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Education Committee
February 26, 2008

[LB731 LB1141 LB1155 LB1157]

The Committee on Education met at 1:30 p.m. on Tuesday, February 26, 2008, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB731, LB1155, LB1141, and LB1157. Senators present: Ron Raikes, Chairperson; Gail Kopplin, Vice Chairperson; Greg Adams; Brad Ashford; Bill Avery; Carroll Burling; Gwen Howard; and Joel Johnson. Senators absent: None. []

SENATOR RAIKES: (Recorder malfunction)...hearing of the Education Committee of the Nebraska Legislature. It is in fact our last hearing of this session. We're pleased you could be here to join us in a new setting. For some of you who haven't been here, we're normally on the other side of the hall, and I'm going to have a hard time getting my bearings here so, you know, bear with me as the case may be. Our procedures today are going to be a little bit different than they sometimes are. We always have used--not always, but for most recent years and sessions--we've used a light system to time testimony. We will continue to do that today. On the first two bills...and we sort of adjust the amount of time available to a testifier depending on how many people we have that want to testify. Our usual limit is five minutes. If there are a lot of people that want to testify, we'll drop that to three minutes just to give more people an opportunity to testify. We often, as we'll do today, restrict the total amount of testimony to an hour for each side. Now you'll have to give us a little bit of flex one way or another, but we would like you, on any of these bills--and I think probably there's...well, there may be a couple that qualify for this--to try hard to make your case as best you can in an hour. So please keep that in mind. As you come forward to testify, try to bring information that has not been heard theretofore in the testimony so that we can in fact get a full understanding of the case that you want to make. To remind you, procedures for testifying, grab a sheet--I think they're in the back corners of the room--a few lines on it, put your name on there and the bill that you want to testify and the other information called for. Bring it with you as you testify, throw it in this box up here to the right. Also as you testify, as you sit down, please tell us your name and spell your last name for us. That's for...these hearings are transcribed and that makes it possible for the transcriber to accurately identify you. Speaking of which, we will hear four bills. They are LB731, LB1155, LB1141, and LB1157. We'll hear them--as far as I know--in that order. There may be a hitch in that, in that I've got to go across the hall and present another bill and we'll see how all that works out, but we make a little bit of an adjustment on the fly. We'll try to stick to that schedule though. For each of those bills, we'll have an opening by the sponsor, the member of the Legislature, followed by proponent testimony, opponent testimony, neutral testimony, and if desired a close by the introducer. Let me tell you about our committee and staff. To my far right is: Kris Valentin who is the committee's clerk; next to Kris is Senator Bill Avery from Lincoln; Senator--you've got that spelled wrong, don't you--Senator Joel Johnson from Kearney; Senator Greg Adams from York; our committee's Vice Chair, Senator Gail Kopplin from Gretna; I am Ron Raikes, District 25. To my left is Matt Blomstedt, our committee's research analyst; Senator Carroll

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Burling from Kenesaw, Nebraska; Senator Gwen Howard from Omaha; Senator Brad Ashford from Omaha. You can't see him right now, neither can I. And...oh, yes. Maybe later Tammy Barry will be in that chair, and she is our committee's legal counsel. So that's our crew. Please turn off your cell phones if you haven't done so, and I think with that, we are ready to proceed. The first bill we have is LB731. Senator Kopplin. []

SENATOR KOPPLIN: (Exhibit 1) Senator Raikes and fellow members of the committee, for the record, my name is Gail, G-a-i-l, Kopplin, K-o-p-p-l-i-n, and I represent Legislative District 3. I'm here today to introduce LB731. I did introduce this on behalf of a couple of spouses of military personnel. They could not be here today, so I do have a handout for you, which is a letter from one of them explaining the problem. LB731 would allow the Commissioner of Education to issue a Nebraska teaching certificate to the spouse of an active duty member of the armed forces of the United States who resides or is stationed in Nebraska. In order to be eligible for the certificate, the person requesting the Nebraska certificate would have to have held a valid certificate from another state within the last three years. The whole purpose of this bill is to make it a little easier for a military spouse who desires to teach a Nebraska school but hasn't had the time or opportunity to meet all the certification requirements in Nebraska. I decided to introduce this bill after meeting with the two individuals who were introduced to me by former Senator Paul Hartnett. They indicated they desired to teach in Nebraska but hadn't had any success in receiving a certificate under our current statutory requirements from the Department of Education. So my main goal with this legislation is to help those spouses who, because of relatively constant movement from military base to military base or similar circumstances, have not been able to keep their teaching certificate current but who are otherwise qualified and competent and want to teach here. Thank you for your attention, and I'll answer your questions if you have any. [LB731]

SENATOR RAIKES: Thank you, Senator Kopplin. Do we have questions for the Senator? I don't see any, thank you. Are there proponents for LB731? Jay. [LB731]

JAY SEARS: (Exhibit 2) Good afternoon, Senator Raikes. If I can get this right. I'm backwards in here also, but I imagine by the end of the afternoon we'll have it right. I'm Jay Sears, J-a-y S-e-a-r-s, representing the Nebraska State Education Association, and we come to you today in support of Senator Kopplin's bill. The one thing that I would add is first of all, we appreciate the fact that Senator Kopplin has brought to you on behalf of military spouses something that would expedite the process to get a certificate. We understand the complications behind traveling as military personnel and jumping through 50 different state hoops to get certification. The thing that I would tell you is the Department of Education through the State Board of Education in its rule-making process is reviewing that process to expedite it. I serve on an advisory committee to the State Board of Education on certification, and we're looking at how we can expedite that issue so we can save you time on the legislative floor and save time in putting things in

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statute that is a rule-making process. So with that, I would end my testimony and urge you to let the rule-making process take its course and thank Senator Kopplin for bringing this to the attention of the Legislature and to those that be at the State Board of Education to work the rule process. So thank you. [LB731]

SENATOR RAIKES: Thank you, Jay. Are there questions? Senator Burling has one. [LB731]

SENATOR BURLING: Thank you for your testimony. I should ask Senator Kopplin this, but do you know why this bill is limited to military? Are there other groups that would be interested in this? [LB731]

JAY SEARS: I think the issue to me is one of the requirements of keeping a certificate current. And one of the things that we know is military personnel tend to move every two years or whatever, and so keeping a certificate current in whichever state that you may be stationed in is the issue. Sometimes you get stationed, you get your home set, you find a job to teach, and then you're uprooted and the family moves again and you don't have a full year of experience. And that's the piece that many of our military spouses run into. And that can be taken care of in tweaking the rule around the provisional certificate, and giving the commissioner a little more leeway to include spouses or people who have traveled and not been able to meet that piece. And I'm sure the department staff members could answer much better than I do. But that's kind of the issue that we're dealing with, Senator. [LB731]

SENATOR BURLING: Okay. [LB731]

SENATOR RAIKES: Senator Adams. [LB731]

SENATOR ADAMS: I got just a follow-up on that, and you also feel confident based on your written testimony of what you just said that the department can expedite this manner and make these rule changes? [LB731]

JAY SEARS: Yes, as long as it gets through the Attorney General and the Governor. [LB731]

SENATOR ADAMS: Okay. Thank you. [LB731]

SENATOR RAIKES: For clarification, you're a proponent of not advancing this bill? [LB731]

JAY SEARS: That's correct. Isn't that weird. [LB731]

SENATOR RAIKES: Okay. [LB731]

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JAY SEARS: In concept we support it. I remember someone who's retiring soon talking about principle and concept, and so we support it in concept and principle but we also support... [LB731]

SENATOR RAIKES: I can't think of anybody like that. [LB731]

JAY SEARS: Yeah...support limited government. [LB731]

SENATOR RAIKES: Okay. Thank you, Jay. Are there any other proponents for LB731? Any opponents, LB731? Any neutral testimony? Yeah, we've changed hands here. We're no longer a left-handed outfit. We're right-handed today. [LB731]

MARGE HAROUFF: (Exhibit 3) I never was left-handed. Good afternoon. For the record, I'm Marge Harouff from the Nebraska Department of Education, that's M-a-r-g-e H-a-r-o-u-f-f as in French fry. (Laughter) Nobody can ever tell whether it's f or s, so that's the way I do it and it does help. [LB731]

SENATOR RAIKES: I'm sure the transcriber will appreciate that. (Laughter) [LB731]

MARGE HAROUFF: I'm glad. I'm here to provide neutral testimony on behalf of the Department of Education, and I'm going to kill two birds with one stone. I'm doing LB731 and LB1155 at the same time because we are addressing the issues that are in both bills in proposed rule as we speak, and so Jay has already identified that that's the way that we can accomplish task. And so let me just go over what my testimony says. I'm not going to read it to you because I already know that you can read. We've already heard what LB731 is about. It's nice to know that the people who were having difficulty getting a certificate were having trouble getting a certificate because they didn't currently possess a certificate, and that's one of the things that we will be changing in Rule 21. If you look at the very last bullet on my testimony sheet, provisional certificates are currently issued to educators from other states who have received a baccalaureate degree and have completed a teacher education program. But they don't meet all of the requirements for a Nebraska certificate, and those requirements generally are things that are in statute, like the human relations requirement, the special ed requirement, and the basic skills test. Those are the three issues that keep people who are coming from some other state to Nebraska, keeps them from getting a regular certificate. So they end up with a provisional certificate or, in the case of human relations, a temporary certificate. We have had in our rule language that required in order to get a provisional certificate, you had to already possess a certificate from the other state. We're also fixing that in rule, and that is if you qualified for a certificate in that state and you had teaching experience in that state, whether it was in a public school, a private school, or in a school that was not approved or accredited but was legally operating in that state, we wouldn't allow it unless it was an approved or an accredited school. So we've made

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a number of proposed changes to rule, and the rule changes that we have proposed will be going to the State Board of Education at its April meeting for approval as a hearing draft, which means that if they approve the proposed revisions--and I don't have any reason to believe that they won't--then we will hold a hearing in May, and we will go back to the board in June with a request for them to approve the rule. And as Jay said when he was up here, once the board has approved it's in the hands of the Attorney General and then the Governor. So I think Senator Kopplin, I think we've fixed that issue. We will have fixed that issue. The other issues are more to do with LB1155, and I know that confuses the testimony process but I think you'd really like to get some people out of this room and onto other things. In LB1155, we will address the issue that's not stated in Rule 21 right now, and that is the legally operated school. And this was brought to our attention by Jim Cunningham because he reminded me, in another rule that we're working on, that we have people who teach in states where the schools are legally operating but they are neither approved or accredited by the state. When they are approved or accredited by the state we don't have an issue. But if they were working in an illegally operated school then we didn't have any provision to allow that experience to count for purposes of certification in Nebraska. We believe that we have fixed that with the proposed language that includes not only approved and accredited schools, but otherwise legally operated schools while qualifying or holding a teaching certificate. So all we're really doing is we're asking that a person who comes to Nebraska from another state who wants a teaching certificate has to, number one, have completed a teacher education program and, number two, have qualified for whatever certificate was required to teach in that state. That's the short and sweet version of it. And so with that, I'd be happy to answer any questions. [LB731]

SENATOR RAIKES: Thank you, Marge. Questions? I don't see any. Thank you. [LB731]

MARGE HAROUFF: Thank you. [LB731]

SENATOR RAIKES: Are there other neutral testifiers? I don't see any. Senator Kopplin waives. I'll trade you. [LB731]

SENATOR KOPPLIN: Okay. This will open the hearing on LB1155 and Senator Raikes, would you open please? [LB1155]

SENATOR RAIKES: I will. Thank you, Senator Kopplin, members of the committee, Ron Raikes, District 25, here to introduce LB1155. I'm here to breathe life into one of the birds that Marge "French Fry" just killed. (Laughter) LB1155 provides another opportunity to get a certificate...she kind of went through this but I'll remind you. The applicant would not be required to have held a certificate issued by another state if: The applicant is otherwise qualified according to rules, regulation, and procedures of the board; at the time of employment experience the applicant was qualified to obtain a comparable and equivalent certificate; the employment experience took place in a state

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which the applicant did not need to obtain a certificate; all of the employment experience took place at accredited independent schools; and employment experience was no less than three consecutive years within the most recent five years for a teacher, and no less than five consecutive years for an administrator. There is a story behind this one, too, and I don't know that anyone else will be here to tell it, so I'll make a stab. I think there is a private school in Omaha that wanted to hire a Latin teacher, I believe, and they were able to find a person that was qualified and appropriately trained and had taught in another state--I think maybe it was Oklahoma--and they wanted the opportunity to employ that person without endangering their accreditation status and so on. So that's the issue here. [LB1155]

SENATOR KOPPLIN: Okay. Thank you. Are there questions for Senator Raikes? I see none. Is there proponent testimony? [LB1155]

JAY SEARS: (Exhibit 4) Good afternoon. I'm Jay Sears, J-a-y S-e-a-r-s, and I work for the Nebraska State Education Association. Senator Kopplin, members of the Education Committee, Senator Raikes, I think I've learned the lesson. I'm a proponent of the concepts and principles in the legislation, but would direct your attention to the fact that the rule-making process can take care of this issue, and as Marge said, that's happening. So that would conclude my testimony, and thank you very much. [LB1155]

SENATOR KOPPLIN: Are there questions for Jay? Thank you very much. Other proponent testimony? Is there opponent testimony? Neutral? [LB1155]

JEREMY MURPHY: Good afternoon, Senator Kopplin, members of the Education Committee. My name is Jeremy Murphy, M-u-r-p-h-y. I serve as associate director for education issues for the Nebraska Catholic Conference, and we're testifying neutral on this bill. There is room and reason for greater flexibility regarding teaching employment experience in other states, particularly for teachers whose experience in other states was obtained in other-than-public schools. From that perspective, we appreciate and support the overall concept embodied in this bill. This subject matter is worthy of attention. Interestingly when this bill was first introduced, the State Department of Education just assumed or jumped to the conclusion that our office--on behalf of the Catholic diocese and superintendents--was responsible for the origination of this bill. No doubt this was based on the fact we have discussed issues reciprocity and employment experience with the department in the past. It's a fact that numerous other states do not require the same extent of certification for teachers in other-than-public schools as Nebraska requires. Nevertheless, despite our positive view toward the concept of this bill, we find trouble with its particulars. There are several ambiguities and uncertainties in the terminology used in this bill, as well as in the scope and application of the proposed new provisions. On page 3, the proposed new wording on lines 4 through 7 is one example of such trouble. It is unclear what is meant by or what criteria are used for determining another state's comparable and equivalent certificate. Comparable and

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equivalent to what? If the other state did not require a certificate in some way tied to the employment experience at issue, then it is possible that the other state has a much different certification system in all respects qualified to obtain a comparable and equivalent certificate might not be determinable in any satisfactory fashion. On page 3 at line 12, one first encounters the term "accredited independent school." That term, to our knowledge and understanding, is not used anywhere in the current Nebraska statutes governing either teacher certification or approval accreditation of other-than-public schools. The term is defined in lines 22 through 24, but that definition in and of itself is obscure, problematic, and troublesome. Most problematic is the word "independent." Independent meaning what? Unlike the terms "nonpublic" or "private, denominational, and parochial," the word "independent" is not common to usage in the current statutes. In Nebraska law, that descriptive word tends to be used with respect to postsecondary institutions, but not for elementary and secondary schools. We wonder if the intent is to identify and isolate a new category of other-than-public schools--that is, those that are independent of affiliation or organizational governance. If that indeed is what is intended, then the provisions of the bill discriminate against denominational and parochial schools, including all Catholic, Lutheran, and Seventh-Day Adventist schools, for example, that have governance structures beyond just the local school. The terminology used to define "accredited independent school" can be interpreted to denote that a nonpublic independent school is distinguishable from a nonpublic nonindependent school. We wonder what is that distinction. If indeed this provision or definition is intended to or has the effect of distinguishing and isolating a separate category of nonpublic schools, then not only does it discriminate against nonindependent, nonpublic schools that are not included in this category, but teachers and these other excluded nonpublic schools, who otherwise qualify under the requirements governing reciprocity and employment experience, would be subjected to unequal protection of the law. On page 4, line 6 through 8 are likewise obscure and ambiguous. We don't know what a national commission on the accreditation of independent schools is or how broadly based it might be, even if such a commission does in fact exist. The idea embodied in this bill is generally a good one, but as it is presented as a matter of legislation, it is problematic. As testified previously, the State Department of Education is working on this issue through a planned revision of Rule 21, which governs certification, and the prospects for that rule are positive from our perspective. We look forward to participating in that process, and we would respectfully ask that you refrain from moving forward with this legislative bill and allow it to be addressed by the administrative rules process. Thank you for your time and attention. [LB1155]

SENATOR KOPPLIN: Are there questions for Mr. Murphy? Senator Adams. [LB1155]

SENATOR ADAMS: So did I hear you correctly? You do intend to be part of that process with the state board? [LB1155]

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JEREMY MURPHY: Yes, Senator. We do intend to be a part of that process. [LB1155]

SENATOR ADAMS: Thank you. [LB1155]

SENATOR KOPPLIN: Other questions? Thank you, Jeremy. [LB1155]

JEREMY MURPHY: Thank you. [LB1155]

SENATOR KOPPLIN: Is there other neutral testimony? Seeing none, that will close the hearing on LB1155, and we will open the hearing on LB1141. Senator Schimek. [LB1155]

SENATOR SCHIMEK: (Exhibits 5 and 6) Good afternoon, Mr. Chairman and members of the Education Committee. Twice in two days I have the pleasure of coming before you to introduce a bill. This one may be slightly more controversial than the one I introduced yesterday. But I'd like to begin by identifying myself. I'm DiAnna Schimek. I represent the 27th Legislative District here in Lincoln, and I'd like to begin this afternoon's hearing by explaining the reasons why I introduced LB1141. First of all, there have been anecdotal stories for years about homeschoolers who appear to be running around in communities during school hours and little seems to be done to see if they are legitimately not truant from school. These stories had piqued my interest. Second, this was my last year to explore the issue. Because it has been almost 25 years since the bill allowing exempt schools passed--that was LB928 in 1984--I decided to introduce a bill that would ensure a retrospective look at how well the law is working. Third, I did do some homework and read the transcripts from the floor debate on Select File and Final Reading on the legislation, LB928. I discovered some discrepancies regarding what the Legislature appeared to intend and what the ultimate results of the passage of the bill were. Fourth, after talking with the Department of Education to learn more about the issue, I decided to try to draft Iowa's law with Nebraska differences because there are differences in our educational structure and organization. Fifth, I did alert my colleague, Senator Erdman, about what I was doing because I knew he was very close to the homeschool association. He arranged for the association, or one of the organizations would be maybe more accurate, to meet with me right before the session began. At that time I presented a second draft of my bill to the homeschool supporters and was told quite definitely that they would fight any attempt at any further kind of regulation. At that point I decided to go ahead and introduce the second draft of the Iowa bill without any further changes. I knew from the beginning that the homeschoolers were very well organized, and they didn't disappoint. I should note that most of the callers and e-mailers have been very respectful and obviously very passionate about their point of view. There were some that were somewhat less respectful, and I want to state now for the record that I am not now nor have I ever been a communist. I am not nor have I ever been a socialist or a Marxist or a wicked woman. I'm not perfect, so I have my flaws, but I don't think they belong in this discussion. I also wish to state for the

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record that this bill is a result of my efforts and mine alone, and no one else asked me to introduce this or pressured me to introduce it. Other than a former state senator who was hear when LB928 was passed, I don't know of any other proponents who may be testifying. You will hear at today's hearing that this bill is unconstitutional. You may hear that my bill is insulting and mean. You might hear that if it ain't broke, don't fix it, or that it would cost a good deal of money and that the law in Nebraska would become one of the most onerous in the country. You might also hear that I have proposed a compromise, and I do have a little handout on that. That's news to me. I haven't proposed any compromise. That doesn't mean that I don't recognize that any piece of legislation that is passed is a work in progress. There always can be amendments and compromises. If you had read my e-mails or received some of the e-mails that I did, you know that some homeschoolers are not afraid of tests and don't have any problems complying with the state's curriculum guidelines. And some of them also admit that some families are probably not doing a good job and need more supervision. Some feel we should investigate those that allegedly are not doing a good job. I hope to address those issues and more in the rest of my testimony. And I ask your indulgence as I walk you through this prepared notebook because I thought it would be good to have some of the background information on this issue since we have not addressed it for a number of years. So it does have a table of contents and it is divided into sections and I will try to go through it quickly with you, but not too quickly that we can't actually look at some of the issues. The first thing I have in my notebook that you might not have in yours but you probably have in your bill book is the fiscal note of the bill, and I'll just mention it because I think that is a work in progress as well. But I think you've probably had e-mails that talk about how expensive this would be. Well, I think it would cost us maybe one or two FTEs and it might cost us some for the testing. But I just wanted to mention that there is a fiscal note on it, not huge. Table of contents. Section 1 in your book has the actual bill and then it has a summary of the bill, and I'd like to just briefly go through that summary with you. Section 1 of the bill simply amends the statutes so that students could be evaluated. The new requirement would also say that private denominational and parochial schools have to report annual attendance to the Department of Ed, and I think that's just kind of a clean up provision because it's not clear now how often they have to report. Section 2, probably the meat of the whole thing, talks about an annual standardized evaluation, and it refers to children who are at least six years of age and attending an exempt school. And this might be a good place to say that homeschools are not identified in statute. I don't know if they were even envisioned by the people who were discussing this legislation in the first place, but what you had was schools who were being exempted from having certification of their instructors or teachers, and that's really what homeschools are. They fall under that exempt school definition perhaps. The evaluation would be conducted by the department at a time and a place convenient for the parents, or it could be a test chosen by the parents with the department's approval, or it could done through additional information. That's the second annual evaluation possibility that in lieu of this achievement test, they could submit parts of lesson plans or other record keeping portfolio of the child's work and another completed assessment

evaluation. The evaluator then has to prepare a report and make the recommendations to the department. Section 3 talks about what happens if a child doesn't appear to be making sufficient progress or being at a grade level where you would hope and expect. There are lots of provisions there that say that the child could retake the evaluation and show adequate progress at a later time. The evaluator could say that the child...he believes the child has made adequate progress as documented in a report, or the department just grants approval to continue attending the nonaccredited school under a plan for remediation as determined by the department. The child would be required in some cases to attend an accredited school until attendance at said...until the child has achieved sufficient progress. I personally don't think that would be invoked, only as a last resort. And then--and this is important--permits the State Department of Education to adopt rules and regs. This is important because I'm sure you heard a lot about children with special needs, children who would qualify for special ed. This would all be taken care of through rules and regs. The next page...and could I have a glass of water please, page? The next page is a comparison, brief comparison, between homeschool laws in Nebraska as they now are and what they are in Iowa. And I'm not going to go over that step by step except just to reiterate that there would be some kind of a test of the homeschool child. Now in Iowa, they say if the homeschool has a certified instructor, they do not have to schedule school assessments, and I'll get to that in another minute when we look at what the Legislature said when it was debating this bill. And finally, I want to call your attention to the bottom part of that sheet where it says what can be done to see if children are being taught. Well, in Iowa, of course, they have the assessments and development portfolios. But in Nebraska, HHS has a toll free number to report suspected child neglect. The Attorney General can file false filing, which is a Class IIIA misdemeanor, if parents misrepresent on the forms they file with the department. And then thirdly, truancy laws can be invoked if the child is not attending school or is said to be attending school but there's no education going on. The next several pages are about Iowa's law, a little bit more in specific, and you'll notice that I've taken some of the materials in this book off the Homeschool Legal Defense Association web site. I trust that it's fairly accurate because I'm sure they want their people to know what the law is. If you'll go to Section 2, I want to call your attention to the colored map. And again, this is from the Homeschool Legal Defense Association and there are different colors for different states, and the green states are states that have no notice, no state requirements that people have to respond to, that they have to fill out any forms or any of that kind of thing. The yellow states are the states like Nebraska that have low regulation, and these states require parental notification only. The ones that are the peach-colored ones are the next step up, and those are states with moderate regulation. And again, this is the Homeschool Legal Defense Association's own web site. The state requires the parents to send notification, test scores, and or professional evaluations of student progress. And then finally, you have the states with high regulation. If you look right around Nebraska, you'll see that Colorado, South Dakota, Iowa, Minnesota are all those higher level, moderate regulation states, and in the Midwest, Ohio is another one of those. Three Midwestern states fall where we fall, and

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that's in the low regulation. And then I've included some more particulars on those states that are right around us. Section 3 takes you to the actual discussion of LB728 on the floor, and I only highlighted a couple of little things. This would have been on the Select File debate on March 9, 1984. Senator Beutler was speaking and he said, "One of the things that parents are required to do under this bill is to allow a standardized test to be administered to his or her child..." And then a little later he says, "...they are obligated and the whole theory of the bill is that the child will get the test." Then if you turn over to the next page he says, "I think that if testing is the key to the whole thing, then we ought to be quite specific about what is to be required." And then finally on, I believe this was on Final Reading, on March 23, Senator DeCamp says, "We keep the Vickers amendment totally with this exception. We take out the teacher testing. We test the pudding as I have used the phrase instead of the cook..." And I believe that's what was intended by the Legislature when that bill was passed. If you're going to take out teacher certification, then you ought to test the children, the students. And if you'll look at the next page, I've actually duplicated 79-1601 for you. I could have introduced a bill that would have changed the "may" right there in the middle of the page to "shall," and that's all we would have really needed to do I think. It says, "Such rules and regulations may include a provision for the visitation of such schools and regular achievement testing of students attending such schools, and in order to ensure that such schools are offering instruction in the basic skill located in this subsection." And then down later it does say "shall" when it talks about some of the minimum requirements, like making sure they're safe from fire hazards, reporting attendance, etcetera, etcetera. And then finally, on the next page, the back of that page, it says, "Any school which elects not to meet state accreditation or approval requirements and does not meet the requirements of subsections 2 through 6 of this section shall not be deemed a school for purposes of Section 79-201, and the parents or legal guardians of any children attending such school shall be subject to prosecution pursuant to such section or any statutes relating to habitual truancy." So there was an expectation there that something would be done. The next page just tells that the state board can make the rules and regulations which govern these schools. And then I've included for you some of the forms that have been developed that parents or guardians must report to the Department of Education, and I'm not going to belabor those. I believe, and I'm not positive about this, I believe they also have to do a few other things like attendance and curriculum and so forth. Then Section 4 is the Attorney General's Opinion that was addressed to then-Commissioner of Education Joe Lutjeharms. And the part that I would like to call to your attention is on the next to the last page, and I believe it's probably highlighted on your copy. It says in summary, there is no requirement in the law that such visits of testing be done. Should the state board desire to visit or test any arrangements for either of these must be made through the individual parent representative of each school. It goes on to say, if the state board makes reasonable efforts to arrange with parent representatives for visits and/or testing, the parent representatives have the legal obligation to respond in good faith to such efforts. Should any parent representative refuse either to: A, make any arrangement at all, or B, make some type of reasonable arrangement, the state of

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Nebraska could then take appropriate legal action to remove the exempt status of the school and/or to seek prosecution of the parents under truancy laws. And then a little later down under number three it does say that the department has properly developed rules according to what the state law allows. In other words, that "may" comes into play here. And I should say for those of you, Rule 12 was developed to deal with the religious exceptions and Rule 13--I believe I'm correct in this--was used to develop...is it the other way around? [LB1141]

_____: It's the other way around. [LB1141]

SENATOR SCHIMEK: Okay. Rule 13 to deal with the religious exceptions and Rule 12 to deal with the parent who simply doesn't want to put their child in the public school for any reason. It doesn't matter. We actually passed that law not too long ago. The next portion I'm not going to go over. It just is actually a presentation by the Department of Education that they sent me that tells generally what exempt schools are and what teacher qualifications have to be, what parents have to do, etcetera, and I'll leave that to you to peruse on your time. The next section is Section 5, and I got this from a site called the Home Education Magazine and it's very interesting reading. And it really gives advice to homeschoolers that not to introduce any legislation because there would be a likelihood that legislation might not turn out the way they like it, and there's advice not to go to court if they can possible avoid it. And on page 8 and 9 of this there was something that I thought there was something that I thought I ought to highlight for you, because this issue of having state regulation, an unconstitutional action doesn't hold water when you look at what this web site says and what I know to be true. It says at the bottom of the page, "Except for a few state Supreme Court cases around 1980 to '86 that ruled that state laws were too vague, federal district courts, federal courts of appeals, and state courts of appeals--including the state Supreme Court--have all upheld the constitutionality of state laws regulating homeschoolers. Arguments concerning the right to free exercise of religion, the right to equal protection and due process, and against self-incrimination and unreasonable searches were all unsuccessful in convincing the courts to rule against state laws regulating homeschools. As a result, we now have a body of precedent-setting case law that says that it is constitutional for the state to review and approve homeschooling programs or to require instructor qualifications and/or standardized testing." So I believe that it is the state's responsibility to regulate all the schools in this state. What we have done by law is allowed exemptions for certain schools for certification. I don't believe we have fulfilled our responsibility if we know there are children that maybe not are getting an adequate education. Since I introduced this bill, of course there's been a lot of flurry and a lot of activity and I understand the talk show programs have been burning up, as have the blog sites. But I don't listen or look at either one of them. But I have had a huge amount of mail on this issue, as I know you all have, and only Senator Ashford's LB958 is starting to take some of the heat off this bill. [LB1141]

SENATOR ASHFORD: I do what I can, Senator. [LB1141]

SENATOR SCHIMEK: Thank you. I wanted you to look at some of the comments that I have gotten from people, and they're in the last section. And I'm not going to go over all of them, I'm just going to briefly flip through them. Number one says, "I know there are homeschoolers doing a fine job"--as do I, I should say--"...but also know there are those who sorely lack the ability to give their children a good education. There should be a way to monitor all of these children." And then this person says, "Make all mandatory testing free of charge," and I agree. Number two says, "I do think that the majority of parents homeschooling their children do a very good job. It is the few that are not qualified, are not dedicated enough to the task at hand, or simply think that a partial education will suffice that concern me. I have nothing against homeschooling as long as very well qualified individuals are doing the teaching. If I were homeschooling my child I would welcome some sort of testing or assessment of my teaching skills and what my child was learning." Next one says, "Way to go. It sounds like you're getting a lot of flak but you're on the right track." Next one says, "I support your bill for standardized testing." Next one says, "I am dismayed when I read of the backlash and personal attacks. Our republic has laws and rules to maintain order. These parents cannot drive down the left side of the road. They should not be allowed to school their children without some standard testing." Number six, "Our political health and economic prosperity depend on it." Number seven, "I can't really understand why anyone would be against this safeguard. I was surprised to hear our own Governor opposes this, so I wrote to him to express my disappointment." Number eight...and this is a particularly interesting one, a meter reader who has the opportunity to walk through his community on a regular basis and he sees kids who are out and about in the community and he asks them why they aren't in school, and they say they're homeschooled. And he asked them usually what they are learning right now, and he said, "I always just assumed homeschool children were getting tested like other public school children. It used to be a law that children had to attend school. Of course I know that there are many well educated homeschoolers but some parents are just not teachers." He goes on--and I'm not going to read it all--to talk about these twin girls that spent the days in their parents' cigarette shop on Main Street, and nobody was making really much of a pretense at all that these girls were getting an education, and they were about 14 years old he thought. He, too, is writing the Governor. Number nine, kind of more of the same except he says, "I worked in another state that had this type of law, South Dakota, and it worked very well." Number ten, "I totally agree." Number 11, she says, "I question where your concern where these students without including without including students who are homeschooled." She doesn't understand that this exempt school children sometimes are homeschooled children. Number 12, she says, "I know firsthand that Nebraska has a reputation for being a haven for homeschoolers due lack of accountability." And she talks about Iowa and then her sister who homeschools seven children and hasn't time enough to do all the cooking and housework, etcetera. Number 13 is the one I want you to really read because I think it's pretty poignant. It says, "I realize you're receiving an

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outpouring of content regarding LB1141. I have an idea that might prove"...oh no, this isn't the one. This one says, "Why not form a committee of both homeschoolers and educators." Number 14 says, "Your bill for testing...is a great idea." Number 15 says, remember the county superintendent when they used to test all children in the state in the eighth grade before they went into high school, and they said this isn't a bad idea. Of course, we did away with county superintendents several years back. Sixteen is the one I wanted to call your attention to. She said, "I e-mailed you last week...I wanted to e-mail again to let you know, after much discussion with my husband, we have decided to step up as a homeschooling family in favor of the proposed changes." I'm not going to read this word for word but just parts of it. She says, "I stand by my assertion that many families are providing rigorous educational opportunities for their children. But we are also concerned about the lack of almost any educational opportunities in some homeschooling families we know." And then down a little later she says, "I am willing to have my children participate if it means homeschool children in Nebraska will each receive as rigorous an thorough an education as I believe I am providing for my own sons. Indeed, I welcome the opportunity to share what we are learning in our home school and I am confident my sons are receiving a quality education." She says, "I am writing this second e-mail in support of your proposal knowing that nearly every member of our town home schooling group is praying for the bill to be defeated." She says, "I do ask that you not share my name with anyone as I would certainly be ostracized by our town's homeschooling group if anyone thought I was supportive of your bill. That, in itself, is a rather sad commentary on the state of homeschooling here in Nebraska, but it's a reality." There are also a number of individual telephone conversations which you can read at your leisure. I did not bring this bill lightly. I brought it in all seriousness. I knew that it was going to be a controversial bill, but I do think it's time that we take another look at what's happening. Maybe all we need is to provide some kind of language so that the Department of Education would know that it is its responsibility to provide that oversight. I don't think most people would think to call Health and Human Services about a matter like this, and yet that seems to be the only avenue that's there for them right now. With that, Mr. Chairman, I thank you for your indulgence. [LB1141]

SENATOR RAIKES: Thank you, Senator Schimek. I would categorize your opening as thorough (laugh). Do we have questions for Senator Schimek? Well, we'll move on to proponents. [LB1141]

SENATOR SCHIMEK: Thank you very much. [LB1141]

SENATOR RAIKES: Any you're going to stick around for a while? [LB1141]

SENATOR SCHIMEK: Yes I am. Thank you. [LB1141]

SENATOR RAIKES: Okay. Proponent testimony, LB1141. [LB1141]

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TOM VICKERS: (Exhibit 7) Senator Raikes, members of the Education Committee, for the record, my name is Tom Vickers, that's V-i-c-k-e-r-s, appearing here before you today representing an old has-been--emphasis on the getting old and enjoying every minute of it, I should tell you. As you might have figured out by now, what is coming around to you is a short history of LB928. You probably already figured out whose name was on that bill. It was mine. I'm not going to...you can read that history. I don't need to read it to you. I just wanted you to know that...a few things that we were thinking at the time, as Senator Schimek related. First of all, you will not find the term "homeschooling" anywhere in the statutes. I don't think any of us at the time recognized or even realized that's what was going to happen, not that that was a bad thing but it's simply a matter of history. At the time, we were dealing with church schools being operated outside of the current law, and after I got into Senator Raikes's chair, it became clear to me that we were going to have to solve this problem in one way or the other. So what you see as current language in LB1141 is...I don't think LB928 has been even opened up since then. And Senator Schimek is right. We thought we were trying to put in some mechanisms to protect children, to make sure that education was taking place. Let me tell you, I think personally I think what's happened over the years that the people in this room are all doing a great job. I think there's some great education taking place in homeschools, and I'm sure you're going to hear about that this afternoon. You are probably going to hear some wonderful success stories of people who have been homeschooled that have achieved great things. I would remind you all, however, that cream always rises to the top no matter what kind of a container the milk is put in, and I think that's an example of what's happened many times with homeschooling. I would also tell you that I think, as Senator Schimek mentioned, there is a homeschool network association that provides a lot of the material, school books, lesson plans, tests, even field trips, those kinds of things that I think do a wonderful job. I'm not concerned about those. I'm not concerned about any of the people that are in this room today or have been in this room. Quite frankly what I've always been concerned about--and I think what you should be concerned about--is those parents of children that are not in this room, have never been in this room, and never will be in this room. They're the ones quite frankly that I have concerns about, and I see my time is up and I'll answer any question you might have. [LB1141]

SENATOR RAIKES: Thank you, Tom. Appreciate the handout. We'll take a look at it. Do we have questions? Senator Avery has one. [LB1141]

SENATOR AVERY: Tom, what does the constitution say our responsibility is to educate children? [LB1141]

TOM VICKERS: I think the constitutional requirement is through education from 5 to 21, I think it is. That's the mandatory attendance requirement, if you will. There are statutory requirements, there's a truancy. That's the statutory provision that Senator Schimek was mentioning. [LB1141]

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SENATOR AVERY: The constitution does... [LB1141]

TOM VICKERS: It is a constitutional requirement... [LB1141]

SENATOR AVERY: ...say that we have the obligation... [LB1141]

TOM VICKERS: ...as I understand it. [LB1141]

SENATOR AVERY: ...to educate all the children of a certain age? [LB1141]

TOM VICKERS: Right, right. That's my understanding, yes. [LB1141]

SENATOR AVERY: Thank you. [LB1141]

SENATOR RAIKES: Don't see any other questions, thank you, Tom. Are there other proponents? Jay. [LB1141]

JAY SEARS: (Exhibit 8) Good afternoon, Senator Raikes, members of the Education Committee. I'm Jay Sears, J-a-y S-e-a-r-s, and I work for the Nebraska State Education Association. We appear on behalf of our members and in support of some of the concepts that Senator Schimek has brought to you. Just some first clarification and a short speech for one of my colleagues at NSEA. Herb Schimek did not write any of this testimony, he wants you to know, even though he may be related to the senator who introduced it. A little less than 25 years ago I came on the NSEA staff as a young uniserve director in the field, and one of the schools that I had in the territory that I was assigned was in Louisville. It was an exciting time for a former government teacher, former history teacher who had just gotten out of the classroom in January and watched the Legislature deal with the issue of exempting teachers in a church school. And we got lots of national press--so of it good, some of it bad--but the Legislature dealt with the issue by coming up with a category of exempt schools. Little did I know that 24 years later, I would be serving as program director for NSEA and working with the State Board of Education and watching the development and redevelopment and revitalization of Rule 12 and Rule 13, which deals with the exempt schools, or in fact coming and testifying before you. We just have a couple of suggestions. One of the things that we know that is happening and is changing in this state is the Legislature's intent to have statewide testing. Maybe that's an avenue for all of us to look at to assess where all of individual students are, and that might be something that you look at in legislation. And the other piece that I feel personally strongly about is just like we have in public schools or just like we have in approved parochial, private or other approved schools, the opportunity to have remediation plans when students aren't achieving at the right standard. We don't close the school. We don't require them to go to another school. We just come up with a plan to change the instruction. That's the important piece, and

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maybe as we look at legislation, we look at the same parallels that we have in our own school improvement process in the state of Nebraska. That ends my testimony. Thank you very much. [LB1141]

SENATOR RAIKES: Okay. Thank you, Jay. Questions for Jay? I don't see any. Thank you, Jay. Are there other proponents for LB1141? Okay. I don't see any, so we'll move to opponents. I will note that it's about 25 minutes before 3:00 and I have a list of testifiers which we'll try to honor, although I'll allow you to come forward as you choose. I think the first one on that list is Dave Lostroh. Dave, welcome. [LB1141]

DAVID LOSTROH: Thank you. [LB1141]

SENATOR RAIKES: Unfortunately, the audience is going to see the back of that. [LB1141]

DAVID LOSTROH: Okay. [LB1141]

SENATOR RAIKES: Just to comfort you, why with my eyesight I can't read it anyway. (Laughter) [LB1141]

DAVID LOSTROH: (Exhibit 9) I can't either. My name is David Lostroh, L-o-s-t-r-o-h, legislative liaison for the Nebraska Christian Home Educators Association. I might add at this time, there 1,000 home school parents that are here in the Capitol watching this hearing that are very concerned about LB1141. The NCHEA vigorously opposes LB1141 because: It will generate major attacks on constitutionally protected freedoms; it contains irreparable implementation problems; it will restart an old powerful controversy; and four, it will attempt to significantly curb homeschooling in Nebraska. Please see the attached list of serious problems. These have been handed out before. These are not easily fixed. I'd like to address any of those later that you might want to speak about, but right now I'd like to talk about the religious element. And I believe that LB1141 would take us 24 years back to 1983 and we would have the same controversy. This stems from the religious nature of education in general. The definitions in quotations given in this section are color coded to help draw attention to the strong interconnections between religion, philosophy, education, and educational philosophy. Hence, we believe that any general education is inherently religious in nature, and I won't go through all this for lack of time but it is listed there. Secondly, humanism, or atheism if you'd like to call it that, is a religion, and we believe that the state of Nebraska through the Department of Education promotes that. And the U.S. Supreme Court Justice Hugo Black declared it to be a religion. The Humanist Manifesto I declared itself to be a religion, that humanism is. And I have included a booklet that I wrote in 1985 entitled What Every Parent Should Know About the Nebraska Department of Education, which compares the Humanist Manifestos to writings of the Department of Education and some of thing looks like it's lifted right out of the manifesto. Now this particular issue

about the religious nature was identified in Governor Kerrey's 1984 Christian Home School Panel Report, so this isn't a new discovery. Thirdly, homeschool parents do not trust the Department of Education. Why is that? The worst sex scandal in the state of Nebraska occurred in 1982 to '84 at the deaf school in Omaha. It was run directly by the Department of Education. I'm going to take a look at Dr. Scanlon's psychological evaluation of the students. This was handled directly by the department, and frankly we haven't forgot about it. The school closed down because nobody trusted the department to run the school any longer. Secondly, the Department of Education, under the direction of then-Deputy Commissioner Doug Christensen in 1992, promoted psychological outcomes for the 1992 LB245 accountability commission and required an Attorney General's Opinion and a scathing letter to bring it back to academics. And frankly, homeschool parents are concerned about psychological evaluations. Teachers college textbooks--and I have some quotes in the footnotes if you care to look--tell us that students can be covertly psychologically tested without the student's knowledge. I got these books out of the Concordia library in Seward. Consequently, homeschool parents will demand to see the test and the keys prior to use per the Federal Pupil Rights Protection Act. The NDE has said that an Attorney General's Opinion says that education officials can't do anything about homeschool students they think are not being properly educated. Actually if you read the footnote that I have there, it outlines exactly what they can do, and if the state board has reason to belief that a program leading to the acquisition of the basic skills is not happening that action can be taken. So if the state has chosen for 24 years not to act, that doesn't mean we have to have this bill. There is a plan that can be followed for that. The NCHEA is not going to defend homeschool parents who aren't doing anything. [LB1141]

SENATOR RAIKES: Dave, let me ask you, you talked about the religious aspect of it. Would there be a reason to think that if someone taught kids in a religious environment that they would not as a result learn science, math, reading, that kind of thing? [LB1141]

DAVID LOSTROH: The law as it currently is has five subject areas and I'm not aware that there's any parents who object to any of those subject areas. [LB1141]

SENATOR RAIKES: But there would be objection if you tested students, say, in math? If homeschool students were tested for academic achievement in the area of math, for example. [LB1141]

DAVID LOSTROH: Parents test their children a lot. My children get 70 tests a year already. The problem that we have with the bill is that we've got a department that is promoting a religion opposite ours, and would end up controlling our schools and we're very nervous about it. The bill requires that a child perform with the 50th percentile or above or they will be in trouble. Half of the kids in the public schools would be in trouble. The bell-shaped curved has half below the peak and half above. So we're being compelled to be in the upper 50 percentile, and if they're not away they go, and there's

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no allowance in the law for learning disabled children, those who would have trouble. I might add that the issue of teacher certification and all these other school approval things aren't shown to be necessarily better. So if a child does go back to an approved or an accredited public school that they would do better when they go there. Some children cannot perform at average or above. And this bill clearly is out to get them, and we're very concerned about it. [LB1141]

SENATOR RAIKES: Okay, Senator Ashford has a question. [LB1141]

SENATOR ASHFORD: Just one question and then I won't ask a lot of questions. But is it the concern that you have is to some extent regarding the Department of Education and having those rules imposed on homeschoolers? Is that somewhat of the...there may be other issues. I'm sure there are, but is that an issue or a concern? [LB1141]

DAVID LOSTROH: Well, the issue is...right, because right now the department exempts those parents who send in a notice that they're schooling. There are penalties for lying on the Rule 12 or 13 application. If you say you're going to do it, then you should do it. But clearly, if there are children that are not learning, then there is a provision, that Attorney General's Opinion, to deal with that. What we're looking for is liberty to not have to have every single homeschool parent and child be presumed to be incompetent and guilty until proven innocent. [LB1141]

SENATOR ASHFORD: I see that point, but if there was a mechanism for some sort of testing that would not be controlled by the Department of Education but would just be some sort of testing that all students in the state would...if it's some sort of national test or some sort of assessment that is recognized generally as being acceptable testing procedures at certain times in the development of the child, is that as objectionable or is that an objection as well? What I'm trying to get at, is it the testing per se or is it the manner in which the testing would occur or how the children would be evaluated? [LB1141]

DAVID LOSTROH: Okay. I think I understand your question. [LB1141]

SENATOR ASHFORD: And I'm sorry if you don't because it's probably too vague. [LB1141]

DAVID LOSTROH: Parents that I know that homeschool are not opposed to testing. They test all the time. The vast majority of them do some sort of achievement testing because they want to know what's going on and how they're doing. But the homeschool parents I've talked to are concerned that if it's linked to some sort of a demand by the state where we can have our schools shut down, then... [LB1141]

SENATOR ASHFORD: Well, let's say that isn't there. Let's say there is no shutting

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down the schools. Let's say that the testing is simply there to make the parents aware of the progress of the child, just hypothetically. If it isn't about closing anybody out or closing them down or telling them they can't educate their children in the manner that they have been educating them, but it is simply a benchmark information that the parents should have, is that objectionable? [LB1141]

DAVID LOSTROH: I think that, at least in my view, God has given the responsibility for educating children to parents, not the state. We do believe that the Bible clearly teaches that states should punish evildoers, and if indeed there are parents that are doing nothing to provide a program, we're not out there to defend them. But we are interested in retaining liberty for those who do, and we have a number of states in the United States where you don't even have to tell the department that you're going to homeschool. So Nebraska is not on the low end of the scale and we are saying that we are going to do it, but we do object to being told that we have to and the regard that someday that could be used against us. I mean, this bill in my mind is a clear swipe against homeschooling. [LB1141]

SENATOR ASHFORD: Well, aside from this bill. Let me just...and I'm not trying to interrupt you but I'm not talking about this bill. I'm talking about some sort of neutral way of some form of standardized testing that would give all parents that are doing...and then I'll stop asking the question, that give all the parents that do homeschooling some sort of a general idea. There would be no penalty, there would be no anything. It would just be some sort of...some general information that the parent would...and it would be the parents would have. Is that objectionable. [LB1141]

DAVID LOSTROH: Well, I think it would depend on who the parents are to some degree. It would vary, it would vary quite a bit. [LB1141]

SENATOR ASHFORD: Okay. I was just trying to get at where the limits...where you're boundaries are. [LB1141]

DAVID LOSTROH: Well, the point I was making earlier was that if parents really aren't doing anything, we're not opposed to the state following up on it. But getting involved ahead of that would be a liberty loss that's significant, and we already have somewhat less than some other states. [LB1141]

SENATOR ASHFORD: Okay. I understand your answer. Thank you. [LB1141]

SENATOR ASHFORD: Okay, okay. [LB1141]

SENATOR RAIKES: Senator Avery. [LB1141]

SENATOR AVERY: Thank you, Mr. Chair. What is your personal opinion of the overall

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quality of homeschooling in this state? [LB1141]

DAVID LOSTROH: I think it's very good. I think that I hear reports constantly of young people going of to collage and going very well or doing very well in their jobs. My wife, Lorraine, and I have been homeschooling since 1981. We have college graduates that have graduated summa cum laude, magna cum laude. They've done very well on college entrance exams and are useful, functional citizens in society, and that all happened without any of the things that we're talking about. If there are a handful of parents that are out there, we have a mechanism available, and I would encourage that to be used rather than go anywhere else. [LB1141]

SENATOR AVERY: Is it your opinion that public schools do not do as good a job? [LB1141]

DAVID LOSTROH: It's my belief that public schools do not do as good a job, and I think there's several reasons for that. But certainly one of them is that there's a tremendous advantage in homeschooling with a limited number of students per teacher, and that's a real plus that homeschooling has. Plus it can be more flexible to match up to the performance capability of the student. If the student needs to slow down or if they're bored and need to speed up, you can do those things. [LB1141]

SENATOR AVERY: Then why wouldn't you eagerly embrace the opportunity for testing to demonstrate the superiority of homeschooling? [LB1141]

DAVID LOSTROH: Well, I think that's already been demonstrated. There's evidence out there already that demonstrates that. I don't see personally and I think our homeschooling families as a whole look at this testing as a way to end up eventually losing our liberty. We believe that the NEA opposes homeschooling and...we know that they do. And we know that there are people that oppose homeschooling, and I think that they would use legislation to erode and chip away at that until there's nothing left there after about so many bill. And you know, I still go back to we have a mechanism that apparently hasn't been used so let's try it. [LB1141]

SENATOR RAIKES: Okay. I think we need to move on. I'm concerned about giving other people an opportunity to testify. So thank you, Dave, and we'll move on to the next opponent. Welcome. [LB1141]

MICHAEL DONNELLY: (Exhibit 10) Thanks, Senator. Good afternoon, Mr. Chairman, members of the committee. My name is Michael Donnelly, D-o-n-n-e-l-l-y. I'm a staff attorney for the Home School Legal Defense Association. I'm also an adjunct professor of constitutional law at Patrick Henry College in Purcellville, Virginia. Our association has been in courts and legislatures advocating for homeschool liberties since 1983. We are the nation's largest homeschool advocacy organization with over 80,000 member

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families and over 600 member families here in Nebraska--I guess there's 1,000 people in attendance here today--and I'm privileged to serve them as their attorney. In addition to litigation, we review and analyze laws in the 50 states and at the federal level, and I've provided you with a gift--our legal analysis binder. I've got three points for you today. First all, if passed, this bill would make Nebraska's homeschool law the most restrictive in the country. I think it would be difficult to implement and enforce, and it could be possibly constitutionally defective. Secondly, it's unnecessary. The current legal framework properly balances Nebraska's interests and the rights of parents. It has worked well for 24 years, doesn't need any tinkering. Nor is this law required by the federal government's No Child Left Behind Act. Number one, today Nebraska stands in good company with 29 other states with low regulation of parents who homeschool. If this bill was passed, it would contrast sharply with the nationwide trend in homeschool legislation, which is away from increasing regulation and towards easing regulation on homeschoolers. Twelve states have recently passed legislation that have reduced regulatory oversight on parents who homeschool. For example last year, Nevada eliminated nearly all previous regulation, opting instead to simply provide a one-time notification and eliminating testing requirements. Number two, while the Nebraska Constitution authorizes this Legislature to provide for the free instruction in common schools...and that is the only constitutional authority that I'm aware of that the constitution does give the Legislature as it relates to children. In fact, I'd wager to guess that the compulsory attendance laws didn't even exist when the Nebraska State Constitution was written. In 1925, the United State Supreme Court in Pierce v. Society of Sisters said that children are not the mere creatures of the state and parents have a fundamental right to direct the upbringing and education of their children. And then in Wisconsin v. Yoder the Court said, yes, states do have an interest in regulating education and seeing that their citizens are educated, but it does not have a compelling interest that they be educated in any particular way. Furthermore, this interest that the state has is being otherwise served. Under the current rules, today Nebraska parents must certify to the department that they will provide basic skill instruction to their children and if they don't, they could be criminally prosecuted. And as the Attorney General's Opinion in 1987 points out, the department has the authority to enforce that regulation. Third, this law is not required nor is even suggested or indicated by the federal government's No Child Left Behind Act. Congress was very specific to include language in NCLB that explicitly states in Section 9506 that "nothing in this act shall be construed to effect the homeschool, not shall any student at home be required to participate in any assessment under this act, " Section 9506. In conclusion, Mr. Chairman and members of the committee, this law has worked well for Nebraska for 24 years, assuring that citizens are being taught basic skills in balancing the right of parents to direct the upbringing and education of their children. It doesn't need to be fixed or ratcheted down, and I'd urge you to vote no on this bill. [LB1141]

SENATOR RAIKES: Okay. Thank you, Mr. Donnelly. [LB1141]

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MICHAEL DONNELLY: Yes, sir. Thank you. [LB1141]

SENATOR RAIKES: Questions? I don't see any. Thank you for being here. [LB1141]

MICHAEL DONNELLY: Thank you, sir. [LB1141]

SENATOR RAIKES: Next opponent. [LB1141]

JAMES GILLET: Opponent. [LB1141]

SENATOR RAIKES: I think that's what I said. I'm trying to slip one past you there. [LB1141]

JAMES GILLET: (Exhibits 11 and 12) That happens all the time, Senator Raikes. I hope not. Ladies and--well, Senator Howard is not here--gentlemen, my name is James Francis Gillet, G-i-l-l-e-t, Jim Gillet, and I speak in opposition to Legislative Bill 1141. Fundamentally related to the equal protection deficiencies in LB1141 is the question where is the evidence that the proposed level and extent of state interference is necessary to oversee Rule 12 and Rule 13 homeschoolers? We agree that absence of evidence is not evidence of absence. But if we directly skip to the bill's proponent that we must annually examine all homeschoolers, should we not annually examine every bank account, financial holding, business record, investment of every state Nebraska legislator because some state legislator somewhere in the United States embezzled government funds or was involved in land swindles? Indeed, there is more direct evidence to support that hypothesis--Arizona--than Mrs. Schimek's suppositions. Moreover, why should reporting or testing requirements on you for that reason be increased without empirical or factual data to justify such wide-scale invasion of your privacy? Yet, this is what Ms. Schimek proposes to do to us. There is not data proving we can't teach or that using college-educated, certified teachers, or that testing per se, proves better learning or better learning experience. It only proves that tested children had certified teachers who may or may not have taught to the test and that some children failed and some did not. The isolated incidents and mere speculation Ms. Schimek frets about are directly related to societal issues. Regardless of how compelling these issues are, where is the nexus with education or testing? Where is the logic in the statement that just because one of these homeschoolers claims he homeschools that all homeschoolers are as he, or that the problems that Ms. Schimek sees are educational issues? What evidence have you received that this level of dysfunction exists with sufficient frequency to require universal testing of homeschools? The lack of identifiable problems with Nebraska homeschool educators does not suggest a hidden festering cancer. It is a testament to the Nebraska Senate of the 1980s and a tribute to the accuracy of current departmental oversight and restraint, exercising the might and the power of the state only when needed. The still water you see about you in the homeschooling pond is simply quite the visible measure of

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successful, legitimate home-based education in Nebraska. LB1141, gentlemen, is an extraordinary departure and a dramatic step backwards from the reasonable norm, either in Nebraska or anywhere else. Please, gentlemen, if you have the opportunity, just glance at parts A, B, and C of my fully prepared written statement which has been given to you additionally. And it details in some detail the constitutional and budgetary problems endemic in LB1141 in excess of what the department has told you in the fiscal note that I have not seen yet, and endemic in what Senator Schimek talks about. And I know I'm out of time. Take a look at the AG report that was pointed out to you. There is a mechanism. The AG report says if, if the necessity is available, then the state can do it. But why nail us all, why all of us? Thank you for these precious minutes, and if you have any questions, I would be pleased to discuss them in mind-numbing detail at your convenience. (Laughter) [LB1141]

SENATOR RAIKES: Okay. I think that was an invitation. Do you have any questions? [LB1141]

JAMES GILLET: There were a couple of questions you asked before I would love to answer. [LB1141]

SENATOR RAIKES: Let me point out first that you accuse me of extraordinary foresight. [LB1141]

JAMES GILLET: I do, sir. [LB1141]

SENATOR RAIKES: Nobody else has ever done that. (Laughter) [LB1141]

JAMES GILLET: I stand convicted to that. It was a brilliant move on your part. I agree with everything you did. [LB1141]

SENATOR RAIKES: And I would also tell you that you have documented the death of a bill that has not died. It's still in committee, so... [LB1141]

JAMES GILLET: I hope it goes in the right direction, sir. [LB1141]

SENATOR RAIKES: Okay. Any other questions? I don't see any, but thank you for being here. [LB1141]

JAMES GILLET: Thank you, gentlemen. [LB1141]

SENATOR RAIKES: Okay. Next opponent. [LB1141]

BRIAN RAY: (Exhibit 13) Thank you, Chairman and members. My name is Brian Ray. I'm from Oregon, and I have a Ph.D. in science education from Oregon State University.

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I studied pack rats for my master's degree in Ohio, and I've been a public school/private school teacher and a professor at the undergraduate levels, and I've studied doing homeschooling, doing research for about 24 years. A few main points: One, first of all, and you've heard this many times, the research is very clear that home-educated children, on average, are 15 to 30 percentile points above the national average in academics, such as reading, writing, arithmetic, math, you know, social studies, those kinds of things. Second of all, the research is very clear that homeschooled children, on average, are doing better...a little better psychologically, emotionally and socially than public school students. And third, there's a new body of...a developing body of research that shows, on average, in adulthood they're more involved in community service, civic activity, and going on to college at a little higher rate and finishing a little faster than those from the general population. A second main point is that LB1141 is methodologically flawed because it uses measurement evaluation the wrong way. It violates the standards of the American Educational Research Association, the American Psychological Association, and the National Council on Testing and Measurement. I've taught that at the graduate level for years and I know that it violates the standards. Third, research that I've done myself has shown absolutely no correlation between the degree of state control of homeschooling and children's academic achievement. You've heard about degrees of control: high control, medium control, low control. There's no correlation. And in research, you have to have at least a correlation to talk about cause and effect. There's no correlation. There's no evidence that doing this would change anything. Another study that Dr. Bruce Eagleson and myself have just finished studies the college SAT scores and finds no correlation between degree of state control and the SAT scores of the home educated. Fifth, or third for me, I think what I've heard here, and I've heard in many states across the nation because I've testified in court about 41 times and to several legislatures, is this theoretical falling-through-the-cracks group of students. There's no empirical evidence that this kind of law or even the law you currently have will catch the students falling through the cracks. Basically, LB1141 is a preemptive, philosophical dragnet that assumes that parents are guilty until they prove otherwise. And I think that what I'd like to do is wrap up by saying that if the author of this bill has integrity, she or those who support it would promote the state controlling at this degree or more all private education in Catholic schools, Lutheran school, Muslim schools, and new age schools. And secondly, if any child did not meet certain standards in testing and measurement standards in the public schools, would be forced to be homeschooled or put into private school. If the authors have integrity they would have to promote that because of equity. I would say finally, because I see a yellow light here, that indeed the author or the sponsor of this bill mentions certain isms that she's been accused of. The fact of the matter is this bill and actually the current bill are world views that have come in...that come and clash with another world view. This is a materialistic, statist, "Platoist" world view that says a state has prior authority over a child and then it has the authority to control what's being done in terms of education. That actually answers the question of this man over here who asked about testing. The idea that the state should require testing and then go from there assumes the state has prior

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authority over a child, whereas another world view says somebody other than the state has prior authority over the education, upbringing, and then allows a state, if there's evidence that harm is being done, to come in and take care of it. This bill violates testing measurement theory, it violates research evidence, and it violates certain world views that I think are held by, from research we know, held by the vast majority of homeschoolers and those who are in nonpublic schools in America. [LB1141]

SENATOR RAIKES: Okay. Thank you, Dr. Ray. Questions for Dr. Ray? [LB1141]

SENATOR AVERY: Quickly. [LB1141]

SENATOR RAIKES: Senator Avery. [LB1141]

SENATOR AVERY: Thank you. You are a Ph.D. [LB1141]

BRIAN RAY: Yes. [LB1141]

SENATOR AVERY: A professor. [LB1141]

BRIAN RAY: I have been a professor, not currently. [LB1141]

SENATOR AVERY: Have you ever earned tenure at a research institution? [LB1141]

BRIAN RAY: No. I've been an assistant professor and an associate professor at Seattle Pacific University and Western Baptist College, and I've taught at Oregon State University. [LB1141]

SENATOR AVERY: Thank you. [LB1141]

SENATOR RAIKES: You say that 15 to 30 percentile points above for homeschool students, how did you figure that out? [LB1141]

BRIAN RAY: Well, that's research that's been done by multiple doctoral students, professors at universities, and myself over the last... [LB1141]

SENATOR RAIKES: But they had to test the students in order to find that out. [LB1141]

BRIAN RAY: Yes, standardized testing, yes. So it's... [LB1141]

SENATOR RAIKES: So what sort of standardized tests? [LB1141]

BRIAN RAY: Oh, it'd be like the California Achievement Test, the Stanford Achievement Test, the Iowa Test of Basic Skills, the, you know, wide range of achievement tests,

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standardized tests. [LB1141]

SENATOR RAIKES: So you...was this done by compelling students to take these tests so you could do research? [LB1141]

BRIAN RAY: No, this would be a collection of research. In some states, the minority, testing is required; in a minority...or in a majority of states testing is not required. But as somebody else testified earlier, some parents test their children anyway because they just want to know how they're doing in terms of standardized achievement tests. [LB1141]

SENATOR RAIKES: But generally for good research you don't allow the subjects to self-select for...in other words, I... [LB1141]

BRIAN RAY: Yeah. [LB1141]

SENATOR RAIKES: ...I decide I'm going to have one of my kids take the test... [LB1141]

BRIAN RAY: Yeah. [LB1141]

SENATOR RAIKES: ...but not the other one. [LB1141]

BRIAN RAY: I understand. The studies have involved both scenarios, both scenarios in which all students were required by law to be tested, and it's also been...done studies in which not all students were required. But the...actually, the findings are exactly the same. In fact, I did one of the studies in Montana, and we had a group of students in which all were tested--there was no opting out, in or out--and another group in which it was the opting in and out, like you're talking about. Amazingly, the percentile was exactly the same of the two groups. [LB1141]

SENATOR RAIKES: Okay. [LB1141]

BRIAN RAY: Yeah. [LB1141]

SENATOR RAIKES: I don't see any other questions. Thank you for being here. [LB1141]

BRIAN RAY: You're welcome. Thank you for having me. [LB1141]

SENATOR RAIKES: Next opponent. [LB1141]

JEREMY MURPHY: Good afternoon, Chairman Raikes, members of the committee. My

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name is Jeremy Murphy, M-u-r-p-h-y. I serve as associate director for education issues for the Nebraska Catholic Conference, appearing on behalf of the diocesan superintendents of Catholic schools of Nebraska who unanimously oppose this bill. We submit that this bill is unnecessary, given the mechanism in process that has been in place for nearly 25 years, and that it is likely to unreasonably and unnecessarily spark the kind of discontent and distrust that characterize the most unpleasant, highly lamentable period of Nebraska history. The current mechanism represents the meaningful resolution of a contentious set of circumstances. In the absence of clear and persuasive evidence that the current law regulations are failing or harming the children being educated in Rule 12 or Rule 13 educational settings, the status quo should be allowed to continue. We are unaware that any such evidence exists, so we are of the view that the common good and interests of the state are better served by not disturbing the status quo in this proposed manner. We also are concerned that this legislation unnecessarily and unreasonably intrudes upon the right of parents to educate the children, their children, in the school setting of their choice. Current law gives due deference to parents to choose the school they deem best for their children. This bill detracts from that due deference. In addition, there is confusing reference in the bill to "adequate yearly progress." Are these references to "adequate yearly progress" in No Child Left Behind? Are exempt schools covered by these provisions of federal law? We think not, but we are not sure. If they are not, then we see no justification for treating them as governmental schools for purposes of testing. There is also inconsistent use of the terms "approved" and "accredited" schools in the bill, and I believe this is in Section 3. In one location it indicates that children in underperforming schools must attend accredited schools, and in another location it indicates that children in underperforming schools must attend accredited or approved schools. We would urge the committee to not look with favor upon this bill. Thank you. [LB1141]

SENATOR RAIKES: Thank you, Jeremy. Questions? Let me ask you one. In order that Senator Schimek keep her integrity, which I understand is uphill, should we require all public, private, and exempt schools to take the same assessments? [LB1141]

JEREMY MURPHY: That is something that I would have to consult with the superintendents of schools about to know for sure. I would imagine they would object to that. I think our schools are testing their children in the way that the school system decides that they should and choosing the type of tests that best fits the children that they're teaching. [LB1141]

SENATOR RAIKES: Okay. Don't see any other questions. Thank you. [LB1141]

JEREMY MURPHY: Thank you. [LB1141]

SENATOR RAIKES: Next opponent. Welcome. [LB1141]

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NICHOLAS TAYLOR: (Exhibit 14) Good afternoon. My name is Nicholas Taylor, it's T-a-y-l-o-r. Thank you for the opportunity to participate in our political process. I appreciate the faithful public service provided by the Education Committee and by Senator Schimek. I, too, am a public servant. At present, I serve as a U.S. government reactor inspector at a Nebraska nuclear plant. I've also served as a public educator, a university academic advisor, I'm a member of the National Council on Measurement in Education, in addition to spending over 15 years as a professional naval officer. But today I'm coming here as a dedicated but concerned parent and home educator. After spending many years serving to protect our rights to be free Americans, I feel it necessary to come to the State Capitol today to defend my rights as a free and proud Nebraskan. We see clearly that LB1141 is flawed, meanspirited and, most importantly, dead on arrival. It's unfortunate that your time is being wasted in consideration of this legislation, but since it's on the table, it's necessary to point out some things you may not already know about this bill. I'll only briefly present some of this information that is more thoroughly explained in my written testimony. This bill is fundamentally flawed. LB1141, by Senator Schimek's own statements, was written based on secondhand reports that some homeschooled students are not being properly educated. Hearsay and innuendo about the failure of the few does not provide a basis for the restraint of the rights of the many. The notion that poorly performing students should be sent to an institutional classroom environment is antithetical. Underperforming students should get the specific care and individual attention that is inherent to homeschools. Gregory Cizek of the American College Testing Program states that if the state distrusts parents of poorly performing homeschool students then perhaps the public should call into question the credentials of public school educators whose students fail. In this regard, the bill just doesn't make sense. The bill is unfair and it begins with an end in mind to eliminate homeschooling in Nebraska. The fact that this bill requires homeschool students to take state-approved, standardized tests will effectively destroy homeschooling in Nebraska. Academic sources, such as the Educational Researcher, the American College Testing Program, the National Education Association, and even the Commissioner of the Nebraska Department of Education have thoroughly documented the negative effects of standardized testing and that standardized tests tend to focus on lower-level cognitive processes and result in teaching to the test. In the face of this flawed policy, homeschooled families will have little choice but to teach to the test, effectively negating the uniqueness of the homeschool alternative. Dr. Christensen asserted that state testing is not a model based on good practice. State testing has no support. It is truly an emperor with no clothes, no data, no evidence, no research. It is not an open road. If it is an open road, it should be closed. The National Education Association agrees on this point and reports that high stakes testing has actually undermined the quality of teaching in reading and math. And the NDE has bigger fish to fry. The homeschool population in Nebraska is roughly 6,000 students. The NDE reported, in their statistics on the Internet, that around 5,200 students dropped out of the Nebraska public school system last year, not including underperformers. This number represents those children who fell off the educational cliff, not those who

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underperformed the norm. The public school system lost almost as many students to academic failure last year as the entire population of homeschool students in Nebraska. The state's limited financial resources would be better spent saving the students already within the system than chasing secondhand reports of a few homeschool students suspected of not making the grade. And here's the big picture, despite what you may have heard. This issue is truly about our rights as parents to homeschool our children in the state of Nebraska. If LB1141 is passed into law, homeschooling in Nebraska will be more onerous than anywhere in the country and many homeschoolers will just leave. Why are we persecuted? Because we're different. Because we're nonconformists. But it is shortsighted not to recognize that our differences make us stronger as a nation and our national progress has benefited greatly from the contribution of homeschoolers such as Alexander Graham Bell, Thomas Edison, George Washington Carver, Abraham Lincoln, both Roosevelts, and Sandra Day O'Connor. Many future national leaders will undoubtedly come from the ranks of homeschoolers. This bill won't stop that. It will just ensure they don't come from Nebraska. [LB1141]

SENATOR RAIKES: Nicholas, I think we're going to have to... [LB1141]

NICHOLAS TAYLOR: Okay. [LB1141]

SENATOR RAIKES: ...stop there. [LB1141]

NICHOLAS TAYLOR: Thank you for your time. [LB1141]

SENATOR RAIKES: Thank you. Are there questions? I don't see any. Thank you. Next opponent. [LB1141]

DEB BADEER: I just wanted to present this testimony from the 1,100 assembled home educators here today. This is a portion of some extra testimony they wanted for public record. (See Exhibit 27) [LB1141]

SENATOR RAIKES: We've got a... [LB1141]

LINDA ROHMAN: (Exhibit 15) We've got this too. Good afternoon. My name is Linda Rohman, last name is spelled R-o-h-m-a-n. I feel very lonely. I'm up here for me, myself and I as an individual homeschooler. This is my seventh year of homeschooling my two sons. They're 11 and 13 now. I've submitted much more detailed comments. I'm going to try and summarize my main points for you right here. I strongly oppose LB1141 for a number of reasons: first, because it places a financial burden upon homeschooling in Nebraska, which is already quite expensive. My husband and I currently pay almost \$5,000 a year in property taxes. Close to \$3,000 of that is earmarked for support of public education. Even though our children don't attend Lincoln Public School, we are required by law to support that institution with our tax dollars and we do so.

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Homeschooling families don't receive any kinds of tax credits or subsidies from tax dollars for purchase of curricula or to secure instruction outside the home where that's necessary. This year alone I'll spend approximately \$2,000 for homeschool curricula and other materials that my children require. I'll spend another \$2,500 to \$3,000 getting private music instruction, private instruction in foreign language--my younger son is studying Japanese at the current time, and for swimming lessons for my sons. Homeschool is already...homeschooling is already an expensive lifestyle. LB1141 would make that even more dear by requiring us to pay for the cost of unwanted and unneeded oversight by the Department of Education. Second, LB1141 is based on the erroneous premise that the state has a responsibility to assess and judge the quality of education I provide to my children at home. The Nebraska Constitution requires the state to make a free public education available to children of a certain age, and the state spends the citizens' tax dollars to provide that. Because public funds are used in the process, the state has a responsibility to taxpayers to ensure that they, the taxpayers, are getting their money's worth. However, as I've illustrated, there are no public funds involved in homeschooling. The state has no responsibility to me or to other homeschoolers in this regard that parallels its proper role with regard to the expenditure of public funds. Third is the testing issue, and Senator Ashford asked some questions that I would love to have answered. I don't oppose standardized testing in general principle. I've actually had my children tested every year. For my information, I choose the test. I use the information to inform me about my curricula choices and how best to improve my children's education. What I do object to is being compelled to submit my children to testing that's chosen by the State Department of Education or local public school officials, administered by those same authorities, graded by those same authorities, and recorded and interpreted by them. I feel like putting anyone connected with the public schools in charge of administering the provisions of LB1141 is like putting the fox in charge of the henhouse. We have two groups of people who have fundamentally different ideas about how education should occur in the home. Public school advocates are often very vociferous, and rabidly so, in their opposition to homeschooling. We don't trust the people that you would have administer this bill. Nor does the bill provide a viable alternative to testing. LB1141 would allow me to submit several pounds of paperwork to the Department of Education, but that's not really practical. I do not think, because of the sheer volume of the information, that it's meant to be a true alternative to the testing that the bill contemplates. I see my time is up. I'd be happy to answer any questions you might have. [LB1141]

SENATOR RAIKES: Okay. Thank you, Linda. Questions for Linda? I don't see any. Thank you very much. [LB1141]

LINDA ROHMAN: Thank you. [LB1141]

SENATOR RAIKES: Next opponent. [LB1141]

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CARSON HOLLOWAY: (Exhibit 16) Like to thank the committee for hearing my testimony. My name is Carson Holloway, C-a-r-s-o-n H-o-l-l-o-w-a-y. I live in Omaha, where my wife and I homeschool our five daughters. I hold a Ph.D. in political science from Northern Illinois University, and I'm currently an assistant professor of political science at the University of Nebraska at Omaha where I teach American government, constitutional law, and political philosophy. My testimony represents, of course, my own views and not those of the university. The portfolio method of assessment that's provided for in LB1141 will, I think, involve serious uncertainties for the homeschooling parents and child. They won't be able to know what sort of standards are going to be applied by the certified evaluator. Moreover, even if the evaluator affirms that the child is making adequate progress, the family cannot be certain that the State Department of Education will accept this determination since LB1141 provides that the report shall create only a presumption of adequate progress without specifying on what conditions the department might depart from this presumption. Given the seriousness of what is at stake then, the right to direct the education of one's children by choosing to homeschool, the uncertainties accompanying the portfolio evaluation will, I think, surely lead many homeschooling parents to opt instead for the standardized test. Yet again, since the state is poised to take away one's right to homeschool if adequate progress is not demonstrated on such a test, homeschool parents will be pressured to teach to the test; that is, to figure out what is on the exam and merely provide the students preparation for the exam, instead of offering a broader educational experience designed to fill all the needs of the student. As any teacher can tell you, this temptation is present and powerful any time a standardized test is used to pass public judgment on the effectiveness of the school or curriculum. The temptation will likely prove overwhelming when something so precious as the right to direct one's child's education is at stake. The predictable result is that homeschool educators will feel compelled to design their curricula around tests approved by the state or, put another way, the state will be indirectly dictating the curriculum of homeschools and any other schools that opt to be nonaccredited. This will result in the loss of educational diversity, diversity which is a great strength of American and Nebraskan education because it recognizes the obvious truth that one size does not fit all families and all children; that different kinds of people prosper in different kinds of educational environments with different curricula. More important, this pressure to teach toward the test will tend precisely toward the sort of compulsory production of standardized children that the Supreme Court has warned is incompatible with the principles of our free society in Pierce v. Society of Sisters. I see that my time is almost up. I would just like to add by way of conclusion that, as a university professor, I think LB1141 runs against the trend in higher education over the last several years, which is to respect and accept homeschool students into colleges and universities, and to be impressed with the achievements that they've made. I would direct or commend to the committee's attention a recent article in the Chronicle of Higher Education entitled "Home-Schooled Students Rise in Supply and Demand," which covers in detail the efforts that most colleges and universities now make to accommodate applications from homeschool students and to recruit them into first-rate

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colleges and universities. Thank you. [LB1141]

SENATOR RAIKES: Thank you. Questions for Mr. Holloway? I don't see any. Thank you for being here. [LB1141]

CARSON HOLLOWAY: Right. Thank you. [LB1141]

SENATOR RAIKES: Next opponent. [LB1141]

PAUL HOPGOOD: (Exhibit 17) Thank you, Senator Raikes,... [LB1141]

SENATOR RAIKES: Welcome. [LB1141]

PAUL HOPGOOD: ...members of committee. My name is Paul Hopgood. I'm a homeschool dad, last name spelled H-o-p-g-o-o-d. And to me, the issue isn't homeschoolers will not comply with the state's approval requirements. The issue is the ill-natured reputation of the institution that will administer the compliance of these requirements and rules. There is the risk that state compliance administrators will violate the Fourteenth Amendment of the Constitution by denying homeschool parents of our freedom to direct the education for our children, more specifically, the education of our mentally challenged children. My wife and I have read the provisions of LB1141 and the stated compliance requirements. We could not find any specific approval requirements for mentally challenged children. As it stands now, the provisions of the bill will automatically flood the public school system with mentally challenged children. Is our public school system prepared to handle the increased number of mentally challenged children? If so, how has the state determined that the short- and long-range goals of mentally challenged children would be better achieved by enrolling them in the public schools? I, as the father of two mentally challenged children, realize that IEPs, individual education plans, are helpful in identifying and completing short-term goals. But measures for creating and completing long-range goals are ambiguous and would involve increased planning. Requiring the public school systems to devote more time and effort in educating mentally challenged children will only crumble the foundation of public education and overload an already demanding system. It won't work. It will cause grief to the children, grief to the parents, and grief to the teachers. Does the state plan to meet the demands of educating mentally challenged kids by increasing the obligations, requirements, and commitments of their staff and of its vulnerable teachers? And will the cost of these obligations be funded by increasing our property taxes? My wife and I worked with one of Lincoln's overburdened public schools to create workable educational goals for our handicapped daughter, Sierra, who has cerebral palsy. Unfortunately, we encountered teachers who didn't or couldn't work with Sierra to help her complete these goals. Sierra and many other mentally challenged children are children who require repetition to learn their subjects. Although Sierra's teachers worked very hard with her and with us, it became clear to us that our public

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school system wasn't equipped nor trained to provide the one-on-one teaching that is needed for mentally challenged children. Often, when Sierra would come home from school, she would be depressed and saddened by the events of the day, which included being teased by other children and occasionally being kicked by a bully. We pulled Sierra out of the public school system when she was eight years old in 1995 and decided to homeschool her. [LB1141]

SENATOR RAIKES: Paul, we... [LB1141]

PAUL HOPGOOD: I'm sorry. [LB1141]

SENATOR RAIKES: ...we probably need to move on, but thank you for giving us the written testimony and... [LB1141]

PAUL HOPGOOD: I'm sorry. [LB1141]

SENATOR RAIKES: ...we can follow that along and get your story. Are there any questions for Paul? I don't see any. Thank you for being here. [LB1141]

PAUL HOPGOOD: Thank you. [LB1141]

SENATOR RAIKES: Next opponent. [LB1141]

KRIS UDD: (Exhibit 18) My name is Kris Udd, K-r-i-s U-d-d. I'm the registrar at Grace University in Omaha, Nebraska, and I live in Cass County. I'd like to present some positive data regarding the academic outcomes that we see at our university for homeschooled students. The data that we see suggests that Nebraska homeschoolers are academically outperforming their public and privately schooled peers. About three-quarters of our students are from Nebraska, so this data is directly applicable to LB1141. Two points: The first is that homeschooled applicants to our university have higher ACT scores, on average, than their public and privately schooled peers; and substantially larger numbers of them rank in the top 10 percent and top 25 percent on the ACT. And you can see the two graphs there that illustrate that. Note particularly the ACT ranking on the right-hand side. Roughly 13 percent of our publicly schooled applicants rank in the top 10 percent compared to almost 30 percent of our homeschooled students. The second point is that homeschooled students who graduate from our university have a higher cumulative GPA on average than do their peers. I have some data there from the two most recent graduating classes, 2006 and 2007. I might note, too, the footnote there that about 15 percent of those two graduating classes were homeschooled students and that's compared to about 13 percent of the overall student body. So they appear to also be graduating at a slightly higher rate. While we are still in the early stages of collecting data on homeschooler performance at our university, and I wish we had more data, the initial data shows that, on average,

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Nebraska homeschoolers outperform their nonhomeschooled peers in college. In fact, based on our initial findings regarding their academic superiority, our admissions team is actively seeking new ways to recruit more Nebraska homeschoolers to the university, and we want these high-achieving students. I would urge our State Legislature to reject LB1141. In my view, it does attempt to fix a problem that does not exist and it would impose a regulatory burden that would discourage the very form of education that appears to be achieving the highest academic outcomes in Nebraska. Thank you. [LB1141]

SENATOR KOPPLIN: Thank you, Kris. Are there questions from the committee? I see none, so thank you. Next opponent, please. [LB1141]

NOELLE BADEER: (Exhibit 19) Thank you, Senators, members of the Education Committee. First of all, I'd like to start by saying that I'm administrative aide to Senator Tony Fulton. I have his permission to be here and I'm doing this on my own time. Today I'd like to give you two things to consider from the perspective of a homeschool graduate. I'm going to give them to you in principle and then in practice. Principle: I think we can all agree that children born are not immediately the property and responsibility of the state. The fundamental principle of home education is this: Parents have natural-born responsibility for the care, keeping, and upbringing of their children, and that includes education. Home education allowed me individual attention during all 12 grade levels. This allowed me to move at my speed, which happened to be a grade level above what the state considers average for my age. I was also fortunate to be in a homeschooling environment where I was conditioned and learned how to interact with all grade levels at the same time in a family environment and not just my peer group. At the age of 18, I walked into the State Capitol as administrative assistant to a state senator. This opportunity was a direct result of my home education that allowed me to pursue, monitor, participate, and cultivate my interest in politics. At this point in my life, I had observed hours of floor debate, made personal contact with state senators, and signed letters that detailed my opinion as a citizen of our great state. I did not have peers telling me that my ambitions were impossible. I was not called a nerd and classified as an overachiever. I simply chased after what I wanted to achieve. The principles of home education are what bear the fruit of my opposition to LB1141 and, if I may, I'd like to list a few specific objections I don't think you've heard so far. The provision in LB1141 that would require students who do not meet state testing to enroll in public school is somewhat ridiculous, and I think that because of the dropout rates in our high schools. There are several studies that have been done. One 2002-2003 study said the graduation rate in Nebraska was 77.8 percent, which sounds like a large number until you realize that 22.2 percent in our high schools are simply dropping out. And I don't believe that enrolling homeschool students into public education will solve the supposed falling-through-the-cracks problem. In conclusion, the principles of home education are the things that all of you would agree to essential to good education: individual attention, efficiency in time spent at school, and room for that child's specific

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interests. In practice, LB1141 does not affirm these principles. Thank you for listening to my testimony and for your attention. [LB1141]

SENATOR RAIKES: Thank you. Also finishing before the red light. (Laughter) That's great. Are there any questions? I don't see any, but thanks for your testimony. Next opponent. [LB1141]

DAVE BYDALEK: (Exhibit 20) Chairman Raikes,... [LB1141]

SENATOR RAIKES: Dave. [LB1141]

DAVE BYDALEK: ...members of the committee, my name is Dave Bydalek. For the record, that's B-y-d-a-l-e-k. I'm a member of the Heartland Homeschool Board of Directors, located in Lincoln, Nebraska. I currently serve as the executive director of Family First, which is a nonprofit public policy institute here in Nebraska. Prior to joining Family First, I served for eight years as a Nebraska assistant Attorney General and, for two legislative sessions, as a policy advisor to Governor Johanns. I have submitted my written testimony to the committee. I'd like to make three real quick points. The first point involves the presumptions and burdens created by LB1141. Specifically, LB1141 creates a presumption that every homeschool student is failing to make adequate academic progress, a presumption which must be disproven by the student. It's this aspect of LB41 (sic) that is particularly frustrating to Nebraska homeschool parents, the vast majority of which are doing an excellent job of schooling their children. LB1141, we believe, is not a proportionate response to a perceived problem. If in fact there are some students failing to make adequate progress, the current Nebraska statutes grant the Department of Education the ability to address those problems on a case-by-case basis. Second, an aspect of this legislation which has failed to get much attention is the fact that many families have actually moved to Nebraska in part because of its favorable laws regarding homeschooling. This body often touches upon the issue of brain drain, the need to attract and retain good jobs and qualified people in the state of Nebraska. The current state of the law actually has had a positive influence of attracting many people to the state, and I have attached with my testimony a list relating to these instances. And finally, I believe LB1141 would have a chilling effect on homeschooling in many instances, especially on parents deciding to homeschool their child for the first time. Rather than submitting their young children to a baseline test, a scenario which really could be very intimidating for a young child, I believe many parents will likely opt to send their children to accredited schools. So in conclusion, for these reasons and the reasons stated in my testimony, I'd respectfully ask the committee to indefinitely postpone LB1141. [LB1141]

SENATOR RAIKES: Thank you, Dave. Questions? Senator Howard has one. [LB1141]

SENATOR HOWARD: I just...I have to ask you this question, and I'm sorry I was

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absent, presenting a bill in another committee earlier. But you made the statement that by doing statewide testing are we assuming that all the students are failing? [LB1141]

DAVE BYDALEK: Well,... [LB1141]

SENATOR HOWARD: Am I quoting you reasonably correctly? [LB1141]

DAVE BYDALEK: Yeah, you are, Senator Howard. The reason I say that, right now, with the testing that occurs in public school, the parents that send their kids to public school...in fact I have a dual-educated child. My eldest daughter takes classes part-time at Lincoln East and part-time at home. They expect that there will be some sort of testing. And in the situation that we currently live in, in Nebraska, what this really conveys to a lot of the homeschool parents is that the state doesn't believe the evidence or the paperwork we file with regard to Rule 12, Rule 13. It conveys an attitude of, okay, you've done this, but you need to prove that you really are doing what you say you're doing, and I think that's very frustrating to a lot of the homeschooling parents of the state, that aspect of it. [LB1141]

SENATOR HOWARD: But carrying your argument over, don't you think that would also apply at public school? I mean, if we put in statewide testing, which we have but now we're looking at doing some revision to that, but are we making the same assumption? [LB1141]

DAVE BYDALEK: I think really what you're dealing with is apples and oranges under the current framework, in that parents that send their kids to public schools, they know that's part of the deal, and it may be a good guide as to how their particular child is doing. Right now, in the framework we're dealing with in the state of Nebraska, that's not something...I think...I think what you're conveying underneath the surface is a distrust of homeschool parents in how they're educating their children, and I think that's where we get the push back a little bit from a lot of parents. [LB1141]

SENATOR HOWARD: The public schools may feel that we're not trusting the school districts are doing the job they should be doing. [LB1141]

DAVE BYDALEK: That may be the case and testing may not be a panacea to all problems. I mean I understand the world view or the concept behind it, but the fact that testing might tell us exactly how every student is going to do, I don't know if that's necessarily the proper view or is necessarily correct. [LB1141]

SENATOR HOWARD: Thanks. [LB1141]

SENATOR RAIKES: Okay. Thank you, Dave. Next opponent. Welcome. [LB1141]

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MARY HILTON: (Exhibit 21) Good afternoon. My name is Mary Hilton, H-i-l-t-o-n. Article I, Section 4 of the Nebraska Constitution states, "All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences." And it goes on to say that, "Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the Legislature to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction." As a mother and home educator of my five children, I take comfort in these words contained in my Bill of Rights as a resident of this state. However, it is to my great distress that LB1141 would basically eliminate these fundamental rights which I now enjoy, and impose a double standard on my students in my exempt school. As stated, the Legislature is to pass suitable laws to protect every religious denomination. LB1141 is anything but suitable. It constitutes a heavy-handed law that would place an impermissible burden on my right to exercise my religious belief in the education of my children. For example, the approval requirement in Section 1(3), line 25, of this bill constitutes the state's authority to disapprove of my homeschool program and, thus, violating, instead of protecting, my religious beliefs. Also, because of the great burden of proof required of me in Section 2 and 3 of this bill, compliance with LB1141 would make it practically difficult for me to practice my religious beliefs. The Legislature is also constitutionally bound to pass suitable laws to encourage schools. Each requirement in Section 2 and 3 of this bill does everything but encourage my exempt school. In fact, it creates a double standard for my students. Though I could cite several instances, I will spend the remainder of my testimony on the double standard that exists in regard to habitual truancy. Home-educating parents in this state that fail to meet the standards set forth by LB1141 will be subject to prosecution right up front. In reviewing statute 79-209 dealing with compulsory attendance of children in public school, I found that when a habitual truancy violation exists, the goal of the education community is to restore the child and remedy the conditions that are contributing to the truancy problem. This would occur in a four-step process, which I have listed there. And it's only after these four steps have been taken in attempt to restore the child and the family will the parents be prosecuted under existing truancy laws. This certainly would constitute encouraging of public schools by the Legislature, but I fail to understand the need for heavy-handedness when dealing with exempt schools. It is not hard to see that exempt schools are discouraged by this bill. It has been stated that the real reason for this bill is to rescue children falling through the cracks. Where is the proof that these cracks exist? The State Board of Education has the ability within the current law to deal with troubled exempt schools if they choose to act on it, so I must ask, how many home-educating parents have been convicted of a habitual truancy in this state? If habitual truancy does exist in some exempt schools, would a new law really help? Lawbreakers are what they are, by definition. [LB1141]

SENATOR RAIKES: You talk fast enough you make it a challenge for me to break in, but break in I will do. (Laughter) [LB1141]

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MARY HILTON: Can I just make my...a quick final comment? [LB1141]

SENATOR RAIKES: I do appreciate your handing out your testimony so we can follow your arguments and complete them for you. [LB1141]

MARY HILTON: Sure. Thank you. [LB1141]

SENATOR RAIKES: Do we have questions for Mary? Let me ask you one. [LB1141]

MARY HILTON: Sure. [LB1141]

SENATOR RAIKES: If I have it right, Rule 12 is nonreligious, Rule 13 is religious. [LB1141]

MARY HILTON: Yes, that's correct. [LB1141]

SENATOR RAIKES: Would it be appropriate to test Rule 12 students? [LB1141]

MARY HILTON: Testing, I understand testing in terms of public schools because of the public's accountability to the students in those schools because taxpayers' dollars are used, but testing is occurring, as testified by many opponents of this bill, already happening in the home, and I would say that testing is happening in the homes of Rule 12 homes as well. [LB1141]

SENATOR RAIKES: Okay. Any other questions? I don't see any. Thank you, Mary. I will remind you that we are a little past an hour, but we'll keep plugging away. I have three more on the list here. [LB1141]

KEN DICK: I'll be short. [LB1141]

SENATOR RAIKES: Okay. We'll see. (Laughter) [LB1141]

KEN DICK: (Exhibit 22) I am short. Good afternoon. My name is Ken Dick. I am a senior research fellow at the University of Nebraska at Omaha. This testimony is coming from the fact I'm also president of the Home Educators Network, a support group in the Omaha and Council Bluffs area. I'm also the homeschool father of three, two of which have graduated from college and one of which is a junior. The third is a junior at UNO and, Senator Howard, she does say to send you her best. It's Rachel Dick. [LB1141]

SENATOR HOWARD: Oh, very good. Thank you. [LB1141]

KEN DICK: My experience with home-educated students at the postsecondary level has

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been extremely positive, but I also admit that that might be a bit self-serving or, as mentioned earlier, self-selection. So what I did to offset this vested interest, I took LB1141 to other faculty and staff members at our university and asked them to see if they perceived a need for additional testing or any other provisions of this bill. The unanimous response was, no, that there are far bigger issues on which the Unicameral should be focused. The university system is heavily recruiting our students because, as you have heard before, their test scores are better, their performance is better. The statistics underlie the fact that these students achieve. John DeCamp said the proof is in the pudding. I'd say it slightly different: The proof of any process is the performance of the product in the open market. Testing, by nature, is a surrogate for actual performance. Testing, by the validation and revalidation of it, is how does it reflect reality? And we use testing as a surrogate for reality. In this case, we have reality to measure. The evidence is clear that these students are doing just fine in the academics. They're coming into our institutions with higher SAT scores than their traditional school counterparts. They have a disproportionate share of the scholarships. And even those students that are coming in as just traditional, normal students are excelling in the classroom. As one of my colleagues put it, I can always tell when I got a homeschooled kid in class. They know how to listen, they know how to learn, and they know how to communicate. Why place a greater administrative burden on a successful program? These students graduate into some of the finest companies and institutions in our country. We now have home-educated students working at Sandia National Lab, Northrop Grumman, Lockheed Martin, Apple and, yes, even Omaha Public Schools as school teachers. The list is lengthy. The kids are excelling in academics and in life. The proof is visible and viable. There's no additional data points required to understand that. I find it interesting that Senator Schimek said that this bill came out of anecdotal evidence. I've always been taught by my government classes and everything else I've done that we build policy and law on the rule and manage the exceptions. We don't build law on the exceptions and then saddle the rule with them. One final point: The major educational option available to parents today are public schools, private secular schools, private religious schools, and homeschools. The decision is the parents', not the state's, as to which option they choose. I was reading this bill with my son, a recent college grad, and he made a great observation. He's my Renaissance man. He did not get my math and physics background. But he said the rules and regulations, including testing, that we place on the traditional school environments are there to ensure parents their children are receiving a good education. This bill has it backwards. They're attempting to regulate the parents to ensure the state that they're getting a good education. The authority and the decision is the parents', not the state's. Thank you. [LB1141]

SENATOR RAIKES: Okay. Thank you, Ken. Senator Avery has a question. [LB1141]

SENATOR AVERY: Thank you, Mr. Chair. You have a...you've attended a graduate institution, right? [LB1141]

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KEN DICK: Yes. [LB1141]

SENATOR AVERY: When you were applying for graduate school, did you have to submit any test scores, standardized test scores, like a graduate record exam? [LB1141]

KEN DICK: Yep. [LB1141]

SENATOR AVERY: Did you find it offensive that you were required to do that? [LB1141]

KEN DICK: You're comparing apples to oranges, Senator Avery. The tests, I've taken the GREs, I've taken the Miller Analogies, I've taken, you know, a plethora of standardized testing, the point being it was an admission. And the students that want to go to our university, they have to take the ACT or the SAT. But it's not based upon...there's not a contingency there that if they don't pass it they no longer get to homeschool. And that's, you know, Senator Schimek mentioned that, you know, that the path of last resort would be the removal, but that language of last resort is not in the bill. And so what you're saying is we test in the public schools in order to grade the schools and ensure the parents that the schools are doing well. This bill is the opposite. In fact, it's one to test the individual and say, can you continue to homeschool. It's a different set of circumstances. [LB1141]

SENATOR AVERY: You've probably served on committees at UNO that evaluate applicants for graduate school? [LB1141]

KEN DICK: I've evaluated applicants for graduate school, for scholarships, for...I've sat on master's and Ph.D. committees, yes. [LB1141]

SENATOR AVERY: And do you find these scores to be helpful? [LB1141]

KEN DICK: I find the scores to be interesting, but I find the essays that the students write to be even more helpful. I find the scores to be surrogates for reality. If there's other ways of measuring it, I'd much rather use them. [LB1141]

SENATOR AVERY: Okay. [LB1141]

KEN DICK: And the applications for scholarships include extensive essays and biographical information, which I find to be far more enlightening. [LB1141]

SENATOR RAIKES: Okay. Thank you, Ken. Next opponent. [LB1141]

RUTH MURRAY: Good afternoon and thank you, Mr. Chairman and senators for your

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time. My name is Ruth Murray, M-u-r-r-a-y, and I've homeschooled for the past 14 years. Three of my four sons have something that looks like autism. Placement in an age-based classroom was disastrous in any terms you can name. Placement in an individually tailored, free-to-the-taxpayer classroom in our home has been far more successful in terms of academics, personal development, and social life, and two of the three are now within normal range. My sons are also highly profoundly gifted, and they have pronounced learning disabilities as well. For them and those like them, whose IQ scores are two or more standard deviations above the norm, mainstream classroom placement doesn't work. If you're more than two standard deviations below the norm, special education measures kick in. Yet students who test that far above are routinely mainstreamed. Homeschooling means that we can speed them through academics and have time to address their sensory issues. Four weeks after beginning homeschooling, the teachers' jaws dropped as they saw the change in my heretofore withdrawn son as he ran to and fro, laughing as he played tag with his former classmates. Homeschooling works for autistic children. Dealing with bureaucracy will reduce my effectiveness. Large group schooling doesn't work for gifted students, and the problem is compounded when they have learning disabilities. What happens when you're ready for calculus at 12 but don't have the finger coordination to hold a pencil that long or write legibly or you still write your threes backwards? Traditional curriculum is also presented in a spiral fashion with lots of reinforcement of previously taught material. You would go nuts if you had to listen to all that; so do gifted children. Students at that level positively thrive on information presented in more depth to a higher level and at a faster pace. When they are held back for the benefit of the rest of the class, they withdraw, act out, or worse. My own children's need for Ritalin disappeared the week after I took them out of school, presented them information at their level, depth and pace. Their eye contact, mood, and spontaneity were vastly improved once they stopped being bored. While we whiz through the academics, we also take time to remediate the learning disabilities. Gifted programs are great for those with ordinary levels of giftedness, like my fourth child, but another son with a much higher level...higher IQ was in a gifted program that still went so much slower than he needed that I was reminded of an old adage of trying to feed an elephant a blade of grass at a time. Not only will he starve to death despite your best intentions, but he's unlikely to be aware you're trying to feed him at all. Do you have a box to checkoff when a 10th grader covers Dante's Divine Comedy? That's what one of my sons did, yet I will not expect public schooled students to do the same. We have no writing to demonstrate his accomplishment other than our detailed instructions. That will come later when the remediation for the LDs kicks in. It has with my other sons; it will with him. By tailoring a curriculum to his learning style and speed, we cover material in far more depth, but with techniques that won't show up easily in your cumbersome proposed guidelines. He holds his own and then some in adult conversations on academic matters. Yet, if I'd had to adhere to state standards and testing, it would prevent delving into material he's interested in... [LB1141]

SENATOR RAIKES: Give us our final point here, if you would. [LB1141]

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RUTH MURRAY: I've got one more phrase--when he's interested in it. That's it.
[LB1141]

SENATOR RAIKES: Oh, okay. [LB1141]

RUTH MURRAY: Thank you very much. [LB1141]

SENATOR RAIKES: You kept looking down. I couldn't catch your eye, so... [LB1141]

RUTH MURRAY: Sorry. [LB1141]

SENATOR RAIKES: Any questions for Ruth? I don't see any. Thank you for being here.
[LB1141]

RUTH MURRAY: Thank you. [LB1141]

SENATOR RAIKES: One more opponent that I have on the list. Not here. Okay.
[LB1141]

KEN DICK: She couldn't get out of class. [LB1141]

SENATOR RAIKES: Is there anyone else that would like to testify in opposition?
[LB1141]

ED HERNANDEZ: Hello. My name is Ed Hernandez, and I didn't really come here prepared to testify, but I see, since you're asking for one more, I'll get up. Public speaking is something that I don't relish. It's very scary, I guess you can say. But I was born and raised in California, and there, the Democrats have control of our Legislature, and it's a very sad situation. Last year they passed SB 777, which dictates that all children, starting in kindergarten, will start to learn that homosexuality, bisexuality, transgenderism, and a whole other number of sexual orientations will be taught starting in kindergarten. And being a homeschooler I said, you know, it's not too long before they're going to come after us so we're leaving this state, and we moved to Nebraska in September. And I thought, we looked on the Internet and we saw 80 percent of Nebraskans are Republicans and we need to get away from these Democrats because they just want to control your life. You know, the statement, I'm from the government and I'm here to help you, resonates in my mind, so I said we're going to leave; we're moving; we're going to look for a new place to raise our family. And then I come here and I see that you want to regulate me out of the business of what I'm about, and that's my children and my family. Well, I think that I'm better qualified to educate my children and to determine their future than the government is. And so what's going to happen here is when you pass this legislation--because I'm perceiving that you're all on board

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with this because I don't hear any questions from you in a positive, they're all in the negative--and my family and I will simply stop looking for a home in Nebraska and move to another state. It will be as simple as that. So thank you for your time. [LB1141]

SENATOR RAIKES: Well, thank you. Weather is nicer here than California. (Laughter) Senator Kopplin. [LB1141]

SENATOR KOPPLIN: Just a comment: As a very proud Democrat (laughter), I salute California. [LB1141]

SENATOR RAIKES: (Laugh) Senator Avery. [LB1141]

ED HERNANDEZ: Well, I would like to say... [LB1141]

SENATOR AVERY: As another Democrat, I don't think you're going to find a state that has no Democrats. (Laughter) [LB1141]

SENATOR HOWARD: I would have to agree with that statement. [LB1141]

ED HERNANDEZ: And I recognize that I won't find a state with no Democrats, but at least I won't find a state that's dominated by Democratic ideas where they believe that the government should be in control of your family. Thank you. [LB1141]

SENATOR RAIKES: Okay. Thank you. So that will...I better stop it here. (Laughter) We're 20 minutes past, and there are some more people, I understand, but we'll have to consider this side done, although I'm opening myself up now, I realize: Is there neutral testimony? (Laughter) [LB1141]

BRIAN HALSTEAD: Good afternoon, Senator Raikes, members of the Education Committee. For the record, my name is Brian, B-r-i-a-n, Halstead, H-a-l-s-t-e-a-d. I'm with the Nebraska Department of Education. We're in a neutral capacity on the bill. Going back, I think there are a couple points that all the testimony has brought out. It was fascinating to listen to Senator Schimek describe the 1984 debate on this entire topic, and Senator Vickers to describe exempt schools and what the senators at that time, he believed, thought exempt schools were. And then it was fascinating to listen to all the people in opposition. They didn't talk about exempt schools. They talked about homeschools. And the reality is that transformation has occurred. The law and this Legislature hasn't addressed that, and maybe it's time we need to look at is it really exempt schools anymore or is it homeschools, and is the laws that you enacted in 1984 really matching the, quote, homeschool situation that Nebraska now deals with? Second of all, we do support accountability. We support accountability for all the schools, whether they be public, whether they be private or whether they be the exempt or homeschools. And I know you guys are going to hear some more debate on

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assessment in the public schools after this bill. We certainly have focused, at the moment, most of our accountability on making sure the students and the teachers have the information so that they can make the instructional decisions, and I think that's what you kind of heard from some of the parents here about testing. They do it and it helps inform them. They're wondering about how the bill is written and how that testing result, if it's going to occur by the state mandating it, what's it going to be used for. And then finally, the whole discussion probably brings up the idea that maybe an interim study on this to better flesh out what's going on. Because clearly, the hour and 15 minutes you heard from some of these opponents does not contemplate all of the homeschoolers. I certainly like to believe, like Senator Schimek and like all the people in this room, they are doing a great job; they are committed to their children. But I think you and I and everybody in this room recognizes that may not be 100 percent accurate, and if there is a need to do more maybe we need to look at something that will address the situation without attacking what they see as their own liberty interests. So with that, I will end my neutral testimony and take any questions if you have any. [LB1141]

SENATOR RAIKES: Okay. Thank you, Brian. Questions for Brian? I don't see any. Thank you, Brian. Is there other neutral testimony? I don't see any. Senator Schimek, to close. Oh, did you have neutral testimony? Okay. I'm sorry. [LB1141]

MARY CUTLER: My name is Mary Cutler. We are a recently retired military family. Both of us are from the East Coast, but we have chosen Nebraska as our new and permanent home. I am just speaking with neutral testimony to clarify some terms that are being used and that were heard today. One is people spoke of teaching to the test. The term of being an exempt school, the words that are used in Rule 12 and Rule 13, are schools that do not seek accreditation or approval by the State Board of Education, so exempt schools do not seek to have approval by test or anything like that. So that's just to clarify exactly what an exempt school is--not seeking approval or not seeking the accreditation of the state board. Also, one of the alternatives in LB1141 that is suggested, aside from testing, is presentation of lesson plans, and this is actually already done in Rule 12 and Rule 13, where lesson plans and explanation of what materials are being used for the home education are to be listed. So those things are already expected and requested. So thank you. [LB1141]

SENATOR RAIKES: Okay. Thank you for your testimony. Are there questions? I don't see any. Thank you, Mary. Any other neutral testimony? (See also Exhibit 26) Okay, Senator Schimek. [LB1141]

SENATOR SCHIMEK: Good afternoon, Mr. Chairman and members. I know that it's been a long afternoon for you and I don't intend do talk as long as I did in my opening in my closing. You'll be relieved to know that. It has been a very interesting discussion this afternoon. I think that there are some very fundamental questions to ask here as to whether the state does have some prerogatives here or not, what prerogatives the

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parents have, and I think that if you examine our existing law, you will see that the state does have some prerogatives, that they do have the ability to govern attendance, that they do have the ability to govern curriculum. So I think what happened when we exempted schools is we exempted them from certain parts of the underlying law that governs schools, and that primarily being certification, teacher certification. But I think the whole question does need to be reexamined. I agree with the speaker from the Department of Ed who said that we've never really defined what homeschools are and what kind of laws should govern them. I have a lot of sympathy with some of the things that people in this room said today. I, for one, don't believe that a charge should be made for any kind of testing. If the state does demand the testing then there probably should be no charge to homeschools. This was something that was in the original and still is in the Iowa statute. They do have to pay for their tests. But you know what? I stopped working on changing the bill that I introduced at the point that I was told that they would accept no changes in current law, and I...so I just didn't solicit suggestions from them at all because I understood them to be in favor of no changes. The basic reason for introducing this bill is to catch children who may fall through the cracks, and I'm...you cannot generalize about private schools or homeschools or public schools. You can't make a general statement that they're all doing fine or that 95 and 96 percent of them are doing fine. We don't know that. We have only anecdotal evidence, except for studies that I've seen so far that have been conducted by people who are associated with homeschool movement. Now that may just be my own fault, my own ignorance, but most of the studies that I've seen have been done by people associated with it. I'm not saying they're not...they don't know what they're talking about. I'm just saying I want to see some studies that are done by outside sources. How do we get empirical evidence if there is no oversight? How do we know? That's the whole problem here--we don't know what's going on. And I think that...I would ask if this committee has any research itself on success of homeschools. I would ask you also if we really know what's going on in parochial schools. I heard the Catholic Conference come in and testify. I believe they are taking norm-based tests in the parochial schools, and I believe if you would investigate that you would find that they are. I did say earlier on that I...that children who have certain handicaps or who are challenged in certain ways ought to be provided for in rules and regs, just like special education is provided for in rules and regs in our laws for the public schools. I don't think that we want to change, necessarily...well, I don't anyway, I don't want to change necessarily what's going on in the homeschools. I've seen too many good examples of what's happening in homeschools. I think if you teach...if you teach from a religious point of view in your schools, that shouldn't mean that you shouldn't be teaching the math and the science and the writing and the English and all those kinds of things. I don't want to interfere with what they're teaching or how they're teaching, I should say, in their schools. All I want to assure myself of, and I think we should want to assure ourselves of, is that these children are learning what they need to learn. I have two children who went through public schools and they're doing very well, too, but that doesn't mean all children in public schools are doing well. I would like to brag about my children a little bit, too, but I won't bore this committee with that. I

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just think that if...I don't want to destroy the homeschools in Nebraska. I just want to make sure that there aren't some children out there who are going to get to be 18 years of age and can't cope with the real world. I thank you very much for your patience. I would say that the bill is a starting point. I think the idea of an interim study is an excellent idea, Mr. Chairman. [LB1141]

SENATOR RAIKES: Okay. Thank you, Senator. Are there questions? Senator Adams has one, and then Senator Avery. [LB1141]

SENATOR ADAMS: Yeah, more than a question, Senator. I don't know, frankly, if I agree with this piece of legislation that you've come forward with, and you have allowed me to converse with you more than once about that. But despite the fact that you have obviously raised a storm, I find you to be a person of integrity. [LB1141]

SENATOR SCHIMEK: Thank you. [LB1141]

SENATOR SCHIMEK: Thank you. I appreciate that. [LB1141]

SENATOR RAIKES: Senator Avery. [LB1141]

SENATOR AVERY: Oh. You may not know the answer to this and I probably should have asked someone else, but I'm going to ask you anyway. If you want to pass on it, that's fine. Do you know what the percentage of college-going students from the homeschooling community are? About how many go to college? [LB1141]

SENATOR SCHIMEK: I don't know how anybody would know that. I would doubt that the University of Nebraska keeps statistics that way, but they might. [LB1141]

SENATOR AVERY: Well, we have...we had testimony or a letter from the president of Grace College that showed the different performances levels between homeschooled, public schooled, and I believe a third category. [LB1141]

SENATOR SCHIMEK: But I would guess that in most of our public colleges and universities, they don't keep statistics that way. I could be wrong, Senator, but I'm not sure what interest they would have in doing that necessarily. [LB1141]

SENATOR AVERY: Well, I do know there are... [LB1141]

SENATOR SCHIMEK: But I would certainly be... [LB1141]

SENATOR AVERY: ...and you're right, there are success stories. [LB1141]

SENATOR SCHIMEK: Yes. [LB1141]

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SENATOR AVERY: I mean, I, in my department when I was at the university, we give an award every year to the number one major in the program and one year that was a homeschooled student, a brilliant student. [LB1141]

SENATOR SCHIMEK: Oh yeah, I've met some really wonderful homeschooled students, and I think that for those of us who may have been skeptical in the beginning about homeschooling when LB928 was passed in the first place, and I'm not sure we envisioned homeschooling at that point, but some of us were skeptical in the beginning. I think that I have been convinced that many, if not most, of these parents are doing a good job, and I think the ideal situation is to have small classrooms where students get individual attention. But if we're not going to...if we're not going to assure ourselves of the abilities of the teacher, then we have to assure ourselves that the students are learning. I understand that the only reason that a school would be rejected from being exempt is because that the teacher is illiterate. I shouldn't say teacher. The monitor is illiterate. [LB1141]

SENATOR AVERY: Uh-huh. [LB1141]

SENATOR SCHIMEK: Mean, it doesn't matter otherwise. There's no other measurement that the Department of Education uses. Basically, anybody can be the monitor in these situations, and some of them...some of them are highly educated. Some of them may not be but may still be very good teachers. So that's...excuse me. [LB1141]

SENATOR RAIKES: Are there any other questions for Senator Schimek? I don't see any. So thank you, Senator, and that will close the hearing on LB1141. [LB1141]

SENATOR SCHIMEK: Thank you very much. [LB1141]

SENATOR RAIKES: I want to thank all of you for your respectful participation. We have another exciting bill coming up but if some of you want to pass on that, now would be a good time to... [LB1141]

SENATOR HOWARD: I'll stick around. []

SENATOR KOPPLIN: If you could, clear the room as quickly as you can. []

BREAK []

SENATOR KOPPLIN: All right. I'd like to open the hearing on LB1157, please. [LB1157]

SENATOR RAIKES: Thank you, Senator Kopplin and I will begin my testimony here

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shortly, my opening. Okay. [LB1157]

SENATOR KOPPLIN: Okay. We're ready. Thank you. [LB1157]

SENATOR RAIKES: Senator Kopplin, members of the Education Committee, Ron Raikes, District 25, here to introduce LB1157. As you recall, this is the second bill on the topic of statewide assessment the committee has heard this year. We heard LB987 on the 28th of January, and I believe that since that time we have made some, although very limited, progress on the issue of statewide assessment in communication with the state board with the commissioner. This being said, I don't believe that we have reached an agreement on the policy direction for the state. The commissioner still insists that reporting local assessment through STARS is more appropriate than statewide assessment. The commissioner and the state board have also interpreted LB653 as, quote, STARS-plus, where school districts would be burdened both with local assessment reporting and statewide assessment. I do not believe that it was ever our intent as a committee or a Legislature that this statute be interpreted in that fashion. At this point, it is clear the department will not interpret LB653 as we intended. The state board and the commissioner have insisted that they have and will follow the law. They have also made clear that a change in statute is required to have statewide assessment in reading, math, and science in the appropriate grade levels. I bring this amendment to LB1157 to make our legislative intent to have statewide summative assessment for state and federal accountability purposes clear. I think you have a copy of the amendment. It is a white copy amendment. Key provisions of it are as follows: Local assessment and assessment portfolios would no longer be required. Statewide assessment instruments would be required in reading, math, and science. Required grade levels for reading and math would be three to eight, and one grade in high school. Required grade levels for science would be once each at elementary, middle, and high school. Science would not be required for AYP decisions, according to NCLB--No Child Left Behind. The state board would develop, implement and maintain a plan for assessment, and submit that plan annually to the Governor. There would be an option for other grade levels and social sciences if required by NCLB in the future. A technical advisory panel of nationally known experts on assessment would be appointed by the Governor to review the assessment plan and provide third-party insights for the Governor, the Legislature, the state board, and the Department of Education. It's time to move forward. I do not want to dwell on the points of disagreement or the past issues of concern with statutory interpretation; however, at this point I believe that some form of oversight is a necessity. I believe that the assessment plan and the appointment of a technical advisory panel in this amendment helped to alleviate some concern about interpretation. I also do not want to dwell on the rhetoric surrounding the issue of statewide assessment, but I do feel compelled to comment on some of the criticisms floated about statewide assessment. The idea that statewide assessment does nothing to prove student learning is a very shortsighted view. Even the national experts that promote local assessment suggest that policymakers need a standardized approach to

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assessment. Different users have different needs. We sought to address these concerns through LB653 and made the point that local assessment is ill-fitted to serve as a statewide accountability approach. It is argued that statewide assessments narrow the curriculum of states and schools. I do not believe this to be true. I think, instead, schools in Nebraska have demonstrated that the time commitment to STARS is just as much of a restriction, and I don't believe we will see the end of the time commitment under STARS if we endeavor to push curriculum forward. The idea that teachers love STARS is actually an overstatement. Teachers have grown accustomed to STARS and has been interpreted at their local level. But you will recall last year's hearing when the question was asked, "What if we revise standards?" There was a collective sigh that deflated the whole room of STARS supporters. A system that is too burdensome for teachers and districts does not make the best use of teachers' time. We hear that statewide assessment is too costly. What is the cost of STARS annually? In 2005, the state board and the commissioner pushed forward LB467 where essential education included teacher time and assessment work exceeding \$20 million annually. Those costs are included in General Fund operating expenditures annually, and the state is paying for the ongoing expense. I believe that an appropriate statewide assessment system can be developed for an annual expense of less than \$5 million. We hear that a new system won't comply with No Child Left Behind. Again, I disagree. I believe that a system of statewide assessment instruments is much easier to gain the approval of NCLB than our current STARS system. The state needs to take the responsibility for state and federal accountability rather than passing it down to local school districts. Looking forward, I believe we can have a very effective statewide assessment system that takes into account the needs of local school districts, the state board, and state and local policymakers. We can and should have a system where districts appropriately use local assessment without the burden placed on teachers to become assessment experts. I envision a system that, once developed, opens a rich set of information about education that helps the state partner with local districts in serving at-risk students, and better addresses the achievement gap. I envision that researchers and policymakers will be able to answer complex questions about the achievement of students in our state. We cannot let our fear of misuse of such information paralyze us as a state in the development of better policy, better instruction, and better teacher preparation. Thank you. [LB1157]

SENATOR KOPPLIN: Thank you, Senator Raikes. Are there questions from the committee? Senator Howard. [LB1157]

SENATOR HOWARD: Thank you, Senator Kopplin. Senator Raikes, I've puzzled about this and puzzled about this, and maybe you can just help me better understand it. The benefits to be gained from statewide testing, the universal, across-the-board statewide testing, the consistency, as opposed to individual, local school district assessment, do you feel that will help raise the standard, raise the level for schools that possibly don't have the same academic opportunities as larger schools? [LB1157]

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SENATOR RAIKES: Well, I think it does a number of things. It may do that. It provides a base of information for statewide accountability. In a sense, it's parallel to what's done now in several of the large school districts in the state, Omaha Public Schools as an example. They use a single test that they can compare across students in schools so they can find out where the achievement gains and the achievement lacks, if you will, are so that they can move to address them. That's really all I'm suggesting here. I am not suggesting, by the way, that we do away with locally based assessments. Locally based assessments should be allowed and school districts can continue to do what they're doing now or something else. That should not be disallowed, in my opinion. But by the same token, I'm equally insistent that we do not require that those results be reported to the state and used for statewide accountability purposes because, frankly, I think that is a misuse of that information. [LB1157]

SENATOR HOWARD: Thank you. [LB1157]

SENATOR KOPPLIN: Other questions? I see none, Senator Raikes, so we'll go...how many of you are planning to testify today? Okay. Let's move to proponent testimony. [LB1157]

ANDREW RIKLI: (Exhibit 23) Vice Chair Kopplin, members of the committee, thank you for making time for us this afternoon. My name is Andrew Rikli, R-i-k-l-i, and I'm an administrator with the Westside Community Schools in Omaha. Senator Raikes, members of the committee, as you'll recall, Westside testified last spring in support of LB653 but, more specifically, we supported the adoption of uniform statewide tests in lieu of using local assessments for accountability purposes. We would like to reaffirm that position today. It has been argued that large-scale statewide tests have limited value in terms of directly improving classroom instruction. That is probably true to a point. It is our assertion that it is equally true that using local tests, which measure widely different academic standards, proficiency definitions, and passing scores, is probably equally unsuitable for accountability purposes. That's why Westside supports LB1157. There are those who fear that statewide tests in reading and math will lead to a narrowing of the curriculum and widespread teaching to the test. However, if we use the Nebraska statewide writing assessment as a reference point, I suspect you'll find those fears are largely unwarranted. For example, Nebraska students had record writing scores at all grade levels in 2006-2007, with almost 90 percent of all students passing the assessment in the latest reporting year available. Furthermore, since 2001, student writing scores have increased on average almost 11 points at all three grade levels assessed. But more importantly, I suspect if you would talk to Nebraska educators across the field, you'll find that there's a renewed focus on student writing which has been fueled at least in part in having a common metric in writing. Is it reasonable to expect similar results in reading and math? I would argue that it is. Furthermore, LB1157 does not necessarily mean additional tests for districts. As you're probably

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aware, under No Child Left Behind there is a reporting requirement of 3 through 8 and 11 that Nebraska has been in compliance with since the 2005-2006 school year. However, LB1157 does shift the accountability focus from a local assessment model to a more statewide model, which we feel is the correct approach. The challenge, of course, will be finding a way to implement these tests without placing an undue burden on teachers, as well as students. One very practical way of reducing that burden on teachers and students, particularly staff, is the elimination of the assessment portfolio. As you're probably well aware, Nebraska districts must annually put together a portfolio which documents the technical quality of their assessments. Up to this point, we've done that six times. By doing away with this requirement, it would save school districts a tremendous amount of time and resources. In the final analysis, we are the only state in the Union that continues to use local assessments as the foundation of its state and federal accountability system. Though the shift away from local assessment to a more statewide model will not be easy, it is not unprecedented. When we look around the country at some of the states that most of us would agree have some of the very finest public schools in the country--your Kansases, your Wisconsin, your Minnesota--they've long used statewide writing...statewide assessment models for a whole manner of subject areas. Furthermore, as Senator Raikes points out, LB1157 does nothing to prevent classroom teachers from using classroom assessments to diagnose student learning needs. I don't think there's a person in this room that would argue that that's just good teaching practice. However, what this law does purport to do is prevent districts from using those local results for accountability purposes. In closing, our state policymakers recognized the wisdom of using a common metric in the area of writing several years ago. I think it's eminently logical that we would use that same methodology when we're trying to measure students' reading and math skills. Our challenge, of course, is to balance the quality classroom instruction that we know is happening across Nebraska schools with the authentic and uniform assessment accountability system that's outlined under LB1157. With that, I would be happy to answer any questions you may have. [LB1157]

SENATOR KOPPLIN: Are there questions for Mr. Rikli? I see none, so thank you, Andrew. [LB1157]

ANDREW RIKLI: Thank you. [LB1157]

SENATOR KOPPLIN: Next proponent. [LB1157]

FRED MEYER: Good afternoon, Vice Chairman Kopplin and Senator Raikes and other members of the Education Committee. My name is Fred Meyer and I am president of the State Board of Education and speaking today on behalf of the state board members. I am pleased to have an opportunity to discuss LB1157 with you today, and to tell you that the state board supports the concepts involved in LB1157. And I think that the main concept here, of course, is accountability. Education Commissioner Christensen will

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address some educational issues as related to LB1157 that we feel are also very important. We support accountability wholeheartedly. The long-term policy position of the state board has defined accountability as improving teaching and learning in our schools through local assessments. For the past nine years, the state board's primary goals have included the terms "standards," "assessment," and "accountability." It's almost been like one word. Those three are tied together very tightly. LB1157 expands that accountability. Test-based accountability is but one piece of education policy. Testing to get a score should not be the only focus of our education policy, and it should not trump our efforts to improve learning. Local assessments are that other piece, and a critical one if we want policy that improves teaching and learning. In other words, we do not understand why local and state assessments cannot peacefully coexist. We believe that public accountability includes both scores and improvement. The State Board of Education, Commissioner Christensen and the department and staff have met with you in recent weeks to assure you of the progress we are making to fully implement the accountability measures as stated in LB653, which is the current law. We have made excellent progress with those revisions of the reading standards, which will allow us to develop a state reading test. In fact, we're about two months ahead of schedule, according to the work done in the field and the department, according to the dates in the law. We will follow the same process for developing new mathematics standards and a state math assessment. We are on track to meet the mandated time line, as stated in the current law, LB653. The state board and the department are following the current law. We look forward to future discussions about the two critical pieces of education--accountability and improving teaching and learning. Thank you. [LB1157]

SENATOR KOPPLIN: Are there questions from the committee? Seeing none, thank you very much. [LB1157]

FRED MEYER: Thank you. [LB1157]

SENATOR KOPPLIN: Next proponent. [LB1157]

TERRY COSSEL: My name is Terry Cossel, and I represent no one but other than myself. [LB1157]

SENATOR KOPPLIN: Could you spell your name, please? [LB1157]

TERRY COSSEL: C-o-s-s-e-l. Okay. Just want to...my presentation is a lot less formal than the others are, but basically, reading LB1157, I agree with the tenet of it, that we need more accountability and statewide accountability. I agree with Senator Raikes saying that local assessments are good, we need to use those, but I think we need a statewide standard so we can have more accountability. We're spending a lot of money on education in this state, which is a good thing. Education is necessary. But I think we need statewide accountability, so I support this. I really would not rather see another

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layer of bureaucracy, but if that's what it takes to get it done, then I'm for that. [LB1157]

SENATOR KOPPLIN: Okay. Thank you. Questions from the committee? Seeing none, thank you, sir. Next proponent. Then we will move to opponents. The first opponent, please. [LB1157]

JAY SEARS: (Exhibit 24) Good evening. I'm Jay Sears, J-a-y S-e-a-r-s. I work for the Nebraska State Education Association. I appear before you today in opposition to LB653 on principle. What I've provided for you in written testimony is the principle that the NSEA stands on, and I'd like to read some of that into the record because we're not opposed to the assessment and accountability of learning in the state of Nebraska. We think that there are a number of ways to do that process. We have and our members have been working for the last eight-plus years doing that process through local assessment, and we think it is viable and can be done. But we're also realists and we realize that the Legislature's intent, and probably the Legislature's intent a number of years ago, was about statewide tests. We must have missed that. But somewhere down the road, we found a better way. Our teachers worked real hard and found a way to make assessment there for learning and correcting and changing instruction. But again, we're realists. The intent is to have a statewide assessment in reading, in math, and ultimately science, and we have a statewide assessment of writing, and we know that the Nebraska teachers and administrators and school boards can make it work and make it something that we can all be proud of so that we can use the system, so that we can reach the ideals of what I think Senator Raikes and you all want to do. We're not abandoning what we think is very important in the classroom--the formative assessment. We won't be able to throw away what's in our teachers' heads about assessment and good instruction and good curriculum. It's there now. They've learned. Most of them have learned how to do proper assessment in the classroom. It will be a little foreign as we do in 2009 the first statewide test of reading, but we'll make it work. Nebraskans always make it work. That's why the teachers in the state of Nebraska stay here. They're proud people. They work hard. So as you can read in our testimony, the NSEA is here to work with the policy partners to develop the best darn statewide assessment we can do so that we can make sure that students in the state of Nebraska learn. And we've stood on our principle and we will always stand on our principle, and that's every student should have the opportunity to learn in this state. Thank you very much for the opportunity to testify and to work with you and your staff as we develop statewide assessment and accountability that everyone is proud of. [LB1157]

SENATOR KOPPLIN: Are there questions for Mr. Sears? Thank you, Jay. Oh, excuse me. Senator Avery. [LB1157]

SENATOR AVERY: Your last point here on your letter is under "We have these suggestions for changes." [LB1157]

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JAY SEARS: Yes. [LB1157]

SENATOR AVERY: And the last one says: "Honor the work Nebraska's teachers have put into the development of the formative assessment...", etcetera. [LB1157]

JAY SEARS: Uh-huh. [LB1157]

SENATOR AVERY: Do you want to be more specific? What do you mean? [LB1157]

JAY SEARS: Here's what's happened in my 30-plus years of education. Every time teachers have worked hard and done something that's good and useful, we go to something else and we don't honor what has been done, even if it's something that needs to take place that is different. And I think what you're saying to a number of teachers who have worked for the last eight years to develop the best formative assessment in the classroom, have put in their work, their time, their sweat and their tears--some getting paid for it, some doing it on their own time--to develop an assessment system that they could believe in, needs to be honored in the assessment system and accountability system we develop for this state also. It doesn't have to be STARS, it doesn't have to be STARS-plus, but it better meet needs of assessment. And our teachers have learned something about that process, but they're also very tired, and I think many of them will welcome the fact that they don't have to do the portfolios over and over again. And many of them will want to continue to do the formative assessment that they do in their classroom because they know it's good teaching. It helps students learn to standard and that's what I really mean by that bullet point. Please honor the teachers that have worked for the last eight years to develop a system because we've gotten into a match of who's right and who's wrong, and nobody is right and nobody is wrong. We're all in it for kids. And please honor the teachers that have been involved in that. [LB1157]

SENATOR AVERY: Well, I want to honor the work of the teachers, but you haven't said anything that gives us specific ways in which we can do that. If you think...if you're saying that going to statewide testing is not a way to honor the teachers, then say so, if that's what you mean. [LB1157]

JAY SEARS: No. I think you honor them in the knowledge they have about assessment, and don't develop assessment that's just a bubble test on recall items, because that will not honor what they've learned and are able to do in the classroom. [LB1157]

SENATOR AVERY: You mean... [LB1157]

JAY SEARS: Make that statewide assessment... [LB1157]

SENATOR AVERY: ...no standardized tests. [LB1157]

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JAY SEARS: Make that statewide test authentic. Make it more than just recalling "1492." [LB1157]

SENATOR AVERY: But aren't most standardized tests bubble sheet tests, multiple choice? [LB1157]

JAY SEARS: There's many different options, I think, for us in this state to develop an assessment system that can be used by all the different districts across the state. Because some will have to use bubble tests because they don't have the technology. Some want to be able to use an assessment process that fits as it goes along in instruction. That's what our members have learned; that the most important piece of assessment happens when you've instructed and you can follow right up with it, not in April after everyone has learned it all and we try to retain it all and everybody gathers in the gym to take the bubble test. That's not true assessment. That's not true accountability. We could just take a snapshot with a Polaroid and that would be good assessment. [LB1157]

SENATOR AVERY: Well, you can have these scores tracked over time, too, and get a... [LB1157]

JAY SEARS: Yes. I think we can build a great system. We already have the start of it. [LB1157]

SENATOR AVERY: But you really don't like the statewide uniform test, do you? [LB1157]

JAY SEARS: Not as a single measure, and that's what I'm afraid of, is as soon as you read anywhere in any state, you can take, for example, the Washington assessment or the Massachusetts assessment, and they're very good assessments, but that's the standard and that's what everybody looks for. And I understand the personalities behind a score for a statewide assessment that people have value and place trust in versus what was developed at the local assessment level. But it's very valuable for our teachers, and I know it will continue at the local level. Most districts will continue to report their CRTs, their criterion reference tests that they use in their local district, because that's what parents want to know. Parents want to know, "Where is my child on math on this standard today?" not where was he in April. [LB1157]

SENATOR AVERY: Oh, I'm a parent of one of those kids. I want to know how my student compares with other people throughout the country and how he compares with kids in his district, in his school, and in the state. [LB1157]

JAY SEARS: Oh, and we can do that, and the data is there now. [LB1157]

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SENATOR AVERY: It didn't sound to me like you're supporting that kind of testing. [LB1157]

JAY SEARS: Our organization will support the statewide test, and we want you to build the best statewide test we can have. [LB1157]

SENATOR KOPPLIN: Other questions? [LB1157]

SENATOR AVERY: We agree on that. [LB1157]

SENATOR KOPPLIN: Thank you, Jay. [LB1157]

JAY SEARS: Thank you. [LB1157]

SENATOR KOPPLIN: Other opponents. Is there neutral testimony? [LB1157]

MARY SCHLIEDER: Good afternoon. My name is Mary Schlieder, that's S-c-h-l-i-e-d-e-r, and I'm a high school teacher. I teach at Norris High School in Firth and I'm the 2008 Nebraska Teacher of the Year. I do try to follow legislative bills that relate to education, although I'm not an expert on those, but what I do know is my students, and I'd like to introduce you to two of them and just help you think a little bit about real life as far as relating the effects that LB1157 may or may not have on them and students like them. They're very representative. The first, Brandon, was born to a teenage mother, abandoned by his father, abused by his caretakers, and after several unsuccessful years in school landed in my district in my classroom. He told me on that first day that he didn't use a locker, didn't do schoolwork, didn't eat breakfast or lunch, and didn't dress out for P.E. He told me that there was nothing that I could give him or take away from him that would make him do anything that he didn't want to do, and he was absolutely right. He spent the majority of the first month in my school with his head on his desk--an 8th grader whose test scores are in the 3rd to 4th grade range. Little by little, we worked on building relationships and creating a safe place for Brandon. He received intensive academic support and lots of encouragement. He began to take academic risks. It didn't happen overnight, but by the end of the school year he had grades of all Cs and above. While Brandon had made tremendous progress that year, he still tested out below grade level. According to No Child Left Behind standards, Brandon might fail to make AYP, adequate yearly progress, but he was an academic success and one step closer to becoming a productive citizen. Even though Brandon was still testing below grade level, I knew he was learning because our STARS assessments proved that he was. I had a tool developed by teachers who understand student learning which gave me invaluable information indicating what Brandon knew and didn't know so I could adjust and reteach accordingly. Andrew is a completely different student, from a two-parent family of high socioeconomic status and the

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recipient of the best exposure to culture and outside education experiences a family can offer. A talented musician, wrestling and track athlete, Andrew is also enrolled in our school's accelerated math and science classes. In my school, education is every bit as serious a business for Andrew as it is for a student like Brandon, because we have to give Andrew the tools to compete in a global market economy. He would like to enter an engineering program at a top university, and it's our job to help get him there. Andrew needs plenty of time to develop higher-level thinking skills, and I'm grateful he's not hampered by a system where test preparation rules the day. As Teacher of the Year, I've had the opportunity to meet teachers of the year from all the other states. What I've learned is that Brandon and Andrew are lucky to live in Nebraska instead of many of the other high-stakes testing states, where students like Andrew spend too much time preparing for tests and too little time developing creativity and problem-solving skills; states where teachers like my brother, a former social studies teacher, left the profession in frustration for just that reason; states where kids like Brandon are, quote, unquote, encouraged to leave school some time early in the 11th grade and get a GED because on the 11th grade assessments he could contribute to his school not meeting AYP, putting funding in jeopardy. LB1157 is seeking to make changes in the way we assess our students, and I'm neutral about it; I have a lot of questions and things that I don't understand, as do many of the other people that I work with. I do have some concerns. It doesn't matter one iota to me if my school's test scores are better than Lincoln Northeast's, Palmyra's, or Elkhorn's. Schools with differing poverty levels, numbers of ELL students, and special education students cannot be compared to each other. In my mind, it's a waste of time. If the purpose of LB1157 is to do this, my fear is that money could be siphoned away from programs that will help Brandon graduate from high school and that will provide Andrew the academic edge he needs to compete in our shrinking world. I'm also concerned that LB1157 could result in even more testing that we already subject our kids to. We don't want to take any more time away from instruction where we're forced to check creativity at the door and turn our students into drones who only have time to learn how to pass a test. I'm concerned that by moving assessment development from the local to the state level, we will further remove educators, the experts in the complexities of student learning, from the process. We don't want to trade the formative assessments that give teachers tools to help students learn throughout the school year for high-stakes summative assessments written by testing companies divorced from the classroom curriculum, tests whose results are often not even seen by teachers until year's end, when it's too late to modify instruction. Teachers only want to know if Brandon and Andrew are learning, if they're being prepared for the world they're about to enter. Nebraska has done so much that's right. We're looked upon by educators across the country with awe and envy. They want what we have here. I would urge our policymakers to listen to the voices of teachers, take careful consideration of the diverse needs of our students, and think long and hard how our education dollars will be spent as they seek to modify the assessment system we already have in place. Thank you. [LB1157]

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SENATOR KOPPLIN: Questions from the committee? [LB1157]

SENATOR ADAMS: Senator Kopplin, may I? [LB1157]

SENATOR KOPPLIN: Senator Adams. [LB1157]

SENATOR ADAMS: Did I hear you say then that if we had criterion-referenced tests that were aligned with our standards that we've established in Nebraska and teachers could more immediately get feedback on those, you would see that of value? [LB1157]

MARY SCHLIEDER: Yes, I see that as value. I think we need multiple means of assessments. My big worry is...I come from another state. I taught in New York State for several years, and my concern is encouraging kids to drop out based on one test, because everything is based on that one test. And those tests really, we don't get those results till the end of the school year anyway. They really don't do teachers much good in the classroom. [LB1157]

SENATOR ADAMS: Right. Thank you. [LB1157]

SENATOR KOPPLIN: Other questions? Well, then thank you, Teacher of the Year. [LB1157]

MARY SCHLIEDER: Thank you. [LB1157]

SENATOR KOPPLIN: Next neutral. [LB1157]

DOUG CHRISTENSEN: (Exhibit 25) Vice Chairman Kopplin, members of the committee, Chairman Raikes, for the record, I'm Doug Christensen, Commissioner of Education. You've heard the testimony of our board president, Fred Meyer, and as he stated, the board supports the concepts of LB1157. You also heard him state their advocacy for assessments that will support the work of educators to improve teaching and learning. Neither the board nor I see these two as mutually exclusive issues. This is very awkward for me. You know my feelings about state testing, and they have not changed. Martin Luther King states what I'm really feeling at this moment when he said, "We stop living when we are silent about the things that really matter." This really matters. What you do with the proposal of LB1157 will have everything to do with the practice of education in Nebraska for a long time to come. It will have everything to do with the education our children and our grandchildren will experience. As President Meyer stated, "The board supports your policy-level interest in the public reporting of test scores. We ask you to recognize the importance of policy that promotes teaching and learning through local assessments." I am testifying in a neutral position not because I am neutral, because I am not; I am anything but neutral about education in this state. I care very much about the education of the children in our state, and I care

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very much about accountability. I care very much about what happens with the implementation of LB1157. You've again heard the testimony of the state board in support of the concepts of LB1157. But the implementation of LB1157 should not proceed without someone making clear what has always been the values of Nebraska regarding education and how these will likely change under LB1157. And I will try to do that. One, we value local leadership and local decision making. Have we considered that we'll be centralizing curriculum instruction, teaching and learning at the state level through statewide standardized testing? Have we considered that local patrons own the largest share of the school enterprise and they're not partners in this policy at all? Have we considered that the local patrons, parents and educators are far removed from any decisions that will be made, and they're the ones who will know our kids the best? Two, we value hard work, initiative and taking responsibility. Have we considered that we're dismissing the hard work of teachers and principals who have demonstrated their ability to create high-quality, local assessments, and have demonstrated their willingness to stand up and be accountable? Third, we value Nebraska culture and Nebraska's way of doing business. Have we considered that we're turning over our schools to the federal government and under their terms, not ours? Fourth, we value spending money wisely on our highest priorities. Have we considered that we'll be expending funds to create 17 new tests that evidence confirms do not measure learning, do not advance the work of classroom teachers to improve teaching and learning, and do not promote the work of school improvement? Fifth, we value community and the fact that it takes a village to raise our children. Have we considered that with test scores we will be placing the entire blame for student achievement solely on the schools and the educators? Sixth, we value making decisions supported by data, evidence, and research. Have you considered that we're putting in place a policy that is not informed by data, evidence or research to support it? And finally, most of all we value our children, and we value doing what is best for them. I want you to consider for a moment Mohammed at Dawes Middle School, Luis from Lexington High School, Santiago from Franklin Elementary in Omaha, and Althonse from Alliance High School who live what it means to be poor, what it means to be an immigrant child, what it means to be a child of color, and what it means to be a child in a mobile family and a child learning the English language. Have we considered how we're going to look in their eyes and explain to them how these tests will help them grow, learn, and improve? All of us are here to benefit our children. We are here to do what's best for their education and their development. The state board, the department, and I will do as the Legislature directs us to act; however, we must consider the educational values of all Nebraskans and, most of all, consider what happens to our students and their learning. This really matters. Thank you. [LB1157]

SENATOR KOPPLIN: Are there questions? Senator Avery. [LB1157]

SENATOR AVERY: Thank you, Senator Kopplin. As an educator, you know that words matter. I note that you and Mr. Meyer said you support the concepts in this bill. Does this mean that you don't support the specifics and, if not, what are they? [LB1157]

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DOUG CHRISTENSEN: I don't know how we can make a statement about the specifics of it because we don't know what the specifics of it will actually be and the amendments that have been filed. There's been an attempt to have conversations with the Education Committee about this, and I can't speak for the board on this issue. Their directive is to support the concepts of LB1157. And I think what they mean is the concept of some kind of accountability that includes the reporting of test scores. [LB1157]

SENATOR KOPPLIN: Senator Howard. [LB1157]

SENATOR HOWARD: Thank you, Senator Kopplin. I have to say before I came down here four years ago, I really had no idea how complex these issues are, and I just...I want to say on the record I appreciate the work that you've done, I appreciate how you've always been so willing to be a reference for me when I needed more information, and how committed you are to any interest concerning children and education. [LB1157]

DOUG CHRISTENSEN: Thank you. [LB1157]

SENATOR HOWARD: So you really are very valuable. [LB1157]

DOUG CHRISTENSEN: Thank you. [LB1157]

SENATOR HOWARD: So thank you. [LB1157]

DOUG CHRISTENSEN: I think there's a lot of people that wish I were committed. [LB1157]

SENATOR KOPPLIN: Other questions for Dr. Christensen? I see no more. Thank you. [LB1157]

DOUG CHRISTENSEN: Thank you. Here's copies of my testimony I'd like to have distributed, please. [LB1157]

SENATOR KOPPLIN: All right. Next neutral testifier. I see none, so, Senator Raikes, would you like to close? [LB1157]

SENATOR RAIKES: Thank you, Senator Kopplin, members of the committee. I do appreciate the testimony we've heard, including the commissioner, I think who expressed his passion for this subject area. He and I don't agree. That's simply the case. I think that there is ample opportunity to combine local assessments and statewide summative assessments for the purposes of informing teaching in the classroom and reporting on statewide accountability. I think that we've got to move beyond the notion that you can't do that, because if you can't move beyond that, I don't

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think you'll make the progress, you'll take advantage of the strides that we can make. So that probably is a problem, but I think...I think we need to move forward. I am absolutely convinced that we need to move forward. There were some other points made. And the Teacher of the Year who testified, again, there has been an effort, it seems, to collapse a statewide summative assessment as assigning one number to a student, one number to a school building and using that for a total judgment somehow. That is certainly not the case. If you look at places where--and basically we're looking...I'm referring to 49 other states, I think--if you look at places where this is done, it's done in varying ways, and I think the quality of the results vary considerably. But if you look at the best places, the places that it's done most effectively, most creatively, I don't think there's any reason to conclude that you have to land at a point where you're making a negative judgment or a positive judgment based on one number. I think there's a wealth of information to be gathered and a wealth of information to be used, both at the local level and by statewide policymakers. That, I think, has to be the goal that we keep our eye on, and I hope we will do that. [LB1157]

SENATOR KOPPLIN: Questions for Senator Raikes? Seeing none, so we will close the hearing on LB1157. (See also Exhibit 28.) Thank you. [LB1157]

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Disposition of Bills:

LB731 - Held in committee.

LB1141 - Held in committee.

LB1155 - Indefinitely postponed.

LB1157 - Advanced to General File, as amended.

Chairperson

Committee Clerk