. It's for the County Attorneys Association I'm here in opposition of LB789. To begin with, I do not believe that there are constitutional concerns to this legislation. The Nebraska Supreme Court, in State v. Garza in 1993, held that the Nebraska Tax Stamp Act does not violate Garza's right to free...to be free from self-incrimination, neither does it violate the Nebraska Constitution, Article VIII, Section 1, or conflicts with Section 28-416(6), which is the distribution statute. In Garza they were talking about the self-incrimination. I know that's been brought up here. You do not have to give your name. You do not have to basically give any type of identifying information. You just have to buy the tax stamp. This can be done over the Internet, through the mail. You can have it delivered to a P.O. Box if you want to. You don't have to go into any buildings to get this drug tax stamp. Again, the purpose of the law is to get the drug tax. Further, in State v. Stubblefield in 1996 the Nebraska Supreme Court again found that violation of 28-416, which is the distribution statute, and 77-4302, which is the drug tax stamp which is...or drug tax law, which is trying to be eliminated through this bill, did not constitute the same offense because each requires proof of an element that the other does not. As a result, the double jeopardy clause does not prohibit prosecution and/or punishment for each of the two offenses. That leads me to another topic that's been brought up here and that is that we use these as a hammer for...prosecutors use these as a hammer to get a plea negotiation. One, we know, you know, by LB605, the Class IV felony was reduced from zero to five to zero to two, so it is a two-year...a potential two-year sentence. There's also a presumption of probation with any charge, so it's presumed probation. Another thing, you know, again, Senator Brasch I think mentioned the probation officers. Just because somebody is convicted of a crime doesn't mean they're going to prison. In fact, I would say the majority of people who are convicted of crime do not see the inside of a prison. They see probation, they see fines, things of this nature than your jail time. They do not see the inside of a prison. Is it used as a hammer? You know, this Legislature passed laws for we prosecutors to implement and I don't think you said in any of the laws that I have read that says, you must choose your most serious crime and that's the only crime you can charge. I have charged many murder cases. I charge a weapons charge. Why would I do that? He's being charged with murder. If you convict him of murder, he's going to away for life. Why do you charge the weapons charge? Because he used a weapon to commit this offense, because the Legislature has said that is a charge. Using a weapon to commit a murder is a crime. That's what I do. I charge crimes that the Legislature has given me the ability to charge. Going back to the drug tax stamp, in...when this originally began--I've been doing this for going on 30 years now--when this originally became law we did charge it more. It was a new

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law. We charged it more. Kind of got away from that in the more mid-'90s and so I would say we've gotten away from it. We are now starting to get back to that, to using that charge, charging that charge. Lancaster County in fiscal 2018, so far through fiscal year of 2018, has brought in about \$14,000, almost \$15,000 in drug tax where we have agreed to settle the drug tax that a person would owe for that amount of money, and then that's basically doubled because I believe, as one of the testifiers testified, 5 percent goes to the Department of Revenue and then 40...the remainder is split to the county and to the state. That money is placed into our drug tax, our county drug tax fund that's derived of the Lincoln Police Department, Lancaster County Sheriff's Office, the Nebraska State Patrol. They each can come to that fund and ask for items to be used to fight crime and fight drug charges. We have bought shields out of that, ballistic shields. We've bought surveillance equipment, some have been used for that. So it is used to fight the crime. I guess that's...I'm about out of time here so I'll just open it up to any questions if anybody has any questions. [LB789]

SENATOR SMITH: Thank you, Mr. Condon, for your testimony. Senator Schumacher, then Senator Groene. [LB789]

SENATOR SCHUMACHER: Thank you, Senator Smith. And thank you for your testimony. Was that \$13,000 in one year? [LB789]

PATRICK CONDON: Fourteen. It was \$14,000 in fiscal, so June 2000...or July of 2017 through this much of 2018 we've brought in \$14,000 into our...in drug. And what I would say, Senator, it is not the drug...they don't go out and buy the drug tax stamp. We can look at it and say, this money would be...or this drug would be taxed at a rate of X and that means you have a tax bill of \$50,000. You have \$25,000 on bond or you have \$25,000 on your person. We will not go after a drug tax is you pay that tax. And they agree to pay that tax. [LB789]

SENATOR SCHUMACHER: Pay that to who? [LB789]

PATRICK CONDON: To the Department of Revenue. It goes to the Department of Revenue, and then Department of Revenue divides it pursuant to the statute. [LB789]

SENATOR SCHUMACHER: So they make a donation to the Department of Revenue? [LB789]

PATRICK CONDON: They...our office, as part of a...as any private plea negotiations, we can plea negotiate that they will pay that money towards the payment of their tax, the same way as, you know, if I'm charging somebody with a tax evasion. We don't do that but, you know, you can

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say, okay, here's your charge, you pay your taxes and we can, you know, we can do...reduce that charge. [LB789]

SENATOR SCHUMACHER: So does the...who makes the assessment, the Department of Revenue or...? [LB789]

PATRICK CONDON: Department of Revenue. [LB789]

SENATOR SCHUMACHER: And so when somebody is charged with one of these marijuana offenses, you notify the Department of Revenue? [LB789]

PATRICK CONDON: Actually, the...and that's another thing. If you look at the statutes, Senator, actually it's the seizing agency can file the paperwork with the Department of Revenue. I don't even have to charge anything. As a prosecutor, I don't have to charge anything and they can still be taxed for that. The paperwork goes to the Department of Revenue and the Department of Revenue decides what the tax is on that controlled substance. [LB789]

SENATOR SCHUMACHER: So the Department of Revenue makes the assessment of the tax. [LB789]

PATRICK CONDON: Yes. [LB789]

SENATOR SCHUMACHER: And the way they get the money is out of a bond or if you happen to find some cash with the guy. [LB789]

PATRICK CONDON: That's one way. The other way, I've had instances where I have charged it and there has been an assessment made and years down the road the individual maybe has changed paths and changed employment and has decided to be on the legal side of things and has gone to purchase a property. He can't purchase property because there's a tax lien because of drug tax, and they end up paying, you know, they agree with the Department of Revenue that they'll pay \$2,000 to get off that tax lien and then they can buy their house. [LB789]

SENATOR SCHUMACHER: So when this tax is assessed, you've got this person that says, I have a bunch of very high-priced marijuana stuff and you look at that and you say, well, gee whiz, this person has been in this business for a while. This person has a distributor that they're buying it from or somehow getting it from. They've made a ton of income. And at 6.84 percent, they owe a huge income tax to Nebraska. And to your knowledge, does the Department of Revenue make an assessment of an income tax? [LB789]

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PATRICK CONDON: I don't know, Senator. [LB789]

SENATOR SCHUMACHER: So do you enter into a plea agreement in which they disclose their income and their tax liability or will turn over information as to who their supplier is so we can tax them? [LB789]

PATRICK CONDON: We...I mean generally, Senator, I will tell you just in having handled drug cases before, our goal is always if we can go up the scale, you know, go up the ladder, we go up the ladder and see if we can get the bigger dealer. That doesn't occur, as you know, that doesn't occur a lot of times. [LB789]

SENATOR SCHUMACHER: So this tiny tax, almost a nuisance tax here, is that...by collecting that, is that a...do you kind of close the book on the tax issue and let the big fish get away with not paying far, far more income tax than \$30,000? I mean what...the street value of this times 6.84 percent, less whatever their cost of their goods are, is a big tax bill that we're letting get by. [LB789]

PATRICK CONDON: Well, and I don't disagree with you. And again, as a former prosecutor you know also that the ones running the drugs usually aren't the ones getting the money, getting rich off this. It's the person... [LB789]

SENATOR SCHUMACHER: Well, but we can go up after them. I mean if we're going to be serious about taxing drugs and the proceeds of drugs, it isn't off of a postage stamp. It's off of going after the income tax now. And not paying income tax is a crime for which you're charged, along with the Revenue Department and the Attorney General's Office, in collecting. What effort has been made to collect the income tax on this tremendous profit that's being made? [LB789]

PATRICK CONDON: I don't think...I don't know, Senator. [LB789]

SENATOR SCHUMACHER: So do you see where I'm going? [LB789]

PATRICK CONDON: Yeah. But, again, Senator, what I can tell you is most of the people who are driving through this state on the interstate aren't selling in Nebraska. They're going to the East Coast. They're coming from the West Coast, they're going to the East Coast. And there's case law that says that we can't charge a conspiracy charge on that. [LB789]

SENATOR SCHUMACHER: But those that you catch selling in Nebraska... [LB789]

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PATRICK CONDON: Those that we catch usually are not...you know, they're street-level dealers, Senator. I mean they're not making the big money. [LB789]

SENATOR SCHUMACHER: But the person... [LB789]

PATRICK CONDON: And the ones that we try to get, a lot of times they will be charged federally, I mean, and the federal government does go after assets and proceeds of those individuals. [LB789]

SENATOR SCHUMACHER: So these drugs that we're taking credit for here, looking for the stamp, are drugs that would never be seen on our streets anyway? They're just pass-through drugs? [LB789]

PATRICK CONDON: A lot of what we see on Interstate 80 is pass-through drugs. When you get into the local prosecution here in Lancaster County, along with the interstate, that's where a lot of the...your big loads, I mean your big loads are going through. They're not usually coming here. [LB789]

SENATOR SCHUMACHER: So they're just simple interstate commerce. [LB789]

PATRICK CONDON: Yes. [LB789]

SENATOR SCHUMACHER: And how is this now a tax on interstate commerce that's prohibited under the federal constitution? We couldn't tax somebody who's taking a truckload of gasoline across the state just because they're driving through Nebraska. [LB789]

PATRICK CONDON: But the government...I agree, Senator, but the...what we're taxing is we're taxing...because when somebody is arrested, they have to be...and charged with this crime, to be convicted of this crime they have to be determined to be a dealer. Now you heard the evidence was that at six ounces you're considered a dealer. I can tell you as a prosecutor, and you as a prosecutor would know this too, if I have somebody with six ounces of marijuana and that's all I have, I'm not charging them with possession with intent to deliver. There's no way I'm going to prove that to a jury. I'm not. I'm just not going to prove that. So you know, saying that, you know, six ounces of marijuana makes him a felony, that's not true. So I'm not doing that and I don't think anybody else can do that. As far as interstate commerce, you know, we try to do what we can do with the resources that we have. This is a resource and, as I said, we use those resources for the equipment to conduct surveillances, we use it for, you know, all types of things to supplement the budget, and to try to ease the tax burden as much as we can on our public that we

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serve. But...so do we go after the income tax end of it? No. But could we? I don't know. I haven't looked at that, Senator. [LB789]

SENATOR SCHUMACHER: Do you go after the sales tax end of it? [LB789]

PATRICK CONDON: Yes. I think, I mean you know, again, I think that's all things to be looked at. I'll look at anything with this... [LB789]

SENATOR SCHUMACHER: Right. Right. But we're not going after the 7 percent sales tax now on this. I mean 7 percent of the value of what's listed out on a sheriff's sheet is one whole lot of sales tax,... [LB789]

PATRICK CONDON: If I can... [LB789]

SENATOR SCHUMACHER: ...a lot more than this marijuana tax. [LB789]

PATRICK CONDON: If I can show that they're doing it here, selling it here in Lancaster County. [LB789]

SENATOR SCHUMACHER: Okay. Thank you. [LB789]

SENATOR SMITH: Senator Groene. [LB789]

SENATOR GROENE: Personally, I don't think marijuana is...I think marijuana isn't on our sales tax list. A lot of these drug dealers that have a large quantity also have a lot of money on them, right? [LB789]

PATRICK CONDON: Yes. [LB789]

SENATOR GROENE: Is the money first used by forfeiture, you take it? [LB789]

PATRICK CONDON: We've been...the...in the change of the Legislature, we have tried on some instances to take the money through the forfeiture. [LB789]

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SENATOR GROENE: That's fine. My point is this: Can the plea bargain go the other way? You charge them with the tax. How much does the county get of the tax, 50 percent, I'm trying to... [LB789]

PATRICK CONDON: It's like 47.5 (percent). [LB789]

SENATOR GROENE: Yeah, the language isn't here, just said it struck the old language. So why wouldn't you plea bargain the other way, which this guy has got a lot of money. He's got 1,000 grams. Say it's zero to 20 now we don't have minimums. You pay the tax and here's a bus ticket, buddy, go back to California. And our jail cells are empty. I mean I'm all for that. Does that kind of a plea bargain ever happen? [LB789]

PATRICK CONDON: Senator, in the past the forfeiture laws, again, have come under scrutiny, and rightfully so. For some instances, it rightfully so has come under scrutiny. At least in Lancaster County and I think for most of the counties throughout Nebraska, we don't believe that we should just be taking money and letting people go. [LB789]

SENATOR GROENE: You're not taking it. You're sitting down with his lawyer and... [LB789]

PATRICK CONDON: Right. [LB789]

SENATOR GROENE: ...you're saying, you got all...I don't know about this money, it's your property. [LB789]

PATRICK CONDON: Right. [LB789]

SENATOR GROENE: You pay the tax to the state... [LB789]

PATRICK CONDON: Right. [LB789]

SENATOR GROENE: ...and here's the plea bargain, we send you down the road with a zero sentence. [LB789]

PATRICK CONDON: Yeah. We don't do that, Senator. I mean, again, you know, you have... [LB789]

SENATOR GROENE: Well, it's an idea you might try. [LB789]

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PATRICK CONDON: Well, (laugh)... [LB789]

SENATOR GROENE: I mean, I would. [LB789]

PATRICK CONDON: Well, you have...then, you know, again, you have to have fairness in what...we have to be fair in what we do. Are we punishing then the people that can't afford to pay the tax? I mean, if somebody has a lot of money or a rich uncle that's willing to come in and pay their tax and get off for... [LB789]

SENATOR GROENE: But then it is fair to the taxpayers? This guy is coming through the state. He's never harmed anybody here, didn't sell any drugs, and now the taxpayer has to put him...pay for him in jail for five years... [LB789]

PATRICK CONDON: Uh-huh. [LB789]

SENATOR GROENE: ...because you went after the penalty instead of the money. [LB789]

PATRICK CONDON: I go after both if I can, Senator. [LB789]

SENATOR GROENE: Well, I don't know if it's fair to taxpayers to arrest those guys and put them in our jail when two hours later, if you didn't pull them over, they'd be in Chicago. [LB789]

PATRICK CONDON: But then we have the ones that are coming through Iowa, which, you know, two hours later... [LB789]

SENATOR GROENE: I understand. [LB789]

PATRICK CONDON: ...they'd be in Omaha, you know, and maybe that's their destination. [LB789]

SENATOR GROENE: I just wanted to give you an idea about plea bargaining. [LB789]

SENATOR SMITH: Senator Brasch. [LB789]

SENATOR BRASCH: Thank you, Chairman Smith. And thank you, is it Mr. Condon? [LB789]

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PATRICK CONDON: Condon. [LB789]

SENATOR BRASCH: Thank you. So when the bill was introduced, it was as if it was a nuisance tax, really not used, and now we're discovering it is being used. And you're Lancaster County? [LB789]

PATRICK CONDON: Right. [LB789]

SENATOR BRASCH: Is Douglas County here today too or...? Okay. Yes. [LB789]

PATRICK CONDON: Yes. [LB789]

SENATOR BRASCH: Yes. Okay, because I am just curious. Now... [LB789]

SENATOR HARR: Let the record reflect Mr. Lux raised his hand. [LB789]

SENATOR BRASCH: So has...and the tax has been around 20-some years or more. Has it ever increased in that time? Is it time for a tax increase perhaps if (laugh)...I mean we're talking about taxing ammunition to get money to help people against violent crime and maybe this is helping take drug dealers off of crime. I guess my question is, you know, basically, this has been...what is the...6.5 percent? What is the tax? It's a percentage? [LB789]

PATRICK CONDON: The tax, and again I believe the tax like on things that are normally sold by weight is \$150 per gram and for those sold by unit it's like \$50 per...or \$500 per 50 units. [LB789]

SENATOR BRASCH: Right. And for the record, I am not for raising any taxes, but seeing that every other tax around is being raised for property tax that maybe this would be something that should be on the table in lieu of property taxes going up. So thank you. I have no other questions. [LB789]

SENATOR SMITH: Other questions for Mr. Condon? I see none. Thank you for being here and testifying. [LB789]

PATRICK CONDON: Thank you. [LB789]

SENATOR SMITH: Next opponent of LB789. Welcome. [LB789]

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JEFF LUX: Thank you. Hello. My name is Jeff Lux. I'm a deputy Douglas County Attorney from Douglas County, last name L-u-x, 100 Hall of Justice, Omaha, Nebraska, 68183. And if we could engage in a short plea negotiation right now, I have a color photo of the tax stamps in their different denominations, which I could let you look at if you promise to give it back to me. (Laughter) So I'll pass this to the clerk. Like I said, I work in Douglas County at the County Attorney's Office there. We've got over 4,000 felonies that we filed last year alone. I handle all narcotics cases. I have a half caseload and I've got over 100 narcotics cases just myself. There's four other people in the office. That's all they do is narcotics cases, so we've got plenty of narcotics cases going. And we realize that we can't send all of these people to Nebraska's prisons. We realize the overcrowding problem. We've got plenty of cases. We'd rather send murders, rapists, people that are doing assault, gun charges, drug distribution to those open seats or spots in the prison. So in Douglas County we've been using several other methods to try and divert felony cases. We've got a diversion program. We have a mental health diversion program. We have our drug court, which is the oldest one in the state, which we've talked about, Senator Lindstrom. We have a young adult court, which is the only one in the state. Both of those courts deal with high-need, high-risk individuals who would be in prison if they were not in those courts. We just started our veterans treatment court over a year ago, which I'm a veteran and I'm the prosecutor on that team where we've got 22 individuals now who would be in prison if they weren't in the veterans treatment court. But another thing we use is the tax stamp and here's kind of what we use. I mean, the people are in the marijuana game to make money, and the tax stamp allows us to hit them in the pocketbook, hold them accountable, get a conviction, and get restitution paid to the Department of Revenue and they don't sit--I wish Senator Groene was here--in our state prison. A lot of these cases are marijuana distribution trafficker guys that are coming across the state. We catch them in Douglas County, either I-80, the train, or the bus. They weren't planning on distributing here in our state but we catch them. If they meet a few certain factors, we'll run their national record. Maybe they don't have any convictions. A lot of times they're younger kids that got a marijuana card from California or Colorado or Washington, D.C., and if they meet those criteria we'll say, look, it's not legal in Nebraska. We'll hit them with the tax stamp. And the calculation is right in the statute. We've talked to the Department of Revenue. They said you are more than willing to do...get restitution for us, we can do the calculation and we'll say you owe us this or we can agree on something less, because that calculation can be pretty high. It can be over 100 percent of what the drugs were worth, really. But we use that as a way to hold somebody accountable, hit them where it hurts financially, because in the marijuana business that's why they're in the business, for that. And then I tell them, hey, take I-70 or I-90 next time because they got caught taking I-80 or the train or the bus. So if they're nonviolent marijuana offenders, they don't have a prior felony on their NCIC, or you know they're somebody we're looking at to be like we shouldn't make this person a felon. They made a bad decision, they thought it was legal, whatever reason. Sometimes we'll do attempt, attempted tax stamp, which is a Class I misdemeanor, or attempted more than a pound of marijuana, which is a Class I misdemeanor. The fines won't work in that scenario because a fine

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for a misdemeanor, a Class I, is only \$1,000. So the tax stamp allows us to assess a harder penalty financially, really hold them accountable. And I mean I've had defendants where they're up there on the stand, pretty mad they're losing their money, and I've never seen them back in Nebraska again. Maybe they just haven't been caught again. But I think that it is an option for us. I know the defense bar that we work with likes to have that kind of option where their client may not end up in prison. It's not for every case, obviously, but there is a niche and we do, do that. Now I normally will charge a tax stamp either, you know, we've been doing controlled buys with somebody, hit the house. They've got a bunch of drugs. And if I could continue my...just the last thought, hit the house, they've got drugs and money. We add up how much drugs they had. If the money covers that for the tax assessment on the drugs that they have, we'll charge the tax stamp there. [LB789]

SENATOR SMITH: Thank you, Mr. Lux. [LB789]

JEFF LUX: I see my red light is on. I can answer any questions. [LB789]

SENATOR SMITH: Thank you, Mr. Lux. Senator Harr. [LB789]

SENATOR HARR: Thank you. Thank you for coming here, Mr. Lux. I appreciate your testimony that you gave today and just keep up the good work you're already doing. [LB789]

JEFF LUX: (Laugh) Thank you, Senator. [LB789]

SENATOR SMITH: Senator Schumacher. [LB789]

SENATOR SCHUMACHER: Thank you, Senator Smith. How is it that Senator Ebke can only give us a black-and-white one, because that's all we can afford for copiers here, and your office had a pretty, multicolored one? [LB789]

JEFF LUX: Well, when I used to work in the AG's Office, they have a set in color that's framed and before I left there I made a copy. [LB789]

SENATOR SCHUMACHER: They've got a color copier over there? [LB789]

JEFF LUX: Yeah. They had one so I took one and I've kept it with me ever since. [LB789]

SENATOR SCHUMACHER: Was that recently? [LB789]

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JEFF LUX: Oh, no, jeez, that's been about ten years ago. [LB789]

SENATOR SCHUMACHER: Oh. Oh. They probably don't have it anymore. Thank you. [LB789]

SENATOR SMITH: I see no further questions. Thank you for your testimony today, Mr. Lux. [LB789]

JEFF LUX: Thank you. [LB789]

SENATOR SMITH: And I think Senator Lindstrom has your colored copy for you. [LB789]

JEFF LUX: Good deal. Thank you. [LB789]

SENATOR SMITH: (Exhibit 6) Other opponents of LB789. Seeing none, do we have anyone wishing to testify in a neutral capacity on LB789? We do have one letter for the record that was sent in to us in a neutral capacity from Chad Lunders. And I see that Senator Ebke did go back to Judiciary. She has waived closing, and that concludes the hearing on LB789. And we now transition to LB738. We'll just give a moment for folks to clear the room, so as not to distract Senator Lindstrom. [LB789 LB738]

SENATOR LINDSTROM: Appreciate that. [LB738]

SENATOR SMITH: All right. Welcome, Senator Lindstrom, to open on LB738 which relates to change in revenue and taxation provisions relating to an adjustment to income for Social Security benefits. [LB738]

SENATOR LINDSTROM: Thank you, Chairman Smith and members of the Revenue Committee. My name is Brett Lindstrom, B-r-e-t-t L-i-n-d-s-t-r-o-m, representing District 18 in northwest Omaha. And today I'm bringing LB738 for your consideration. As most of you on the committee know, reforming or repealing Nebraska's tax on Social Security income is a goal I've worked on since my first year in 2015. The first bill I brought to this committee outright repealed the tax for a five-year period, which carried with it a heavy fiscal note of over \$100 million. The next year, I introduced legislation to increase the threshold of tax on Social Security income and was able to drop the fiscal note significantly to \$39 million. Last year I proposed a solution that was a hybrid of the ideas to reduce the amount of tax for over five years. This year, I understand with the budget crunch we're in, I'm asking the committee to adjust the brackets for Social Security tax...income tax in the same ongoing basis that we adjust them for income tax for all

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Nebraskans. In 2014, this committee enacted a one-time adjustment to the Social Security income thresholds for inflation purposes and indexed the brackets for Nebraska income tax. This bill is much like a clean-up bill to align all of our income taxes by adjusting them to...for inflation in the same ongoing manner. LB738 will ensure that we are addressing this tax for seniors every year. In my personal career, I do work with retirees. The biggest concern is purchasing power and having the means to live more than just paycheck to paycheck. By not continuing to adjust the thresholds for inflation, we are putting a strain on the purchasing power, especially in times like the last year when retirees were not provided with a cost of living adjustment by the federal government. While we have no control over the way the federal government treats our seniors, we can control how we treat our seniors in Nebraska. Nationally, we have reached the point as one of the top five worst states for retirees. Every year we continue to creep higher and higher in the standings. Regionally, only Kansas ranks worse than Nebraska coming in at number four. We are only 1 of 13 states in the country who continue to tax Social Security income. I believe that LB738 is a step in the right direction. Our retirees provide immeasurable resources to our community, both with their volunteerism and financially. We can't afford our neighboring states to continue to profit off of our losses. LB738 is the right thing to do for our seniors and the right thing to do for the state of Nebraska. Thank you, and I will be happy to take any questions you may have. [LB738]

SENATOR SMITH: Thank you, Senator Lindstrom, for your opening on LB738. Do we have any questions from the committee for Senator Lindstrom? I see none. So you're going to remain for closing? [LB738]

SENATOR LINDSTROM: I will, Chairman. [LB738]

SENATOR SMITH: Okay. All right, we now move to proponents for LB738, those wishing to testify in support of LB738. Welcome. [LB738]

DAVID HOLMQUIST: (Exhibits 1-2) Thank you. Good afternoon, members of the Revenue Committee and Chairman Smith. My name is David Holmquist, D-a-v-i-d H-o-l-m-q-u-i-s-t. I've also handed in some information from two representatives from the retired teachers association. One is Roger Rea who's the vice president of the Nebraska state retired teachers. And one is from Dr. De Tonack who is the president of the retired teachers organization, some information they wanted me to give you. Dr. Tonack asked me to briefly say that she's concerned that we are considered one of the unfriendly states for retirees. There were four states on that list; we join Minnesota, Rhode Island, and Vermont as the four least likely places for people to retire. Today I appear on behalf of AARP Nebraska. I am the state president of AARP Nebraska and I testify in support of LB738. AARP is a nonprofit, nonpartisan organization that works across Nebraska to strengthen communities and advocates for the issues that matter most to families, such as

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healthcare, employment, and income security, retirement planning, affordable utilities, and protection from financial abuse. We stand in strong support of LB738 and thank Senator Lindstrom for introducing the bill and being a champion on this topic. This legislation would lower the tax burden for many older Nebraskans by adjusting for inflation the current Social Security tax exemption threshold that is in the law today. As you may know, Social Security exemption levels for inflation have not been adjusted for more than 30 years. Meaning that each year, more and more lower- and middle-income Nebraskans are paying taxes on their benefits. Social Security is a vital source of income during retirement for many Nebraskans. There are 330,309 Social Security beneficiaries in Nebraska; 17.7 percent of these people rely on Social Security for 90 percent or more of their income. And 47.2 percent rely on Social Security for 50 percent or more of their income. The average monthly Social Security benefit in 2016 in Nebraska was \$1,345. That's a pretty low income threshold. Annually adjusting Nebraska's taxation of Social Security benefits for inflation is an important way to protect the purchasing power of lower- and middle-income retirees. If left untouched, the income thresholds for taxation of Social Security benefits would eventually disappear for all practical purposes, making nearly all Social Security benefits taxable in our state. Without these annual adjustments, retirees are able to keep less and less of their hard-earned money. At the same time, other burdens such as higher healthcare costs, utility costs, and costs of other basic necessities like groceries and medication are increasing for older Nebraskans. Moreover, these individuals who are now in retirement have limited options for rejoining the work force and virtually no time horizon for increased savings. Annually indexing the existing threshold for inflation would provide some small relief to retirees initially, but much more as time goes on and would reinforce our state's commitment to older Nebraskans. Moreover, this change should not be hard to implement because in the existing statute the income brackets are already indexed for inflation. So the language would simply need to be amended to include the taxation of Social Security. In addition, we believe that this proposal should fit within the parameters of Nebraska's budget while balancing the needs of our retirees' and our state's desire to have revenue for important services. I'd ask the committee to support LB738 and advance the bill to General File. Thank you, and I'd be happy to answer any questions I may be able to. [LB738]

SENATOR SMITH: Thank you, Mr. Holmquist. Questions? Senator Schumacher. [LB738]

SENATOR SCHUMACHER: Thank you, Chairman Smith. And thank you, Mr. Holmquist. On a joint return, husband and wife, how much money do you have to bring in before you have to file a state tax return? [LB738]

DAVID HOLMQUIST: Your Social Security taxes are taxed for a single taxpayer at \$43,000...below \$43,000 a year. And for a married couple... [LB738]

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SENATOR SCHUMACHER: No, no. Before you have to even file a Nebraska tax return. Joint return, how much income do you have to have? [LB738]

DAVID HOLMQUIST: I don't have an answer to that question, I'm afraid. [LB738]

SENATOR SCHUMACHER: Well, I think that number is around \$30-some thousand, okay? [LB738]

DAVID HOLMQUIST: Okay. Sorry I don't know. [LB738]

SENATOR SCHUMACHER: And very few people get more than that in Social Security. [LB738]

DAVID HOLMQUIST: Yes. [LB738]

SENATOR SCHUMACHER: So we don't tax Social Security the way it is. What we're talking about here is the taxation of income that comes in above Social Security. That every...and everybody is taxed on that income. So I'm having difficulty connecting the dots here. [LB738]

DAVID HOLMQUIST: My understanding of the situation is that any individual taxpayer who has an income of under \$43,000 will not have to pay taxes on their Social Security...the Social Security portion of that income. And for a married couple, I believe it's \$58,000 annual income. So we're all encouraged to save for retirement or have a pension plan or something. And we've saved and we've tried to put our money together. And then our tax bill comes and I'm in this situation; I'm paying full taxes in the state of Nebraska on my Social Security income. [LB738]

SENATOR SCHUMACHER: Because you have other income. [LB738]

DAVID HOLMQUIST: Because I have some other income. [LB738]

SENATOR SCHUMACHER: But if you had nothing but Social Security... [LB738]

DAVID HOLMQUIST: I know I'm lucky; I have a defined benefit pension but...and I also have a small annuity. [LB738]

SENATOR SCHUMACHER: But if you had nothing but Social Security, you wouldn't be paying any income taxes to Nebraska. [LB738]

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DAVID HOLMQUIST: I'd have to do the math. [LB738]

SENATOR SCHUMACHER: And to the extent that seniors are in the same boat as all of us... [LB738]

DAVID HOLMQUIST: Sure. [LB738]

SENATOR SCHUMACHER: ...short of money. We...the extra break is already adjusting the tax rates for seniors, just like we do for everybody. Then who picks up the slack? Is it the young people with families? [LB738]

DAVID HOLMQUIST: Well, I think it's a...if there is a slack to be picked up, it's picked up by everyone across the spectrum. It's not that seniors don't want to pay taxes, it's the taxes specifically on Social Security that many states already exempt. And other states also exempt taxes on any kind of retirement income because...look at the demographic. I'm 72 years old. I worked for 50 years of my life, I worked until I was 71. I did 20 of those years here in this building. I feel that many seniors have worked hard, tried to save, tried to take care of their children and their grandchildren, and that it's time to give them some sort of a break on what kinds of taxes they've paid. This is one small measure that we can do to help the seniors who worked hard and have increasing costs. My...for instance, my Part D went up this year from \$47 a month to almost \$100 a month. Those kinds of expenses continue to rise. Food isn't getting any cheaper. Taxes on my home in Omaha have gone up, as many others have. People say, well, sell your house and get into something smaller. You can't do that in this particular real estate market. It's not possible. My financial advisor said, don't sell your house, don't try to downsize because you can't afford to downsize. So many of us are stuck between a rock and a hard place, there's no question. [LB738]

SENATOR SCHUMACHER: And so is...so are the young people. [LB738]

DAVID HOLMQUIST: Yes, a lot of people are. [LB738]

SENATOR SCHUMACHER: Right, so to the extent we say, gosh, you're telling us a good reason for you should have a tax break. Tomorrow somebody else could be sitting in that chair saying, I'm the good reason for a tax break. [LB738]

DAVID HOLMQUIST: I understand. [LB738]

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SENATOR SCHUMACHER: And so when we don't have any money, it's kind of hard to give anybody a tax break. [LB738]

DAVID HOLMQUIST: It is. But I think we also have to look at the...if you will, we've worried about the "brain drain" from Nebraska with young people graduating from college and leaving because there aren't any...supposedly, there aren't any jobs. There are many, many Nebraskans who flee to more tax-friendly havens like Arizona, particularly to Florida where there is no tax at all on income. And as long as you're a resident there and can prove it on January 1, you're a resident of Florida, and you may only stay there for six months and one day of the year in total. But you're not paying taxes in Florida. And if you come back to Nebraska, you're sure as heck not paying them here because you're a resident of Florida. [LB738]

SENATOR SCHUMACHER: If you have Nebraska income you do. [LB738]

DAVID HOLMQUIST: Well, if you have Nebraska income...I'm not sure, I'm not a tax person, but I'm not sure how that works. [LB738]

SENATOR SCHUMACHER: Okay, thank you. [LB738]

SENATOR SMITH: Senator Brasch. [LB738]

SENATOR BRASCH: Thank you, Chairman Smith. And thank you for coming forward here today, Mr. Holmquist. I do hear and understand what you're saying. I'm not retired yet, but getting closer to that point. And the younger families, as they struggle today...they have in the past. When I was younger, I had a full-time job and a part-time job to help, you know, holidays or whatever. And grandparents are wonderful to have. And...but...I also...and there should not be a "but" in here, but I want to state that I've talked to a few individuals in their 60s that are getting cash-strapped and they're having difficulty in the job market because that younger person seems to be the person that takes the job. So, to add to your dilemma, are you hearing of older people who are, perhaps out of necessity, trying to get back into the job market and there's difficulty? [LB738]

DAVID HOLMQUIST: Yes, there are people who are out of the job market and have a tough time getting back in. And certainly, the bigger issue is someone who has earned, let's just pick the number \$50,000 a year, has worked in their career for 15 years and suddenly is reduced in force and is 55 years old, almost impossible for that individual to get back into the job market at the amount of money that he or she was making. And then we subject those individuals, frankly, to an almost poverty level. They may get back in and make \$15,000 a year. I defy you to find a

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place where you can find decent housing, an automobile to get to and from work, and all the other necessities of life to be able to afford that. Age discrimination is becoming a much bigger issue in this nation. We have laws against age discrimination. Either they're ignored or not enforced. I believe that there are measures at the federal level being taken to revisit some of the age discrimination issues, but it's an endemic issue. Some careers you can get a...you know, I was in...I was a lobbyist. I can do that for...conceivably I could still be doing it except that I found I couldn't stand on these marble floors or go up and down the stairs anymore. And that's really why I retired. But conceivably I could still be employed. But people who have different skills...or...I don't know...if your new job requires technology that you were never able to attain, you're out of luck when it comes to trying to find a job at a level of compensation that's necessary to be able to survive. [LB738]

SENATOR BRASCH: Very good. I appreciate your coming forward today and excellent testimony. [LB738]

DAVID HOLMQUIST: Thank you, Senator Brasch. [LB738]

SENATOR FRIESEN: Thank you, Senator Brasch. Any other questions from the committee? Seeing none, thank you for your testimony, Mr. Holmquist. [LB738]

DAVID HOLMQUIST: Thank you, Senator Friesen. [LB738]

SENATOR FRIESEN: Welcome. [LB738]

JAMES CAVANAUGH: Good afternoon. Members of the Retirement Committee (sic), my name is James Cavanaugh, J-a-m-e-s C-a-v-a-n-a-u-g-h. I'm an attorney and a founding partner of the Cavanaugh Law Firm, the oldest and largest Social Security law firm in the state of Nebraska, here to testify in favor of LB738. I commend Senator Lindstrom on introducing this worthy measure and taking the time and the effort, over years, to push this issue, hopefully to a successful conclusion. As you heard from the introducer's statement, LB738 is a variation on a theme that I have been trying to get the Legislature to adopt for some years now which is, don't tax Social Security benefits, real simple. This is a scaled-down version and I think it takes into account where we are fiscally as a state. It's a responsible response to the situation that we find ourselves in. But I don't think that the fiscal note fairly analyzes what this would do. You see in some of the testimony that's been submitted to you, particularly by Mr. Roger Rea of the NSEA-retired teacher's association, we drive people out of this state by taxing Social Security. And those retirees that we drive out are, in large part, the people who are most able to find a home in another state to protect their resources. What we are losing to places like Arizona and Florida are people who take not only their personal income but their assets with them and remove those

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from taxation. Those people move away and liquidate their real estate holdings here in Nebraska. Those people move away and never pay any sales tax here in Nebraska. And if you live in Omaha, those people move away and don't pay any restaurant tax here in Nebraska anymore. This is a net loss to us that is not recognized in the fiscal note that you have in front of you. Yes, you're going to see some minor dip in income tax liability by this select number of people. Mr. Rea points out that it's 10 percent, that's 10 percent a year, and that's generally the top 10 percent of your retirees in terms of resources. But you are going to make it up by having those people stay here, maintain their real estate holdings and pay property taxes and--I've got to tell you as a Douglas County Commissioner, that's near and dear to my soul--to pay sales taxes on everything that they buy. And if you live in Omaha, they'll pay restaurant taxes when they go out to eat. All the other taxes, you know, go away when they go away. So you're impacting not only on the income tax receipts that you have, but all those other receipts go away. And when they pass on, the retirement tax implications go away to the benefit of Florida and Arizona or those other states. I think we're all aware of friends and family members who, when they retired, left Nebraska for one of these more friendly states simply for financial reasons. I mean, some of it's weather related. But a lot of it is it's better financially to be retired in one of these other states that recognizes that it's not wise to, at the very least, tax Social Security benefits. And for the modest proposal that you have before us, it doesn't eliminate taxation on Social Security benefits entirely. But it recognizes that if you don't have this COLA built in that the bracket creep eventually wipes out whatever advantage you were trying to institute in the first place. This makes a lot of sense, and this would make financial sense to the state of Nebraska. And I would hope that this committee would see that in these tough times we need to hang onto as many high income people as possible. And a step in that direction would be the passage LB738. I've represented thousands of people on Social Security claims and I can tell you that two things happen. If they're at the high end of the income and they retire, they look seriously at getting out of Nebraska because we're one of the four most unfriendly states for taxing Social Security benefits. If they're at the bottom end and, as Senator Schumacher pointed out, maybe aren't paying the taxes, they spend every penny every month. I'm out of time, but I'd be happy to answer any questions that you might have. [LB738]

SENATOR SMITH: Thank you, Mr. Cavanaugh. Questions from the committee? I see none. [LB738]

JAMES CAVANAUGH: Thank you. [LB738]

SENATOR SMITH: Thanks for your testimony. We continue with proponents of LB738. Welcome. [LB738]

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GEORGE SEDLACEK: Thank you. Thank you, Chairman Smith and committee. My name is George Sedlacek, G-e-o-r-g-e, Sedlacek S-e-d-l-a-c-e-k. I was born in Colfax County and raised there. I came to the university to study and taught in Lincoln Public Schools until I retired a few years ago. So I've lived my whole life here in Nebraska. And upon retirement, I believe, maybe, this committee was also debating issues on taxation of Social Security and I testified, two or three years ago. So when I heard that you were, again, visiting this issue, I thought I might give you an alternative view. The last time I was here, I spoke mainly as I've heard the last witness speaking, that I can go anywhere. I can go to Colorado, I can go to Florida. I can benefit myself taxationwise by just leaving the state. And, as a matter of fact, I was in the panhandle of Florida last week just checking out what January was like and it wasn't that much better than Nebraska, to be honest with you, at least last week... [LB738]

SENATOR SMITH: I will differ, I'm from Pensacola. (Laughter) [LB738]

GEORGE SEDLACEK: Oh, well I was in Destin so it wasn't far from Pensacola and it was cold and some snow actually. Anyway...the fact of the matter is, that is one half of it. But the other half is that retirees are assets. I grew up in Clarkson, if I thought that it would be beneficial or advantageous to move back there--and I still have property and pay property taxes there--but if it was advantageous for me to move back there, I would not only bring my retirement income, but I would generate income or I might even start a business. One of the biggest businesses there is a bakery. The second, I mean, a very large business is the Bluebird Nursery. All of those things employ people, create communities, create goodwill. Retirees do things like woodworking, they like to fish, they ride bicycles, they walk. I mean, those aren't expensive things; but they have to have a pleasant place to do them. So if we can create a community of retired people that want to live in that community and build on it, I think you'll create an environment that is wonderful to be in because Clarkson is a very nice place. I used to say it was like going to a foreign country. I could eat different food and hear different languages. And it was just...it's just a very enjoyable experience to have a thriving community. And retirees will bring that to them. And I appreciate the idea that young people aren't going to get a cut of this. But, as was said, as a retiree we spend pretty much all of our money. We're careful about it, but I don't have that much more time to spend it so I'm going to enjoy it. (Laughter) And by doing that you'll create an environment that, I think, is more positive. So I'd hate to see you be penny wise and pound foolish on this thing. Think of it as an investment. With that I'll stop. [LB738]

SENATOR SMITH: Thank you, Mr. Sedlacek, for your testimony. Do we have questions from the committee? I see no questions. [LB738]

GEORGE SEDLACEK: Thanks. Well, I wanted to thank Mr. Schumacher, too, for representing that area and doing a nice job. And congratulations on your term. [LB738]

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SENATOR SCHUMACHER: Thank you. [LB738]

SENATOR SMITH: Senator Schumacher does do a fine job. And we appreciate you... [LB738]

SENATOR SCHUMACHER: The kolaches are good in Clarkson. [LB738]

GEORGE SEDLACEK: What's that? [LB738]

SENATOR SCHUMACHER: Kolaches, they're good in Clarkson. [LB738]

GEORGE SEDLACEK: There's not many Sedlaceks left there. [LB738]

SENATOR SCHUMACHER: No, kolaches, (laughter) the bakery. [LB738]

GEORGE SEDLACEK: Oh, yes, the kolaches, absolutely. Thank you. [LB738]

SENATOR SMITH: (Exhibits 3-6) Thank you for your testimony. Next proponent of LB738. Seeing none, we do have letters that were submitted for the record in support of LB738 from Jason Hayes representing the NSEA; from Roger Rea representing NSEA-Retired; Al Mumm representing Nebraska Alliance for Retired Americans Educational Fund; and Robert Hallstrom representing the National Federation of Independent Businesses. All those letters were submitted in support. We now move to opposition. Those wishing to testify in opposition to LB738. Seeing none, anyone wishing to testify in a neutral capacity on LB738? Seeing none, we invite Senator Lindstrom back to close on LB738. [LB738]

SENATOR LINDSTROM: Thank you, Chairman Smith. And I hope Mr. Sedlacek's testimony garnered a vote from you, Senator Schumacher, with that endorsement. (Laughter) Just to simplify the bill, you know, we're talking about linking it to the Consumer Price Index, CPI, which on average you're looking at 2.5 percent annual adjustment. So for the \$43,000, I just did a quick math, the next year would be \$44,075. Senator Schumacher, you're correct. If you're just taking Social Security as your only source of income, you would not pay tax on that. It would adjust to the adjusted gross income with all the other things, deductions, and then that would calculate into whether or not you do pay tax. And that's that middle ground that we're trying to address. Obviously, people that make a lot of money can afford to go elsewhere. But like I said in my opening, the biggest fear isn't necessarily a good return in the market. It's not whether or not interest rates are keeping up with inflation, although it's important. It's how much can...the dollar, the purchasing power...will my dollar buy the same goods and services a year from now, two years from now, three years from now? And if we don't adjust this on an annual basis, eventually

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the purchasing power on that dollar doesn't go as far. And you've seen it over the last 50 years in the price of milk to what it is today. So...and we've tried some version. Obviously, getting rid of it in the first year. Obviously, the fiscal note of \$109 million isn't really feasible. But it's, in my opinion, it's a prudent step to take to help retain retirees here. And I know that one of the doctors, Dr. David Drozd from UNO, came in last year and testified and did provide some information for us. But just, when we talk about all these other states of where people are moving to, and I know, back years ago when I was walking door to door, it was a big issue that came up quite a bit is whether or not going back to property tax that is an issue for them. So the dollar that doesn't go as far, what is it being used to do? And if you look at, say, Arizona, Florida, all these as we compile the out-migration for 50-year-olds and 72- to 74-year-olds over the last, say 2011, 2005; we are at a net loss. With Arizona, Nevada, we are at a net loss of 348 individuals. Missouri, a net loss of 206. Iowa, who we know phased theirs out a few years ago, with a net loss of 192. Now are there other circumstances involved in that? I'm sure there are, but these are individuals, like was stated, are involved in community activities as you go out into your community the people that you see the most are those retirees. They're engaged in the community that bring a lot of that positive vibe and positive influence in the community. So the one thing that I just want to address is make sure that we are maintaining those individuals here in the state, because they do provide not just sales tax and income tax and property tax, but they do provide a positive element to the community that is hard to replicate. So, with that, I'll be happy to answer any questions but I think this is a modest and prudent, doable solution to what we have in the state of Nebraska. [LB738]

SENATOR SMITH: Questions from the committee? I see no remaining questions. Thank you, Senator Lindstrom... [LB738]

SENATOR LINDSTROM: Thank you. [LB738]

SENATOR SMITH: ...for your close on LB738. And that concludes our hearing for the day. Thank you, all. [LB738]