

**Government, Military and Veterans Affairs Committee March 6,  
2019**

**BREWER:** Good afternoon, ladies and gentlemen. Welcome to the Government, Military and Veterans Affairs Committee. I am Senator Tom Brewer. I'm the Chairman of this committee. I represent District 43. We will start by introducing the committee members starting on my right with Senator Blood.

**BLOOD:** Thank you, Chairman Brewer. I'm Senator Carol Blood and I represent District 3, which is western Bellevue and southeastern Papillion, Nebraska.

**LOWE:** John Lowe, District 37, Kearney, Gibbon, and Shelton.

**La GRONE:** Andrew La Grone, District 49, Gretna and northwest Sarpy County.

**M. HANSEN:** Matt Hansen, District 26, northeast Lincoln.

**KOLOWSKI:** Rick Kolowski, District 31, southwest Omaha.

**HUNT:** Megan Hunt, District 8, midtown Omaha.

**BREWER:** Senator Hilgers is presenting in Judiciary. To my right is Dick Clark, legal counsel. To my left is Julie Condon, the committee clerk. And against the wall back there are pages, Kaci

and Preston. Today we will have public hearings on LB211, LB163, LB83, and LB711. With that said, we will go to some administrative tasks. First is, please mute your cell phones or electronic devices. The senators will be on computers and cell phones either checking on information or making sure that they can be at whatever hearing they need to be at this afternoon. If you wish to record your attendance, there are white sheets at the back that look like this and you can have opposition, support, bill number, all that's on there. You can indicate if you wish to present today. They are green testifier sheets. Be sure and have those filled out and present to the committee clerk or one of the pages when you come forward. If you have handouts or documents that you want the committee to have and you don't have 12 copies, let the pages know now so that they can make copies for you. If any letters are to be submitted for the record, they need to be in by 5:00 p.m. on the day prior. The letters need to indicate your name, address, bill number, and your position on the bill. In addition to that, you need to make a statement that you want them to be in the official record. If you are going to testify on a given bill that's up, please move to one of the first two rows so we have an idea of how many testifiers we have on that bill. When you come forward to testify remember that you need to state your name, spell your

name, speak into the mike clearly so that the official record is correct. The senator will do an opening statement, then we will have proponents, opponents, and those in the neutral. And lastly, the senator will be allowed to come back and close. Today, we will be using a clock system. It will be three minutes, then you'll have an amber light, and then a red light. And if you're reading and you don't catch the red light, there'll be an audible alarm that comes. I ask if your red light or audible alarm please close your testifying and then be prepared for questions. With that said, our first bill up is LB211, Senator Crawford. Welcome.

**CRAWFORD:** Thank you. Good afternoon, Chairman Brewer and members of the Government, Military and Veterans Affairs Committee. For the record, my name is Sue Crawford, S-u-e C-r-a-w-f-o-r-d, and I represent the 45th Legislative District of Bellevue, Offutt, and eastern Sarpy County. I'm honored to be here today to introduce LB211 for your consideration. This bill is about a fundamental Nebraska principle, the value of nonpartisan government. As George Norris stubbornly fought for our State Legislature and its staff to be nonpartisan, he argued that partisan legislative races result in those elections being extensions of national partisan debate instead of focusing on what's best for Nebraska. The same logic applies when we

consider our county officer elections. Party affiliation and county officer races can distort election dynamics at the local level, prevent qualified candidates from considering running to serve their county, and limit the number of registered voters who are able to vote in a competitive county election for these important positions. The challenge is particularly difficult for the 21 percent of Nebraskans who choose not to register for a party. LB211 provides that all county officers be elected on a nonpartisan ballot including county clerk, register of deeds, county assessor, sheriff, treasurer, county attorney, public defender, clerk of the district court, and county surveyor. Currently, citizens who register as nonpartisan cannot be involved in every party's county primary elections. The Republican Party currently does not allow nonpartisans to participate in their primaries. The Democratic Party does allow nonpartisan to participate but the nonpartisan has to know and specifically request the partisan ballot from the poll worker. Effectively, most nonpartisans can't help to narrow the field of candidates. In Sarpy County, that's 26 percent of our registered voters. In counties large and small with a dominant political party, the races for many county positions effectively happen in the primary for the dominant party which leaves out one in five Nebraskans who are nonpartisan and the voters of the minority

party. This results in the registered voters of one party selecting the officer that will represent all the residents of the county. Additionally, some candidates even switch their partisan affiliation so they can, can run and will become presumptive nominee in the county election even if they don't identify with that party's platform. We also hear in smaller counties that it's very difficult to recruit candidates and, and making it a nonpartisan position provides a greater base of people from who can be recruited for those positions. The roles and duties of these county officers are no more or less linked to party platforms than our larger counties. Although the larger counties have a larger pool from which to recruit county officer candidates, partisan races for county positions and these large counties with a dominant party like Sarpy still makes it difficult to recruit qualified candidates of minority party. I see no reason to limit the option to only counties with smaller population or create a mechanism that would prevent the uniform standard from being implemented statewide. Mostly, consider all the other offices that are included in a nonpartisan ballot in our state, the Legislature, Board of Education, Board of Regents, Learning Community, Community College Board, Public Power District, Natural Resource District, and ballot initiatives are all nonpartisan. Why shouldn't our county

elections to be nonpartisan as well? You see all these other local elected positions that are nonpartisan. And the question is, why should the county elections be any different than these multitude of other local positions that are all nonpartisan? So I appreciate the committee's attention to this issue and I'm happy to try to answer any questions you may have.

**BREWER:** Thank you, Senator Crawford. Questions on LB211? I'm sure for the closing, we'll have some.

**CRAWFORD:** All right, excellent. I'll be here for closing. Thank you.

**BREWER:** All right. Thank you. All right. We will start with proponents for LB211. Welcome back to Government, Military and Veterans Affairs.

**WESTIN MILLER:** Thank you, Chairman Brewer, members of the committee. My name is Westin Miller, W-e-s-t-i-n M-i-l-l-e-r. I'm the policy and communications associate with Civic Nebraska. We're a nonpartisan, nonprofit organization. We work with the Legislature on elections and voting rights legislation. I want to thank Senator Crawford for bringing LB211 and for promoting nonpartisan elections. You'll notice those of you that are here that my support for this bill is very similar to my support for

Senator Hughes's LB144. So I just want to quickly reiterate some of the main points. As a nonpartisan organization that works on elections and voting rights, we have four major goals when it comes to elections. We want participation to be high. We want them to be secure. We want them to be efficient. And we want Nebraskans to feel confidence in the process. And we believe that LB211 furthers several of those goals. One of the reasons that partisanship erodes public trust in county elections is because it makes it significantly harder for voters to choose their number one candidate in the general election. In counties or districts that are packed with voters from one major party, and we have them on both sides of the spectrum here in Nebraska, oftentimes partisan elections unnecessarily eliminate the candidate who received the second highest vote total for the sole reason that they're registered with the same party as the top vote getter. In our opinion, this gives disproportionate weight to voters in the minority party. If your preferred candidate was eliminated from the primary, despite them receiving the second highest vote total, that is not gonna improve your confidence in the election process. It is not gonna make you feel counted, and it is definitely not gonna make you more likely to vote in the next election. And that's why we support nonpartisan elections. The second reason is that it

could help eliminate some confusion surrounding the current nonpartisan elections which Senator Crawford listed for you. As I mentioned here before, one of Civic Nebraska's major goals outside the Legislature is a nonpartisan election observation program. And one of the, one of the highest concentration of reports received this year from our election observers was confusion surrounding nonpartisan ballots. We think that if nonpartisan ballots are-- become more the norm that will help reduce confusion because we can have more focused specific training about how to handle those nonpartisan ballots. This will be a better experience for both poll workers and for voters. So in summary, we support nonpartisan elections because they promote participation over partisanship and they will also help reduce confusion surrounding our current nonpartisan elections such as the election for the Legislature. And with that, thank you for your time. I would be happy to answer any questions.

**BREWER:** All right. Thank you for your testimony. Questions? Questions? All right, no questions. Thank you. All right, additional proponents for LB211? OK, we'll go to opponent? Those in the neutral capacity? Come on up. Welcome to Government, Military and Veterans Affairs.



**BETH BAZYN FERRELL:** Thank you. Good afternoon, Chairman Brewer, members of the committee. For the record, my name is Beth, B-e-t-h, Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials. I'm appearing neutral on LB211. As you may recall, we also appeared neutral on Senator Hughes's bill last week about nonpartisan county elections. Our board was split on this issue and that's why we took a neutral position on both bills. I would like to just touch on some of the issues we raised on the previous bill just so that they're part of the record. I think that Senator Crawford has really addressed those though. First, our board talked about under the current system some races are decided in the primary because that's how the candidates fall. And so that disenfranchise maybe a strong word, but it does restrict some members of some parties from being able to vote for those candidates. Our board talked about, is there a difference in the functions that are related to the parties? For example, is there a reason why a county board member who is elected should be elected maybe on a party system versus a county assessor being elected on a partisan system? This bill doesn't address that-- doesn't provide for that, but we talked about the functions of the offices and whether a party affiliation is really needed to be able to fulfill those functions. Our board also talked about if county

elections are nonpartisan how far should that go up. And Senator Crawford provided a list of some of the offices at the state level that are already nonpartisan and our board talked about which counties are nonpartisan, maybe the Governor's race should be nonpartisan or maybe the constitutional officers. How does that line get to be drawn? So as I said our discussion was very wide ranging but we did have a neutral position. I would be happy to answer questions.

**BREWER:** All right. Thank you for your testimony. Questions? Wow, you're getting off lucky. Thank you. All right, any additional in the neutral position? All right. Seeing none, Senator, you're welcome to come on up and close.

**CRAWFORD:** Thank you committee members and thanks to those who came to testify. Basically, this comes down to a principle of making elections work better at the local level. We have nonpartisan elections for all of our other local elected official positions. And, and there is no reason to assume that the county work is partisan. Unlike, say an election for someone who's a member of Congress where we know that they go and they are part of a party caucus when they're elected where the party may make a strong difference in terms of who you would vote for because it makes a difference in who is the majority party and,

and has power in Congress. We don't have those dynamics at the county level and especially not for county assessor, county clerk-- those positions. And so the partisan, partisan-- partisanship doesn't really give us information about that position-- the person in that position or how they'll behave. And so it's really not an effective signal. And so-- but it also-- but it is something that distorts those, those local elections by making it the case that in many cases the decision gets made at the primary with only a portion of the electorate being able to participate. And having nonpartisan county elections would allow all voters in the county to participate in selecting the two best candidates who then will be up for election to determine the best candidate for that county. Thank you.

**BREWER:** All right. Thank you for your closing. Let's go to questions? Wow, you're gonna have a good day.

**CRAWFORD:** All right. Thank you.

**BREWER:** All right. We need to read in-- we have four letters that are proponents. There are no letters in opposition and no letters in the neutral on LB211, and that will close--

**CRAWFORD:** Thank you.

**BREWER:** --LB211. And we now transition to LB163, Senator Hunt. Senator Hunt, welcome to your committee on Government, Military and Veterans Affairs.

**HUNT:** Hi, everybody. Good afternoon, Chairman Brewer and my fellow members of the Government, Military and Veterans Affairs Committee. I'm Senator Megan Hunt, M-e-g-a-n H-u-n-t, and I represent District 8 in midtown Omaha. Today, I'm presenting LB163, a bill to allow precincts within counties with populations greater than 10,000 to ask for permission from the Secretary of State to conduct their elections by mail. I'd like to begin with a little bit of background. Since 2005, Nebraska has allowed counties with fewer than 7,000 residents to use a vote by mail standard in elections pending the Secretary of State's approval. In an election conducted with a vote by mail standard, every registered voter is mailed their ballot in a secret-- or not secret, in a sealed individually labeled envelope 20 days before Election Day. Then I guess when you put it in the envelope and seal it, it's technically secret-- but anyway. The voter can then choose to mail the ballot back, return it in a secure drop box, or return it in person to the county clerk or Election Commissioner's Office. Each voter's ballot has a unique barcode and voters must sign an oath on the envelope and that signature must be verified by election

officials before the vote is counted. In 2009, the Legislature raised the population cap for this process to 10,000 allowing a few more counties to participate. Seventeen counties currently utilize this tool in one or more of their precincts. Under current statute, 26 counties are prevented from even considering this option just because they have more than 10,000 residents. This isn't just counties like Sarpy, Lancaster, Douglas, it also includes counties in the 15, 20, and 30 thousands which is most of the counties like Gage, Holt, and Saline County. I understand that one of our most important and challenging responsibilities as a Legislature is to find a balance between local control and basic state oversight. LB163 strikes this balance very well by encouraging local control in election administration by removing the arbitrary 10,000 population cap while still preserving the Secretary of State's oversight of the application process. This is a simple permissive bill supported by the counties that removes an unnecessary bureaucratic barrier. Civic Nebraska and NACO are also both here to speak to the technical nature of the bill. And other than that, I'm happy to answer any questions.

**BREWER:** All right. Thank you for your opening. Questions?

**KOLOWSKI:** I'll take one.

**BREWER:** Yes, sir.

**KOLOWSKI:** Thank you, sir. Senator, why was 10,000 chosen?

**HUNT:** I'm not really sure. I can't-- the reason I'm bringing this bill is because I don't think that that makes a lot of sense. It feels a little bit arbitrary and if it's good for a county of 7,000 to do vote by mail, I don't know why it wouldn't be good for a county of 10,000. We received written testimony from many county officials, many people who live in these counties and my favorite letters that we got were ones from the volunteers who work at the polls and they talk about how when there's adverse weather, when-- you know, they just talk about the struggle that some people have to get to the polls. And whether county of 7,000 or 10,000, there's so much space sometimes and bad roads and there's just lots of reasons that people struggle to get to the polls and that vote by mail can help them increase voter turnout in their counties.

**KOLOWSKI:** Do you know the breakdown between the 90-some counties we have right now and, and how they permit this or not permit?

**HUNT:** I do. I have a sheet about that in here and I know that somebody behind me can speak to that more specifically.

**KOLOWSKI:** That'd be fine.

**HUNT:** Yeah, a, a vote by mail standard is currently used in 127 of our precincts in 17 counties. And another great thing that I didn't speak to in my opening is that in the counties that have vote by mail, election turnout goes up and that's of course across all parties. And I think that's what we want.

**BREWER:** OK. Additional questions? I've got one real quick. OK, now I know Cherry County, I think, as a county does just mail-ins. I, I just checked. They're 5,818 so they would be under that limit. Now if you want to vote with, with a mail-in, you can request that now. Right?

**HUNT:** That's right.

**BREWER:** Yeah, because in Sheridan County, I believe, we've got some precincts that, that do mail-in. And then I was in the Czech Republic this past fall so I did a mail-in ballot. All right. No other questions. All right. Thank you for your opening. You'll stick around for closing, I'm assume.

**HUNT:** I'll hang out today, yeah.

**BREWER:** Yeah, you've got nothing else to do. [LAUGHTER]

**HUNT:** Thank you, Senator.

**BREWER:** You bet. All right. We will start with proponents. Come on-- hey, welcome back.

**WESTIN MILLER:** I'd tell you this is my last one but that's a lie.

**BREWER:** That's all right. We kind of designed this so those that are traveling don't have quite so many trips. They can kind of do all elections in one day.

**WESTIN MILLER:** It's very considerate. Unless you get sick of me, then I'm in trouble.

**BREWER:** No, you're doing good. All right, whenever you're ready.

**WESTIN MILLER:** Thank you, Chairman Brewer, members of the committee. I'm still Westin Miller, W-e-s-t-i-n M-i-l-l-e-r, representing Civic Nebraska. Senator Hunt explained this bill really well so I just want to give some quick history of how this conversation started. I started my current position at Civic Nebraska this past summer and one of the first meetings that I had was with Larry Dix, the executive director of NACO. We had a great conversation about the goals of my organization, the goals of his organization, and most importantly how we could work together. Per his suggestion, LB163 was the product of that conversation. So Civic Nebraska's interest in LB163 is



threefold. First, we think that county officials and election officials are really good at their jobs. We just want to make sure that they have all the tools that they need to succeed. Which is basically just me saying we think local control of elections makes a lot of sense. LB163 doesn't make anyone do anything. I cannot be clear enough about that. It just gives all counties equal permission to engage in a conversation with the Secretary of State. Second, we understand that elections are expensive so we're interested in any measure that could improve the cost efficiency of our election administration without harming the voters' experience. To explain this, I'd refer you to the vote by mail cost savings handout that's in your folder, I believe, on the right side there. The most useful indicator of an election's cost efficiency is the cost per voter. Because turnout is always higher in presidential election years, the cost per voter will almost always be lower. So we've got really good numbers for Garden and Dawes County because they were two of the first counties to do this county wide which allows us to test them pretty easy before and after numbers. They saw cost savings so significant that their cost per voter was lower than in 2016, despite that being a presidential election year. You can see from the blue table there on the front page that Garden County's per voter cost dropped by 30 percent between 2014 and

2018 which is pretty incredible. Dawes County, last I spoke with them, didn't have 2014 info available, but they still managed to save 10 percent from 2016, despite that being a presidential election year which is pretty unheard of. Now I'm not saying, nor is this bill saying, that this tool ought to be used by everyone, but because this tool does have the ability to save money, it seems like a good policy to allow counties to engage in a conversation with the Secretary of State which is all they were asking you to do. The final reason we support LB163 is turnout. In every instance that we found, the use of a vote by mail standard increases turnout no matter the kind of election, and this turnout is politically neutral. It doesn't favor one party over another. And if the committee has questions, I'd be happy to go into that misconception. So in summary, LB163 is a moderate measured bill. It supports local control and election administration. It gives counties access to a cost savings tool. It doesn't force anyone to do anything and it preserves the Secretary of State's oversight of this process. This is a [INAUDIBLE] bill that saves money and encourages local control. So we've-- we have worked really hard over the last couple of months to make this a no brainer. So if you do have questions, I would love to talk about them now so that we can try to make

this bill palatable to everyone. Otherwise, I'd urge you to advance LB163 to General File and could answer any questions.

**BREWER:** Thank you. You put a lot of work into this. Well done.

**WESTIN MILLER:** Thank you, sir.

**BREWER:** OK. Questions? Yes, sir.

**KOLOWSKI:** Thank you, sir. Westin, thank you for your presentation. And there are people that would disagree with you, of course.

**WESTIN MILLER:** Sure.

**KOLOWSKI:** And when we look at this past national election in the last two-plus years--

**WESTIN MILLER:** Um-hum.

**KOLOWSKI:** --and some of the things that we've been hearing and understanding and the decisions that have taken place in-- I'll just go back over my own-- my seven years here in the, in the Unicameral. It's remarkable that we don't have more people disgusted by this. There is gerrymandering that has been done and it has taken place in the Omaha area in multiple cases, in multiple ways. It just stands out as something that we need to

do and this solution gets people to be able to do a private ballot, send it in, and have it counted, which can't always be done with some of the other situations that we have.

**WESTIN MILLER:** Sure.

**KOLOWSKI:** So I thank you for you bringing that forward. And from your perspective, statewide-- how many states allow this at the current time that you know of?

**WESTIN MILLER:** How many states allow?

**KOLOWSKI:** States-- total states.

**WESTIN MILLER:** There is a whole range-- about half the country has a system that is either equally or more permissive than Nebraska's. There are three states: Oregon, Washington, and Colorado. That they do vote by mail exclusively for all of their elections. I believe-- let's see, California, Utah, and North Dakota are almost entirely all by mail. The rest are somewhere in between. There are some states like Missouri, where I'm from, that they don't even let you do no excuse absentee voting so they've got some catching up to do. But we are-- our policy, both before and after LB163, is very almost literally middle of the road as far as this policy goes.

**KOLOWSKI:** Thank you very much.

**WESTIN MILLER:** Sure. Thank you.

**BREWER:** Yes, Senator Hansen.

**M. HANSEN:** Thank you, Chairman Brewer. Thank you, Westin, for coming and sharing. You were talking about the cost savings--

**WESTIN MILLER:** Yeah.

**M. HANSEN:** --related to that. Can you talk about the fiscal note?

**WESTIN MILLER:** Yes, absolutely. Thank you for that question. So this bill does have a \$66,450 fiscal note and that's for a new full-time employee in the Secretary of State's Office. To be honest, that fiscal note was a big surprise. The big reason is, because in 2017, this exact bill existed with the exact same language and the fiscal note was zero so this is not something we were expecting. With that being said, I was able to have a really productive conversation with Secretary Evnen this morning about this fiscal note and basically where it came from and why it's needed. I think three major takeaways from that conversation that are worth sharing with the committee. Number one, I think that to his credit, Secretary Evnen is looking out

for his staff. Which as someone who's worked for understaffed organizations, I very much appreciate. He told me that his staff basically as a whole as it as an office staff is at capacity. And so he said that as a policy, any bill that's gonna make more work for the Secretary of State's office is gonna get an FTE fiscal note which-- fair enough. That being said, I think it's very important from my perspective to point out that means that this fiscal note is not uniquely caused by LB163. That means anything that requires more work would get a similar fiscal note. However, the fiscal note itself, I have some serious concerns with. Based on the fiscal notes own explanation, this full-time employee is already needed. So I refer you to-- just that-- on that front page, the explanation where it says based on 2015 population figures as reported by the Nebraska Blue Book, 66 counties had populations under 10,000. It is possible that all 66 counties could opt for mail ballots. And then proceeds to explain why that means we need a full-time employee. I cannot emphasize enough, those 66 counties are already eligible to do that today. That is not a result of this bill. There are 27 new counties that would be eligible as a result of LB163, but the fiscal note's own logic says if all 66 did it today we'd be in huge trouble. They're already eligible. That's not a, not a shift as a result of LB163. And the Secretary

himself has acknowledged that the adoption has been pretty measured and pretty slow which I think leads to the third take away which is that the justification for this fiscal note is a hypothetical that what if all counties did this tomorrow, wouldn't that be so overwhelming? Which, yes, it would. But it's not happening. There are 66 counties already eligible, only 17 are using this in any capacity and it's been a, it's been a slow opt in since 2005 since we started allowing that. But the second thing that's crucial to remember other than the fact that they're already eligible is that under this bill the Secretary of State has full discretion to approve or reject applications. And I think a legitimate reason for rejecting an application is the inability to administer that new election. So if the Secretary decides that-- you know, we can't possibly process all these applications he has-- this bill in no way limits his discretion to say, sorry, you've got to wait two years then we can figure out how to do this. So I think this fiscal note is-- again, I absolutely appreciate the, the need for his office to be staffed. We want that. I just, from my perspective, we just don't want LB163 to be punished for the fact that his office could use some more capacity. Thank you for asking.

**M. HANSEN:** OK. Thank you.

**BREWER:** All right. Any other questions? Yes, sir.

**KOLOWSKI:** One more, please. Thank you. I have a son and a daughter-in-law living in Colorado. They think this is the best thing in the world.

**WESTIN MILLER:** My dad lives there, too, and he loves it.

**KOLOWSKI:** It-- it's a snap from that perspective. When you add in the potential of terrible weather--

**WESTIN MILLER:** Um-hum.

**KOLOWSKI:** --and how much that cuts into all people that don't want to go out and slip on the ice and do everything else, and the accidents that occur and other injuries that might be incurred by people, this makes all the sense in the world because makes-- it makes \$66,000 look very small when you think of the participation and the impact those voters have upon the future of that particular state and the issues of that state.

**WESTIN MILLER:** Absolutely.

**KOLOWSKI:** We have to think differently about how we handle those things.

**WESTIN MILLER:** Yeah, I mean, I--



**KOLOWSKI:** Thank you for that.

**WESTIN MILLER:** Thank you, sir. And I think it's certainly my job to question the fiscal note and it is questionable. With that being said, I think that if, if we decide this is worth it, I can think of few more efficient uses of \$66,000 than expanding this tool certainly.

**KOLOWSKI:** Thank you.

**BREWER:** All right. One more try. Other questions? All right. Seeing none,--

**WESTIN MILLER:** Thank you.

**BREWER:** --thank you for your testimony. We are still on proponents? And welcome back.

**BETH BAZYN FERRELL:** Thank you. Good afternoon, Chairman Brewer, members of the committee. For the record, my name is Beth, B-e-t-h, Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials. I'm appearing in support of LB163. We'd like to thank Senator Hunt for introducing the bill and we'd also like to thank Senator-- or Civic Nebraska for their work on this bill as well. We supported the process when it was enacted in 2005 with the 7,000

population limit. We also supported the increase in 2009 when it went from 7,000 to 10,000. And, Senator Kolowski, to address your question.

**KOLOWSKI:** Um-hum.

**BETH BAZYN FERRELL:** The reason, as I recall, that was increased to 10,000 was simply to open it up to a few more counties. Ten thousand seemed to be a sort of reasonable breaking point to have a few more counties, but not to be potentially overwhelming for the counties that could do that. We see this as an opportunity for counties of all sizes to be able to have the elections by mail. Some of the election commissioners that I've spoken to in larger counties say this would be an opportunity for them in some pockets of the county where maybe they don't have a facility that is handicapped accessible for that precinct to go vote in or maybe they don't have a number of poll workers that are readily available in a particular area that they would be able to do this as has been stated. It would still be up to the application from the Election Commissioner and approval from the Secretary of State. So if there was a problem or an area that it didn't seem like this was appropriate for, there is still a process in place to refuse that application. With that,

I would be happy to answer questions and I would encourage your support of this bill.

**BREWER:** All right. Thank you. Questions? Yes, sir.

**KOLOWSKI:** Thank you, Mr. Chairman. I just wanted to piggyback on your comments on the accessibility of voting locations. And I did some research on that and what my staff and I found was the difficulty in many places, in far out reaches of rural Nebraska or Colorado or anywhere else, that's just the difficulty with-- if you have a handicapped situation or you're on crutches or wheelchair or something of that nature you just throw up their hands and they don't go vote because there's no easy access into the facilities that are available. As, as people pick the very best places they can, they can find, but they're, they're just not accessible because of stairs or lack of elevators or all those kind of things that would turn into something. So I just-- again I want to thank you for your comments and, and what we're facing in some of those issues. Thank you.

**BREWER:** Additional questions? Now since you're representing the counties, right?

**BETH BAZYN FERRELL:** Um-hum, I do.

**BREWER:** In the polling places, is it common that they are limited in accessibility?

**BETH BAZYN FERRELL:** It just depends. It's, it's not like it used to be back in the day where sometimes-- you know, you can have a polling place in someone's shed or their garage out in the rural areas. Now there are requirements about what kind of a threshold at the door there can be and the width of doors, just a whole host of things that are, are set out in federal regs. And I think, Senator Kolowski, you have a bill next week maybe that--

**KOLOWSKI:** Yes, I do.

**BETH BAZYN FERRELL:** --addresses that. So, yes, in areas-- some areas there are not places that meet those standards.

**BREWER:** All right. And-- but just, just for clarification from earlier, they can request and have a ballot if they have a physical limitation and, and do their voting early. Right?

**BETH BAZYN FERRELL:** Yes, they can.

**BREWER:** OK. All right. Thank you. Come on up. You are a proponent, right?

**EDISON McDONALD:** Yep.

**BREWER:** Good.

**EDISON McDONALD:** And--

**BREWER:** Welcome back--

**EDISON McDONALD:** Hi.

**BREWER:** --to Government, Military and Veterans Affairs.

**EDISON McDONALD:** Yeah, it's been a little while. Edison McDonald, E-d-i-s-o-n M-c-D-o-n-a-l-d with the Arc of Nebraska. We advocate for people with intellectual and developmental disabilities. And given that the conversation about accessibility just got cracked into, I figured I'd go ahead and hop up. We're a nonprofit advocating for people with intellectual and developmental disabilities. We focus on community inclusion because we believe that it ensures the most cost effective and focus on the most-- on the best treatment possible and it brings the most back to us as a society. We support LB163 because we believe that it will help ensure that more people can vote. People with intellectual and developmental disabilities facing unique challenges including a history of discrimination and exclusion from meaningful choice and participation including in voting. The Arc believes that everyone should have access to all elections. Last year-- you

know, we talked a lot about-- according to a 2016 election study by Rutgers University, voting participation for people with disabilities was down. And nationally, one of the biggest studies had 137 polling locations. They looked at this in the 2016 election. Of those, approximately two-thirds, according to the Government Accountability Office, nationally were-- had at least one impediment limiting people with disabilities. With the limited data set, wide ranging stigma, pervasive misunderstandings, and many disenfranchised individuals, the Arc of Nebraska and others saw a need to really dive into some of those issues. And I personally really appreciate when we can have better data. I think it leads to a better understanding and a better ability for legislators to really properly do your jobs. Included in our testimony, you will see what we were able to create thanks to a partnership and election accessibility report for the state of Nebraska that digs into some of those accessibility issues. We'll talk about this more next week with LB733, but we believe that one helpful tool at increasing accessibility is vote by mail. We are aware that the Secretary of State has expressed some concerns that they will not be able to make these accessible for people with disabilities. As the head of an organization representing many people with disabilities, I would like to say this can be easily alleviated.

First, I would encourage keeping open the ability of people to pick up ballots. Second, vote by mail is open to our-- vote by e-mail is open to our troops and we believe that we should open that up to Nebraskans with disabilities. Third, I would encourage keeping open early voting locations and suggesting a requirement for extended hours to ensure full accessibility. For many people with disabilities, vote by mail is vital because it allows them a lower-pressure situation in which they have time to think and discuss the candidates. They are also able to limit the physical barriers that prevent them from being in a polling location. For these reasons and more, we encourage you to pass LB163. Questions? And I'd encourage you to look at that study.

**BREWER:** Thank you. Real quick on your annexes-- you've got Annex [SIC] A here and then I roll it over and it says Annex [SIC] B here. Is there a page missing, or is it just an annex and there's two letters?

**EDISON McDONALD:** Oh, yeah, that's a typo. I must have printed one of our draft versions.

**BREWER:** You-- it's all right. You're entitled to one mistake. [LAUGHTER] OK. So if we go to the charts here, you've got clear, you've got 32 inches, wheelchair, wide enough, and problems. Can you kind of walk me through some of that?

**EDISON McDONALD:** I'm sorry. Yeah. So I'm, I'm seeing-- that's it. So the appendix that's missing is a survey that Disability Rights Nebraska went and developed that we used to go and help implement this study and it has a variety of questions going through these issues and then we had 250 people-- or 250 polling locations that we surveyed this data making it the largest in the nation. So clear is talking about ensuring that there's a clear walkway between the accessible parking places and between the building.

**BREWER:** OK.

**EDISON McDONALD:** Let's see, are there any--

**BREWER:** Thirty-two inches I assume is a width--

**EDISON McDONALD:** With the door--

**BREWER:** What is the normal wheelchair width?

**EDISON McDONALD:** Yeah. So that's, that's the standard and that's the requirement under the ADA.

**BREWER:** So 32 would be enough to get a wheelchair through?

**EDISON McDONALD:** Yes, a, a standard wheelchair. However--



**BREWER:** Now accessibility would mean do they have a lift if they have to change floors. Is that when--

**EDISON McDONALD:** So in terms of accessible for ramps there are a couple other questions that get more into that and I believe it's through the wheelchair accessible and through the voting area that will dig into those issues. I'm sorry, those are split up over two pages.

**BREWER:** Yeah. No, that's all right. I just want to make sure that as I was tracking. And the-- where it says wide enough. What exactly is wide enough? Is that access to get in the building or once you're in the building? Is it more than 32 inches?

**EDISON McDONALD:** I don't-- sorry, I don't have the survey.

**BREWER:** Yeah, you're probably really hating me right now, aren't you?

**EDISON McDONALD:** But it's [LAUGHTER]--

**BREWER:** I, I don't mean-- I just-- I--

**EDISON McDONALD:** No, no, no.

**BREWER:** --want to make notes, it's easier to remember.

**EDISON McDONALD:** I'll, I'll be sending this to you and we'll talk more about this next week. And I just wanted to make sure and go ahead and bring this. Because in terms of talking about election accessibility issues, this is important. I think what's really vital for this conversation, is that our polling locations currently have a lot of limitations. Encouraging vote by mail helps to eliminate a lot of those barriers. And I think the, the thing you keep asking is, well, people can already vote by mail. So what does this do to benefit it? I think it goes and encourages the practice and helps to expand the practice a little bit more. Specifically, I think one of our biggest issues is that people with disabilities are discriminated against just through how people are seen and so frequently well-intentioned poll workers will think that an individual with a disability can't vote. And so they'll discourage them and they'll question them. And it's, it's with good intention but it ends up deterring people from voting. And so really I think that this helps to ensure that there are more opportunities and that there are more options to ensure that people with disabilities can vote.

**BREWER:** Thank you for testifying. Is there any other questions? Yes, Senator Kolowski.

**KOLOWSKI:** Thank you. When you look at the polling places,--

**EDISON McDONALD:** Um-hum.

**KOLOWSKI:** --how much do you use schools?

**EDISON McDONALD:** Schools are significantly used polling location. Typically, they're one of the buildings in a community that have the capacity, that have the ability to be open and that theoretically should be ADA compliant although that's not always the case.

**KOLOWSKI:** And as a high school principal we did that in Omaha--

**EDISON McDONALD:** Um-hum.

**KOLOWSKI:** --in the Millard area and-- but we ran into issues over time. We had a growing population within the school. So parking lots became--

**EDISON McDONALD:** Um-hum.

**KOLOWSKI:** --very difficult to come by. And you'd have to have people out there to say don't park here these are for-- come up and park, drive, and vote, and, and then leave. And then you have the accessibility into the building with no guards, no--

**EDISON McDONALD:** Yeah.

**KOLOWSKI:** --protection as far as the kids are concerned. And that became a major issue in our community. As time went out and so they went from being very positive locations to being more difficult to be able to get all the time because of the things that I mentioned.

**EDISON McDONALD:** Um-hum.

**KOLOWSKI:** And that, that gets-- because you have all the accessibility in the world because it's a high school, the ramps, the wheelchairs, and all those kind of things are, are there. But it really becomes a dangerous situation when you think about what could happen. And it's good that we're reminded of that.

**EDISON McDONALD:** Um-hum. Yeah, I think that there, there are a whole bunch of issues and as we've talked about with LB733 just even understanding the statutes, making sure to follow all of them and for buildings. And actually I, I think a couple cycles ago, I actually observed at one of the high schools in your old district and they had to shift their location. And that led to some lack of compliance just because it was the time and they were trying to go and shift quickly. And I understand that and that can be difficult but because of another event in the building it's difficult to ensure full accessibility.

**KOLOWSKI:** Thank you.

**BREWER:** All right. Edison, thank you for your testimony. No other questions. Thanks for coming in. OK, additional proponents? All right, we'll go to opponents? Are you an opponent or proponent?

**CARYL GUISINGER:** Pro.

**BREWER:** Pro. Come on up. Welcome to the Government, Military and Veterans Affairs Committee.

**CARYL GUISINGER:** Thank you. Chairman Brewer and committee members, my name is Caryl Guisinger, C-a-r-y-l G-u-i-s-i-n-g-e-r, and I'm testifying today in support of LB163 to allow counties to conduct elections by mail. According to a recent University of Nebraska at Omaha, College of Public Affairs research study, voter turnout was only 41 percent for the 2014 midterm elections. Also in 14-- 2014, 45 percent of Nebraska's registered voters did not cast a vote. In the 2016 elections, across all age groups anywhere from 18 to 37 percent of registered voters did not vote. In the 2016, voter turnout was the lowest in the Nebraska Panhandle, south of the I-80 corridor across the width of the state as well as in the northeastern part of Nebraska. With the implementation of Garden County's

pilot vote by mail program, this county saw a turnout of 59 percent for their midterm last May. Who would have thought a midterm primary would experience a ballot return rate this high. Then they turned around and experienced a 76 percent turnout for their midterm general election all by converting to a vote by mail ballot. Following in the footsteps of Garden County, both Merrick and Morrill counties experienced an astounding 70 percent voter turnout with their vote by mail implementation for the 2018 midterms. These numbers are quite amazing from a ballot return rate of 41 percent in 2014 without vote by mail to a ballot return rate of 70 percent in 2018 with vote by mail. That's nearly a 30 percent increase in turnout. So the next logical step is to open up vote by mail for all across Nebraska. The population cap of 10,000 is an arbitrary number. Why not 5,000, 25,000, 45,000, whatever? In reality, there should not be a cap at all. On ethical grounds, every Nebraskan should have the option to vote by mail. When the state divides its electorate into two groups, one with a 40 to 50 percent higher ballot return rate than the other group, the Legislature is imposing an unfair division among its voters. In the-- if the first step to bringing a vote by mail to all of Nebraskans was to set up a pilot program in Garden County, then we can see that it was a very successful pilot. If the second step was to allow

counties with populations under 10,000 to request the same option, we also have achieved a high voter return rate for those participating counties as well. Now it's time to offer the same ease of voting to all Nebraskans. I urge you, Senator Brewer and committee members, please vote in support of LB163. Thank you for your time and consideration.

**BREWER:** All right. Questions? All right, thank you.

**CARYL GUISSINGER:** Thank you.

**BREWER:** OK. Any additional proponents? Are there any opponents? Are there any in the neutral capacity? Senator Hunt, would you like to close?

**HUNT:** Thank you again, Chairman Brewer and my colleagues. And we heard some really great testimony today so I won't say things over and over again. I do want to address the fiscal note. This came as kind of a surprise out of the blue type of situation. I did not think there was one, as there wasn't one for the previous bill that was brought last time. I, I want to say-- I feel comfortable saying that this \$66,846 is based on kind of a hypothetical. If, if every county suddenly wanted to do vote by mail, that's what that would cost to administer it. But we know that in practice that's probably not gonna happen. For example,

for example Buffalo and Hall counties they support this bill but they have no interest in doing a vote by mail election. So we know that they're not likely to take advantage of this and opt into it. So it's good to know what it could cost, but in reality that's not always the same thing. And also as, as Westin made the point, who's one of my favorite constituents by the way, nothing would prevent the Secretary of State from rejecting applications. So if a flood of applications did hypothetically come in, the Secretary of State could say, we just don't have the capacity for this but we see that there is a demand so-- you know, we're gonna reject them for now and we'll build our infrastructure and accept it later. It's, it's completely up to the counties if they want to request it. It's up to the Secretary of State if they want to approve it. We've got to give them the right to, to customize their elections and have that local control. It is really hard for some counties to find enough polling locations that are accessible. Not just talking about ADA stuff, but talking about roads, talking about weather. One of-- an election clerk in Red Willow County sent me a message and she just wanted to point out to me that as their population ages it's becoming harder and harder for them to find poll workers. So they're having to close polling places because they just don't have the staff to, to fulfill the, the



requirements of that. And she says some of the old timers love being a poll worker, have a great deal of pride in taking part. However, as time passes we have to replace them. And it's becoming difficult to find people to commit. And being able to have an all-mail election would make this stressful election year much easier. Election commissioners want this, clerks want this, voters want this. I think it's a cut and dry bill and I would urge you to move it to General File. Thank you.

**BREWER:** All right. Thank you for your closing. Questions on LB163? Must have done a good job.

**HUNT:** Thank you.

**BREWER:** And I, I agree. Edison's not only a pretty sharp guy but snappy dresser, too. [LAUGHTER] OK. Letters-- that's it. Thanks for reminding me what I need to remember. OK. On LB163, we have 15 letters in support; one in opposition; none in the neutral. With that said, we will close the hearing on LB163 and transition to LB83, Senator Wayne. You know we live for these moments. Senator Wayne, welcome back to your committee on Government, Military and Veterans Affairs.

**WAYNE:** Thank you.

**BREWER:** We, we miss you. OK.

**WAYNE:** Thank you, Chairman Brewer and members of the Government, Military and Veterans Affairs Committee. Today we are-- my name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent District 13 which is north Omaha and northeast Douglas County. Just want to remind most of my colleagues who are here with me two years ago, we actually held this hearing at 9:30 in the morning on the day of our 150th state birthday. And the reason I worked with Chairman Murante to have that is because we are trying to erase a dark, dark period when we first became a state in this great country called the United States. And that was an issue in Article-- I won't even go into it because as you see I just had to wipe my eyes because I'm so passionate about this. But for those who are new, we were actually vetoed twice upon entering the country. The first time was a pocket line veto where he pocketed, the President, and just decided to let time run out so it couldn't become law. The second, Congress passed a measure saying, no, and the President agreed say-- or saying, yes, and the President agreed and vetoed it-- Nebraska becoming a state because of the section we are talking about today. At the time, that section read in 1871 that only white males could vote. During this period of time across the southern states, they decided to get around their requirement of becoming a new state. We would change that section across many, many states'

constitutions to say, that it was no longer just white men who can vote but anybody could vote as long as they weren't convicted of a felony. Well, what happened then is many ex-slaves were arrested and brought up on multiple charges of felonies including here in Nebraska where many of you voted for my constitutional band LR, LR1CA which was supported by everybody in this committee and this is an effect of that. And the effect of that was when people were arrested and sent to convict slave camps we will call them because they were slavery. Not only were they slaves and we leased them out as a state but we also took away their right to vote. So I'm gonna read from some things that make sure I hit my talking points but I thought it was important to re-- remind my colleagues that this is a bigger issue than just a voting. This is an issue that we have to send the right message that we are erasing-- or not erasing from history, but erasing from the legacies of slavery issues that still go on today. LB838-- 83 will restore voting rights to felons upon completion of their sentence. I think that's important with post-conviction release. You need to understand it's after they are off paper is what we call it. And I want to remind this committee that there are many felons who have not served a day in prison. We have what's called a Class IV felony where the presumption, the presumption to the court is

probation. They've never actually stepped foot in a prison. Yet, they can lose their voting rights up to eight years. If there's two Class IV felonies and there's no-- and they get probation on both of them and they run consecutive-- consecutively that's eight years plus two more years, they could lose a decade of voting without ever stepping foot in a prison. This issue addressed in this bill is nonpartisan or noncontroversial although sometimes we try to make it be in the last two years. This is a basic fundamental right that most conservatives all agree with. Once you've done your time you should be a productive citizen in America. So when people make their mistakes there shouldn't be an arbitrary two-year waiting period. And why is it arbitrary? Rest upon his soul, my first year, Senator Lowen Kruse came in and testified. And go back and read LB75 from two years ago. He was here and cut the deal for two years. They met underneath the balcony during a filibuster and they cut the deal so it wouldn't affect their next elections. There's no number behind it. And for those who believe that it's about making sure they're on a safe path and doing the correct things, you can go out and get in a fist fight every day and commit multiple misdemeanor assaults during and after that two years and still automatically after two years to get your right to vote. This is an arbitrary number that needs

to be erased. The reason it's not political is Texas, then Governor, now, now former President George Bush passed a law that required a two-year waiting period like us. That's where it came from. Let's do two years and have now said no more of that. Arkansas, Oklahoma, Missouri, Kansas, Montana, Tennessee, Georgia, Carolina's, the Dakota's, and many more, and our state next door Iowa, just passed their Senate unanimously to actually change their constitution to allow once you complete your sentence you should restore your voting rights automatically. Now I'll explain why there is a difference in the constitution over there and why we don't need it here in a minute. But nevertheless, this is not a partisan issue. Studies upon studies have showed that with experts on recidivism rates and reentry into society have done all the research on this and they've showed over and over and over allowing people to participate in a civic duty, the ability to vote cuts down on recidivism rates. So not only do we need this as a way to correct the past but it's a way to make sure going forward we have less people, less people in prison and that they're a part of a productive society. We need our felons when they get out or never go in as I just explained to be productive citizens in our life and to be engaged in the process and in their community. According to one poll, about 7 percent of ex-felons who have, who have their

voting rights restored upon completion of their sentence participated in the election following their release. Yes, we still have to educate a lot of people when they get out because they're still a misnomer in Nebraska. And if you would ask people who come up they still think they can't vote when they get out because of this arbitrary law. They don't know for sure, is it when they get out? When they get off paper? And even our Douglas County Commissioner last election made mistakes in their office of telling people who could and could not vote because they were unsure if they met the two-year requirement because of our post-supervised release issues. I just want to read one quote of where this came from. And it started back in the Reconstruction era. There was a young person by the name of Carter Glass and he's considered the brainchild of this felon movement in the 1800s. He became a U.S. Senator and it was our 47th U.S. Treasury Secretary. He drafted this in the 1970s [SIC] across the United States. And when he finally was asked in a public setting about felony disenfranchisement does not necessarily deprive a single white man from the ballot he said, but it will inevitably cut the existing elect-- electorate four-fifths of the Negro voter. We will not be-- this will not be done by fraud or discrimination. But no-- somebody asked him that. He said, no, not by fraud, not by discrimination, Glass

assured. But it will be discrimination within the letter of the law and not the violation of the law. And he went state to state promoting this idea. Now two years ago, I went to the-- our archives and brought the old books and put them right here on the desk and quoted from the books about Asians, Chinese, and we even quoted when this was being debated about will the white man still have the ability to have a vote and be the majority if we allow black people to vote? That was mentioned on the floor during our constitutional convention. We know the history behind this. The question we have right now is do we have the courage to change it. We got all the way through debate. We made three rounds and the Governor vetoed it. Will he do the same? I don't know, nor do I care. We are a legislative body. We have a duty to make sure we protect people's rights to vote and not disenfranchise people after they completed their sentence. Senator Lowe had a bill that I supported that made sure that felonies cannot be held against somebody when selling a car, I believe it was. We can sell cars, can't vote for two years. We had a bill that I supported from Senator Groene that said as long as you hunt you can have a sword even if you're a felon. I supported that bill. You have to purchase a hunting permit and you can have a sword, a deadly weapon, even if you're a felon. There's no two-year waiting period. But our most basic full

duty, we put an arbitrary number of two years. So Chairman Brewer and the members of this committee, I am asking your support for this issue and to send a clear message. And I will say it again, like I did in my freshman year, if I can get this out of committee before the 21st, I will make this my priority bill. But this committee has got to be willing to do it. And with that, I'll answer any questions. Or on the 19th, my fault.

**BREWER:** Thank you for your-- thank you for your opening and I hope if I ever end up in a court you're my lawyer. Senator Blood.

**BLOOD:** Thank you, Chairman Brewer. And thank you, Senator. I want you to know that I purposely didn't ask questions on the first two bills because I have a long list of questions--

**WAYNE:** OK.

**BLOOD:** --for you today. So you'll want to get really comfortable.

**WAYNE:** All right.

**BLOOD:** I did a lot of research on this. I was one of the senators who supported your bill last year and I still feel strongly about the bill and there's some questions I have for



you. Things I'd like to get on record that we didn't really discuss last time.

**WAYNE:** OK.

**BLOOD:** And this may not be a question that you can answer and it might be better for the ACLU if they're here, but do you have a definition of disruptive justice?

**WAYNE:** I will defer that to the ACLU.

**BLOOD:** OK.

**WAYNE:** Giving them time to Google that. [LAUGHTER] I have my own idea, but you-- I think you want something clear on the record.

**BLOOD:** They're probably Googling it right now as we speak.

**WAYNE:** Yes.

**BLOOD:** So the statistics I found were-- one of the inequities I found in reference to voters' rights are that the specific issue pertained almost seven times more to African-Americans than non-African-Americans. Would you say that that's accurate?

**WAYNE:** That is accurate.

**BLOOD:** OK. And would you say that that makes them marginalized then as a result of that?

**WAYNE:** Yes, they are marginalized. We are marginalized.

**BLOOD:** So one of things I didn't really hear very much from you and I'd, I'd be interested in hearing for the record what statistics if any you have on the economic impact that this has from the reduction in prison costs, reduced court costs, increased earning power through employee opportunities.

**WAYNE:** There are some specific data points that the Brennan Center for Justice that I know some people from Civic Nebraska are gonna to testify on there so I don't want to steal their testimony. So that would be a question for them. But there are some-- there are a lot of, lot of research around this that they-- that I know the answer to but they specifically brought up those issues and will testify to that.

**BLOOD:** If Flora had-- Florida had a substantial study done on that, right?

**WAYNE:** They had a substantial study that showed a substantial benefit in recidivism and economic benefit and community service.

**BLOOD:** And then would you say that higher income felons can then afford to live in less disadvantaged areas--

**WAYNE:** Correct.

**BLOOD:** --which has been associated with better employment?

**WAYNE:** Correct, and better schools.

**BLOOD:** And does that create a ripple effect to our economy then?

**WAYNE:** Absolutely, it creates a ripple effect. And it's multiplied by two or three times studies have shown.

**BLOOD:** So when it comes to voting and political participation, I read-- and you've probably read the same article. The American Journal of Criminal Justice had a really good article on people who were disenfranchised.

**WAYNE:** Yes, they did.

**BLOOD:** And felons were part of that story as well as homeless veterans.

**WAYNE:** Correct.

**BLOOD:** Which is another issue I think we need to, to--

**WAYNE:** Absolutely.

**BLOOD:** --figure out, and what they found. And I would be curious if you agree with this statement, it's skewed towards the elite those with higher income, employed, and more education.

**WAYNE:** Yes.

**BLOOD:** So ultimately if we don't register felons to vote, that creates a lower voter turnout. Do you think that that's a challenge to our democratic responsiveness?

**WAYNE:** I think it's a huge challenge. And let me just give you a practical example. Because there's still a belief that you-- there was a project done in 2008 about Project 10,000 and they were just trying to register 10,000 voters, particularly ex-felons-- 10,000 ex-felons. And the issue was when they would find out who these people were and talk to them they still believe that they couldn't vote.

**BLOOD:** Right.

**WAYNE:** Because many states, and other places still think that they might not be able to vote. It's a misnomer even in those states as every state that I explained has changed that. But that's a cultural thing that we've always believed. But from a practical standpoint, you walk out in society, you're off paper, you're jammed out, whatever we want to call it, there's an

election that happens within that two years. You are left out of the community. You are not participating and you become disenfranchised even more. So then the following two years come around, you're not excited about voting, you're not excited about being involved in the process because you already missed it and you thought, well, my voice doesn't matter. So, yes, it's a huge problem with when they get out, handing them their license, Senator Hansen, I remember that bill, and handing them their registration saying go vote is the easiest way and the most cost effective way of getting them back reengaged into society.

**BLOOD:** So the goal is to allow these citizens, because they're still citizens--

**WAYNE:** They're still citizens.

**BLOOD:** --the ability to vote irrespective of their status--

**WAYNE:** Yes.

**BLOOD:** --because that's a part of good governance.

**WAYNE:** It's part of good governance.

**BLOOD:** So you would say that's accurate then?

**WAYNE:** Yes.

**BLOOD:** And then, lastly, because I think most of these other questions I have are probably better suited for others, no offense. It'd be easier if I just knock it all out right now and then I can sit back quietly and drink my coffee.

**BREWER:** That'd be good. [LAUGHTER]

**BLOOD:** Or I can chat for a while or maybe read a book, like what's happened on the floor today. I love when we have private jokes. And I'm looking, and it looks like Maine and Vermont felons never lose their right even when incarcerated and they have a very low recidivism rate. Fourteen states only when incarcerated. Correct?

**WAYNE:** Correct.

**BLOOD:** Twelve states indefinitely, indefinitely--

**WAYNE:** Correct.

**BLOOD:** --unless you're pardoned by Governor.

**WAYNE:** Correct.

**BLOOD:** And then California even allows voting in county jails but not state prison. Right?

**WAYNE:** Correct. And we allow voting in county jails.

**BLOOD:** Right.

**WAYNE:** We just don't have an effective process of doing that.

**BLOOD:** But once prison, parole, or probation is completed.

**WAYNE:** Yes, [INAUDIBLE] out.

**BLOOD:** So they're still doing their time?

**WAYNE:** Correct.

**BLOOD:** And I think that that's the one thing I want to be really clear on. What's your definition of punishment when it pertains to the judicial system?

**WAYNE:** A set a time that a judge has determined, as relates to the judicial system, has determined is-- I hate to use the word punishment because you just asked me that. A set of time that the judge has determined to lose some civil liberties as a result of a crime you committed.

**BLOOD:** So you're being punished?

**WAYNE:** Yep.

**BLOOD:** And when you are done with that time, is it fair that you should continue to be punished?

**WAYNE:** No, I've never thought that in any capacity.

**BLOOD:** And so the one thing I'm, I'm going to end with, Senator Brewer, do you remember last year when we talked about this bill and the thing that always resonated with me was when an inmate told me one time that there is no justice,--

**WAYNE:** Yeah.

**BLOOD:** --there's just us.

**WAYNE:** Yep.

**BLOOD:** And I do think that the system is very unbalanced in favor of people who are not people of color.

**WAYNE:** I agree. And, and this is not-- I mean, my first year we had the Catholic Conference here. We had an individual-- and I would, I would-- if I could somehow incorporate-- that's what we say in legal terms, an exhibit I would incorporate testimony from the first year. We had it-- we had Republicans come down and testify. A young lady from Nebraska who cannot test-- cannot vote for George W. Bush because she was on a two-year waiting period. Did not serve a day in jail. Did not go to prison but



was in that Class IV felony which is-- the presumption is not going to prison. There, there is a presumption out here when you hear the word felon that it is a murderer and I'm saying there is a broad, broad perspective here. That's why we have different classes and somebody doing life versus somebody who never gets in, there's a lot of in-between there. But regardless of the situation, when a judge and a jury and everybody's decided this is your sentence, when you walk out you should be able to be engaged in our society. There shouldn't be an arbitrary two-year number that the Legislature picked underneath the balcony to not disturb our voting to make sure we can go back and get reelected. That's a problem.

**BREWER:** All right. Additional questions? Senator Hilgers.

**HILGERS:** Thank you, Mr. Chairman. Thank you, Senator Wayne. We do miss you here in this committee. It's good to see you again. I do want to-- and I appreciate, I appreciate when you brought LB75 and the arguments you made and the arguments you made today. I want to touch on a topic that you and I have discussed before and get at least a little of the discussion on the record this afternoon which is the constitutional question. So I've got Article VI, 2, in front of me and that says: No person shall be qualified to vote who-- and then skipping ahead, who has been

convicted of treason or felony under the laws of the state or of the United States unless restored to civil rights. So with that as sort of the background, I don't see how the current law squares-- the two-year restriction squares with the constitutional provision. But it seems to me-- and this is my question I want to get your thoughts. It seems to me there's two options. One, is amend the constitution to do what you want to do in this bill; or secondly, do something with the restored to civil rights language and how that is applied in statute and case law and not necessarily to, to just eliminate the requirement or the prohibition in statute. So it's sort of a general question, but I want to get your general thoughts on the constitutionality of it. We've discussed it before, and I'll, I'll throw it to you for your response.

**WAYNE:** All right. Well, the first thing I'll throw back-- and you don't have to answer this question, is because typically I don't, I don't get to ask questions. But if you want to do a constitutional amendment next year, I'd love to have you cosponsor it. Second, and that's-- but in all, in all seriousness, here's where we differ on our legal reasoning the unless civil rights are restored. So how-- the question is how do you restore your civil rights? Well, there's one way which is a pardon but that is a, that is a, that is a pardon which

restores all your civil rights. But there is case law in Nebraska that says some of your civil rights can be restored through the Legislature as long as it's not all and it's a balancing test. Once it becomes too many of them-- yes, that is more of a pardon. And that was the case around set asides and why set asides do or don't restore civil rights and there was dicta in there that says, this went too far. But there are other things like right to be on a jury, right to do those things that we're not touching. We're touching one thing, the right to vote. That isn't fully restored. It doesn't say fully restored. It just says civil rights are restored. We're only restoring one right. And that's why I think it's legal. There is analysis on there, that it's not the same as a pardon. I mean, there is case law, *State v. Bainbridge*, essentially you cannot commute a sentence-- is not a substitution for a mild punishment. That's where they went too far. And there is *Spady* which gives analysis on that. Those two provide guidance on-- and I think *Otey v. State*, too. And I can give you the exact numbers. But those are the things that give you guidance on restoring civil rights fully versus partially and we are just restoring one right. So I think it is well within the law.

**HILGERS:** So I appreciate [INAUDIBLE] if we could unpack briefly a couple of things you said and I know this is an area that you practice in and so I defer in many ways here--

**WAYNE:** I'm sure the ACLU will clean up any of my mistakes here.

**HILGERS:** Well, this is a good discussion. And I know some of this can be kind of, kind of [INAUDIBLE], but it's important-- I mean, there are bills that I've, I've supported on the policy merits that I'm opposed because of the-- because of some sort of constitutional restriction on our authority to enact those things. So I think it's important to go through this. So as I-- if I understand-- and these are just clarifying questions. I have nothing other than to get what I-- hopefully the right reasoning on the table constitutionally. So if I understand, you said civil rights can be restored through a pardon. Right? That was one way.

**WAYNE:** It's a fully one, it's all--

**HILGERS:** And that's a full?

**WAYNE:** Right.

**HILGERS:** OK.

**WAYNE:** Well, technically not. Right? You can get a pardon with gun rights or pardon without gun rights which I think is unconstitutional but you can do that right now underneath our current statute.

**HILGERS:** So you can get a pardon that includes restoring your voting rights?

**WAYNE:** Gun rights.

**HILGERS:** Just gun-- oh, just--

**WAYNE:** No, I'm saying you can get a pardon right now with gun-- restoring your gun rights or a pardon without restoring your gun rights which I think is unconstitutional. I think there's only-- the, the constitution only says a pardon or not pardon. There is no partial pardon.

**HILGERS:** OK, condition [INAUDIBLE]--

**WAYNE:** Yes.

**HILGERS:** OK. OK.

**WAYNE:** But, yes, you can get it-- you can get your civil rights restored or your voting rights restored through a pardon, yes.

**HILGERS:** And the pardon would be considered sort of-- because it restore to civil rights is sort of a term of art and that's what I'm trying--

**WAYNE:** Right.

**HILGERS:** So a pardon would be considered restoring, restoring someone to civil rights. Correct?

**WAYNE:** Correct.

**HILGERS:** OK. And then the other thing you mentioned was the Legislature had the authority-- has the authority-- case law says we have the authority to restore individual civil rights. Am I phrasing that correctly?

**WAYNE:** No, not individual. I'm just saying not all-- the State v. Spady was that, was that case where it was a set aside conviction that restored particular civil rights but not all civil rights.

**HILGERS:** So in other words the pardon power resides not in the Legislature but the Legislature as long as some smaller balance-- it's not-- it doesn't weigh too heavily so it doesn't look too much like a part in the Legislature can restore some civil rights?

**WAYNE:** Yes, and it goes back to the term punishment. It goes back to the terms of, of all civil rights, yes.

**HILGERS:** OK. And so the argument. Well, let me-- are you aware of the--

**WAYNE:** But let me ask you this question first.

**HILGERS:** Well, I'm just trying to-- I'm, I'm not trying to--

**WAYNE:** No, no.

**HILGERS:** --not have you ask the question. But I do want to--

**WAYNE:** But anything you--

**HILGERS:** --No, I just want to lay out the legal framework. That's all.

**WAYNE:** All right. That's fine.

**HILGERS:** I'm, I'm not implying one way or the other. And you said, have-- do you know-- you said, this, this-- that this bill would only, would only restore one right. Has the Legislature ever-- and I don't know the answer to any these questions. I mean, has the Legislature ever-- is there any other statutory provision out there where the Legislature restored other civil--

**WAYNE:** Yes, set asides.

**HILGERS:** For set asides.

**WAYNE:** Yes.

**HILGERS:** OK.

**WAYNE:** Which you voted for.

**HILGERS:** OK. Well, I'm just at-- I'm-- this isn't a challenge.

**WAYNE:** I know it's not a challenge. I'm just reminding you that you voted for it at one point.

**HILGERS:** OK. I, I appreciate that. Thank you. [LAUGHTER] So if we've done that in the past, would that-- I mean, what's your analysis as to whether this would or would not impact the overall balance of what the Legislature can do?

**WAYNE:** Well-- so first the constitutional analysis from our Supreme Court is gonna start with any law that we passed. There is a presumption that it's constitutional. In order to find something unconstitutional we have a very unique burden where we have a higher threshold for our Supreme Court to find something unconstitutional than any other court in the land which is in and of itself very, very hard. I think it's five out of seven,



right? I'm looking at my other two attorneys, five out of seven. OK, which is, which is more than a majority. It's kind of almost a super majority. And in Spady they made it clear that as long as it's not restoring complete rights-- or as long as it's not commuting a sentence. So if we, we can't sentence you to 10 years and the Legislature come back and say, that crime retroactively is only five years. That's, that's a-- you can't do that because that's considered a, a, a-- basically, you're pardoning them from their sentence. But if we restore partial rights-- one right here-- like I say, the right to, to be on a jury, right to-- those things do not encompass the word pardon because they're not-- it doesn't meet the threshold of restoring all of their rights. And, yes, it's, it's a legal term, and it's term of art, and it's case law. But at the end of the day-- and I'm crafting how I'm saying this very carefully, and this is not towards you, this is a general statement. My conservative colleagues will take an issue that has been decided by the U.S. Supreme Court, and although it's not constitutional they will still push an agenda to try to overturn whatever it is. My point is, I feel strongly enough about this that I would, I would love to sit with the Attorney General in the state of Nebraska and argue this about whether somebody shouldn't be or shouldn't be right to vote. I think this is constitutional based off of the

Spady decision, Spady v. State. I think it's constitutional because it's not a restoration of all rights. It's one particular right. We're not talking about being on a jury. We're not talking about any of these other things. We're talking about the right to vote. So underneath that definition, this is a narrow purpose that I think is constitutional. Could it be challenged? Of course, just like anything else. But I think it's constitutional.

**HILGERS:** And I, I appreciate that. Just for those, for those here and watching-- I mean, I think it's an important question to walk through. My goal is simply to get the reasoning on the table. I agree that what we do is, is presumed to be constitutional. I do think it's an important consideration for the body to consider. And you know, even the last year we had the right-to-try bill that a number of colleagues supported. At least-- and I know you weren't speaking to me but at the same time I'm the one asking the questions and that was the bill that I was against because I didn't think we had the constitutional power. Similarly, with the on-line sales tax from last year. So ultimately it's an important question. I know you and I discussed it when LB75 was on the table and I appreciate you laying out some legal, legal cases here which I will read and I look forward to having the dialogue with you outside of here.

**WAYNE:** So, so here's, so here's what I mean by all-- and I guess I'm not trying to do a whole legal brief analysis or make arguments but you can't run for office if you're convicted of a felony. That's one civil right-- civil liberty we are not restoring. You can't serve on a jury if you're convicted of a-- that's one we're not. So that's two right there we're not changing. We're talking about one. And it seems from the, from the dicta as long as it's not reducing a sentence, commuting a sentence which you would agree is not. It's not changing their sentence, and it's not changing their punishment of a felony which is directly tied to the felony. This is a civil liberty and this is just one out of like five, five or six of civil rights that are in our, in our, in our constitution and in our statute. Those are the reasons why I think the right to bear arms. We're not restoring the right to bear arms. So because of that-- let's say, one out of five, I don't think you reached a threshold of it being a pardon.

**HILGERS:** So the way that-- and I, I appreciate that and I'll just say this and then I'll, I'll give it back to the Chair. So the way that-- I think-- like you could imagine, I'm not sure what the answer is to this. But I think this is a good dialogue, and I appreciate you sharing your thoughts. The, the, the term says restore to civil rights. And part of the reason I asked you

initially was what does that term mean? Because you could read it one way which, you could read it one way which would be only when you restored to all rights which could only be done through a pardon as I understand it.

**WAYNE:** Correct.

**HILGERS:** Or you could read it to say, you're restored to the right that we're talking about which is the right to vote. And I don't, I don't know what the cases say on that. And I hear what you're-- essentially if I'm restating your argument correctly is that the Legislature has the power to restore something less than all rights. We have the power to restore just the right to vote. And if we do that that's consistent with provisions VI, 2, of the constitution.

**WAYNE:** Correct.

**HILGERS:** Is that right? OK.

**WAYNE:** That is correct.

**HILGERS:** Thank you, Senator Wayne.

**WAYNE:** And again, my colleagues who practice in this area will probably clarify all the things that I said wrong and then I'll-

- and on closing I will clean them all up later but that is essentially what I'm saying.

**BREWER:** Senator Blood.

**BLOOD:** Thank you, Chairman Brewer. Just a quick question because whenever you start speaking lawyer speak it always makes me want to have a question. So the purpose of punishment or one of the things that happens when you punish you lose your constitutional rights is part of that punishment. Is that correct?

**WAYNE:** Correct.

**BLOOD:** You're still protected under the Eighth Amendment.

**WAYNE:** Correct.

**BLOOD:** And you always, always keep your First Amendment, right?

**WAYNE:** Correct.

**BLOOD:** OK. So if punishment-- but that is part of the punishment and your punishment is done. From what I'm hearing you guys saying and what I'm reading that then you temporarily lose your constitutional rights but when your punishment is over you should have those restored.

**WAYNE:** Say that again.

**BLOOD:** When your punishment is over your constitutional rights should be restored.

**WAYNE:** That's what I believe. This bill only deals with one, one civil liberty which is the right to vote. But that's a, that's a-- that's an extension of what I believe, yes.

**BLOOD:** OK. Thank you.

**WAYNE:** And to clarify, Senator Hilgers did not vote for one of those set asides. You did vote against that one but there was another one that I, I will remind you of later. But I, I do want to say for the record, Senator Hilgers and I have had this dialogue for two-- three years now. It's not a new dialogue and I do respect the fact that you did not and chose not to filibuster and allowed votes to continue and I will still respect that and appreciate that.

**BREWER:** I need you to understand that because I really do learn and enjoy having lawyers for free is why I let you go on.

[LAUGHTER] Senator Hunt.

**HUNT:** Thank you, Chairman Brewer. And again, to kind of pull away from the lawyer speak which I don't really speak either. I care so much about elections and so much about voter turnout and so much about making sure that people have access to the ballot

and that's why this committee was my first choice to come in and be on this committee.

**WAYNE:** And you remember I asked you why, but that's OK.

**HUNT:** I do remember that. [LAUGHTER] And I care a lot about civic engagement and pride, too. And for everything I say about patriotism or whatever that it's very true and I think that there is-- I asked myself how do we increase turnout? How do we increase civic engagement? And one thing that I've seen change over time is how social voting is, how cool voting is to some people. And something that you said in your opening about how so many incarcerated people and formerly incarcerated people are so ignorant through like no fault of their own but they just have no idea what rights they have that come back into place. And when I was knocking doors, I met dozens of people who would say to me, well, I can't vote. And I'd say, do you mind me asking why you can't vote? Well, I'm a felon. And so then we figure it out and so many of those people ended up being able to vote. And they did vote, and they posted on Snapchat and they posted on Instagram and they said, I just went and voted for the first time. And I was-- I, I admit I don't have a question but I think that there is something so powerful about the reach of that especially in modern times. Making sure that we engage people

because it is so social and it's so effective to their peers as well. And just-- I guess to go back to my first question that I said, how do we make sure that people know about their rights and are civically engaged and they know which rights they have that are restored? It's not a pamphlet that you give them. It's something you see on Snapchat from your friend or your buddy who is incarcerated. Now he's voting and you're like, oh, I didn't know about that. So that's all I wanted to say.

**WAYNE:** Well, to, to just answer how do we engage? I will say to this committee our first year we engaged a lot. And I can think of two individuals in the back who were caught in the gap but because it was on the paper, because it was on Facebook, because people-- they were like wait a minute felons can vote? And we started a dialogue and now I don't necessarily appreciate at the time how I got my priority. And that's an inside joke to people who are on the committee who Murante announced that it was my priority before I knew it was my priority. But it did take a life of its own our freshman year and it was really engaging at least in the area I represent to see people come out of the woodwork and be happy and proud that they could cast a vote and they didn't know that they could. So I think it's education. But I also think it's this committee right here. This committee right here can have a huge impact on my district and the people



around my district by putting this on the floor and supporting this bill like we did with the constitutional amendment to, to say we're not gonna live like we did in the 1800's and we think everybody has a voice and that voice should be heard.

**BREWER:** All right. Thank you for your opening. You will stick around for the closing.

**WAYNE:** Yes.

**BREWER:** OK. I hope you are ready. All right. We will start with proponents of LB83. Come on up. Green sheet. Just have a seat. Sir, welcome to the Government, Military and Veterans Affairs Committee.

**JOHN WAYS:** Good afternoon. I like to thank all of you for allowing me to come here and speak in favor of this bill. My name is John, J-o-h-n, middle initial S, last name is Ways, W-a-y-s, Sr., and I'm retired. I retired from the Lincoln Police Department in '92 and I'm retired from the state in 2014. I'm enjoying my time, but I'm here to speak on my volunteer work. I visit the penitentiary campuses and regularly in the county jail here in Lancaster County and I conduct Bible study. That's my focus. My interest is to spread the gospel. And from my observation of inmates that I've spoken to over the years, men

and women and teenagers as well who are incarcerated, I've seen some amazing changes in people's lives and seeing those changes and seeing these former inmates on the outside has really touched my heart because I've seen things most people don't see. A real change in people's hearts and in their mind and in their way of thinking. And I truly believe that it would help tremendously the inmates who are looking forward to getting out and regaining their freedom that they would feel much better and more viable to the community being a whole citizen. And that whole citizen should include the right to vote. Once they're free and are employed they're paying taxes and to some degree I believe that the taxes that they pay should enable them to speak their voice. It's kind of like having taxation without representation. And I think with the small options that they have in our penal system and in a county jail of rehabilitation, my thought is bringing them the gospel. But even with the gospel seeing the change in lives, I think that from my perspective seeing all hundreds over the-- well, I've been doing this for about three decades. Started when I was a police officer and why would they want to have a police officer come in and talk to them is beyond me. But I was a volunteer when I was on the police department. But I think seeing some of these people come out and having the right to vote would just improve their

overall well-being and give them some-- something to look forward to being a well-rounded citizen. I've seen the changes. I'm not saying 100 percent of these people are going to not offend again or do anything wrong but I've seen enough changes to not lose my hope in mankind. So with that, I would just like to thank you for your attention.

**BREWER:** All right. Questions? Senator Blood.

**BLOOD:** Thank you, Chairman Brewer. First of all, I want to thank you for your outreach to your community. We need so many more people like you who did it sounds like while you were employed as well as in your retirement. Is that correct?

**JOHN WAYS:** Yes.

**BLOOD:** Why do you feel passionate about this issue? I mean, if you could say it in one sentence, what makes you passionate about this issue?

**JOHN WAYS:** Well, I, I think that one thing that made me passionate is the fact that I didn't know any of this was gonna happen. I never thought I'd be going to the prison and facing some of the same people I arrested. But I think it was because of faith in Christ and his direction in my life.

**BLOOD:** So you'd like to see people have the same kind of hope that you have through your faith?

**JOHN WAYS:** I'm there to offer them the gospel of Jesus Christ.

**BLOOD:** Fair enough.

**JOHN WAYS:** And that-- I think when he offers the direction of your feet, I think everything else will fall into place.

**BLOOD:** Thank you.

**BREWER:** Questions? Well, thank you for your testimony. Thank you for your service to our state and to the law enforcement community. I, too, after I retired decided that maybe there was a way to contribute and have been active with the Native American group at the prison with the veterans, with the lifers. And you know the work you do changes lives. And thank you for doing that.

**JOHN WAYS:** Thank you.

**BREWER:** All right. Next proponent. Welcome to the Government, Military and Veterans Affairs Committee.

**MAJOR DEWAYNE MAYS:** Thank you, Senator Brewer and members of the Government, Military and Veterans Affairs Committee. I am Major

Dewayne Mays, Major, M-a-j-o-r, Dewayne, D-e-w-a-y-n-e, Mays, M-a-y-s. My address is 2711 South 74th Street here in Lincoln, Nebraska, and I'm representing the Lincoln branch of the NAACP, which is the National Association for the Advancement of Colored People in support of LB83. The NAACP is the largest civil rights organization in this country and it has advocated for the rights including voting rights for all citizens. It is our mission to oppose, challenge, and fight any and all efforts to limit or diminish the voting rights of citizens of Nebraska. Rights that should be afforded to all citizens to include restoring voting rights upon completion of a felony sentence. The current law allows the restoration of voting rights two years after completion of a felony sentences. This double jeopardy disenfranchises thousands of Nebraskans voting-- voters each year. Many of which are people of color or poor. The Lincoln Branch NAACP opposes voter suppression or any other form of voter ID restriction or restricted voting right registration. We believe that providing citizens with the right to vote is the most effective tool for rehabilitation and integration into society. About 4 million Americans, or 1 in 50 adults, are not allowed to vote because of their-- they have convictions of a felony. About 13 percent of African-American males are prohibited from voting. We believe that the more opportunities

given persons complete in incarceration to participate in the demo-- democratic process, the less the recidivism among the prison population. We encourage you, the members of this committee, to join many other legislators around the nation who do not place a two-year restriction on the restoration of voting for their citizens. Therefore, please vote yes on-- to advance this LB83. Thank you for your service and for the opportunity to participate.

**BREWER:** Thank you, sir. Senator Blood.

**BLOOD:** Thank you, Chairman Brewer. And thank you for your testimony. I'm gonna ask you a hard question, and it's gonna be two parts. Are you familiar with what a poll tax is?

**MAJOR DEWAYNE MAYS:** Yes.

**BLOOD:** Can you describe for the record what a poll tax was?

**MAJOR DEWAYNE MAYS:** Poll tax was a, a tax that were placed upon people in order to vote. My parents paid poll tax in Arkansas and it was-- my dad even helped to collect them so then to encourage other members of the community to pay their poll taxes so that they could vote. That was a requirement.

**BLOOD:** And what do you-- and I'm-- this is your personal opinion, but I feel that being-- representing the NAACP that you're qualified to answer this question. What do you think the purpose of the poll tax was?

**MAJOR DEWAYNE MAYS:** The poll tax was a way of restricting voters because many of the poor persons in the community did not have the money to pay at that particular time was \$1.

**BLOOD:** So poor and people of color.

**MAJOR DEWAYNE MAYS:** Yes.

**BLOOD:** And then I, I think Evelyn Butts took it to the Supreme Court and it was found to be--

**MAJOR DEWAYNE MAYS:** Unconstitutional.

**BLOOD:** --unconstitutional. In some ways do you feel that not allowing felons the ability to reintegrate into society is just kind of a new version of the poll tax?

**MAJOR DEWAYNE MAYS:** It is. It serves the same purpose.

**BLOOD:** To disenfranchise?

**MAJOR DEWAYNE MAYS:** To disenfranchise, yes.

**BLOOD:** Thank you.

**BREWER:** OK. Additional questions? Now I've got one quick one for you. Your first name?

**MAJOR DEWAYNE MAYS:** Major.

**BREWER:** Your, your, your mom and dad gave you the first name Major.

**MAJOR DEWAYNE MAYS:** Yes.

**BREWER:** Why didn't they give you the first name Colonel?

[LAUGHTER]

**MAJOR DEWAYNE MAYS:** Major was the name of my uncle and I was--

**BREWER:** Really.

**MAJOR DEWAYNE MAYS:** --named in his-- in honor of him.

**BREWER:** Wow. Very good. Well, thank you for your testimony.

**MAJOR DEWAYNE MAYS:** You're welcome.

**BREWER:** Good afternoon.

**FRAN KAYE:** Good afternoon.



**BREWER:** Good to see you.

**FRAN KAYE:** Thank you very much for letting me come here. My name is Fran Kaye, F-r-a-n K-a-y-e, easy "peasy." I-- I'm semi-retired university professor. I am still teaching one class at LCC, the prison, this semester. We met this morning. I volunteered in the prisons in Nebraska for about 25 years teaching English, teaching restorative justice, Native studies, and just sort of being a general cheerleader. It's really important for me to see my guys, my gals come back into the community and succeed. One of the things that is most important for letting people succeed in reentry is having a compassionate sense of belonging to the community. If you believe that you have a place you are going to fight to keep that place. If you figure, oh well, I don't have a chance. I'm just gonna go back anyway. I might as well fill in the blank. Voting and being recognized as a citizen is one of the best ways to get that sense of compassionate belonging. It is to my mind absolutely ridiculous to make people wait for two years after they get out. The first two years after being released are when one is most vulnerable. If we saw somebody fall off a cliff and they're hanging on by a root and you can sort of see the pebbles coming out around them. You know, like in the cartoons. You don't say, oh well, why don't we wait two years and then we'll give them a

hand up. No, we don't do things that way. We need to bring back the sense of compassion belonging to the community by letting people vote, by letting people know that they are valued citizens that they can succeed. That there is hope. We know from what Senator Wayne has said and Senator Blood has helped other people to say that this was a racist law to begin with, that the two years Senator Schimek established last time round was arbitrary, that there is no reason to wait two years. We want people to succeed. Let's give them that sense of compassionate belonging by restoring their vote. Thank you very much.

**BREWER:** Thank you for your testimony. And I would be remiss if I didn't let everyone know that whenever I go to the Nebraska State Penitentiary, Fran is there, Fran is a pillar of support. She's there for all of the Native American activities out there and, and lifers so thank you for the contribution you make of your time and efforts to, to help. Questions? All right. Thank you for your testimony.

**FRAN KAYE:** Thank you. And thank you for coming to the prison, too.

**BREWER:** Welcome to the Government, Military and Veterans Affairs Committee.

**LUCIA PEDROZA:** Thank you. Good afternoon. I don't know if you can hear me, I talk very softly. My name is Lucia Pedroza, and I'm the senior organizer at the Heartland Workers Center. My name is spelled L-u-c-i-a P-e-d-r-o-z-a. So our organization is dedicated to building a community that works for all. And we do that by focusing on workers' rights, civic engagement, and leadership development. We have a nonpartisan get out the vote campaign called I Vote for my Family or Voto por mi Familia. In the past seven years we have been working tirelessly to increase voter participation in areas where voter turnout is typically low. We started out in south Omaha, but now having expanded to north Omaha, Schuyler, Nebraska City, Bellevue, Columbus, and Grand Island, and working on going to Fremont and Norfolk this year, too. I'm not an expert on the judicial system nor do I have statistics for you today. So hopefully some of the experts in the audience can help you with that. But I'm here to share with you that we have canvassed in all those area that I just mentioned and we have seen firsthand just like Senator Hunt said, the many faces of people that have been charged with felonies in the past and are eligible to vote but they don't know it or they could be eligible but they have to wait. And there is no better feeling than to tell somebody that they can vote and they can participate, that their voice matters, too. In

Schuyler, we spoke with Rogelio. He's a young man who recognized that he's made mistakes in the past but he doesn't want to be defined by those mistakes. He wants to contribute to his community and he sees voting as the best way to do that. In Grand Island, we spoke with a young woman and she has been registered for three years now. She said that after prison her main focus was just putting her life back together. When she finally was able to register she got a voter card at the commission and she said that getting that card was like being part of society again. So I don't know if you can imagine that or when you got your license-- you know, getting that one card or document that makes you feel like you're doing something else. In recent conversations with young people all around the metro area, they have said that one of the biggest issues that they care about is being in a preschool-to-prison pipeline and they have seen their family members and friends being part of that system and-- you know, seeing the struggle or being-- trying to put their lives back together after prison. If our younger generations are internalizing that as part of the reality, I think we have a big problem. And we think we can do something about it today. So I'm here to ask you to support LB83 because we can make a difference in restoring people's lives and that of their families because they belong in our communities

not in prisons. And just so you know, I was talking to my son last night-- he's ten, and he wants to come personally talk to you because he says that senators can change people's lives so no pressure. [LAUGHTER]

**BREWER:** Well, thank you for your testimony. He, he may think a little higher of us than we deserve, and that's fine. [LAUGHTER] And we would love to have the conversation. All right. Questions? All right. Thanks for coming in. I know it can be a little intimidating, that big chair. You feel like either they give you too big a chair or you're too small. Welcome to the Government, Military and Veterans Affairs Committee.

**SHAKUR ABDULLAH:** Good afternoon, Senator Brewer and members of the committee. My name is Shakur Abdullah, S-h-a-k-u-r A-b-d-u-l-l-a-h. I am a trainer for the Community Justice Center. I appear here today as a private citizen and also for the Justus15vote. I want to first begin by thanking Senator Wayne for being courageous enough to bring a bill such as this nature. I was here several years ago when he brought LB75. I supported that bill then. I definitely support it again now. I want to also thank him for the brief history lesson that he gave. I think that it is essential that people have the right framework for what this bill is attempting to do and I think that is part

of that. I exited prison-- discharged after a very lengthy stay January 24 of 2016. I voted for the first time in my life this last past election. It was the most uplifting cathartic thing that I have participated in since my release. I was released. I did what I was supposed to. Got a job, found housing, engaged in all the other things that I was supposed to as a citizen. The one thing that eluded me was the ability to vote. It still made me feel as though that the lengthy sentence that I had completed was still on my back to such an extent that it was still being served. Although, I discharged, I did not get released on parole or any other type of supervision. So for me it felt like if my tax money was good enough to take my vote should have been good enough to take as well. That was not the case. It made me feel ostracized, marginalized, and very much like a pariah in the society even though I had served my sentence. I am in full support of LB83. I think that it is the right thing to do. It is the most restorative justice measure that could be done to include people back in society once their sentence has been served. I would urge the committee to vote this LB83 out of committee. Thank you.

**BREWER:** All right. Thank you for your testimony. Questions? All right. Thank you. Next proponent. Welcome to the Government, Military and Veteran Affairs.

**GABRIELA PEDROZA:** Thank you. Hello, my name is Gabriela Pedroza, that's G-a-b-r-i-e-l-a P-e-d-r-o-z-a. I'm a community organizer at Heartland Workers Center, and I'm here as a proponent of LB83. Part of our work at Heartland Workers Center is nonpartisan canvassing with the goal of increasing the voter turnout across the state of Nebraska. Personally, I spent the primary and general elections of 2018 going door to door in north Omaha to help raise voter participation through helping individuals register to vote, understanding the voting process, and understanding the candidates. One of the biggest restraints to increasing voter turnout was that the number, the number of former felons whom either were ineligible to vote or were unaware that their voting rights had been restored. To help understand the scale of voter turnout in north Omaha, in 2014 there were 13,943 registered voters. That number grew to 2,018-- that number grew in 2018 to 15,070. Even with that growth in 2018, only 5,457 voters actually voted. A number that represented a 54.8 growth in voter turnout from 2014. But the actual voter turnout for 2018 was 36 percent. Now I'm not saying that the amount of felons is solely responsible for low voter turnout in north Omaha nor I am saying that in north Omaha is the only part of Nebraska that suffers from low voter turnout. For example, in south Omaha in 2018 had a 43 percent-- 43.5

percent voter turnout out of 26,387 registered voters. What I am hoping to convey is that removing this barrier to voter participation would help create a more representative state government. Updating legislation to allow voter participation to continue to grow in our state is truly a nonpartisan issue and an issue that would increase voter participation on both sides of the table. Furthermore, removing this barrier to civic participation would also allow our community to rally around civic engagement creating a more involved community. Not only this is a barrier for people to vote but also creates a barrier for people to feel like they can create a better future for themselves and a family after they had done their time. I thank you for your time and I hope you support this bill to help strengthen our community.

**BREWER:** All right. Thank you for your testimony. Questions? All right. Thanks again for coming in.

**GABRIELA PEDROZA:** Thank you.

**BREWER:** All right. Welcome to the Government, Military and Veterans Affairs Committee.

**SCOTT WILLIAMS:** Thank you. Good afternoon, my name is Scott Williams, S-c-o-t-t W-i-l-l-i-a-m-s. I live at 1139 South 93rd



Ave in Omaha. I join you here today to testify as a proponent of LB83 regarding restoring voting rights. Thank you, Senator Wayne, for bringing this bill to the Legislature. And I hope that this committee provides him with the opportunity-- and if he's here, provides him with the opportunity to make this his prior-- provides you [LAUGHTER] with the opportunity to make this your priority bill. I appreciated the testimony of Mr. Miller with Civic Nebraska on the first piece of legislation during today's hearing. He highlighted an objective that I'm sure that we all share and that is to expand engagement in our democratic process. We need Nebraskans, as many Nebraskans as possible to vote. In fact, this building that we are in today is quite literally built on that notion. If you entered today through the north entrance you would have seen engraved over the door, "The Salvation of the State is Watchfulness in the Citizen." And ingrained in that watchfulness is voting. Currently, two states have no voting restrictions whatsoever with respect to felony convictions even people who are still in prison are afforded their right to vote. Senator Blood had mentioned this previously during her questioning. If it were my sole discretion this would be the standard that we would enact here in Nebraska to ensure the good life for all Nebraskans. But the bill in front today is more moderate than that standard.

Currently, Nebraska shares a dubious distinction of being in a small group of states that are the most restrictive of individual liberties. I was an active part of a campaign during 2018. I knocked on what felt like an overwhelming number of doors. Part of canvassing includes asking people about their plans to vote. I remember vividly and viscerally the emotions on the faces of people whose voting rights are restricted by our state: frustration, exasperation, embarrassment, and shame. I know that I spoke to people who lied about their voting eligibility as a result of those same emotions. As state senators, each of you was elected. I wonder if any of you remember the same, the same experience while you were campaigning. I-- Senator Hunt, I know that you do. You mentioned in your remarks. I prepared my remarks in advance today and I'm embarrassed to say that there is no way that I could ever express those emotions that I experienced other people having as well as Mr. Abdullah had expressed the feelings that he felt. So I appreciate his testimony as well. Men and women of Nebraska who have served their time and paid for their past offenses should be granted restoration of their rights without additional arbitrary restrictions. I ask you to support the restoration of their freedom without delay. And with that, I'd answer any questions if I can. And I encourage you to support LB83. Thank

you, Senator Brewer and Senators of the committee for your time today.

**BREWER:** Thank you for your testimony. Questions? Must have done a good job.

**SCOTT WILLIAMS:** Thank you, Senator.

**BREWER:** Thanks. All right. Welcome to the Government, Military and Veterans Affairs Committee.

**SCHUYLER GEERY-ZINK:** Good afternoon, Chairman Brewer, committee members. My name is Schuyler Geery-Zink, S-c-h-u-y-l-e-r G-e-e-r-y hyphen Z-i-n-k, and I'm a staff attorney with Nebraska Appleseed. We strongly support the elimination of the two-year waiting period for people who have completed their sentences to reintegrate back into democratic society and vote in elections like any other citizen. We have a longstanding tradition of fair and just elections in Nebraska due in large part to our commitment to voter enfranchisement. By removing the unnecessary two-year waiting period for ex-offenders to register to vote, LB83 takes an important step in allowing people who have pay their debt to society and completed their prison sentence to participate in civic life upon release. Nebraska is committed to a social policy goal in which people have served their sentence

are able to reintegrate back into the community. However, ex-offenders are met with significant continuing consequences for their conviction even well after they have completed their prison sentences such as limitations on housing, employment, education, and the issue at hand in this bill. Everyone deserves a second chance to prove themselves. People should not continue to be punished for mistakes already atoned for. Ideally, voting rights should never be abridged or denied even while serving the sentence. But as people return to and rebuild their lives they should have the liberty to vote and the opportunity to find a job, pay taxes, and provide for their families. Voting is one of those many actions which can reduce recidivism and encourage a sense of community, normalcy, and political efficacy for people reentering society. I recently learned my former neighbor had a past felony conviction. He's a generous neighbor who shovels other sidewalks including my own which I very well appreciated. He cared for his pregnant wife when she had a life threatening health complication during birth. He plays with his kids and dog in the yard and works hard at his job every day to provide for his family. A lot of misinformation about voting still exists and even though it's been several years since he completed his sentence and he is eligible to vote he didn't know that he could. The right to vote should not be abridged in the first

place, not from my neighbor and not from any other previously incarcerated Nebraskans out there trying to rebuild their lives. By advancing LB83 and restoring voting rights, this committee is making a long-term commitment to a population of Nebraskans who have important perspectives and are ready, willing, and able to make a meaningful contribution to their community by voting alongside their peers. We strongly urge you to advance LB83. I'll take any questions.

**BREWER:** OK. Thank you, Schuyler. Questions? Go, you're up.

**HILGERS:** Thank you, Mr. Chairman. Have you looked at the constitutionality section of it?

**SCHUYLER GEERY-ZINK:** I have.

**HILGERS:** Are you-- would you be comfortable having a dialogue with me? I don't want to ask-- I don't want to sort of surprise someone with a-- I know, maybe it involves me reading some cases, things the provision, so I'm happy to ask someone, someone else but--

**SCHUYLER GEERY-ZINK:** I would, I would defer to someone behind me.

**HILGERS:** OK.

**SCHUYLER GEERY-ZINK:** But simply, I would say that I agree with Senator Wayne's legal interpretation of the state constitution based off of my, my own analysis.

**HILGERS:** OK. Is there anything that you-- I'll ask-- if there's some behind you, I'll ask them that question. But I will-- is there anything in addition you'd like to add to that analysis while you're here.

**SCHUYLER GEERY-ZINK:** I don't, I don't think so.

**HILGERS:** OK. Thank you.

**SCHUYLER GEERY-ZINK:** Yep.

**BREWER:** All right. Thanks for your testimony. Welcome to the Government, Military and Veterans Affairs Committee.

**CAROL WINDRUM:** Thank you, Senator Brewer, Senators of the committee. My name is Carol Windrum, C-a-r-o-l W-i-n-d-r-u-m. I reside at 3735 North 39th Street in Omaha, Nebraska, District 11. I'm here to testify in favor of LB83 to eliminate Nebraska's mandatory two-year waiting period to vote on returning citizens after they've completed their felony sentences. I'm a United Methodist clergy person. I believe in restoring people's dignity and self-worth after they have made mistakes. From my Christian

context, I understand that all humans are flawed and fall short of the glory of God. Those who break the law and those of us in this room we all fall short of perfection. That being said, I believe that laws in their best intent are made to bring order, security, and well-being to the community. We need laws and those who break laws should be ready for the consequences. The community must be protected, members must be able to live in safety and security. I also believe that everyone should have the opportunity to be restored to the community and the state agrees with this. After a person has served their time, she or he should be reintroduced to society as a full participant. But that is not so presently. When citizens are released after serving their time, we don't say to them, hold off on paying your taxes for two more years. We want to see how you do. No, we expect them to pay up. After all, they have served their time. But we aren't so excited about them truly being full citizens when it comes to voting. Unless we change the law, we're actually saying to them that they indeed have not served their time, their sentence is not over. Again, they are expected to pay taxes as full citizens and yet we don't allow them to vote for two more years. Nebraska is one of only five states that have this law in place. My Christian faith informs me to honor the human dignity of all. And as a Christian and as a Nebraskan,

I am urging you to honor the human dignity of every citizen and if they have paid their, quote, debt to society, unquote, they should have voting rights restored after they have completed their felony sentences. Thank you.

**BREWER:** Thank you. And I have just changed my mind. I want you to defend me not-- [LAUGHTER] All right. Questions? Thank you, ma'am.

**CAROL WINDRUM:** Thank you.

**BREWER:** All right. Next proponent. Welcome to the Government, Military and Veterans Affairs Committee.

**MIKE FORSYTHE:** Thank you, Senator Brewer and members of the committee. My name is Mike Forsythe, M-i-k-e F-o-r-s-y-t-h-e. I reside at 4201 North 136th Street in Omaha. That's LD 18. In 2018, I ran for the Nebraska Public Service Commission in District 3 which includes western Douglas County, Sarpy, Saunders, and Washington County. And like Senator Hunt, I was taken aback by the number of people that I encountered along the way in the process of my campaign that were in limbo, if you will, they weren't sure of their voting status. Some of them were-- turned out they were eligible to vote. Some weren't. And the ones that weren't-- I had one gentleman tell me that he did



feel that he was alien-- felt alienated and isolated and as if he didn't count. And I think the expectation that we have for, for felons once they, once they are-- they've completed their sentences that they reintegrate into society, that they become, they become gainfully employed and they pay their taxes. And this gentleman has done that, yet that-- yet he couldn't-- he was ineligible to vote for me or anybody else because of this arbitrary and extreme policy. And I believe that-- it's my contention that once a person has served their, served their-- completed their sentence successfully that they should be able to choose who represents them in government. Thank you.

**BREWER:** Thank you for your testimony. Questions? Senator Blood.

**MIKE FORSYTHE:** Yes.

**BLOOD:** Thank you, Chairman Brewer. And thank you for your testimony. Do you ever watch documentaries?

**MIKE FORSYTHE:** I do.

**BLOOD:** Did you ever see the documentary Breaking the Cycle where they highlighted the Norway prison?

**MIKE FORSYTHE:** No, I haven't seen that one. That's about the only one I haven't seen. [LAUGHTER]

**BLOOD:** Come to my house. So what you said just kind of touched on that. And if I heard you correctly you're reminding us that one day these people are gonna be our next door neighbors.

**MIKE FORSYTHE:** Sure.

**BLOOD:** And so our goal is always to make sure that we do right by our next door neighbors because we want them to be good neighbors. Would you say that's accurate?

**MIKE FORSYTHE:** Pardon?

**BLOOD:** Would you say that that statement is accurate?

**MIKE FORSYTHE:** Absolutely.

**BLOOD:** Thank you.

**MIKE FORSYTHE:** Um-hum.

**BREWER:** All right. Any additional questions. Thank you, Mike, for your testimony.

**MIKE FORSYTHE:** Thank you.

**BREWER:** OK. Next proponent. Welcome to the Government, Military and Veterans Affairs Committee.

**MARY BOSCHULT:** Thank you, Senator. My name is Mary Boschult, M-a-r-y B-o-s-c-h-u-l-t, and I'm representing the League of Women Voters of Lincoln and Lancaster County. The League is a nonpartisan organization that encourages informed and active participation in government. We do not support or oppose candidates or political parties. We work to increase understanding of major policy issues and to influence public policy through education and advocacy. We want to express our support for LB83, the bill to restore the voting rights for felons upon completion of their sentence including parole rather than waiting two years. The League of Women Voters believes that the right of every citizen to vote should be protected. Excessive disenfranchisement undermines voting rights as well as the reintegration into the community for those who have completed their sentences. Voting links people to their local and national communities. Being able to vote creates political participation and a vested interest in their community. It increases the success of their reintegration into the community after fulfilling their sentences. We urge you to advance LB83 to General File. And we, too, experience when we do voter registration at very many different locations around the community and whether it's the homeless shelter or the library, we do experience people coming and not knowing that they can

vote that they've completed their sentence and with-- and homeless people as well. It becomes a challenge to register homeless, homeless veterans and former felons.

**BREWER:** All right. Thank you, Mary. OK. Questions? All right. Thank you for your testimony.

**MARY BOSCHULT:** Yes.

**BREWER:** OK. Any additional proponents? Come on up. Welcome to the Government, Military and Veterans Affairs Committee.

**SARENA FREET:** Thank you. My name is Sarena Freet, S-a-r-e-n-a F-r-e-e-t. I'm here to speak in support of LB83. I'm gonna be brief. I-- one, I don't think that the bill is enough. I don't think that it's-- that we shouldn't deny the right for incarcerated people or felons to vote. I think that should be something that they shouldn't have to-- regardless of their sentencing. And Senator Blood, I'd like to say that felons are already our neighbors. Right? As you mentioned. And this is really important.

**BREWER:** All right.

**SARENA FREET:** Thanks.

**BREWER:** Thank you. Senator Blood.

**BLOOD:** Thank you, Chairman Brewer. Take a deep breath. You did great. Because you're so passionate about this, where does your passion come from? And I'm not trying to make you cry more.

**SARENA FREET:** No, no. Wait just one moment.

**BLOOD:** It's all right. You're doing great.

**SARENA FREET:** I'm passionate about this because I know several people that don't have the right to vote for a variety of reasons. And in order for them to be able to be a functioning person of our society that's a really basic right of democracy and equal representation, and that clearly isn't happening.

**BLOOD:** So it sounds like you are a big supporter of human rights.

**SARENA FREET:** Yes.

**BLOOD:** Thank you.

**SARENA FREET:** Thank you.

**BREWER:** All right. Thank you for your testimony.

**SARENA FREET:** Thank you.

**BREWER:** OK. Any additional proponents? Come on up. Have a seat. Sit down and relax. Welcome to the Government, Military and Veterans Affairs Committee.

**JASON ABLES:** Thank you. Hello, my name is Jason Ables, J-a-s-o-n A-b-l-e-s. I'm here to speak in support of the bill. I think it's an important step forward. I also don't think it goes far enough. I-- I'm directly affected by the current policy. My right to vote will be reinstated the 24th of August of this year. Before I became a dangerous criminal, I had a life and a career that I built here in Lincoln. I started as a busboy and a dishwasher at a brew pub downtown in 1998 and I worked my way up and through a handful of places and learned every aspect of the business. In 2005, I opened my first restaurant in this town. In November of 2014 when I was arrested for selling weed, I had just opened my second restaurant. It was the third business I owned. So my perspective isn't just as a felon, as a danger to my community, but as someone that was a bit of a poster boy for the American dream. Right? I worked hard, spent my whole life trying to build something and turned it into a small business. I collected tax revenues for the city and the state, created some jobs, made the community more interesting, more vibrant. And as I sat in the day room at C unit at a Community Corrections and watching the election results in 2016 come in, I thought a lot

about what programming and rehabilitation should look like. I, I own a home just ten blocks from here. I did then, too. I should have received an absentee ballot and the rest of the men and women in that facility should have as well. Those that weren't registered should have been registered. Part of rehabilitation should be educating us on how to participate in our, in our society in a meaningful way. This is your kids' school board, city council, mayor, this is your state senator, your federal delegation. This is-- these are the judges that are up for retention this year. Here's the President. That's probably an idealized and oversimplified picture, but I think it's-- the sentiment holds. If our, our state is, is sincere in its efforts to help those in custody reenter society, that policy would be a lot closer to what I just described. I urge you to support this legislation, but also to acknowledge that it isn't enough. My crime here in Nebraska cost me 14 months of freedom and a lifetime of struggle. And 500 miles from here, there would have been another storefront. Would have been taxes, a lease, Yelp reviews, unemployment insurance. So I ask you is a felony a legitimate threshold to disenfranchise people from the right to participate in their community at the most fundamental level? I don't think so. I encourage your support, but I ask you to consider if it's enough.

**BREWER:** All right. Thank you for your testimony. Questions? Well, thank you for sharing. It means a lot. All right. Next proponent. And you would be the one that Senator Hilgers has been waiting for. [LAUGHTER]

**SPIKE EICKHOLT:** Thank you.

**BREWER:** Welcome to the Government, Military and Veterans Affairs Committee.

**SPIKE EICKHOLT:** Thank you, Chairman Brewer and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t. I'm appearing today on behalf of the Nebraska Criminal Defense Attorneys Association, but I think Miss Conrad will be testifying later on from the ACLU. The Criminal Defense Attorneys Association supports this bill. I missed some of the proponent testimony because I was in another hearing room but I think this committee is well aware and familiar with this bill, familiar with the issue. Right now, we would argue that what we have is an arbitrary two-year waiting period where a person's rights to vote are automatically restored after they complete their sentence, whether that sentence is imprisonment in a jail, imprisonment in a prison, or even probation. And we would argue that that present state of the law is arbitrary and it would make good public policy sense to simply do away with that and



just provide for restoration of voting rights when a person actually does complete their sentence and serve their time so to speak. I worked here as committee counsel years ago when Senator Schimek did the bill to provide for the two-year waiting period. I can't remember everything off top my head and I don't know how much is on the legislative record and how much was just discussion off the floor that I do remember. But if I remember right, her bill initially proposed for no waiting period and there were some opponents to her bill that suggested a five year or maybe a three year. And really the, the decision to have two years was really just a deal, was really just a settlement-- or an agreement that they had when they did the bill and it was enacted into law years ago. I heard some of the questions earlier. I-- just a couple of things I want to say with respect to some of the arguments that people made in opposition to removing the two years. One argument is, is that this is a good cooling off or a good waiting period, if you will, where a person completes their sentence and then if they have two years of sort of living a life of productivity they can get their right to vote back. First, with LB605, the Legislature already created for low-level felonies an automatic rehabilitative process for a person who's incarcerated. That's automatic. For a person who goes to prison, they're subject to post-release

supervision automatically for a period of time. It can be a little bit less or a little bit more than two years. Secondly, the notion that if a person somehow just doesn't get convicted of another felony in two years that they somehow earned the right to vote back is a little bit inaccurate. In other words, during that two-year period a person doesn't have to do anything. They just have to wait it out and presumably not get convicted of another felony. You can get convicted of all kinds of misdemeanors and you don't lose your right to vote back, you just get it back. What this really does, the two-year waiting period, is really disenfranchise those people in that window who have completed their sentence and want to vote. And I would submit that those people who are in that window are trying to reengage in a positive way with society for trying to-- they've changed their life, are not involved in criminal activity, they want to vote. And those are the people who are kept out by the present state of the law. So we would urge the committee to adopt the bill-- or advance the bill.

**BREWER:** All right. Thank you for your testimony. Senator Hilgers.

**HILGERS:** Thank you, Mr. Chairman. Mr. Eickholt, it's great to see you. Thank you for being here today. Always appreciate your

testimony and insight. So to sort of summarize what I think the questions are from a constitutional perspective or really two. The first question is does the Legis-- does the Legislature-- and it's sort of 1A and 1B, so multiple questions embedded within the two. But does the Legislature have, have the power, to what degree, to restore any civil rights of any, of any kind in a way that doesn't run afoul of our separation of powers in the constitution? That's question one. And then-- and I'll state, state question two, and then I'll kick it to you. Question two then seems to me to be-- if the answer to question one is yes. If the answer question one is no, then we're done I think. From-- because this is a bill and not a constitutional amendment. If the answer to question one is the Legislature does have power, maybe not to Senator Wayne, Senator Wayne suggested all-- completely up to restoring all civil rights because that would be-- so something less than that. Whatever that power is to its maximum extent, is that enough under Article VI, Section 2, of the constitution to, quote unquote, restore to civil rights sufficient to allow the legis-- sufficient to allow for the restoration of voting rights for a felon? Those are the two questions as I see them. There's not a lot of case law that I found. There's a-- maybe an Attorney General opinion or two that, that I found that sort of touch on various aspects of

those questions. With that prelude will you-- would you mind sort of dialoguing with me about both of those questions?

Please.

**SPIKE EICKHOLT:** The answer to the first question is, yes. If you look at State v. Spady, and that-- you can find that case is annotated if you look at the statute 29-2264 and that's the set aside statute and that is a statutory provision that the Legislature created I think sometime originally in the 70s that essentially allowed that if a person is convicted of a misdemeanor or felony or any kind of crime and they complete probation successfully then they can ask the judge to set aside their conviction and restore their civil rights or remove their civil disabilities whatever the language says. I didn't bring my statute book but I did pull it up on my phone earlier. Spady was a case in which-- I don't-- can't recall what disability Spady suffered when he got found guilty of whatever he found-- was found guilty of, but he got a set aside and it may have been like a car dealer type license and may have been something that he was prohibited to have by a licensing thing from the state. He got a set aside. He wanted to get it back. And I can't recall who refused to give it to him but it was litigated and went to the Supreme Court and the issue in Supreme Court is whether the set aside statute under 29-2264 was a legislative pardon,

whether it encroached on the pardon authority under the Board of Pardons. Our Supreme Court said it did not. And Senator Wayne, I think, mentioned this in his opening, and it did not because the set aside is a partial restoration of some rights lost and the Legislature has that ability. And if, and if you look at the annotated cases under miscellaneous, even though it's a big [INAUDIBLE], right? In the annotated cases, it's under miscellaneous and that's just the summary, that's the holding if you will. And that was actually referenced during floor debate after a session at least when they did the two-year waiting period. If you look at Article VI, Section-- is it Section 2?

**HILGERS:** So let me-- can I stop you for just for a second, Mr.--

**SPIKE EICKHOLT:** Sure.

**HILGERS:** So you're-- so on the first-- it sounds like you're about to transition to the second question.

**SPIKE EICKHOLT:** Right.

**HILGERS:** So on the first question, you-- the argument is-- again, I'm trying-- just trying to get the argument.

**SPIKE EICKHOLT:** Um-hum.

**HILGERS:** This a complicated and this isn't always-- it's not clear cut necessarily so I just want to get State v. Spady, which I have in front of me which is 26 [SIC] Nebraska Reporter 99 is that in that case the court found that-- and the statute was 29-2264, which was what you said,--

**SPIKE EICKHOLT:** Right.

**HILGERS:** --was not a pardon. It was not a pardon, but like a legislative pardon that would,--

**SPIKE EICKHOLT:** Right. That would encroach on the--

**HILGERS:** Right, exactly,--

**SPIKE EICKHOLT:** --power of the Pardons Board.

**HILGERS:** --separation of powers.

**SPIKE EICKHOLT:** That's right.

**HILGERS:** It looks like there's-- and I'll just-- and so we're on the record and to save someone who looks at this later, I'm looking at pages 104 and 105. The court identified a few things that it found relevant to the consideration that it was not a pardon. So for instance, the party's not exempted from punishment. It's only applied in limited circumstances. A

conviction cannot be set aside unless the person has been placed on probation or sentenced to a fine only, can be introduced in later court proceedings, can be used to impeach a witness, etcetera. So--

**SPIKE EICKHOLT:** And, and all of those things like there-- all those features that that conviction that was set aside in Spady apply here. In other words, two years after your felony conviction you can vote. Right? So after you complete your sentence, but your felony is still on your record. You can't get a gun. You still have lost your [INAUDIBLE]. If you get in trouble again and that felony is "enhancible" or whatever it can-- that conviction from before can be used to make a later charge more serious or more severe. So all those things are, are happening. And if you look at LB83, it amends 29-2264 in part along with some other statutes because at 2264 deals with the probation completion and you-- it's two years after you complete a sentence and that's probation. That's prison or jail. The other thing I was going to say is that if you look at Article VI, Section 2--

**HILGERS:** So you're--

**SPIKE EICKHOLT:** Sure.

**HILGERS:** I just want to make sure because these are just the questions I think when I start muddling them and-- so that-- OK, I hear you on, on the second-- first question, that in other words the Legislature does have the power to do so. Do you have any-- have you seen anything that might-- I mean, anything beyond Spady that suggests what the outer limit might be? In other words, Senator Wayne has suggested that a full pardon, Legislature can't do. Any sense of what less than a full pardon-- what's the outer bounds of the Legislature's authority?

**SPIKE EICKHOLT:** There was a case, I can't-- I think it was Ways v. Shively, W-a-y-s, that said that a set aside does not restore your right to vote. So at least in that case there has been sort of a limitation of what that [INAUDIBLE].

**HILGERS:** But that-- and that was interpreted as a Miller-- Justice Miller-Lerman case I believe. And that was actually dealing with-- was that the prior version of the statute before the two years was--

**SPIKE EICKHOLT:** Before the two years. That's right, that's right.

**HILGERS:** All right. So-- OK, so that's question one, question two, go ahead.



**SPIKE EICKHOLT:** If you look at Article VI, Section 2, it says, restore to civil rights. It doesn't say unless we pardon by the Board of Pardons or Board or-- yeah, Board of Pardons pursuant to-- and you know, if you look at the Board of Pardons' power and that's in Article IV, Section 13: the Board of Pardons as the power to grant respites, reprieves, pardons, or communication [SIC] except in cases of treason or impeachment. In other words, it doesn't use that language restore civil rights. When we talk about the Pardons Board, they didn't use that phraseology restore civil rights. I'd argue that a way to read that or restore civil rights as provided by law and that would-- I know I'm reading words in there, but that's [INAUDIBLE] out of me, the Legislature has the authority. I think the Legislature has authority because it says treason or felony. What's a felony? The Legislature has the ability to make anything a felony. Right? You can say what a felony is and in our state it's anything punishable by a year or more in prison. OK, that's a cut off we have on our, I think, 29-- 28-105, that's our statutory definition for a felony. We could limit it. And at the time when they had this constitutional amendment, I would submit that felonies were things like treason or murder or sexual assault. And that's probably it.

**HILGERS:** Yeah. Although, I push back a little bit just because-- I mean, the Legislature does have the-- has the authority to change what a felony is.

**SPIKE EICKHOLT:** Right.

**HILGERS:** But this presupposes where that-- we're dealing with felonies. So the Legislature could I suppose say, we're not gonna have felonies anymore.

**SPIKE EICKHOLT:** Right. We're only gonna have a handful of them that all existed in 1867 or 1875 or whenever we drafted the constitution. In other words, we have a lot of felonies now that I would submit would have nothing to do with any kind of rational reason to deprive somebody of their right to vote.

**HILGERS:** And that, and that could be but I guess that's not the touchstone. It doesn't appear the textual touchstone of, of Article VI which is if there's that felony then you can vote. I mean, unless restore to civil rights, so the, the other-- and you've kind of touched on this and I, I just-- and this is probably my last question depending on what you say, but [LAUGHTER]-- I mean, it's-- restored to civil rights is such-- I mean, it really strikes me as a term of art.

**SPIKE EICKHOLT:** Right.

**HILGERS:** And I've looked to see-- and I've been unsuccessful really-- I mean, this goes back to the 1800s. Right? What does this mean? It, it had to have some intent, some meaning at the time maybe some commonly, and maybe it wasn't commonly understood, but-- you know, I would think some commonly understood meaning-- it, it does pop up in other state statute or state constitution. Do you anything that you can point to and, and maybe you come up dry like I have that can really help us understand what the phrase initially meant or even, or even if it's evolved over time. Just something to look back and say, what does this mean? Because right now, I'm sort of grasping as a layperson trying to understand what this means. It might-- it seems like a term of art you know.

**SPIKE EICKHOLT:** I haven't researched it in a while because I researched that same issue. It is a term of art. It's-- maybe it's just copy from another constitution that was drafted nearby. I mean, who knows that there is actual deliberate intent put behind the language. The only thing I would say is that our court has in Spady and I think in McCray v. State Patrol has approved of the Legislature providing for post-conviction restoration of things that are lost with a conviction even a felony conviction. They've said that you can do that and no courts ever said that the two-year restoration, the two-year

waiting period that we have now is unconstitutional. That's never happened. And I think what Senator Wayne before us presumed to be constitutional. And I don't argue it is. And I think since we-- the Legislature has the ability to create what is a felony. Right? Which we have and you can say we can-- there's no longer gonna be felonies that just cause chaos or the system probably wouldn't do that, but ultimately have that ability. But I think that we have the ability to-- the Legislature would have the ability to decide what-- whether someone's right to vote should be restored and when.

**HILGERS:** Thank you very much. I appreciate your insight.

**BREWER:** All right. Just for the record, I did warn you. Right?

**SPIKE EICKHOLT:** Well, I think so.

**BREWER:** OK. Additional questions? Senator Blood.

**BLOOD:** Thank you, Chairman Brewer. Thanks, Spike, for putting more lawyer speak into my head. So if I'm-- I'm hearing you banter back and forth as I did with the previous person. So in a nutshell, would I be right if I said amendments to the constitution usually have a required equal protection? I can't do lawyer speak, but they usually have an equal protection like when we eliminated the poll tax or made it unconstitutional to

restrict voting based on like race, sex, age. Doesn't this fall under that type of umbrella?

**SPIKE EICKHOLT:** The current law that we have right now for [INAUDIBLE]. I'd argue that you probably do because it is-- I would, I would suggest it's arbitrary just to even be found guilty of felony [INAUDIBLE]. And here's why-- because if you look at Chapter 32, there's a bunch of crimes that deal with fraudulently getting an early ballot--

**BLOOD:** Right.

**SPIKE EICKHOLT:** -- or violating voting laws. In other words, that have a nexus to whether you shouldn't be able to vote anymore but those are misdemeanors. You can commit them indefinitely--

**BLOOD:** As much as you want and still vote.

**SPIKE EICKHOLT:** -- and not lose your right to vote.

**BLOOD:** Yeah.

**SPIKE EICKHOLT:** But if you have a small amount of a controlled substance or if you get a felony that really has nothing to do with whether you should be able to vote at all, you lose this. Right there, I think you have a kind of a suspect equal

treatment, equal protection kind of argument. And then-- you know, you kind of have this.

**BLOOD:** And so that would make it constitutional, is what I'm asking. Right?

**SPIKE EICKHOLT:** It maybe suspect. I, I suggest that you just do away with it.

**BLOOD:** Maybe I should go to law school.

**SPIKE EICKHOLT:** Well, maybe. I don't know, maybe. [INAUDIBLE]. That's one thing I was, I was--

**BLOOD:** I was trying to put this into a synopsis that I can understand. Let, let me ask you this. And if you don't have the answer, I'm hoping--

**SPIKE EICKHOLT:** Oh, Danielle will.

**BLOOD:** --ACLU does. Do you have a defin-- definition of disruptive justice?

**SPIKE EICKHOLT:** I don't.

**BLOOD:** All right.

**SPIKE EICKHOLT:** I don't.

**BLOOD:** Somebody's gonna have this answer. All right. Thank you, Spike.

**BREWER:** All right. Senator Hilgers.

**HILGERS:** Did you-- I'm, I'm sorry. Did I hear you say that you thought there was an equal protection problem with our current statute? Is that what I heard?

**SPIKE EICKHOLT:** I think you can make a pretty good argument that there's-- that, that the loss-- you mean the-- well, let me start over, the two-year waiting period?

**HILGERS:** I don't know what-- I, I missed what the it was.

**SPIKE EICKHOLT:** Oh, well I--

**HILGERS:** I just heard you say there's equal protection clause or prob-- potential problems. I just-- that's why I asked the question to clarify, I didn't want to assume.

**SPIKE EICKHOLT:** No, I, I wasn't sure I was being responsive to her question, but if I was, I was trying to say that there's-- I would argue an equal treatment problem already with the loss of voting rights. And I tried to give the example about it. If this notion that being convicted of a felon-- a felony, aha, you shouldn't be able to vote any more. Right? And I know it's in

our constitution so you have somehow be consistent with at least our state's pro-- protection for equal protection. But I think-- and I don't know, I'm just kind of thinking off the top of my head, you probably could make a pretty good argument that there's really no rational reason to make that distinction for that kind of crime. When you commit other kind of crimes that really have a nexus whether you ought to be able to vote at all, but they're misdemeanor level offenses.

**HILGERS:** And I would imagine there'd be case law on that somewhere.

**SPIKE EICKHOLT:** And there might be. [LAUGHTER]

**HILGERS:** Thank you very much.

**BREWER:** All right. Any additional questions? Thank you for your testimony and your patience. Welcome back to Government, Military and Veterans Affairs.

**DANIELLE CONRAD:** Hi. Good afternoon.

**BREWER:** It's almost like they're anticipating special information from you.

**DANIELLE CONRAD:** My name is Danielle Conrad, it's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I'm here today on behalf of the ACLU of



Nebraska. It's nice to be amongst the warm embrace of the Government, Military and Veterans Affairs Committee on this cold and snowy day amid this never ending winter. Now I've been listening to all the testimony and I don't know if I've ever quite felt the amount of pressure leading up to testimony as I do today. But my friend and colleague, Spike, did a great job on behalf of Nebraska Criminal Defense Attorneys. I think trying to, to lay out some of the thinking in the case law on the jurisprudence surrounding set asides and separation of powers, I'm happy to continue that dialogue and to add some additional thoughts. I'm hoping to at least initially though provide some additional considerations on the record and then we passed around some written testimony for you to take a peek at as well. Number one, I want to make sure to reaffirm and impress upon you, which I know you already know, but that voting is a fundamental right and it is the cornerstone of our democratic system. It is the fundamental right upon which all of our civil liberties rests upon. Right? So, so that's kind of the threshold premise that I think we need to establish. Secondly, we need to look at this issue in the context of an era of mass incarceration, right, and where we are today. So because of the state has to prison pipeline and a host of other factors and as Spike started to lay out a little bit in context. Today, there's

a lot of activities that are charged as and they're considered felonies, right, in our criminal code. And today our system of mass incarceration has grown so unwieldy that about one in ten Nebraska kids have a parent in the criminal justice system. Let that sink in for a minute. Right? And then when you think about how many Nebraskans-- how many of our fellow Nebraskans does this type of legislation impact, it's a little bit tricky to get our heads around. There's a report from legislative research in 2014 which demonstrated that this legislation would impact about seven or eight thousand Nebraskans. I think if you look back at the legislative history when Senator Schimek brought this legislation, there was estimates of tens of thousands of Nebraskans. A bill Senator Wayne has for this year, LB84, which is related to tax credits for hiring returning citizens, demonstrates that they impact the Department of Corrections about 24,000 Nebraskans would be impacted. So there's a significant chunk here that we need to think about and not just the run numbers either. Right? We need to not forget for one minute that our system of mass incarceration is inextrica-- inextricably intertwined with racial justice issues and racial justice-- racial injustice issues. And when you look at, for example, the demographics of Nebraska where roughly top lines about 15 percent of our population are Nebraskans of color but

almost 50 percent of Nebraskans who are incarcerated are Nebraskans of color. We can't divorce that reality from this conversation. And I think Senator Wayne was on fire and, and absolutely right on in his opening comments. I see I'm already at the red light. So with that, I'll, I'll rest in our written testimony and would, would be happy to open up the dialogue about some of our previous research about felon disenfranchisement in Nebraska and the broader constitutional conversation.

**BREWER:** All right. Well, thank you for your--

**DANIELLE CONRAD:** Yes.

**BREWER:** --opening and, and I think you're have plenty of opportunity to fill in any of the gaps. All right. Let's start with questions? I'm gonna go to Senator Hilgers first just because I always go to you first.

**BLOOD:** I take less time.

**HILGERS:** Thank you, Chairman Brewer. Thank you for being here always appreciate your insight and thoughts.

**DANIELLE CONRAD:** Yes, it's fun to be here.

**HILGERS:** I don't want to retread all the ground that I-- maybe just some of it--

**DANIELLE CONRAD:** Sure.

**HILGERS:** --that I had--

**DANIELLE CONRAD:** Sure. Yeah.

**HILGERS:** --that I had with Mr. Eickholt. First, would you-- and I'm not certain that it is, but I think it is, it seems like it is a two, a two-step constitutional question. First, does the Legislature have the authority to do any sort of restoration of any civil right? And then if so, what-- to what extent? And then, secondly, whatever that power is, is it sufficient under Article VI, Section 2, to restore--

**DANIELLE CONRAD:** Sure.

**HILGERS:** --voting rights for felons? Is that first-- my first question is, is-- do you-- is that-- do you have any-- poke any holes in that sort of two set framework or is there something I'm missing from your perspective?

**DANIELLE CONRAD:** Thank you, Senator Hilgers, for the questions. And I, and I think they get right to the heart of the matter. So first of all, I think it's important-- you've talked a lot

appropriately about Section, Section 6 [SIC], Article II [SIC], right, which has limitations on who's a qualified lector-- elector in our state constitution, but we also have to look at that in context of also Article I, Section 22, which is an incredibly strong and broad right to vote for Nebraskans generally. Right? So we have to read those together. But specifically to your question, a couple of things-- and Senator Wayne talked about this in his opening. If in fact there was racial animus, that was a part of the discussion to adopt this provision. That provision on its face is suspect under equal protection and other aspects of our state and federal constitution. Right? And we'll, we'll bear that out through the constitutional convention documentation and dialogue, etcetera. Right? Record. So that's the first part, and, and I think that Senator Wayne has done that research and has brought that research forward for you. So we, we can't forget that. Right? The other piece is-- and if you look in your Nebraska Constitution-- and you've talked about this already. Right? This, this hasn't really been tested out in case law. Right? There's no annotations under this section that give us some guidance for this-- for how to interpret this that had been tested through the courts. Right? So we're trying to figure it out the best that we can. People of goodwill working through it

together. But to your-- the heart of your question, I think it's a rather radical reading of the provision to say that this could never be addressed and voting rights can never be restored by the Legislature. You're actually reading this as a lifetime ban. Right? And that's not the system that Nebraska has had in place for well over a decade which first established the two-year arbitrary waiting period and that is the law of the land today. And if you or Governor Ricketts or others believe in your heart of hearts that that's the true reading of, of that provision then somebody should move forward with a declaratory judgment action or challenging it as applied. Right? Which no one has. So that's the first thing to put forward. And I, I, I would suggest that's a very radical reading of that provision I think.

**HILGERS:** And can I stop you there just--

**DANIELLE CONRAD:** Yeah. Yeah

**HILGERS:** And I'm not saying--

**DANIELLE CONRAD:** And would you disagree? I mean, I don't know. Yeah.

**HILGERS:** Well first, I haven't-- I have not put my cards on the table as to how I read it. I'm trying to get to the purpose of this hearing from my perspective at least is not to impose my

viewpoint of how things should be interpreted but to understand the arguments of those bringing forward the bill. So first, just so the record is clear, I haven't laid out what my interpretation is. Secondly, I would say I'm not sure that it would-- I guess, could you impact why you think it would be radical? You mentioned-- what I heard at least--

**DANIELLE CONRAD:** Right.

**HILGERS:** --was at least in part because there's been a statue in place for ten years, but is there--

**DANIELLE CONRAD:** Right. Where Nebraskans, returning citizens, who've restored their right to vote have been actively voting and participating in our elections. So then to all of a sudden wake up today and say for the past decade that all of those Nebraskans have been voting in error, I think is, is a rather radical interpretation of our existing practice in Nebraska. Right?

**HILGERS:** Although, wouldn't someone who-- I mean, wouldn't, wouldn't someone say, well, we haven't--

**DANIELLE CONRAD:** Would you disagree though that there's--

**HILGERS:** No. Well, I'm sorry. Well, I would, I would-- I don't know if I would-- I think I would disagree to say that it would be radically-- radical to interpret a provision of the constitution that has been around for over 100 years based on the-- only, only based on-- maybe their other facts that would support it, but only based on the idea that the Legislature passed the statute that could potentially conflicted with that interpretation recently that hasn't been challenged in court.

**DANIELLE CONRAD:** Um-hum.

**HILGERS:** I don't know if that's enough for me to say on its own to say, well, this is the one data point that's gonna say this interpretation for the last 100 years is way wrong and, and off base.

**DANIELLE CONRAD:** Um-hum.

**HILGERS:** That's-- so on that basis-- that's I guess that's part of my question is that-- is there other reasons either in the text of the,--

**DANIELLE CONRAD:** Right.

**HILGERS:** --of the provision or how we've done things over, over the decades that would help with [INAUDIBLE] at that point?



**DANIELLE CONRAD:** Yes, so to tease that out a little bit more, again, we can't divorce the provision from the historical context that Senator Wayne appropriately put before this committee. Right? And if this provision was put forward as a basis or a substitute for racial injustice or racial animus it's suspect on its face. Right? Secondly, for well over a decade thousands of Nebraskans who have had their civil rights restored for purposes of voting two years after they've completed the terms of their sentences have been voting and participating in our elections. So I think that it would be a very radical departure from what's been over a ten-year period of civic engagement in, in our state. Right? I think that's-- we can't divorce that from the reality. Look no further, go and Google-- you know, ex-felon voting rights, returning citizen voting rights, and look at the FAQ page on our Nebraska Secretary of State's Web site. It doesn't say, stop here, go apply for a pardon. It has a host of information about how to actually implement the existing law with the two-year arbitrary waiting period. Right?

**HILGERS:** So--

**DANIELLE CONRAD:** And our top election officials, so I think that's a pretty radical read to suggest that the existing

statutory framework is-- and, and the Chief Election Officer for the state is-- you know, somehow in violation of our, our state constitution. I, I think that's a, a challenge. I think that's a radical proposition.

**HILGERS:** So I would say two-- I, I would there's-- I appreciate that point. I would say there's-- it's two slightly different points. I think one-- which I think I would agree with you on is that to say that the current statute challenged and rendered unconstitutional so that someone who--

**DANIELLE CONRAD:** Right.

**HILGERS:** --expects to have their voting rights restored after two years and they're not would be a significant practical departure from current practice. There's no doubt about that and I agree with--

**DANIELLE CONRAD:** Right.

**HILGERS:** --you to that extent. I do think that's it's something that is a separate point from saying when we interpret the constitution what it means that saying the constitution would-- and there-- and it's pretty-- I mean, I'm not saying-- you know, I'm trying to assess--

**DANIELLE CONRAD:** Yeah, [INAUDIBLE].

**HILGERS:** --out the arguments for why--

**DANIELLE CONRAD:** Yep, yep.

**HILGERS:** --it wouldn't apply. But there's pretty strong language to say that they can't unless it's been restored. So--

**DANIELLE CONRAD:** Yeah.

**HILGERS:** --putting aside the two-year wait, I'm just-- and I, I, think they're two separate points which is, yes, I-- and I'm not arguing that, that--

**DANIELLE CONRAD:** No, I agree.

**HILGERS:** --someone should go run and challenge the current statute. I'm just-- that is-- it's there. No one's challenged it.

**DANIELLE CONRAD:** Right.

**HILGERS:** I don't anticipate anyone to challenge. But as a legislative body, you served here. I mean,--

**DANIELLE CONRAD:** Yes.

**HILGERS:** --thinking about our constitutional obligations,--

**DANIELLE CONRAD:** Yes.

**HILGERS:** --and thinking about how the constitution may or may not restrict our authority. I guess, those are two separate questions as well.

**DANIELLE CONRAD:** Absolutely. And, and I also agree. And for the benefit of all on the committee returning members and new members and it's incredibly complex from a legal perspective. Right? It's, it's difficult, I think, even for people who are trained in constitutional law to come to all the same conclusions about these issues. Right? So there's-- I think people of goodwill who've looked at these, who've studied at these issues can come to different conclusions and that's, that's kind of what lawyers do. Right? That's kind of what legislators do. Right? But I, I, I do think that we can't divorce it from the reality. And the other thing is this, when you look at this very brief section in Section 2, and Article II-- VI, Section 2, where it does have-- you know, the, the provision or who has been convicted of treason or felony under laws stated-- of the state or the United States unless restored to civil rights. I think what else you can do as a Legislature through your statutory provisions as you frequently do in

breathing life into the constitutional provisions is to provide definitions. Right?

**HILGERS:** Um-hum.

**DANIELLE CONRAD:** And I'm not aware of any other provision in Nebraska's Constitution or the federal constitution for that matter that would have a limiting definition on felony. And so why, why couldn't the Legislature say that according to the kind of general understanding the felony-- the, the word felony is defined and encapsulated to mean once you complete the terms of your sentence. Right? I don't think there is any limitation on that.

**HILGERS:** And that's a very, very good point. I mean,--

**DANIELLE CONRAD:** Right.

**HILGERS:** --that's a-- and that sort of shifts the-- it shifts--

**DANIELLE CONRAD:** Maybe an alternative way to think about it.

**HILGERS:** Yeah, I-- yeah.

**DANIELLE CONRAD:** Yeah.

**HILGERS:** No, and I, and I would agree with you. I think that's very-- and it's an interesting way of looking at it. And I

agree, the Legislature certainly has more, has more discretion  
as it were--

**DANIELLE CONRAD:** Right.

**HILGERS:** --to be able to define [INAUDIBLE].

**DANIELLE CONRAD:** Right.

**HILGERS:** I would, I would agree with that.

**DANIELLE CONRAD:** I mean-- and you'll remember of course from  
your law school days, X is a Y for purposes of Z. Right? Like--  
sorry Senator Blood, but [LAUGHTER] that will be, that will be  
familiar to Senator La Grone and Senator, and Senator-- Counsel  
Clark are, are laughing, but it's, it's kind of along that line  
of thinking. Right? So the Constitution sets this broad  
parameter and then it's up to the Legislature to define what  
that means and to breathe life into that and to provide clarity  
through the corresponding statutory framework. So I think that,  
that could be another approach to incorporate into this debate  
to provide some, some clarity and perhaps guidance if people are  
concerned about that untested issue.

**HILGERS:** I appreciate that. The last question--

**DANIELLE CONRAD:** Yeah.

**HILGERS:** --I have-- just-- and you may not have anything additional to add to Mr. Eickholt, I couldn't find anything on this restore to civil rights concept--

**DANIELLE CONRAD:** Yeah.

**HILGERS:** --in terms of what it might have meant-- and, and do you have anything there?

**DANIELLE CONRAD:** I, I don't. And I, I think that your dialogue, I covered a lot of the bases of anything I would have would be redundant in that regard. The last point, I, I definitely do want to provide to the committee is, again, how the two-year arbitrary waiting period really disenfranchises even more people. And we heard about some of the confusion that exists not only for individual returning citizens in our community. But in 2016, the ACLU did a survey of all of our hardworking election commissioners in Nebraska and over half of county election officials couldn't provide accurate responses for how this worked in practice. So when people are trying to restore their voting rights and participate in the process sometimes they're even getting bad information at that front lines from people who are experts and who are trying to do the right thing because it's so darn confusing. So that perpetuates the problem and, and disenfranchises perhaps even more people. So I think it's a, a

great indication about not only how it's arbitrary but it's confusing for individuals and it's confusing for our hard working election officials.

**HILGERS:** And, and by the way-- and, and I'll--

**DANIELLE CONRAD:** Yeah.

**HILGERS:** --probably stop asking questions--

**DANIELLE CONRAD:** Yes.

**HILGERS:** --of people going forward. I appreciate the committee's patience and everyone's patience for these questions.

**DANIELLE CONRAD:** Yeah.

**HILGERS:** I, I agree that the two-year period seems very arbitrary--

**DANIELLE CONRAD:** Yeah, right.

**HILGERS:** --and, and there very well might be an equal protection. Now if you challenged on the--

**DANIELLE CONRAD:** Yes.

**HILGERS:** --equal protection grounds and you have it--



**DANIELLE CONRAD:** That's right.

**HILGERS:** --and it goes away and then, then there's no--

**DANIELLE CONRAD:** That's right.

**HILGERS:** --two-year automatic restoration rights at all. And then you go back to the status quo,--

**DANIELLE CONRAD:** That's right.

**HILGERS:** --which would be-- so in any event, thank you for being here, I appreciate--

**DANIELLE CONRAD:** Yes.

**HILGERS:** --the dialogue as always. Thank you.

**DANIELLE CONRAD:** Absolutely. Thank you, Senator.

**BREWER:** All right. Thank you. Senator Blood.

**BLOOD:** Thank you, Senator Brewer. I, I do think we need to consider a rule change on-- as to how many attorneys are allowed on each committee. [LAUGHTER] I do have a question. I'm sorry. [LAUGHTER] Moving forward. I have several questions,--

**DANIELLE CONRAD:** OK.

**BLOOD:** --but I will make them quick questions. To your knowledge, has anybody challenged Maine and Vermont in reference to consti-- I don't even, I don't even know how to say this, constitutionally on the fact that felons never lose their right even when incarcerated?

**DANIELLE CONRAD:** I, I have not done that research, Senator, but I'd be happy to follow up with you on that.

**BLOOD:** So to your knowledge that would be-- you're not aware of any though.

**DANIELLE CONRAD:** I'm not aware of any. But I also have not specifically researched their state constitutional provisions, which I think perhaps may not exactly be an apples to apples comparison to ours.

**BLOOD:** I would be curious to know within their states constitutions Maine, Vermont and then the 14, 14 states that allowed-- that prohibit voting only when incarcerated. I would-- and then the 12 states that do it indefinitely. I'd be curious to see--

**DANIELLE CONRAD:** Sure.

**BLOOD:** --what has happened legally with that. So let's talk about an area of expertise that I know you have. How overcrowded are our prisons right now? Can you give me a number?

**DANIELLE CONRAD:** Sure. I actually printed off the most recent Nebraska Department of Corrections data sheet through December 2018 before I came over. So today our prisons in total are-- or the last look-- last snapshot December 2018, are about 159 percent of capacity with some institutions over 300 percent of capacity.

**BLOOD:** Can you say body wise what that is? What would that, that filter down to as far as--

**DANIELLE CONRAD:** Sure.

**BLOOD:** --how many [INAUDIBLE].

**DANIELLE CONRAD:** So I-- so the design capacity for the prison system writ large across all state institutions is about 3,375 Nebraskans and we're holding average daily population about 5,300.

**BLOOD:** So knowing that the state recidivism rate, I think, is between 28 and 30 percent--

**DANIELLE CONRAD:** Yeah.

**BLOOD:** --and all the research that I read showed that consistently passing laws like this reduced recidivism from at least-- to at least one-third. I saw one state was like 50 to 75 percent. Could this be seen as a tool possibly that could help us get our population down and ACLU may eventually not sue us? You don't have to answer the second part.

**DANIELLE CONRAD:** I'm happy to answer the second part. So the first part is, yes. I've, I've read some of the same studies that you've talked about. I think we even cited those in our written testimony. And to be really clear, the reentry period and ensuring success for returning citizens is, is fraught. Right?

**BLOOD:** Um-hum.

**DANIELLE CONRAD:** In addition to a lack of civic engagement, access, and opportunities, there's restrictions on housing, there's restrictions on employment, there's restrictions on public benefits. There's a lack of support generally in that period and that all contributes to whether or not somebody will be successful at that, that really critical period when they reenter our communities. Right? And over 90 percent of people incarcerated will reenter our community.

**BLOOD:** And, and be our next door neighbors.

**DANIELLE CONRAD:** And be our next door neighbors. That's exactly right. And so I think civic engagement absolutely is a factor in that. I don't think it's the only factor in that.

**BLOOD:** Right.

**DANIELLE CONRAD:** So I wouldn't divorce it from those, those other critical pieces.

**BLOOD:** But one that is within our control.

**DANIELLE CONRAD:** Absolutely. So I think that it is a decarceration tool and it is a tool that can help to mitigate recidivism. And I think our system's so bad right now. Senator Brewer's been on the special committees. I know many of you have dug into these issues in prison reform generally. The problem is so big that we no longer have the luxury to address it from any one standpoint.

**BLOOD:** Right.

**DANIELLE CONRAD:** We-- and that's OK because we can walk and chew gum at the same time. Right? But we have to do front-end, diversion, problem solving courts, right size of sentences, and extreme sentences, mandatory minimums, habitual criminals, or,

or limit those, those kinds of applications. We have to infuse resources on the inside. We have an overcrowding crisis. We have a lack of program and services. We have-- I know, Senator Blood, you've looked really deeply into the, the issues for frontline staff where we have significant amount of vacancies and people aren't getting the training and resources that they need to do their job and stay safe. And then we got to do the back end, too. Which includes access to benefits, access to employment, access to stable housing, and civic participation.

**BLOOD:** Right.

**DANIELLE CONRAD:** And so this is a big piece of that big puzzle but something that unlike a lot of other things in criminal justice reform and prison reform doesn't have the same political consequences and doesn't carry the same price tag. So this is a really commonsense low cost, no cost alternative to help address those issues.

**BLOOD:** Great answer. Now I'm gonna give you the hard question that nobody's been able to answer. Eventually, I'm just gonna have to give the answer.

**DANIELLE CONRAD:** OK.

**BLOOD:** What would be your definition of disruptive justice?  
Because I feel that's what, what this bill does.

**DANIELLE CONRAD:** Yes. And so I heard your, I heard your conversation earlier about that and I had to Google disruptive justice because I did not know what that meant. And I'm hoping that maybe--

**BLOOD:** Sometimes I say really smart things. It just happens.

**DANIELLE CONRAD:** OK, maybe you have invented or coined a new term, Senator Blood, or maybe I'm missing it. But I, I was thinking that perhaps it was related to the concept of restorative justice which is an emerging trend in criminal justice reform. Which instead of focusing on punitive issues, punishment, and retribution, it really elevates rehabilitation. It really, really elevates reconciliation. It has stronger and better outcomes for victim, offender, and community. Actually I think interestingly enough Senator Albrecht has a bill on restorative justice before the Judiciary Committee today, so I can speak to restorative justice. I'm not sure what disruptive justice is but it sounds kind of wild and fun. So I'd like to learn more about that.

**BLOOD:** And it, it, and it is a philosophical, it is a philosophical definition that does pertain to criminal justice. And so the concept concentrates on just outcomes and just consequences.

**DANIELLE CONRAD:** OK.

**BLOOD:** And I feel that that's what this bill does and that's why I was trying to get it into the record.

**DANIELLE CONRAD:** Very good,--

**BLOOD:** So I appreciate that.

**DANIELLE CONRAD:** --very good. Well, I'm gonna put in for CLE's now because lifelong learning and that's a new term. So. And your final point regarding settlement-- you know, we'd love nothing more than to settle that case. We'd love nothing more than to turn our time and attention elsewhere. And to be clear, we're not seeking money damages. We're seeking access to healthcare. We're seeking access to mental health care. Pretty basic things on behalf of some of Nebraska's most vulnerable people.

**BLOOD:** Well, and I'm sure the taxpayers would like to see our staff time spent on other things. So--



**DANIELLE CONRAD:** Indeed.

**BLOOD:** But that's just my personal opinion.

**DANIELLE CONRAD:** Yes.

**BLOOD:** Thank you.

**BREWER:** Additional questions?

**DANIELLE CONRAD:** We covered a lot of ground there.

**BREWER:** We did and you've probably got the blunt of a lot of questions.

**DANIELLE CONRAD:** That's OK. It's fun.

**BREWER:** It was,--

**DANIELLE CONRAD:** It's invigorating.

**BREWER:** --it was, it was refreshing, the bantering-- Spike can be a little dry. [LAUGHTER] You on the other hand, we could track where you were and--

**DANIELLE CONRAD:** Right. We're a good team that way.

**BREWER:** Yeah, and so you know you don't go into the hate lawyer mode cause you're actually learning and you're kind of tracking

what's going on is kind of good. So thank you. You, you made the experience pleasant.

**DANIELLE CONRAD:** Well, it's been my pleasure to be here before you and to engage in these really critical issues of the day. And I think this issue is so exciting because it intersects with so many issues: criminal justice, racial justice, voting rights. It's rare that we have an opportunity to dig in on so many meaty issues that impact our state and our citizenry. And I think-- you know, term limits are, are tricky for a lot of perspectives. But I definitely miss having the opportunity to have a really invigorated floor debate with somebody like Senator Hilgers. He's, he's bringing it and bringing it consistently and thoughtfully and that makes better policy.

**BREWER:** Well, thank you. Thanks for coming in today. All right. I think I know who is next, Gavin. Welcome back to Government, Military and Veterans Affairs. You understand the bar's been set fairly high now, so no pressure here.

**GAVIN GEIS:** My name has Gavin Geis, G-a-v-i-n G-e-i-s, and I am representing Common Cause Nebraska. I do not have a ton to say that hasn't already been said so I will be super brief and I have probably nothing to discuss, Senator Hilgers, that hasn't been said so just leave me alone.

**BREWER:** So we're clear, you are an attorney?

**GAVIN GEIS:** I am not today. [LAUGHTER]

**BREWER:** OK, fair enough.

**GAVIN GEIS:** Not today.

**BREWER:** Fair enough.

**GAVIN GEIS:** I have researched nothing that they have researched. All I can add is just to say if you haven't-- if you don't have a good source for some of the data on this stuff, I would recommend sentencing project. They have a lot of good digestible data. It's on-line. They break down state by state. The sentencingproject.org. It's state by state, great map, and they go through, break down just basically what incarceration looks like. They do some research on what this looks like in terms of disenfranchisement. And through symmetric, they try to show what does it look like percentage wise? How many people are we disenfranchising in Nebraska? And they have some really good articles. Their article on disenfranchisement, I think is worth a read while you're looking at this to try to wrap your head around-- they break down their metrics. So if you're questioning their numbers, they're very transparent about it. I would encourage you as you're looking at this, go read, dig into it.

It's worth your time. The last thing I'll say, is that while we're looking at this we often look at it from the perspective of each individual returning citizen. And yeah, we're hurting those people. We're hurting them and their ability to return to society but we're hurting ourselves, too. Let's be honest, we hurt ourselves as a society by not including these people in our balance, by not including their votes because that matters. It matters to our communities that we include them in who gets elected. They are our neighbors as people have said. They are the people who live next door and we want people elected that represent every single one of us. So it's not just about the individual. It's about every single Nebraskan. We have to take the whole into account not just the individual. And I think it matters, it's a two-way damage we're doing. It's not just one damage. So look at the data, take it into account. And that's all I've got. Leave me alone. [LAUGHTER] Thank you.

**BREWER:** Sentencing, [sentencingproject.org](http://sentencingproject.org).

**GAVIN GEIS:** Yes.

**BREWER:** OK, thank you. Questions? Yes, Senator Hunt.

**HUNT:** I just have about 15 very technical questions. [LAUGHTER]  
Just kidding.

**GAVIN GEIS:** I'll take yours.

**HUNT:** Thank you for being here today.

**BREWER:** All right. Thanks, Gavin.

**GAVIN GEIS:** Thank you.

**BREWER:** All right. Next proponent.

**WESTIN MILLER:** This is the last one.

**BREWER:** It's the last one. Good, because we're running out of bills. Welcome back.

**WESTIN MILLER:** Thank you, sir. Chairman Brewer, members of the committee, my name is still Westin Miller, W-e-s-t-i-n M-i-l-l-e-r. Don't forget, I'm not a lawyer. However, I'm gonna talk about a question that hasn't brought up yet quickly. And Senator Hilgers, I do actually have an answer to a question you've asked several times at the end. So if I run out of time, let's chat about it. I want to quickly address a question I've seen a lot as I was trying to read up on previous years of this conversation and that's the issue of causation. One of the issues that Governor Rickett's laid out in his veto letter was can you definitively prove causation between having the right to vote and voting rights for former felons. And I just want to

start out now by saying that causation in the situation is by definition impossible to prove and it's very important that we are all honest about that. Causation by definition would require controlling for every other variable other than the one that we're testing which means the only way to prove causation in this case is to enact this change now and see what happens which I think is a great idea. But in the interest of having the conversation, I just want to be upfront about the fact that causation is not technically impossible-- or technically impossible to prove. But I also think importantly that is the wrong question to be asking. We shouldn't be asking can you prove that this proposed change is perfect. We should be asking is our current policy working? And to that the answer is profoundly, no. To this, I'll refer you on the right side of your folder there is a handout about the state of Florida and I want to turn your attention to that document. That's because they're the most data rich state that we have to work with. So Nebraska has done very little research of its own about recidivism rates and voting rights, but Florida has done a ton of research so I want to talk about that. Between 2009 and 2012, Florida conducted two pretty robust studies that measured two things. First, was the measure of the three-year recidivism rate as a whole? And just for the record, when I say three-year

recidivism rate, I mean that if in 2009 you were released from prison, the three-year recidivism rate measures how many people return to prison before the end of 2011. That's what they measured. For the state of Florida, as a whole, that number is about 26 percent or slightly more than a quarter of all released felons were incarcerated again either for a new crime or for violating their post-release supervision. The other study they did measured that exact same number but only for former felons who had their voting rights restored. That measure in those same years was 4.5 percent or less than a fifth of the statewide rate. That number is profound and should be unignorable as we're having this conversation. It should be very instructive as we look to that relationship between the right to vote and recidivism rates. Our current policy is doing absolutely nothing to encourage public safety or a healthy reintegration. And I think that LB83 is a, is a measured, moderate approach to criminal justice that has no impact on sentencing. It simply stops us from punishing Nebraskans beyond their sentence. Now as you heard during Senator Wayne's intro, I think it's easy to agree that if you've served your time you should be able to vote. Thank you.

**BREWER:** All right. Thank you for your testimony. Questions?  
Senator Hunt.

**HUNT:** Thank you, Chairman Brewer. What'll you-- I guess the only opposition I guess I've heard to this kind of bill is about public safety. I don't know if you could speak to that a little bit.

**WESTIN MILLER:** Yeah, absolutely. So I think that it's a very important part of this conversation. I think one of the obvious duties of the Legislature is to pass policies that discourage the commission of crimes and not pass policies that would make it more likely for someone to commit a crime. By every measurable standard having the right to vote is a pro-social policy. Voting is a pro-social behavior. When I say that phrase, I mean it's a behavior that makes you feel more connected to your neighbors in your community. And it doesn't make you feel more isolated from those people. I think it very easily stands to reason that if you feel more connected to your community you are less likely to act out against that community. If you feel totally separate or other or worst case scenario the enemy of that community it's gonna be a lot easier to act out against that. The International Association of Chiefs of Police is an organization that hasn't been brought up yet today. They're a professional association for law enforcement worldwide. They have for a long time supported the restoration of voting rights upon release from prison for the main reason that it is a pro-



social behavior that is in the interest of public safety. They were hugely involved in Florida's recent change. And that was the reason was that this having the right to vote makes it less likely you will reoffend. So why would you not encourage that policy? Thank you.

**HUNT:** Um-hum.

**BREWER:** Additional questions? Senator Hilgers.

**HILGERS:** You mentioned that you had an answer to one of my questions.

**WESTIN MILLER:** Yes, absolutely. Let me see here so the document in the back of the right side of your folder, I hope will be interesting. So I've already addressed one of the issues that Governor Ricketts brought up in his veto letter and I guess just the record for those reading this that don't know what I mean by that. In 2017, this exact same bill was LB75 passed by the Legislature, vetoed, not overridden. Governor Ricketts gave two reasons for vetoing that bill. Number one, was the one that I just addressed that you can't prove causation between having the right to vote and recidivism rates. So I addressed-- that's the wrong question. But the second and much more emphasized point, was that the-- kind of the questions you've been asking Senator

Hilgers which is-- you know, this constitutes what he called a legislative pardon and therefore violates separation of powers clause. I would argue that there are two really important questions that need to be asked but have also been answered by the Nebraska Supreme Court. The first question is does the restoration of voting rights constitute a pardon. And the second one is how is the restoration of voting rights legally implemented. This-- I think Spike answered this one really well. But just to kind of lay it out in, in nonlawyer terms, *State v. Spady* lays out three very clear criteria for what is a permissible restoration of voting rights and those criteria are: it's permissible if it doesn't fully restore an individual to civil rights; it's permissible if it does not exempt an individual from their actual sentence and it's permissible if it doesn't quote nullify all of the legal consequences of the crime committed. I think we've pretty well discussed and established that LB83 doesn't do any of those things. The question that has not been answered that you've asked yet so far is what is that phrase unless restored to civil rights. What is it actually referring to? So in *Ways v. Shively*, the Nebraska Supreme Court answers this question specifically. And so I'll just quote from that case, they say, the right to vote is a civil right and the restoration referred to in Nebraska Constitution Article VI,

Section 2, is the right to vote. They then go on to say, and this is maybe the most important sentence I could leave you with, restoration of the right to vote is implemented through statute. That is from the Nebraska Supreme Court in *Ways v. Shively*, 2002. It seems like those are the two kind of looming questions is what is, what is the right we're talking about and how is it restored? And the Nebraska Supreme Court has done us a favor by answering both of those questions in the same sentence. They said that the right we're talking about is the right to vote. "Restoration of the right to vote is implemented through statute." Yeah.

**HILGERS:** Can I stop--

**WESTIN MILLER:** Please.

**HILGERS:** --can you, can you-- I've got, I've got *Ways v. Shively* up--

**WESTIN MILLER:** Um-hum.

**HILGERS:** --and I've read it. I didn't see that. What was the second-- the quote that you read to me?

**WESTIN MILLER:** Yeah, so the right to vote is a civil right.

**HILGERS:** Hold on one second.

**WESTIN MILLER:** Um-hum.

**HILGERS:** OK.

**WESTIN MILLER:** And the restoration referred to in Nebraska Constitution Article 6, Section 2, is the right to vote. "Restoration of the right to vote is implemented through statute."

**HILGERS:** Do you have a pin cited by?

**WESTIN MILLER:** I don't. I'm sorry. I can-- I'd be happy to find it for you later.

**HILGERS:** OK.

**HUNT:** I suppose the-- sorry.

**WESTIN MILLER:** Here's, here's the real answer is I got a citation, Do I know what it means? No, I don't because I'm not a lawyer. But it's on there. I just read it.

**HILGERS:** So I appreciate-- well, I know-- and you've said before-- and I think you it today, you're not a lawyer, and I didn't intend to ask any more questions. But since you--

**WESTIN MILLER:** Yeah, yeah. No, please.

**HILGERS:** --opened the door for this. Thank you for doing the legal analysis. And I'm not sure-- I did read your State v. Spady. I've read, I've read it. I'm not sure that's the complete story but I have, have the cite now and I will read that portion of what I've read Ways and didn't interpret it the same way, but I'll read it. And I appreciate you very much adding that additional bit to the dialogue. Thank you.

**WESTIN MILLER:** My pleasure. And, and if I could just because you were talking about kind of-- you know, the important constitutional framework for these perspectives. We've all established that Article VI, Section 2, says that convicted felons can't vote unless restored to civil rights. I've kind of [INAUDIBLE] to what I think my definition of that is-- or the Supreme Court's definition. I think it's important to note though that the Nebraska Constitution is not clear on how those rights are to be restored. It just says the only way you can vote is if you're restored to civil rights. Which is when I think it's really important then to pivot to Article III, Section 30, of the constitution which requires a Legislature and I was quoting here to pass all laws necessary to carry into effect provisions of this constitution. I take that to mean that in this case the Legislature is constitutionally required to pass laws that create a statutory mechanism for restoring civil

rights. The idea that the Board of Pardons is exclusively responsible for the restoration of civil rights post sentence that idea is utterly absent from the Constitution. They are certainly one of the ways but the exclusivity idea just is not there. The statute 29-112 is the statutory mechanism by which the Legislature empowers the Board of Pardons to restore rights. That's also the statute that was amended in 2005 by Senator Schimek when we first implemented this arbitrary two- year waiting period. And that is for the third and final time, the same statute that LB83 seeks to amend. It's a statutory mechanism that has been in place. It just simply does what, you all as senators, are required to do which is legislatively enact provisions of the constitution. All that LB83 does is amend that statutory mechanism again. And I think that maybe the most obvious thing I could say is that amending statute is the most basic undisputed power of the Legislature and that's all that you're really been asked to do with this bill.

**HILGERS:** OK. Never mind.

**BREWER:** All right. Additional questions? All right. Seeing none, thank you for your testimony.

**WESTIN MILLER:** Thank you.

**BREWER:** OK. Additional proponents? Come on up. Welcome back to Government, Military and Veterans Affairs Committee.

**GREGORY LAUBY:** Thank you, Senator Brewer, members of the committee. I'm Gregory C. Lauby, G-r-e-g-o-r-y, C as in Christian, L-a-u-b-y. I support LB83, but I want to recommend an improvement as I have twice before. I know of no justification for denying voter eligibility to felons who have completed their sentence. So therefore, I certainly recommend this proposal. But I don't know any reason to deny it to those who are no longer incarcerated. Those who have reached the age of 18 are allowed to register to vote in local state and federal elections. And I for one think that that benefits the general welfare as well as Nebraska youth. As a group, felons are just as capable of casting an informed and responsible vote as a high school group of students. There may be legitimate reasons to suspend voting privileges of the incarcerated. Expense and potential risk to the safety of poll workers may preclude polling places conforming to state requirements in prisons or jails or the transportation of prisoners to a polling place. Some might argue that restricted access to the in-- of the incarcerated to a diversity of information sources hinders the formation of an informed opinion even if voting by mail were allowed. But none of these considerations apply to those who have been released

from incarceration. They can travel at their own expense to an existing polling place with no more public risk than when they go to a movie or shopping. Access to the media, traditional and social, and political conversation is no longer restricted by confinement conditions. You've heard a great deal about what the loss of voting privilege means and what the restoration can mean. To put it in perspective, I would just ask you to consider an unthinkable hypothetical, suppose the United States Supreme Court rendered a decision that banned the public display of the American flag and the next day they rendered a decision that restricted voting to members of the military. Which personal loss would you find more grievous? I would hope that you refer this bill to the floor amended to allow for voter eligibility upon lawful release from incarceration and which would not reduce the sentence that the court imposed originally. And I find, just as a common farm boy, that there is a difference between a sentence imposed by the court and the consequences of that sentence. You know the consequences of a felony sentence are widespread and there can be efforts by the Legislature to modify those or increase them. And I think one of the consequences is voting rights. If there are no further questions, I thank you for your attention.



**BREWER:** Thank you for your testimony. Are there questions?

Seeing none, thank you again.

**GREGORY LAUBY:** Thank you.

**BREWER:** All right. Any additional proponents? Are there any opponents? Are there any in the neutral capacity? Senator Wayne, would you like to come up and close on LB83?

**WAYNE:** Thank you all. Just for the record, there were only two attorneys from when I was here. Myself and Hilgers. You now have three. So maybe it's an upgrade that I left maybe it's not. I-- you probably didn't want four, Senator Hilgers, so it's probably a good thing I left. Just for you to know that. [LAUGHTER] I do want to say I do appreciate Senator Hilgers' back and forth on the constitution. I think as we continue to pass laws, we need to think about those types of things. And I was incorrect, he did not vote for one of the set asides but he did vote for Senator Hansen's set aside but that only dealt with infractions. So it wouldn't deal with felonies. So he is correct, I was wrong. I'm man enough to admit that. But I just say that to say one more point before I get to a serious note, it was not just swords we had passed, we also-- that bill included crossbows. And if you ever shot the prime logic crossbow-- compound bow, that's just as deadly as a gun. But we passed that to allow

felons that they have the right if they have a permit to hunt to, to have those now and possess those so just wanted to point that there. It wasn't just swords. It was also crossbows. Thought that was interesting. Nevertheless, Senator Hilgers, I do want to say laws are constitutional until they're found to be unconstitutional and this particular law that we have on hand, the two years, has never been challenged. It's considered constitutional. I don't think passing it to just mean after your rights are restored, after completion of your sentence would make it unconstitutional. That would be up for a court to decide. But they are presumed to be constitutional in our body. That's the way this-- the, the judicial body and the judicial system works. But what dicta has said, and what case law has says, there is the ability for the Legislature to restore some rights clearly based off of case law. Is it to the point of all a pardon? Maybe not, maybe so. But clearly we have the ability. What the court has never said is, we do not have the ability. So I think for this important of an issue let's air on the side that we do have the ability and let's kick this out and let's pass this on the floor and allow all people when they finish their time and sentence to be able to vote immediately and restore their vote--felon-- or restore their voting rights. And with that, I will submit and to answer any questions.

**BREWER:** All right. Thank you for your close. Questions? All right. We do have letters on LB83. We have 14 letters that are proponents. We have one letter in opposition. None in the neutral. With that, we will close on LB83.

**WAYNE:** Thank you.

**BREWER:** Next we have LB711. Senator Cavanaugh. Oh, that's right, you are going to be substituting. She did warn me on that. So--

**BRANDON LANGLOIS:** Good afternoon, Chairman Brewer, members of the committee. As you may have guessed, I am not Senator Machaela Cavanaugh. My name is Brandon Langlois, B-r-a-n-d-o-n L-a-n-g-l-o-i-s. I have the privilege of serving as Senator Cavanaugh's legislative aide while she goes about the business of the Nebraska Legislature. Her schedule personally didn't allow her to be here today. So I'm here to introduce LB711 on her behalf. The intention of LB711 is to remove all statute that strips the right to vote from a citizen of the United States as punishment for a crime other than treason. Of all Western democracies, America is the only nation that disenfranchises millions of its own citizens on this basis. While the revocation of voting rights as punishment is something that can be traced all the way back to ancient Greece, it historically has been used, used only in individual cases of especially heinous crimes

or for election fraud. Felony disenfranchisement in America is a fairly recent phenomenon that can be traced directly to backlash against the expansion of voting rights to black men following the Civil War. Nearly simultaneously, laws were introduced across the country specifically targeting African-Americans for criminal prosecution as other laws were passed that strip the right to vote of people convicted of felony crimes. The result was the mass incarceration of African-Americans who having recently been granted a voice of their own government immediately had it taken away from them. As an illustration of how unfairly targeted these laws were, we can look as an example at the Alabama prison population from 1850 to 1870. In 1850, its population of nonwhite prisoners was 2 percent. In 1870, shortly after many of these bills were-- these laws were passed, that population became 74 percent. Unfortunately, Nebraska lawmakers at the time chose to follow this trend and that stuck with us as a lifetime ban for ex-felons in Nebraska until 2005. The racial impact these laws have on voting in Nebraska is very clear. According to statistics from the U.S. Department of Justice, African-Americans make up only 4.6 percent of Nebraska's population but represent 26.9 percent of our prison population. African-Americans are eight times as likely to be charged and convicted of a serious crime as a white person. And this

strictly affects their ability to have a voice in their own government despite continuing to work, pay taxes, and live in our state. Like I said earlier, disenfranchisement as punishment for a crime is not without historical precedent. But the scale and explicit racial targeting of it as exists in America today absolutely is. Senator Cavanaugh would be the first to tell you that, no, mass murderers and serial killers should not be voting in our elections and that there is room for open and honest discussion on what crimes should result in someone losing their right to vote. And she welcomes that discussion. But a punishment scheme that unfairly targets nonwhite citizens and treats a person illegally downloading the latest season of Game of Thrones as a serial killer is clearly broken and needs to be replaced from the ground up. With all of that said, Senator Cavanaugh recognizes that LB711 has a major flaw that cannot be corrected through an amendment to the bill. And so she would ask that the committee hold this bill and-- until next year.

**BREWER:** All right. Thank you for your opening. I would remind the committee that we do not engage staff with questions and the staff is not required to close. So with that, thank you for that opening. So we will hold the bill as asked. OK. All right, we still have a requirement for public hearings so if there are those that wish to testify either in support or opposition. Are

there anybody that's here to speak in support? Anyone in opposition? Or anyone in the neutral position? All right. Well, with that said, then we need to read letters. We have five letters in proponent. We have two opponents. None of the neutral on LB711. With that, we will close the hearing on LB711 and close our hearings for the Government, Military and Veterans Affairs Committee. Thank you for coming.