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Sen. Laura Ebke
Chairperson, Judiciary Committee
Nebraska Legislature
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February 22, 2017

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Sen. Ebke:

I am writing to express support for LB 526, which among other things requires a finding of willful contempt prior to imprisoning a judgment debtor and guarantees the appointment of counsel for indigent judgment debtors in such proceedings. I am a Staff Attorney with the Public Justice Center who serves as the Coordinator of the National Coalition for a Civil Right to Counsel. The NCCRC is comprised of nearly 300 participants in 38 different states who work to advance the right to counsel in civil cases implicating basic human needs. Physical liberty is undeniably a human need deserving of procedural due process protection.

It is my impression that contempt sentences conducted pursuant to R.R.S. Neb. § 25-1577 are civil in nature since they are of indeterminate length (i.e., they last until the person complies with the court order). As such, the Sixth Amendment right to counsel would not attach, meaning this bill provides important protection.

Moreover, to the degree the contempt proceedings concern the judgment debtor's actual ability to pay a judgment, the presence of counsel is essential to ensure the court has sufficient information to make an accurate decision. Incarceration of those who lack the ability to comply with the order incurs needless expense to the state.

This bill language is also consistent with in *Allen v. Casady*, 511 N.W.2d 125, 127 (Neb. 1994), which held "an indigent litigant has a right to appointed counsel when, as a result of the litigation, he may be deprived of his physical liberty ... This 'right of an indigent to court-appointed counsel may be found in either a civil or criminal context.'" It is my hope that at some point, Nebraska will wholly codify the *Allen* ruling such that it applies to all civil contempt proceedings threatening incarceration, not just those related to a judgment debtor. For instance, child support contempt proceedings under R.R.S. Neb. §§ 42-358 and 42-370 do not mention appointment of counsel for the contemnor, notwithstanding the same threat to physical liberty.

I would request that you make these comments part of the record.

Sincerely,

A handwritten signature in dark ink, appearing to read "John Pollock". The signature is fluid and cursive, written over a light background.

John Pollock
Coordinator, National Coalition for a Civil Right to Counsel