

Judiciary Committee March 14, 2019

LATHROP: [00:00:02] All right. Good afternoon. Welcome to the Judiciary Committee. My name is Steve Lathrop. I am the senator representing Legislative District 12, and I'm also the committee Chair. A few ground rules that we'd like to go over before we start. On the table inside the doors when you came in, you will find yellow testifier sheets. If you are planning on testifying today, please fill out and hand it-- hand one of those sheets to the page when you come up to testify. This helps us keep an accurate record of a hearing. There is also a white sheet on the table if you do not wish to testify but would like to record your position on a bill. Also, for future reference, if you're not testifying in person on a bill and would like to submit a letter for the official record, all committees have a 5:00 p.m. deadline the day before the hearing for the submission of letters. We will begin testimony on a bill with the introducer's opening statement. Following the opening we will hear from proponents of the bills-- of the bill, then opponents and, finally, anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last name and spell them for the record. We utilize an on-deck chair to the left of the testifiers' table. Please keep the on-deck chair filled with the next person to testify to keep the hearing moving along. If you have any handouts, please bring up at least 12 copies and give them to the page. If you do not have enough copies, the page will try to make more. We will be using a light system, which are these lights right up here on my desk. When you begin your testimony, the light on the table will turn green. That will be on for two minutes. The light will then turn yellow. That's your one-minute warning. You have a total of three minutes to testify. When the light comes on, we ask that you wrap up your final thought and stop. As a matter of committee policy, we'd like to remind everyone the use of cell phones and other electronic devices is not allowed during public hearings, though senators may use them to take notes or stay in contact with staff. At this time I'd ask everyone to look at their phones and make sure they are in the silent mode. Also, verbal outbursts and applause and things of the like

are not permitted in the hearing room. Such behavior may be cause to have you excused from the hearing room. You may notice committee members coming and going or not showing up on time. That has nothing to do with the importance of the bills being heard, Senator Brandt, I want to assure you of that, but senators may have bills to introduce, and I know a number of us do have other bills to introduce in other committees, or they may have other meetings to attend. We are holding our hearings in the Warner Chamber while our regular hearing room is being renovated. Please remember water bottles, cans of pop, and cups of coffee are not permitted on the desks, and that's done in an effort to maintain the integrity of the chamber and the desks. I've introduced myself. Senator Brandt, who's going to introduce the next bill, is also a committee member. I'm not exactly sure where everybody is at right now, but we're going to proceed with LB708 in just a second. Assisting the committee today are Laurie Vollertsen, our committee clerk. Neal Erickson and Josh Henningsen are our two legal counsel, and the committee pages are Alyssa Lund and Dana Mallett, both students of UNL. They do a great job for us here. We appreciate their assistance every time we have a hearing. And with that, we will begin with Senator Brandt and his opening on LB708, which promises to be--

BRANDT: [00:04:06] Exciting. Good afternoon, Chairman Lathrop and no members of the Judiciary Committee. I am Senator Tom Brandt, T-o-m B-r-a-n-d-t, and I represent Legislative District 32, Fillmore, Jefferson, Saline, Thayer, and southwestern Lancaster Counties. I'm appearing here today before-- I'm appearing here before you today to introduce LB708, the Uniform Partition of Heirs Property Act. UHPA is a uniform statute that facilitates the preservation of real property within a family after the death of the property holder. Currently, if a landowner dies without a will, the property is passed on to the heirs as tenants in common under state law. UHPA arose to address the various issues to individuals who inherit property as code tenants, which is the default ownership structure for two or more individuals who inherit property from a family member. In a tenancy in common, two or more cotenants own an undivided interest in the property. Any tenant

can sell or give away his or her interest without receiving permission from his fellow tenants.

Moreover, any cotenant has the right to file a suit to partition the property, which simply means to split up the property, regardless of when the parties seeking partition acquired the interest or the relative size of the interest. In a partition action, the court may order a partition in kind which divides the property into separate lots proportionate in value to each tenant's interest, or a partition by sale which mandates a forcible sale of the whole property with proceeds divided proportionately among the cotenants. This divests property owners of their land without their consent and against their will. The negative effects of the involuntary loss of property disproportionately affects lower to middle income property holders who tend to inherit property as tenants in common. Under UHPA, the real property inherited from a relative without a will is protected when a cotenant files an action for partition, assuming no other written agreement exists, through a number of due process requirements. First, notice must be given to all cotenants of the intended partition. Second, the court conducts an appraisal to determine the value of the land as a whole. One cotenant may then purchase the interest of another cotenant requesting partition in an amount equivalent to the share of the property. The cotenants may utilize the right of first refusal within 45 days and if exercised, they have another 60 days to obtain financing. If none of the cotenants choose to buy the share of land from the selling cotenant, the court is required to order a partition in kind unless doing so would cause great harm to the other cotenants in the opinion of the court. If the court opts to order a partition by sale, the property must be offered at a fair market price as determined by the court. These procedures are intended to protect the rights of the prospective seller to convey the property, and those of the cotenants to avoid an involuntary sale of the property. UHPA has been enacted in ten states so far, Alabama, Arkansas, Connecticut, Georgia, Hawaii, Montana, Nevada, New Mexico, South Carolina, and Texas. Thank you, Chairman Lathrop and committee members. This will conclude my introduction to LB708. I would be happy to take any questions, although testifiers following me will provide more information on the current practices and the need for the bill. Thank you.

LATHROP: [00:07:48] I don't see any questions at this time, Senator Brandt. Thanks for the introduction.

BRANDT: [00:07:53] You bet. Thank you.

LATHROP: [00:08:06] Good afternoon.

BEN ORZESKE: [00:08:07] Good afternoon. Chairman Lathrop, members of the committee, my name is Ben Orzeske, B-e-n O-r-z-e-s-k-e, and I'm here representing the Uniform Law Commission. We are a nonprofit law reform organization that drafts model legislation. I think everybody on the committee is familiar with the Uniform Law Commission. Dean Perlman was here a few weeks ago on another uniform law. This is the Partition of Heirs Property Act. As Senator Brandt said, what we're trying to solve here, the problem that we're trying to solve is a forced sale of inherited real estate. So real estate, normally this arises in a situation where somebody who owns real estate dies without a will and there's multiple heirs who owns property. So let me use an example to illustrate the typical situation. Imagine a widow who owns a farm in Nebraska and has three children and when the widow dies, those three children inherit the farm. And legally, the form that they inherit it as, they are cotenants. They each own a one-third, undivided interest in the entire property. Normally this happens with families that don't engage in estate planning. If you're a wealthier family and you've planned ahead for this, you might use an LLC to hold the property and make sure that-- you might have a partition agreement, a written agreement in place. But normally this happens when somebody-- to a poorer family who's-- who does not engage in estate planning, dies without a will. The children may not be aware of their vulnerability to lose the property. So in my example with the three children, imagine that two of the children want to maintain family ownership of the farm, continue to work it, but the third child

needs cash for whatever reason. That child might sell their share to somebody outside the family or the child could lose their share in a-- in a judgment to creditors. In either case, you now have one third of the property owned by somebody outside the family. And if that person has an eye on trying to gain control of the entire property, one of the things that they can do is file a partition action in court and that could force the two-- the two heirs, the two family members who wanted to keep it, to sell the farm against their will. Forced sales sometimes bring meager returns. If it's sold at auction, depending on the particular circumstances, they might not inherit the full value of their property. What this law does is it puts in place a series of protections. So first, it gives a right of first refusal-- first, there's an independent appraisal to determine the value of the entire property, and then there's a right of first refusal so that the family members can buy out the not-- the petitioning member, the person who's petitioning for the sale, at the appraised value, the fractional share of the appraised value, if they want to do that. If they do not exercise that right of first refusal then, the additional protections, the court has to partition in kind, meaning physically partition the property, if that's feasible, and it allows the court to consider beyond the financial aspects of-- of-- when making that decision, it also allows them to consider the heritage, how long the farm has been in the family. And then finally, if they do have a partition sale, it puts in some reasonable commercial standards so that rather than selling at auction, it's first listed in the real estate market at the appraised value for a reasonable period of time, so to at least get the full value for the heirs. If the-- it doesn't sell, then the court still has the option at auction. My time has expired. Thank you.

LATHROP: [00:11:37] What's happening now with these? So I appreciate, by the way, really appreciate when the Uniform Law Commission comes up with something that addresses a problem that seems to be widespread, or at least in common from state to state, and this makes a good deal of sense to me. Can you contrast this process with what's happening right now, just for our benefit.

BEN ORZESKE: [00:12:00] Yes. And I should preface it by saying this affects a relatively small

number of people. But when it does, the-- it's devastating to those families. And poorer families, this might be the largest source of their wealth is-- is their real estate, so a small number of people but a large effect when it does happen. Under the current partition law of Nebraska, and pretty much every other state except those that have enacted this, the person in my example, the person from outside the family who files for partition, may then hope to outbid the family members at-- at the auction and that would mean that the family members then are forced to sell even if they choose to stay there. That's-- that's the situation that happens in many cases.

LATHROP: [00:12:49] OK. And now we have a process that makes it more equitable and probably represents what the decedent might want to see happen as opposed to bringing in a stranger and-- and doing a forced sale.

BEN ORZESKE: [00:13:02] It allows the property to stay in the family if there are family members who do want to keep it there. I should emphasize, it does nothing to prevent family members from-- who want to sell from selling. A willing buyer, a willing seller can always agree on a price. All this does is prevent the forced type of sale.

LATHROP: [00:13:19] OK, good. I don't see any questions. I do appreciate you being here. We appreciate what the Uniform Law Commission brings to this committee too.

BEN ORZESKE: [00:13:26] Thank you.

LATHROP: [00:13:33] Yep. How many other proponents do we have, or testifiers, do we have today on this bill? Looks like one, OK, two, three, and I see Senator Friesen here. OK. Go ahead, John.

JOHN HANSEN: [00:13:49] Mr. Chairman, members of the committee, for the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I'm the president of Nebraska Farmers Union. We want to thank Senator Brandt for bringing this bill forward. LB708 is-- has been enacted in other states. It is a reasonable and responsible solution for a long known problem. And while it does not impact a large number of people, it impacts the people that it does impact very harshly. And so if you're the unfortunate winner of having parents who, for whatever reason, didn't think they were going to die or didn't do estate planning, when this issue hits, when I get these phone calls at my office, I know that there's trouble and that it's not going to be resolved easily and that-- that these situations are all made worse by the fact that we have low commodity prices. And so there's very little cash available on the part of the estate to be able to help make up and deal with the members of the family who do not want to continue as a part of the ownership of the family land. So this is a reasonable bill. I have attached to my testimony an example of some of the succession workshops that we cosponsor. We have a long list of folks that we cosponsor with, but of course Nebraska Legal Aid Society, the Nebraska Network for Beginning Farmers and Ranchers, the Nebraska Department of Ag, UNL Extension, USDA, FSA. And so we're pleased to cosponsor with these. We've done about 17 workshops last year. We've done three so far this year. So the brochure that I have kind of gives you an idea of how that works. There is a great need for this, these services. And I'm also attaching the testimony from Joe Hawbaker, who is the lawyer that I work with, with Nebraska Legal Aid. He's the farm desk lawyer. He's well-known, well-respected, does a lot of this kind of work, and I thought his testimony, which he missed yesterday, might be helpful to the committee to get a better idea of the-- kind of the specific situations that he faces when people call and why this would be a prudent piece of legislation. And as in most things, and especially in this particular issue, an ounce of prevention is worth many pounds of cure. And if land can be held in the family and family members can walk away from that feeling that they were treated fairly, that's a win. It's a big win. And so thank you for your time and attention, and I'll be glad to answer any questions if I could.

LATHROP: [00:16:39] I don't see any, but thanks for being here, John.

JOHN HANSEN: [00:16:42] You bet.

LATHROP: [00:17:02] Good afternoon.

BRUCE RIEKER: [00:17:02] Good afternoon. Senator Lathrop, members of the Judiciary Committee, my name is Bruce Rieker, it's B-r-u-c-e R-i-e-k-e-r, vice president of government relations for the Nebraska Farm Bureau Federation. You can thank Congress for me being up here to testify in support of this bill. In the most recent farm bill just passed by Congress, they made specific reference to the Uniform Partition of Heirs Property Act, making special reference to it in a couple different sections. I think that-- and the reason being is that historically, because of farmers or ranchers who own land and tenants in common, we're ineligible for certain federal programs because they were unable to get a farm number pursuant to the USDA requirements. And the most recent farm bill gave preference or gave status to those states who have passed this particular law to allow them to go through the process of attaining farm numbers to make them eligible for those various programs. It could be disaster relief, things like that. I did fail to make copies of the particular sections of the farm bill that refer to this, but one is the preference that it gives to the states who enact this. And the second part is it makes loans available to low-income families who need financial assistance to resolve these partition issues. So that's the reason Farm Bureau is here in support of this bill.

LATHROP: [00:18:40] Good, good to know. We take your word for what the farm bill says, and this looked like a good idea even before you testified and maybe makes more sense now that you have. I don't see any questions, though, for you.

BRUCE RIEKER: [00:18:55] OK. Thank you.

LATHROP: [00:18:55] Thanks for being here today.

BRUCE RIEKER: [00:18:58] You bet.

LATHROP: [00:18:58] Other proponents? OK. Any other proponents? Seeing none, we'll take opponent testimony. Good afternoon.

MIKE DUNN: [00:19:18] Good afternoon, Senator. My name is Mike Dunn, M-i-k-e D-u-n-n. I'm an attorney with the law firm of Halbert, Dunn and Halbert in Falls City, and I'm here today testifying on behalf of the Nebraska State Bar Association who is in opposition to LB708. I've been in private practice for over 36 years now and I've been involved in several partition actions, and I have also had numerous family property disputes which have been resolved outside of court proceedings. Presently, our statutes have a procedure for handling partition actions. Those statutes are found at 25-2170 through 25-21,111

LATHROP: [00:20:03] Say that again, slower.

MIKE DUNN: [00:20:03] 25-2170 through 25-21,111. And those statutes are even referenced in this bill as part of the-- the-- the bill itself, but they want to add additional provisions. These provisions have been used when parties who become owners together, whether by choice, inheritance, or other circumstances, cannot agree on how much the property is worth, who should buy it from the others, how it can be sold, how the property could be divided or should be divided, and an array of other issues that come along with joint ownership of property. These statutes date back to 1867, beginning of this state, and they have served us well for over 150 years. Our current

statutes provide a great incentive for the parties to work together to settle these disputes before they go to court. LB708 appears to be a solution looking for a problem that does not exist in Nebraska. The summary of the bill talks about outside investors buying fractional interest and then partitioning the property. This does not appear to be a problem in this state. LB708 would create a separate set of rules for property owned by family members. The system calls for the courts to determine a fair market value and the parties who want to partition by sale to accept that price. The amount of the interest being purchased by those remaining may still not be the full-fee interest, and attempting to borrow funds to purchase less than a full-fee interest by parties would be difficult. Additional steps to determine who will ultimately be the owner may follow this initial partial-interest purchase. The statute appears to favor those with the means to purchase a property but who do not want the risk of an actual auction which would set the highest and best price. The summary of the bill assumes that an auction sale will not-- will be at a lower than fair market value established by a court based upon appraisal or other means. In a majority of cases that I've been involved with, this is simply not the case. The Nebraska State Bar Association asks the Legislature not to create a separate and confusing partition action for family-owned properties, but to continue the use of the system that has served us well for over 150 years. On behalf of the State Bar Association, we request that you not advance LB708.

LATHROP: [00:22:50] Mr. Dunn, first of all, I hope you're not under water back at home. I had a briefing about the water and the flooding and you guys are in the bullseye.

MIKE DUNN: [00:23:03] Unfortunately, the-- the Nemaha River and the Muddy Creek, both north and south of town, were out yesterday, but they were within their banks when I drove up this morning.

LATHROP: [00:23:10] Yeah, well, hopefully you got a road to go home on.

MIKE DUNN: [00:23:14] Yeah.

LATHROP: [00:23:14] Is your issue that we already have a process in place and this is a replacement, or is there something specific about this process that you have a problem with? In other words, is there something you'd change about the bill or you think it's just completely unnecessary?

MIKE DUNN: [00:23:32] Well, first off, I don't think we should have two systems. But the way I understand the bill is that if you are the partitioning party, you cannot be a buyer, you have to be a seller. Well, there are certainly instances where the farmer who is farming this ground wants to unify the title and wants to not have to worry about a sibling who lives in Omaha or Lincoln not contributing to the real estate taxes, wanting an exorbitant amount of rent for a one-third interest, and those people would actually not be able to bring this suit. So, you know, in most of those cases, we can negotiate prices and things like that, but there are times when you simply can't work it that way and it requires the partition. Yes, the property may sell to someone else, and that's always a risk in a partition action. You don't know who is going to be the-- the seller, but-- or who's going to be the buyer. But you know, when you have a court proceeding partition action, you're buying 100 percent of that property.

LATHROP: [00:24:52] OK.

MIKE DUNN: [00:24:52] So you're unifying the title. Here, when you do this, you don't even know if you're going to get 100 percent of the title because you don't know who's going to say they're going to be a seller.

LATHROP: [00:25:02] OK. OK. I appreciate you being here today.

MIKE DUNN: [00:25:05] Thank you.

LATHROP: [00:25:06] Are there any other opponents to this bill? Anyone in a neutral capacity?

DONNA ROLLER: [00:25:09] Good afternoon. I'm Donna Roller, D-o-n-n-a R-o-l-l-e-r. I wasn't here to testify on this bill at all, but I am a person that has dealt with this difficulty. And so I think I'm not neutral. I think after hearing the last testimony against this bill, I think I'm actually proponent because I disagreed with everything he said because I experienced horrible things that he says people don't experience. So my big question is, for this committee, is this law applying to other people that have had trust or wills in place, because my situation was a family member dying of dementia, dealing with five siblings in an-- in a-- in a situation that I did not ever think would happen. So in a neutral capacity I'm asking-- it was-- it was very-- it was a year of hell for me, and it was something that needed to be done, and I was right. And I had younger generations that didn't know anything. So be it that I didn't have a good enough lawyer in the beginning when I set this up with my sister, I don't know, but I just want this law to be reviewed carefully and that no one is susceptible to what I went through based on my only option was partition. And, yes, an auction was not going to guarantee that we would get even near the value of that farm. So I disagree fully with the person that just said he's against this bill. So whatever you do legally to check out, I think there are more people in my situation than those that have no wills, so, you know, would you please consider those--

LATHROP: [00:27:12] OK.

DONNA ROLLER: [00:27:12] --those actions?

LATHROP: [00:27:13] All right. Thank you for your testimony.

DONNA ROLLER: [00:27:14] Thank you.

LATHROP: [00:27:16] Anyone else in a neutral capacity? Senator Brandt to close.

BRANDT: [00:27:20] We are going to waive closing but wanted to make you aware this is also a problem in the urban areas.

LATHROP: [00:27:27] Right.

BRANDT: [00:27:29] This isn't just unique to farmland.

LATHROP: [00:27:29] OK. We do have a letter of support from Scott Mertz at the Legal Aid of Nebraska Housing Justice Project. With that, we will close our hearing on LB708, and that takes us to LB712. And I have a bill to introduce in Revenue, so I'm going to have you chair the next-- the next one.

FRIESEN: [00:28:35] Chairman Brandt-- that's got a nice ring to it. My name's Curt Friesen, C-u-r-t F-r-i-e-s-e-n. I represent District 34. I'm here today to present LB712. LB712 seeks to prohibit joint public agencies and joint entities from prohibiting the members of their board to speak about issues and businesses-- and business that comes before the entities and agencies. Last year, a joint public agency in my district, an Area Agency on Aging, updated their bylaws to say that a board member who fails to perform the duties of a member or acts contrary to the best interests of the agency may be subject to censure by the governing body. Further, if the board member is censured,

the county where the board member serves would be sent notice and a request would be made that the county send a new representative to represent that county on the agency board. This bylaw change runs the risk of trying to silence someone who may hold a different point of view from the rest of the members of the agency or entity. We are-- we in the Legislature greatly value our ability to speak on issues without fear of censorship and our body was designed to provide the most transparency of any legislative body in the country. Why wouldn't we want the same to be held true for those at the local level who sit on joint public agency boards where it can be difficult for the public to be able to know what kind of business the agency is conducting? This is an issue about transparency and an individual's right to free speech, and I feel this is something the Legislature should make the-- sure that the public is entitled to. With that, I thank you for your time and glad to answer any questions.

BRANDT: [00:30:18] OK. Thank you, Senator Friesen. Does the committee have any questions?
Senator Chambers.

CHAMBERS: [00:30:23] Senator Friesen, just so I understand, this seems strange to me that this would have to come. What-- what led to it, did you say?

FRIESEN: [00:30:33] Well, there was-- there was a joint agency formed. It's the Midland Area Agency and it has a multiple-county group, and one of the board members have had a differing opinion of what the board was doing. They-- they differed on a decision and they talked about it in public, and so she was censured. They were-- she was told she shouldn't be talking about it, the board should be talking as a board, and only the chairman of the board should be able to speak about the issue, and so, therefore, they passed some bylaws to-- to be able to censure that board member.

CHAMBERS: [00:31:07] And what was spoken was not based on what had occurred in an executive session where it-- which is not open to the public?

FRIESEN: [00:31:16] No, this should have been public information.

CHAMBERS: [00:31:20] OK. I find it-- when I saw what it was, I said, this can't be. But I'm glad that you brought the bill.

BRANDT: [00:31:29] OK. Any other questions? I assume you're going to remain for closing?

FRIESEN: [00:31:33] I'll stick around.

BRANDT: [00:31:33] OK. We'll now ask for any proponents. LB712, any proponents? Seeing none, we're going to go to opponents. LB712, opponents. OK. Are you an opponent?

_____: [00:32:02] Neutral.

BRANDT: [00:32:02] No, behind you there.

_____: [00:32:04] Neutral.

BRANDT: [00:32:04] OK, those testifying in the neutral capacity.

DONNA ROLLER: [00:32:17] Donna Roller, D-o-n-n-a R-o-l-l-e-r. I'm speaking out today on obscure bill LB712 as the wording seeks to protect representative free speech. I thought it was curious why representation needed protection for free speech and I needed to be here today to be

informed. I'd point out that just a four-word change in a revenue bill would tax everyone's groceries, so that's why I'm here to view changes necessary in this bill. Today I'm using my free speech to speak out on recent events regarding the leadership of the state that began with racist e-mails on a senior member of the family. The events keep propagating into campaign employee posting numerous racist, homophobic, anti-Semitic comments. This included an attack on a Jewish professor at the university. This extends to an endorsement to our local election on an individual who shares those racist, homophobic views, and surely a bill that would have protected LGBTQ in the workplace would have been vetoed. These views are shared and endorsed through the biggest financial contributions to the associated political party of this state, the party leadership that has directed action against other professionals employed at our state university for speaking out against racist-- racist white nationalist organizations. In addition, this financially powerful family influences extend up the chain of command to the racist white nationalists occupying the Oval Office. It also extends with financial influence into this Legislature, supporting senators that affect our state laws and policies. I can no longer ignore the increasing exposure of these hateful actions. Apologies and denials are no longer enough. LB712 is about protecting a state employee or representative county board free speech. Why is this necessary? It seems we have plenty of inappropriate speech going on in the state and in this Capitol Building.

BRANDT: [00:34:18] OK. Thank you, Ms. Roller. Any questions from the committee? No questions.

JUDY KING: [00:34:33] Thank you.

BRANDT: [00:34:33] Good afternoon.

JUDY KING: [00:34:33] Hi. My name is Judy King, and it's J-u-d-y K-i-n-g. Anything with the

words "free speech" in it reminds me of what's happened-- happened at the university, what the professors there-- and so I am just going to read a Seeing Red article that was written by Amanda Gailey and Patricia Hill in May 2, 2018. Three senators have repeatedly asserted through op-eds in state newspapers that Nebraska is a place where political pluralism is undesirable-- undesirable and where speech opposing the single party in control should not be allowed. They have maintained that political speech they agree with is welcome but opposing viewpoints shared in a public forum are harassment and conduct issues and need a firm punishment and termination from employment. These senators seem to believe that public universities are not sites of free inquiry but places where thinkers and researchers must fit their speech at all times to the ideology that won the most recent election. Protest and civil disobedience have a long patriotic record in American history. Readers may recall a 1773 theatrical protest in which activists dressed in costumes dumped a shipment of tea into Boston Harbor. Since that time, through Abolition, Suffrage, and Labor and Civil Rights movements, full participation in democracy, including civil disobedience and protest, has been a part of what makes America great. Indeed, there is nothing more than America-- more American than engaging fully and wholeheartedly in democracy using the methods of our activist predecessors. But this is not the vision of the America that these senators espouse. They envision a country where the ruling party can silence dissent. The senators seem to believe only people who do not work for a living should get to speak freely and act upon their moral convictions. If you are among the employed majority of Nebraskans, you should be terrified that the state legislators believe that your employer ought to fire you if you engage in politics on your own time. The senators imply that the Nebraskans are one mind politically, that they themselves define the one mind, and that they are entitled to punish anyone who strays from their ideology. But they don't speak for all Nebraskans, including many of the young Nebraskans who attend the University of Nebraska-Lincoln. Like the two of them, Amanda and Patricia, many of them come from conservative, small-town backgrounds and went to college to find intellectual challenge and a marketplace of ideas. The state senators are simply playing their part in a repeated historical

struggle between those who are threatened by dissenting ideas and those who stand up for them. We are happy to carry the torch and to fight for freedom of speech and academic freedom in a state that sorely needs both. I just hope the senators would agree with that, that are--

BRANDT: [00:37:54] Let's-- let's see if we have any questions. Any questions? Thank you, Ms. King.

JUDY KING: [00:37:59] Thank you.

BRANDT: [00:38:00] Anybody else to testify the neutral capacity? Seeing none, Senator Friesen, as you're coming up to close, we will read--

FRIESEN: [00:38:10] [INAUDIBLE] questions, I'll waive closing.

BRANDT: [00:38:12] OK. Is there going to be any questions for Senator Friesen? If not, we have one letter in support from Amy Miller, the ACLU of Nebraska. And with that, the hearing is closed and we will move on to LB427 with Senator Howard.

HOWARD: [00:38:37] Good afternoon, colleagues. I'm going to scoot up. OK. Good afternoon, Senator Brandt and members of the Judiciary Committee. My name is Senator Sara Howard, H-o-w-a-r-d, and I represent District 9 in midtown Omaha. Today I'm bringing you LB427, a bill changing terminology in our child legitimacy statutes. LB427 strikes the word "the wife" and replaces them with "either spouse." This statute states that any children born to a couple while the couple is married is considered legitimate for purposes of divorce or annulment. The intent of this legislation is that the birth certificate of a child born to a married couple would contain the names of both parents, regardless of the sex of both parents. Under current Nebraska law, if a child is born to

a same-sex couple, only the woman giving birth would have her name on the issued birth certificate. In the case of two men having a child together, only the man adopting the child would have his name on the birth certificate. We've passed out a Supreme Court case that would-- that's guiding this statute because we need to align ourselves with this ruling. So in 2017, the Supreme Court ruled in *Pavan v. Smith* that same-sex parents have the right to be listed on their children's birth certificates and be legally recognized as parents, just as any heterosexual couple would be. This case originated in Arkansas where two same-sex couples conceived children through anonymous sperm donation and when the couples, both women, filled out paperwork citing both spouses as parents, the Arkansas Department of Health issued certificates citing only the birth mother's name. The Arkansas State Supreme Court ruled that the state law did not require them to extend the rules for opposite-sex couples to similarly situated same-sex couples, but the Supreme Court explained that in *Obergefell v. Hodges* that the constitution entitles same-sex couples to civil marriage on the same terms and conditions as opposite- sex couples. The Supreme Court found that issuing the birth certificate in only the birth mother's name infringed upon the constellation of benefits that the state has linked to marriage and, therefore, reversed the state court's judgment. Passing LB427 will enable to-- Nebraska to comply with the ruling of the Supreme Court. I have brought you an amendment, as we need to add some language into our statutes governing the Division of Vital Statistics to completely accomplish the intent of the bill. The language in AM705, which I believe you have, is in addition to the current language in the green copy. LB427 is intended to fix an issue that should be addressed as the state continues to recognize same-sex marriage. I thank you for your time and attention to this important issue and I'm happy to try to answer any questions you may have.

BRANDT: [00:41:22] Do we have any questions? Are you going to stick around to close? That's the question.

HOWARD: [00:41:29] Unfortunately, no. I would love to. This is a really wonderful bill. But we've got a lot going on in HHS today and I apologize.

BRANDT: [00:41:37] Well, thank you.

HOWARD: [00:41:38] Thank you for having me. I appreciate it.

BRANDT: [00:41:40] Now we will go to proponents.

ABBI SWATSWORTH: [00:41:41] Thank you, Senator Brandt, members of the Judiciary Committee. My name is Abbi Swatsworth, A-b-b-i S-w-a-t-s-w-o-r-t-h. I'm the executive director of OutNebraska, Nebraska's statewide organization working to empower and celebrate LGBTQ Nebraskans. OutNebraska supports LB427. A birth certificate documents the legal parentage of a child and serves as the most important piece of identification for a minor. Because of a presumption that the husband of a woman who gives birth to a child is the other legitimate parent, a child born to different-sex married couples should have the names of both their legal parents included on their birth certificate. Unfortunately, this presumption has not been applied as consistently to same-sex couples in legally recognized relationships. The parental presumption should apply to same-sex Nebraskans who have a child who are married. Numerous studies and metastudies have borne out that children of same-sex couples fare equally as well as different-sex couples. As you've already heard, the U.S. Supreme Court cited children's well-being as a key argument in favor of marriage equality in its 2013 and 2015 rulings, and the case of Pavan v. Smith, which you've been handed, affirmed in June 2017 that marriage equality means both parents in a married same-sex couple have the right to be on their children's birth certificates. This distinction is important for a variety of reasons, not the least of which are issues with survivorship with Social Security and inheritance tax law. LB427, a simple update to the definition of legitimacy and a clear statement of birth certificate

procedure, should ensure that Nebraska law is in line with the 2017 Supreme Court decision. It is time for Nebraska to do the right thing and honoring same-sex parents and giving both of them legal parental recognition. We respectfully encourage you to advance LB427 to the full body. I'm happy to try to answer questions.

BRANDT: [00:43:54] OK. Do we have any questions? I don't see any.

ABBI SWATSWORTH: [00:43:59] Thank you.

BRANDT: [00:44:00] Thank you for your testimony. Proponents.

SPIKE EICKHOLT: [00:44:08] Proponent. Thank you. Good afternoon, members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of LB427 and the amendment that Senator Howard distributed earlier. We want to thank Senator Howard and Senator DeBoer for doing-- introducing this bill. You've already heard the-- the reason for this bill. In 2015, the U.S. Supreme Court decided Obergefell v. Hodges. It was a landmark civil rights case ruling that the fundamental right to marry is guaranteed to same-sex couples as is in traditional opposite-sex couples. Even though this is the law of the land, some statutes contained antiquated gender-specific language which really needs to be updated and does not accurately reflect the state of marriage and the state of the law, and this is one of those statutes. Additionally, in 2017, the U.S. Supreme Court decided Pavan v. Smith, which invalidated an Arkansas birth certificate law which is at least, by my cursory glance, is very similar to Nebraska and that is, it doesn't-- it does not recognize or accommodate same-sex married people both being record-- recorded on birth certificates as the parents of child or children who's born in that marriage. So for those reasons, we would encourage this community to advance this bill as amended by the amendment.

BRANDT: [00:45:30] OK. Any questions for Spike? Seeing none--

SPIKE EICKHOLT: [00:45:34] Thank you.

BRANDT: [00:45:35] --thank you. Any more proponents? Looking for opponents. Is anybody opposed to LB427? Anybody to testify in the neutral capacity? And do we have any letters? We have no letters and we waive closing and the hearing for LB427 is closed. We will now move on to LB643, Senator-- Senator McDonnell.

McDONNELL: [00:46:14] Thank you, Senator. Members of the committee, my name is Mike McDonnell, M-c-D-o-n-n-e-l-l. I represent Legislative District 5, south Omaha. LB643 proposes to amend Sections 35-1001 relating to the death or disability prima facie evidence requirements for firefighters or firefighter paramedics by adding breast cancer and ovarian cancer to the list of cancers already specified in the statute. Language currently exists within the statute that represents male-specific cancer, prostate systems. It is time our-- our laws be updated to accurately reflect the fact that the fire service is not a male-only field of service. Women are filling the role of fire service protection to their communities at an ever-increasing pace, and LB643 adds necessary language to the statute that acknowledges their service and the risks they are taking to provide protection to our citizens. Firefighters is a more-- are a more dangerous-- than most people know. In fact, the number-one cause of death among firefighters is not from the fire itself but from occupational exposures to toxins and carcinogens at the fire scenes. Besides inhalation hazards, chemicals pose a significant threat to the firefighter's health through skin absorption. Even with the full protective equipment, when firefighters attack structural fires, they are repeatedly exposed to many hazards-- hazardous chemicals, including carbon monoxide, hydrogen cyanide, benzene, formaldehyde, and vinyl chloride, just to name a few. A study conducted by the National Institute of Occupational

Safety and Health in 2013 found that firefighters have a 14 percent increased risk of dying from cancer as compared to the general population. Cancer is a leading line-of-duty death among firefighters today. LB643 acknowledges that high-risk exposure and expands the protections in law to cover female cancer as well. I became a firefighter in Omaha in 1989. We were the second class to have females in the fire department in our class. Every class since has had female firefighters that we've been hired in-- in most cities around the country, they followed suit. This language was put in place to help firefighters and now the fire service has expanded amongst male firefighters to female firefighters. They're taking the same risks on a daily basis, putting their lives on the line for the citizens they serve, and I think we should respect that and add the language to this bill. Steve LeClair is my subject matter expert. He is going to be testifying. He's the president the Omaha Firefighters Union Local 385 and he's going to tell you about some personal stories that he's dealt with, with some of his members, over the last ten years. I'm here to answer any questions.

BRANDT: [00:49:10] Senator Chambers.

CHAMBERS: [00:49:10] Senator McDonnell, I cannot tell you how much it pleases me to have one of my male colleagues bring a bill like this. So indulge an 82-year-old man who's old enough to be your grandfather to say, behold Senator Mike McDonnell, my male colleague in the Legislature, in whom I am well pleased.

McDONNELL: [00:49:36] Thank you, Senator.

BRANDT: [00:49:38] OK. Will you stick around for closing?

McDONNELL: [00:49:40] Yes.

BRANDT: [00:49:42] OK. We will now go to proponents. And if you're a proponent, could you come down here to the on-deck chairs.

STEVE LeCLAIR: [00:49:57] Good afternoon.

BRANDT: [00:50:03] Welcome.

STEVE LeCLAIR: [00:50:04] Thank you. Good afternoon. Excuse me. My name is Steve LeClair, L-e-C-l-a-i-r. I'm the president of the Omaha Professional Firefighters Local 385. Mr. Chairman and members of the Judiciary Committee, thank you for the opportunity to appear before you this afternoon to speak in support of LB643, introduced by Senator Michael McDonnell. Senator McDonnell, thank you for your support on this important piece of legislation. As Senator McDonnell stated in his introduction-- introduction, LB643 aims to add in language "breast and ovarian cancer" as proposed and, as proposed, does not in any way undermine or change current criteria in Nebraska Revised Statute 35-1001 that such firefighter had to be exposed to a known carcinogen "as defined on July 19, 1996, by the International Agency for Research on Cancer, while in the service of the fire department, and such carcinogen is reported by the agency to be a suspected or known cause of the type of cancer the firefighter or firefighter-paramedic has." Firefighters are routinely-- routinely exposed to toxic fumes and chemical substances when they respond to fires. Additionally, the mixture of hazardous chemicals is different at every fire with many substances acting as cocarcinogens. The way all toxic combustion byproducts interact makes firefighters' exposures even more dangerous. Studies have found an association between firefighting and a significant increased risk for specific types of cancers. And as Senator McDonnell, indicated a NIOSH study in 2013 found that firefighters have a 14 percent increased risk of dying from cancer as compared to the general population. This is the risk that firefighters take every day as they serve their communities. A problem, though, with any study up to this point in time is that there has been

an underreporting of smaller demographics within the fire service, specifically females. This demographic has historically been underrepresented in the fire service and this underrepresentation has created a void in the data. Recently we, the IFF, worked extremely hard to get the Firefighter Cancer Registry through the U.S. Congress in order to create a database of firefighter cancer information from around the country and across demographics in order to get a clearer picture of how cancer is affecting firefighters across the spectrum. Because of the presently unreliable demographics data, I can only say anecdotally that women have become a larger demographic of the fire service over the last 20 years. But what I have seen over the last 17 years on the ground supports that. Women are gravitating towards the fire service in higher and higher numbers and recognition of breast and ovarian cancers, female-specific cancers, in our presumption language is appropriate and necessary. Two very good friends of mine, women in the fire service, have had their struggles with cancer. In 2014, Captain Laura Larson succumbed to job-related ovarian cancer, making the ultimate sacrifice. We recognize her on the IFF Memorial wall in Colorado Springs every year. We can further recognize her sacrifice today with the addition of the proposed language. Fire apparatus engineer Laura Kitzman was diagnosed with breast cancer in 2018, even though she tested negative for all 43 gene markers. She underwent a double mastectomy and reconstructive surgery and would have relished the opportunity to testify here in person, but unfortunately she is at her oncologist's office today, a place she will be regularly the rest of her life. We can also recognize her sacrifice today by moving LB643 out of committee and to the floor for full debate. Not only is it appropriate, but it is necessary to recognize the increased numbers of women in the fire service to validate the sacrifice, all too often ultimate sacrifice, that our women in the fire service are making every day. Thank you again for your consideration of this legislation, and I'm happy to answer any questions that you may have.

BRANDT: [00:53:48] OK. Does the committee have any questions? I see none, Mr. LeClair. Thank you for your testimony. Thank you for your service.

STEVE LeCLAIR: [00:53:55] Members, thank you very much.

BRANDT: [00:54:00] Any other proponents? Any opponents? Anybody to testify in the neutral capacity? OK. As he is coming down to close, we have letters. Let's see.

McDONNELL: [00:54:19] If there's-- if there's no questions, I'll-- I'll waive my closing.

BRANDT: [00:54:23] Well, hang on a second here. We've got-- we've got one letter for the record, Scout Richters, ACLU of Nebraska, in support. Are there any questions for the senator? LB 643 is now closed.

McDONNELL: [00:54:37] Thank you.

BRANDT: [00:54:38] Thank you. Mr.-- Senator La Grone, is he here? And then I don't-- where's Patty at? Somebody might start looking for her. All right. There he is. The committee is waiting. What number is this one, LB471?

CHAMBERS: [00:55:43] He doesn't get here in 30 seconds, I think we should just kill his bill.

[LAUGHTER]

La GRONE: [00:55:48] Sorry about that. I was in a conversation with Senator Vargas down in Government about modernizing our elections, something I know Senator Morfeld could forgive.

BRANDT: [00:55:51] Well, welcome to--

MORFELD: [00:55:53] Depends on how you vote.

BRANDT: [00:55:53] Welcome-- welcome to the Judiciary Committee, Senator La Grone, and you're a go to open on LB471.

La GRONE: [00:56:01] Well, thank you, acting-Chairman Brandt. LB471 provides a procedure for the consolidation of civil actions arising out of the same transaction or occurrence or series of transactions or occurrences that are pending in different judicial districts. Excuse me. The bill is intended to promote efficient-- efficiency and reduce costs. Any party to one of the actions could request the Supreme Court consolidate the actions. The Supreme Court could do so if it finds that doing so will promote efficiency. The actions would be transferred to a single county in front of a single judge designated by the Supreme Court. The actions would be consolidated only for pretrial and discovery unless all parties agree to a joint trial. This procedure would not apply to civil actions arising under Chapter 42 or 43 and many states have a similar procedure. It is-- thank you. This particular bill was modeled after the Kansas procedure and someone from the Attorney General's office can go more in depth about the exact situation that caused the need for this in Nebraska. I found it very compelling, which is why I introduced the bill, and I'd be happy to answer any questions.

BRANDT: [00:57:12] OK. Does the committee have questions? Senator Chambers, no questions? All right. Are you going to hang around to close?

La GRONE: [00:57:18] Absolutely.

BRANDT: [00:57:20] All right. Thank you, Senator La Grone. We will now go to proponents.

RYAN POST: [00:57:30] Good afternoon, Chairman and members of the Judiciary Committee. My name is Ryan Post, R-y-a-n P-o-s-t, and I'm an assistant attorney general with the Nebraska Attorney General's Office. The Attorney General thanks Senator La Grone for introducing this legislation. As you just heard, LB471 provides a procedure for the consolidation of civil actions arising out of the same transaction or occurrence or series of transactions or occurrences that are pending in different judicial districts. The need for this legislation arose out of an emergency situation last spring where the Attorney General, on behalf of the Nebraska Department of Health and Human Services, had to request an ex parte order appointing a temporary receiver in 32 separate cases in 10 different judicial districts on a Friday night after 5:00 p.m. As you can imagine, that was quite difficult. We were able to make it work under existing law, but I-- I must admit, we had to get a little creative. In that particular instance, it wasn't even opposed. It's just we had to get a court to order it and so we had to track down the judges and get this procedure in place. We also learned that evening as we were scrambling that most other states actually have a procedure for this. We don't. And so our friends from Kansas notified us of their procedure and that's what this bill is based on. Obviously, you know, one unique situation does not command a statutory change, but we thought it was important to start the discussion. We've discussed this legislation with the Nebraska Bar Association legislation committee, received very positive feedback and a few suggested changes. One of those was to address costs and expenses in a consolidated action, as well as how do you appeal from a consolidated action. And so the Attorney General's Office is in the process of drafting an amendment to address those suggested changes and we will provide that to Senator La Grone and the committee once drafted. And I'm happy to answer any questions you may have.

BRANDT: [00:59:25] OK. Do we have any committee questions? Senator Chambers.

CHAMBERS: [00:59:28] One question, is this the first time you appeared before this committee?

RYAN POST: [00:59:32] No.

CHAMBERS: [00:59:32] You've been here before?

RYAN POST: [00:59:35] Yeah, just a couple weeks ago.

CHAMBERS: [00:59:37] You flew under the radar. Here's what I was going to ask you: What are the odds in the office that you would not get away clean? But that doesn't have to be asked because you've already been here, so I don't have any questions.

BRANDT: [00:59:48] OK. Thank you, Senator Chambers. Thank you, Mr. Post, for testifying.

RYAN POST: [00:59:51] Thank you.

BRANDT: [00:59:52] Are there any more proponents? Are there any opponents to LB 471? Opponents? Anybody to testify in the neutral capacity? Seeing none, Senator La Grone, you are welcome to close.

La GRONE: [01:00:14] Well, I just think that that lack of additional testimony shows how wonderful a bill it is and why you should all pass it out immediately. Well, obviously wait for the amendment. But, no, I think there are still paths to get this done this session, maybe through consent or something like that. So I would encourage the committee to advance the bill when you do receive the amendment because I think it is something that we can accomplish still.

BRANDT: [01:00:37] OK. Any questions? Senator Chambers.

CHAMBERS: [01:00:39] Senator La Grone, this is just for the record. In order for this process to be effectuated, all parties and the court that would be appointed would have to agree.

La GRONE: [01:00:51] That's my understanding, yes.

CHAMBERS: [01:00:52] That's the way I read it. OK, thank you.

BRANDT: [01:00:55] OK. With that, we are closed on LB471 and we have one left, LB387, Senator Pansing Brooks. And we will take a five-minute break and be back here at 20 till. She is closing on another bill at the moment, so if--

[01:04:42] [BREAK]

MORFELD: [01:04:45] We're going to get started right now. Senator Brandt is coming back. You're the last one, so--

PANSING BROOKS: [01:04:50] OK, good.

CHAMBERS: [01:04:52] They heard you were coming. You know how to empty a room.

PANSING BROOKS: [01:04:53] Gosh, I do.

CHAMBERS: [01:04:53] I'm just kidding.

PANSING BROOKS: [01:04:55] I'm good at this.

MORFELD: [01:04:59] Are we ready?

PANSING BROOKS: [01:05:01] I'm ready.

MORFELD: [01:05:01] Senator Pansing Brooks, welcome. We will open on LB387 with what's left of the Judiciary Committee.

PANSING BROOKS: [01:05:07] Thank you, Senator Morfeld and fellow members of the Judiciary Committee. For the record, I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. And I have been off introducing another bill and clearly, if I'm not here, it goes so much faster since this is the last bill of the day. I'm here today to introduce LB387. This is a bill that seeks to modernize procedures for the selection of jurors. And for those of you who have been here for many years, I have-- I have brought this bill before. The bill was brought to me by the Nebraska Association of County Officials and the clerks of the district court. The bill seeks to update jury selection to accommodate modern practices and define related terminology. I previously introduced similar legislation and the Judiciary Committee advanced that legislation to General File with a unanimous vote, but the bill did not get scheduled for debate due to lack of time. In drafting this legislation, the clerks of the district court looked at the whole of Chapter 25, Article 16, and determined that it might be easier for the public attorneys and others who work with juries if the whole article was recognized in chronological order with topics grouped together. As often happens when amendments are adopted over time, related subject matter gets separated and out of order. The substance of the new language defines terms such as "grand jury," "jury commissioner," and "jury list." It also describes the processes for qualifying and summoning jurors. The main substantive change from last year is a raise to the age of exemption from jury duty from 65 to 70 years old in order to make it consistent with the federal court system which already uses the age of 70 in Nebraska. Nebraska is one of the few remaining states that has

65 as the age of exemption. The second main change is to allow a jury commissioner to not provide the juror with a printed qualification form but to provide the information in an ability to complete it on-line. Again, this is similar to the federal court system's process. There is a provision that if the juror does not complete the qualification form on-line within ten days, the jury commissioner shall then send the juror a printed qualification form. Also, wife-- "wife or husband" was replaced with "spouses" to bring it in line with court rulings. LB192 [SIC] makes a number of other technical changes that those behind me who have the experience and expertise with these issues will be able to answer. And I do have one amendment on the bill. AM404 makes a few technical adjustments. The experts behind me can answer questions on those. And in closing, I ask you to advance LB387 and its underlying amendment to General File. And I'll be able to-- happy to take a question if you want, if you dare.

BRANDT: [01:08:11] Thank you.

PANSING BROOKS: [01:08:12] Oh no.

BRANDT: [01:08:16] Questions? Senator Chambers.

CHAMBERS: [01:08:17] What was the previous age for exempting people from jury duty?

PANSING BROOKS: [01:08:21] It moves from 65 to 70. They're just puppies.

CHAMBERS: [01:08:25] So all these years I've been exempt.

PANSING BROOKS: [01:08:29] You have.

CHAMBERS: [01:08:30] Is there such a thing as a person beyond the age volunteering?

PANSING BROOKS: [01:08:34] I don't know. There should be.

CHAMBERS: [01:08:36] Oh, I'll see if--

PANSING BROOKS: [01:08:36] You should be--

CHAMBERS: [01:08:36] -- expert. I'll [INAUDIBLE]

PANSING BROOKS: [01:08:37] OK, good.

CHAMBERS: [01:08:39] OK.

BRANDT: [01:08:39] OK. Any other questions? Will you stick around to close?

PANSING BROOKS: [01:08:42] Yes. Well, yeah.

BRANDT: [01:08:43] All right.

PANSING BROOKS: [01:08:44] Thank you.

BRANDT: [01:08:46] Thank you. We'll now go to proponents

ELAINE MENZEL: [01:08:53] Acting Chairman Brandt and other members of the Judiciary Committee, for the record, my name is Elaine Menzel, E-l-a-i-n-e M-e-n-z-e-l, here on behalf of the

Nebraska Association of County Officials, and we are in support of LB387. My purpose primarily today is to greatly thank Senator Pansing Brooks and the clerks of the district court and that have been working on this legislation. As Senator Pansing Brooks testified, she's done some-- introduced bills for us for the last three to four years, and my understanding is that there's even been legislation prior to that that's begun the process of trying to harmonize and update this language related to juror selection. And so that's essentially what I have to tell you, and gladly I'll attempt to answer any questions. But as Senator Pansing Brooks did, I would like to defer to the experts on this and the practitioners on the topic.

BRANDT: [01:10:05] Let's find out. Any questions? You're off the hook.

ELAINE MENZEL: [01:10:09] Thank you.

BRANDT: [01:10:10] Thank you.

JANET WIECHELMAN: [01:10:17] Good afternoon, Judiciary Committee. My name is Janet Wiechelman, J-a-n-e-t W-i-e-c-h-e-l-m-a-n. I am the clerk of district court for Cedar County and also the legislative liaison for the Clerks of District Court Association. As Senator Pansing Brooks had indicated, this has been a process. We actually went back to looking at legislation back in 2007 when Senator Flood had brought some legislation at that time from a clerk of district court who had concerns about the terminology and how the processes worked. And then from then, we kind of waited a little bit and then we asked Senator Pansing Brooks to bring the legislation in 2016. We are still in the process of fine-tuning and we hope now we have a bill that has completed and addressed all the concerns of everyone. Some of the general terms that we're-- issues that we're dealing with in this legislation is there is a court rule, and that court ruled dictates from the Nebraska Supreme Court the qualification form that we use. Right now that qualification form does not quite match the

statute. And in my packet, on page 13, is the questionnaire by the Supreme Court. One of the main issues we have is they have included the issue of exemption for military. Statute does not address that and we just want to-- the portion is to define the issue of spouses where statute still refers to husband and wife. This process now that we believe we're at, that is a clear process from the start to the end. So if someone needs to actually work through the statutes, they can see how we do the process of selecting a juror. First process we started with was dealing with terms. We deal with terms. We talk about a jury panel. We talk about a master key list. We talk about a combined list. Now when you read the statutes, you can go back to those terms and understand what we are talking about. It's clear now, advances from the start to the end. And as I mentioned the terms, "master list" was always a term we really didn't know how to define it, if it was the list being combined list, being the voter registration list from the Election Commissioner, and the list of licensed drivers and those with state ID cards from Department of Motor Vehicles. We have now named that as the combined list. And once we have drawn the key number, we now are going to say that's the master key list, so we're defining it so you can understand it. This was partly brought by Madison County when the clerk of district court was on the stand for postconviction relief. The confusion, what are we talking about, terms, is this the right term, and I included with this-- my testimony is this testimony from that particular case. The statutes, while we fine-tune them, will now help deal with small counties and large counties so they can do the appropriate processes within their counties. The senator did bring up the issue that we're talking about another process we've had in the federal civil courts and another clerk will deal with that. As far as the age of exemption, I've provided you information, which is the federal questionnaire which shows the age of 70, and also I surveyed all of the other states to find out what theirs are and actually Nebraska is one of the few states that still has an age exemption of 65. So we would like to move that to 70 to broaden our pool of names. I will leave it as that and ask the committee to review LB387 and also AM404 and advance this to the floor. I'll take any questions.

BRANDT: [01:13:55] OK. Let's see if we have any questions. Senator Chambers.

JANET WIECHELMAN: [01:13:56] Yes, Senator Chambers.

CHAMBERS: [01:14:00] I just got to thinking about the question I was going to pose to Senator Pansing Brooks. And upon further thought and consideration, in view of how people are reluctant to serve on jury duty, the fact that somebody would volunteer to do so would probably be taken as presumptive evidence of mental incompetency and that person would be returned down, so I don't need to ask the question. But thanks for your willingness to answer had I asked it.

JANET WIECHELMAN: [01:14:31] Thank you, Senator.

BRANDT: [01:14:33] Thank you, Ms. Wiechelman.

JANET WIECHELMAN: [01:14:35] Thank you.

BRANDT: [01:14:38] More proponents.

TROY HAWK: [01:14:49] Senator Brandt, good afternoon. Members of the Judiciary, thank you for having me here today. And thank you, Senator Pansing Brooks, for sponsoring this bill. My name is Troy Hawk, T-r-o-y H-a-w-k, and I'm the clerk of the Lancaster County District Court and the jury commissioner for Lancaster County. I'm here today to testify in support of LB387. Specifically, I would like to talk about two items in this bill. The first, Section 7 of the bill would amend the age at which a potential juror could opt out of jury service from age 65 to 70. Specifically, I'd like to talk about how this would affect Lancaster County. Currently I summons between 1,000 and 1,200 jurors each month, or each jury term, for a total of a little over 13,000

jurors each year. Currently, I lose about 1,600 potential jurors each year due to jurors opting out based on their age. Of those 1,600, approximately 550 of those are between 65 and 70. So what this means is that I lose nearly 4.5 percent of my potential jury pool to people who are between the age of 65 and 70. The number of jurors that I summons each month is partly based on the fact that I know statistically that I'll lose over 4 percent of my potential juror pool based on age. Changing the age of opt-out to age 70 would allow me to recapture this number, which in turn would allow me to summons fewer jurors each month. I estimate that if the opt-out age changed from age 65 to 70, I could summons approximately 100 fewer jurors each month, or approximately 1,200 fewer jurors each year. This would result not only savings in postage, hours of my staff, and printing cost to the county, but it would mean that I'm asking 1,200 fewer Lancaster County citizens each year to answer a jury summons and put their lives on hold for jury service, which, as we all know, jury service, while it's a very important civic duty, is also a strain and uncertainty in people's lives during the length of the jury term and if we can lessen that, I think that's a great thing we can do for our citizens. Second, I'd like to address Section 14 of LB387. The changes contained in this section would allow but not require a jury commissioner to summons jurors using a jury management system or an electronic system. In short, current statute right now requires that when a prospective juror is summoned, I must mail a copy of that questionnaire to them. The changes this bill provides would allow me to send a summons to a protective [SIC] juror-- prospective juror but then have them answer the questions electronically, i.e., on-line. This is similar to the federal jury system. If you get "summonsed" in the federal jury system, the prospective juror receives a postcard in the mail and then they log onto the court's Web site to complete their questionnaire. Realizing that not everyone will be able to or have the resources to reply to their summons electronically, LB387 does contain provisions for the jury commissioner to provide a paper questionnaire if requested or needed. Currently, jury commissioners do have the capability to allow for electronic completion of the juror qualification form. However, statute still requires us to mail that questionnaire out in paper. Right now, in Lancaster County, I do have approximately 40 percent of my prospective

jurors complete that questionnaire on-line. With the changes in this bill, I think my completion rate would most likely approach 90 percent or higher. This is more environmentally friendly. It reduces the time and effort in my office and reduces the mailing costs and would allow me to respond to questions from judges and attorneys that will be using those jurors in their cases. I see my time is over so with that, I will take any questions.

BRANDT: [01:18:47] OK. Do we have questions? Senator Chambers? Thank you, Mr. Hawk.

TROY HAWK: [01:18:52] Thank you.

BRANDT: [01:18:55] Any more proponents, LB387? Any opponents, LB387? Anybody to testify in the neutral capacity? As Senator Brooks-- Pansing Brooks is coming to close, we have three letters for the record, all in support: Amy Miller, ACLU of Nebraska; Valerie Bendixen, Hall County District Court Clerk; John Friend, Douglas County Clerk of the District Court. Senator Pansing Brooks.

PANSING BROOKS: [01:19:34] Thank you, Senator Brandt. Well, just for the record, it's 2:52, and so I can get us through by the time 3:00 rolls around. Senator Morfeld wants me to pass. But the only thing I want to add is thanking everybody who came and also, since I've brought this basically three or four years now, I'm hoping that this can go up on consent, so just to let you know that that's what I'm thinking. So thank you.

BRANDT: [01:20:01] Do we have any questions? We're good. We are adjourned today, folks. Thank you, everybody, for-- for coming.