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Education Committee
February 01, 2010

[LB745 LB956 LB1001 LB1061]

The Committee on Education met at 1:30 p.m. on Monday, February 1, 2010, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1001, LB1061, LB745, and LB956. Senators present: Greg Adams, Chairperson; Brad Ashford; Bill Avery; Abbie Cornett; Robert Giese; Ken Haar; and Kate Sullivan. Senators absent: Gwen Howard, Vice Chairperson. []

SENATOR ADAMS: We'll have our members here in just a few moments. We've got seats for everybody. Well, to begin, I want to welcome everyone here. For the four bills that we will hear today...we're going to be hearing LB1001, LB1061, LB745, and LB956. Members of the committee--though they are sparse at this moment, I'll introduce them regardless. First of all, the committee clerk, Becki Collins. If you have statements that you wish to hand in for the record, you need to hand those to Becki. That is no indication that they will appear for or against on a committee statement. But, nonetheless, if you want them provided for the committee members, you can hand them in to her. Senator Ashford from Omaha, representing District 20. Next to him, Senator Giese from South Sioux City will be here. Senator Cornett from Bellevue. To my immediate right is Tammy Barry, the committee counsel. I'm Greg Adams, representing the 24th Legislative District. Our Vice Chair, Senator Howard, is sick today; she won't be here. But next to her, Senator Kate Sullivan from the St. Paul area. Senator Avery from here in Lincoln. And Senator Haar is introducing a bill in another committee; he's first up, so in just a moment he'll be here with us. Let me initiate this hearing with just some words of how we're going to do this. We'll, of course, begin with Senator Janssen's opening. From there we will move to proponents of the bill, then to opponents, and then to neutral testimony. And then, if Senator Janssen chooses, we'll allow him to close before we move on to the next bill. If you wish to testify today, we have a light system, and we're going to use it. We will go three minutes per person for your testimony. In addition to that, we have to hear three more bills after this first one. And therefore I'm going to limit the hearing to two hours. And, in aggregate, I'm going to try to be a little bit flexible, but I'm going to be watching the clock and want to limit one hour to each side. And if there are pertinent questions that are being asked of the testifiers by committee members and we run beyond time, I may let that go. But if there's going to be a lot of repetitious testimony, for the sake of getting through the other bills and allowing people who are here today on other bills to have their moment with us, we're going to keep things moving right along. I'll also ask you the very obvious: I would appreciate proper decorum while we're here today--no applause, no jeering. I want everybody to be able to hear what's going on today, whether you are testifying or not, regardless of what side you are on. I would also ask you to turn off your cell phones and any other electronic devices that you may have, including your computers. I don't want any interruption as we are proceeding through this hearing today. Another word of caution to you: At each doorway there's a table that has sheets for you to sign up as a testifier; and please, please, please, before you come up to testify, please gather one of those, have filled it

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out, and you can bring it to the committee clerk, Becki Collins, at the time of your testimony. If we don't do that, I'm not going to take time to have everyone sit here at the table and fill them out, waiting for you to testify. We'll never get through all of this. So with that, make sure that you have filled one of those out. I can't think of anything else. So we will begin. Senator Janssen, you are recognized to open on LB1001. []

SENATOR JANSSEN: Thank you, Senator Adams, members of the Education Committee. For the record, my name is Charlie Janssen, C-h-a-r-l-i-e J-a-n-s-s-e-n. I represent Legislative District 15, which includes Fremont and all of Dodge County. Again I'd like to thank Senator Adams for working with me for this hearing--on how this hearing will go. I think you're handling it in the most appropriate manner. LB1001 would repeal the provisions of LB239 of 2006. LB239 expanded Nebraska's postsecondary education residential statutes to permit aliens not lawfully present in the United States to qualify for in-state tuition if they graduated from a Nebraska high school and provided to the state postsecondary educational institution that they want to attend... [LB1001]

SENATOR ADAMS: Excuse me, Charlie. Sir, put your camera away, please. All right, Charlie, continue. I'm sorry. [LB1001]

SENATOR JANSSEN: Thank you, Senator Adams. Find my spot here. If they wanted to attend, they had to put forth an affidavit stating that he or she will file an application to become a legal resident at the earliest opportunity he or she is eligible to do so. LB239 was one of the most controversial bills passed during the 99th Legislature. The bill received 27 votes on Final Reading and was promptly vetoed by the Governor. The Legislature overrode the veto by the minimum 30 votes. Several votes changed in the process. The public was rightly confused. Some were disappointed. Many were outraged. This change in law has come up in nearly every statewide election conducted since then. I was asked about my position on in-state tuition for illegal immigrants more than any other position statement during my campaign for the District 15 seat. From following news accounts, I am positive that each and every one of you as well as our colleagues in the Legislature was asked their position in the 99th Legislature's action on this issue. I think it is appropriate that the 101st Legislature be given an opportunity to also re-examine this policy. Only four members who voted for LB239 on Final Reading remain in the Legislature. And only three members remain that voted for the override of the Governor. Senator Raikes, Chairman of the Education Committee during deliberations on LB239, voted no--no to advance the bill to the full Legislature and did not vote on the Final Reading or the override motion. I have great respect for Senator Raikes, and his votes were very influential to me as I consider policy arguments for and against LB239 and whether to introduce LB1001. As I read the floor transcripts of debate of LB239, comments made by Senator Flood and others also made an impression. There was a great deal of questions and anxiety about the appropriateness of making aliens not lawfully present in the United States eligible for in-state tuition benefits. Many brought up federal law. Title VIII, United States Code, Section 1623,

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language was considered. It reads: "Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a state or a political subdivision for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit in no less an amount, duration, and scope, without regard to whether the citizen or national is such a resident." I'm certainly not an attorney, but the law of the land seems clear to me. Nebraska cannot grant in-state tuition to aliens not lawfully present in the United States unless we offer in-state tuition to all citizens or nationals of the United States. Nebraska State Statute 85-501 still requires: "All state educational institutions shall charge nonresident fees to be paid by nonresidents of Nebraska who shall matriculate at any such institution." And I'm certain that we are still charging students from Missouri, Illinois, California, and every other state in the Union a nonresident rate. Something has to give on this issue. Nebraska is opening itself up to unnecessary legal action and cost to the taxpayer. We are violating federal law; we are encouraging illegal behavior. LB1001 deserves serious consideration and support. Mr. Chairman, with your permission, I would like Mr. Kris Kobach and Mr. Garrett Roe to provide initial testimony following me. I'd like to thank you for your attention. And to all committee members, I urge you to advance LB1001 to General File and certainly would be happy to entertain any questions you might have. [LB1001]

SENATOR ADAMS: Thank you, Senator Janssen. Committee, are there questions of this testifier? Senator Sullivan. [LB1001]

SENATOR SULLIVAN: Thank you, Senator Adams. Senator Janssen, you mentioned in your earlier comments that when the original legislation was passed, that it was confusing to the general public. In what way was it confusing? [LB1001]

SENATOR JANSSEN: Well, I think a lot of people at the time were confused at the simple issue of providing a benefit to people here not legally--people breaking the law--and that we were somewhat rewarding them for breaking the law. And certainly I don't think, day to day, all Nebraskans have a grasp on what in-state, out-of-state tuition is or tuition rates are at any college. [LB1001]

SENATOR SULLIVAN: Thank you. [LB1001]

SENATOR ADAMS: Are there other questions for Senator Janssen? Senator Giese. [LB1001]

SENATOR GIESE: Thank you, Chairman Adams. Senator Janssen, just on that note, you said, "breaking the law," so in your opinion receiving...and at that time in-state tuition was breaking the law? [LB1001]

SENATOR JANSSEN: I think we're in violation with federal law. When I say, "breaking

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the law," if you're here illegally, you have broken our laws. Regardless of how you got here, a law has been broken. And now we are also in direct violation with federal law. I find it disturbing that many times myself and many of you, possibly--we've always been upset or at least pointed out that the federal government has not acted on immigration the way we'd like them to. Certainly I would prefer that there was a clearer path to get citizens here that are immigrants here legally, in the proper way and by not rewarding them with illegal behavior, which I think we're sending the message...we are rewarding them with this nonresident tuition. But federal law on this one has spoken. Nebraska has chosen to not accept that. They've spoken clearly on this; it says we can't do what we're doing. Us and ten other states, or, excuse me, nine other states, decided to go against federal law. Oklahoma has repealed theirs. So at present there are 41 states that are--that don't have the so-called Dream Act and are in compliance with federal law. [LB1001]

SENATOR GIESE: Thank you. [LB1001]

SENATOR ADAMS: Other questions? Senator Avery. [LB1001]

SENATOR AVERY: Senator Janssen, this is not going to be a unfamiliar question. What public purpose do we serve--or what do we gain by denying these students the opportunity to get an education? What do we gain as a state? [LB1001]

SENATOR JANSSEN: You know, I don't know exactly how to answer the question as what we gain. It's--should we be doing this? Again, I know I can't ask you questions at this point in time, but I guess I would ask out loud: What does the student gain when they graduate from this postsecondary education? They're still not a citizen of our state; they can't get hired. Legally they cannot get hired in our state. So we're also giving them...I guess--public policy--we're removing the false hope, because when they finish college, we can't hire them. I own a company in Fremont. When I ask for proper documentation of citizenship, it will not be there. And therefore I can't hire them. [LB1001]

SENATOR AVERY: Well, I guess then I could ask it a different way. Is it better or worse for the state to have these students educated? And by the way, I believe one of the conditions is they be working toward citizenship. Is it better to have them to enter the work force and citizenship unprepared, unable to lead productive lives, pay taxes, and contribute to our society or to have them uneducated, without job skills, possibly then on welfare, possibly working their way into the criminal justice system? Do you see that counterargument there? [LB1001]

SENATOR JANSSEN: I think it's better for our state not to offer false hope. Again, you talk about this mythical job that they're going to get after they graduate from college. And, one, I would take issue...I'm very respectful to the K-12 educators: I think once

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they finish 12th grade, they are an educated individual. But again, I think it just comes back to the false hope. You're talking about this job they're going to get--they're going to enter the work force. They're going to enter the work force illegally under present law. [LB1001]

SENATOR AVERY: They have to have a green card, I presume, to get employed, right? [LB1001]

SENATOR JANSSEN: I couldn't go through the exact immigration work status at this point. [LB1001]

SENATOR AVERY: But you don't have to be a citizen to get a green card. [LB1001]

SENATOR JANSSEN: That's what the green card is for, is my understanding. [LB1001]

SENATOR AVERY: Right. Yeah. It's for those who are not citizens--guests here and who wish to work. [LB1001]

SENATOR JANSSEN: There are guests, and there are uninvited guests, and there are guests that went through the proper process. And I think it would be better for all of us if the process were streamlined. And I certainly hope this helps to advocate for that. I'm not trying to shut people down. I'm trying to encourage people to go through the proper channels to get here legally, to take advantage of our postsecondary education benefits in a legal manner. [LB1001]

SENATOR AVERY: Thank you. [LB1001]

SENATOR ADAMS: Any other questions? Senator Giese. [LB1001]

SENATOR GIESE: Thank you, Chairman Adams. Senator Janssen, the question I guess I have for you is we could potentially have somebody here for 12 years of school and invest well over \$100,000; I think the latest cost per student per year is \$9,000. Shouldn't we be doing something to maybe get a return on our investment? And I see this as a...regardless of the federal legislation--we realize that there's some problems there in that area yet. But we have a substantial investment already with these students. Anyway, your comments on that, if any? I mean... [LB1001]

SENATOR JANSSEN: Senator Giese, thanks for the question. I come back to the same conclusion that I gave Senator Avery. Are we better off having an educated work force? Certainly. Postsecondary education? Certainly we're better off. We still have to--we have legal tests we need to hurdle. And in this case, I don't feel that we're making that hurdle. We're also possibly creating a culture that we're going to accept illegal behavior. And more and more people are going to circumvent our laws of the land and come here

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illegally than legally--than going through the proper process. So while I think it's...yes, I think we should educate people; people should be educated--all people, postsecondary education. But it's not up to the state of Nebraska to determine whether or not something is legal or not legal when the federal law has certainly said what we're doing is against federal law. [LB1001]

SENATOR GIESE: But don't you think then also that we are forcing these people to...I mean there is no future with this; we are forcing a new culture and forcing them underground or, if you will, hiding in shadows. Anyway, that's my comments. And if you have a comment, please do so. [LB1001]

SENATOR JANSSEN: Oh, certainly. And I hope this issue helps bring that to light. There are some serious immigration issues in this land. The federal government hasn't spoken in many areas, and it needs to be addressed. We're not really disagreeing that much on what we're saying. Our approaches probably would be a lot different in how we're approaching the subject. I would like for the students participating right now in this so-called Dream Act--and there may be some here as well--to become legal citizens, to become productive citizens. Yes, we have made an investment. But we can't keep rewarding the illegal behavior and just turn our backs to it. I just don't think we can keep doing that. [LB1001]

SENATOR ADAMS: Senator Sullivan. [LB1001]

SENATOR SULLIVAN: Thank you, Senator. Senator Janssen, are you aware of any recent court attempts to test the constitutionality of this law? [LB1001]

SENATOR JANSSEN: I am aware of multiple court attempts questioning this. I have Professor Kobach, who's an attorney; he'll be up testifying next. He'll bring specific light on that and give you, actually, the specifics. I know California that's been tested recently. [LB1001]

SENATOR SULLIVAN: But here in Nebraska. [LB1001]

SENATOR JANSSEN: There has been a lawsuit put in against the state of Nebraska by Mr. Kobach--I believe is the one that put that in. And he will discuss that as well. [LB1001]

SENATOR ADAMS: Other questions? Thank you, Senator. [LB1001]

SENATOR JANSSEN: Thank you, Senator Adams. [LB1001]

SENATOR ADAMS: First proponent. The other thing I would ask as you're preparing to testify is that you would state your name and spell it for the record so the clerk can be

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sure to get it into the record properly. Go ahead, sir. [LB1001]

KRIS KOBACH: (Exhibits 1, 2 and 3) Thank you, Mr. Chairman. My name is Kris Kobach, K-r-i-s K-o-b-a-c-h. I come to you in my capacity as a professor of constitutional law and immigration law at UMKC, although I am certainly not representing my institution. Who I am representing are the plaintiffs in the case of Mannschreck v. Board of Regents, filed a week ago. They are Nebraska taxpayer plaintiffs suing to ensure that their tax dollars are legally spent by the state of Nebraska. I also served as counsel to U.S. Attorney General John Ashcroft from 2001 to 2003, was his chief advisor on immigration law. As Senator Janssen has already pointed out, there is a federal law, which he read word for word. It's 8 U.S.C., Section 1623, and it says in very plain language that a state may not give in-state tuition rates to an illegal alien unless every U.S. citizen in the state, regardless of state of residence, is eligible for the same benefit--in-state tuition. I've heard some proponents of LB239, or the existing law, saying: Well, what if we give in-state tuition to a few U.S. citizens under this law; won't that immunize us from the federal law? Answer is no, because the phrase in the federal statute is very clear; it says: every U.S. citizen, regardless of state--the state in which he resides. The other argument, which I just heard mentioned, I believe by Senator Avery--he referred to the legal affidavits that are under the current Nebraska law. You are required to sign an affidavit saying you'll try to legalize someday. There is no avenue to legalize someday. That legal affidavit is meaningless. And so you're essentially saying...it's as if you're signing an affidavit that says: I will try to fly someday when I grow wings. There is no avenue. Now the original California law that this bill is essentially copied from had that affidavit requirement. They were hoping that the federal Dream Act would be passed, which they hoped would repeal 8 U.S.C., Section 1623, and create a massive amnesty. That was never passed, and as many of you who follow federal legislation and other events in Washington know, it has never been passed since--either in 2002 when California passed this law or in subsequent attempts. Now the...in addition to facially violating Section 1623, there's also another provision of federal law--it's part of the Welfare Reform Act of 1996, which President Clinton signed--that says that no public benefits may be given to illegal aliens. This is in conflict with that. It's also a conflict pre-emption case, which is a legal term for it defeats the purpose of federal law. And by that I mean in order for a student to avail himself of the benefit of in-state tuition in Nebraska, he has to remain here to receive the reward--to receive the subsidy. He has to remain unlawfully present. And so you have Nebraska law giving an incentive to violate federal law. Finally, I would end on a few policy considerations you should consider. First and foremost, you are subsidizing an illegal work force that can be deported at any moment. It is an illegal work force that cannot work. And so the argument that you are creating more effective workers is a fallacious one. The second argument is you're actually hurting the students you're trying to help. Under federal law, once you turn 18, your immigration violation becomes your own. You accrue what's called unlawful presence. Once you accrue one year of unlawful presence, you come up against the ten-year bar, which means you can never get a U.S.

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visa for the next ten years. So if these students want to live the American dream, you have lured them down a primrose path by giving them a reward to stay here an extra year--an extra four years, in fact--and then they hit the ten-year bar, and they cannot get a legal status. And so, in fact, you're hurting them more than you're helping them. I see my time is up. [LB1001]

SENATOR ADAMS: Thank you, sir. Are there questions? Senator Avery. [LB1001]

SENATOR AVERY: Thank you for taking the time to come and address this issue. Are you at all familiar with the Federation for American Immigration Reform? [LB1001]

KRIS KOBACH: Yes, I am. [LB1001]

SENATOR AVERY: Do they have a position on this bill? [LB1001]

KRIS KOBACH: I assume they are in favor of this bill. [LB1001]

SENATOR AVERY: And would that also be true for the Center for Immigration Studies--I think that's part of the federation? [LB1001]

KRIS KOBACH: They are separate organizations. I don't know if they've taken a position on this. [LB1001]

SENATOR AVERY: Are you in any way affiliated with either of those two? [LB1001]

KRIS KOBACH: I am affiliated with the Immigration Reform Law Institute, which is a legal organization based in Washington, D.C., which litigates on behalf of U.S. citizens and enforcement of federal law. [LB1001]

SENATOR AVERY: And is that institute affiliated with the federation that I just mentioned? [LB1001]

KRIS KOBACH: There is a loose relationship there. And to be frank, sir, I'm not sure exactly what it is, but they may share board members or something like that. [LB1001]

SENATOR AVERY: Have you been in the past affiliated with this federation I mentioned? [LB1001]

KRIS KOBACH: I have attended their--spoken at their meetings, yes. [LB1001]

SENATOR AVERY: Do they have a membership? I don't know. [LB1001]

KRIS KOBACH : I've...yeah...I've never been a formal member or anything like that.

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[LB1001]

SENATOR AVERY: You've heard of the Center for... [LB1001]

KRIS KOBACH: Immigration Studies? [LB1001]

SENATOR AVERY: ...the Southern Poverty Law Center? [LB1001]

KRIS KOBACH: Yes. [LB1001]

SENATOR AVERY: And Morris Dees. [LB1001]

KRIS KOBACH: Yes. [LB1001]

SENATOR AVERY: Civil rights center... [LB1001]

KRIS KOBACH: Um-hum. [LB1001]

SENATOR AVERY: ...that works to combat hate groups in America. [LB1001]

KRIS KOBACH: Well, I think that's a very generous characterization of their work. Lately their work has been more denigrating people who disagree with their, I would say, radical agenda. [LB1001]

SENATOR AVERY: You mean civil rights is a radical agenda? [LB1001]

KRIS KOBACH: No. No. Civil rights is a great agenda, but the Southern Poverty Law Center has taken a very hard-core left view of a wide variety of political issues that have nothing to do with civil rights. [LB1001]

SENATOR AVERY: Are you aware that this Federation for American Immigration Reform has been labeled by the Southern Poverty Law Center as a hate group? [LB1001]

KRIS KOBACH: Yeah, they've labeled quite a few people hate groups. I think they've labeled Congressman Tom Tancredo as a hate person. I think I'm on their list of bad people too. So, yes, if you'd like to take the SPLC as a disqualifier of testimony, you're welcome to do so. [LB1001]

SENATOR AVERY: Well, it's true that the federation's founder was John Tanton, who had a pretty murky history in the white supremacist movement. [LB1001]

KRIS KOBACH: I don't believe that's correct. I've heard the arguments made about

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F.A.I.R., and my understanding is that it's a very...it's a very strange argument. They claim that F.A.I.R. got a grant in 1984 from a gentleman who was a eugenicist...oh--no, from the Pioneer Foundation and that the Pioneer Foundation was started by a gentleman in the 1930s who was a eugenicist and that somehow, through four degrees of separation, that somehow they're...you know, I've never found them to be anything but for racial equality and no bias or bigotry in any of their views. And you--certainly if you read their statement of purpose, I think it's a very egalitarian one. [LB1001]

SENATOR AVERY: I have no more questions at this time. [LB1001]

SENATOR ADAMS: Are there others? Senator Giese, did you have a question? [LB1001]

SENATOR GIESE: Thank you, yes, Chairman Adams. Mr. Kobach, you mentioned before just a word that I just want to...explain, if you will: subsidize students. [LB1001]

KRIS KOBACH: Yes. [LB1001]

SENATOR GIESE: How do we subsidize...? [LB1001]

KRIS KOBACH: Well, in-state tuition rates, as I'm sure this committee knows, represent a discount off the real cost or full cost of providing a postsecondary education. In most states, the subsidized portion approximately equals the difference between in-state and out-of-state tuition. So, for example, at the University of Nebraska-Lincoln, it's...and if you take 120 hours over the course of your degree, you're talking about \$11,000 per year--so about \$44,000 difference. That difference approximates the subsidy. Now, of course, with the bookkeeping of postsecondary institutions, sometimes...or if the Legislature gives additional money in a year, the subsidy portion is going to be a little bit different than the difference between in-state and out-of-state tuition. But it is certainly fair to say that it is a taxpayer subsidy when any person receives in-state tuition. And that, of course, is something that states have traditionally done to help their own residents. [LB1001]

SENATOR GIESE: Well...and I...but they have to pay--this particular group that we're talking about--they have to pay their own tuition, if you will, though. I mean, they're not receiving a subsidy, correct? [LB1001]

KRIS KOBACH: Well, essentially, they're paying tuition at less than half the rate that a person paying full freight, an out-of-state student, would pay. And so they are paying a portion, but in effect you're giving them more than a 50 percent discount. That discount would be the subsidized portion that the Nebraska taxpayer is picking up. [LB1001]

SENATOR GIESE: But that is the only thing...they have to pay for that. They get no

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other grants. They do not apply for anything else, because they can't get anything else. [LB1001]

KRIS KOBACH: They are ineligible for federal grants, as federal law makes very clear. Indeed in 8 U.S.C. 1601, Subsection 1, it says quite clearly that the purpose of federal law is to discourage illegal immigration by not giving any public benefits, which is why federal law makes them ineligible for all federal educational grants. [LB1001]

SENATOR GIESE: Thank you. [LB1001]

SENATOR ADAMS: Other questions? I might have...go ahead, Senator Avery. [LB1001]

SENATOR AVERY: Did you...? [LB1001]

SENATOR ADAMS: Go ahead. No, go ahead. [LB1001]

SENATOR AVERY: I'd like to go back to that 1996 federal law. I can't tell you that I've read all the legal literature, but I do know that there is significant literature that suggests that there are various ways to interpret that law and that many of those contradict the interpretation that you gave us. Are you familiar with that? [LB1001]

KRIS KOBACH: Um-hum. [LB1001]

SENATOR AVERY: Would you be willing to explain... [LB1001]

KRIS KOBACH: Sure. [LB1001]

SENATOR AVERY: ...since you are a constitutional scholar... [LB1001]

KRIS KOBACH: Yeah, I'd be happy to. [LB1001]

SENATOR AVERY: ...some of those? [LB1001]

KRIS KOBACH: Indeed I have firsthand experience with them. I represented the plaintiffs in Martinez v. Board of Regents, which is the case...I've handed you a copy of the decision from the California Court of Appeal. We prevailed in that case by a 3-0 decision. And we heard every possible plausible argument to make California's similar--virtually identical--statute to Nebraska's fit somehow under the federal law and comply with federal law. Their arguments were severalfold, one of which I mentioned earlier. They said that: Well, maybe you could think of the fact that California makes a few U.S. citizens eligible for the in-state tuition benefit--that somehow that complies with the federal law. But the California court rejected that and said: No, the language of the

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federal law is very plain; it says all U.S. citizens have to get the benefit if any illegal aliens get it. The other argument they tried to make was--they said: Well, the California law doesn't make any reference to the word "residence"; and the federal law says you can't give an illegal alien a postsecondary education benefit on the basis of residence; California just says: You go to high school here for three years, you graduate, you sign the affidavit; that's good enough. The California Court of Appeal said: Well, residence and school attendance are de facto substitutes for one another; that's not good enough. Now that argument would not be available for Nebraska--for an attorney attempting to defend the Nebraska law--because the Nebraska law, unfortunately for the state, makes very express reference to residence, and that means it runs smack into the federal statute. They do not have the availability of that legal argument. So those arguments have been rejected by the only court of appeal to deal with the issue, which is the California Court of Appeal. It's now pending in the California Supreme Court. There's one other case that was argued; I was involved in that too. That was in Kansas. The plaintiffs in that case attempted to go through federal court. Federal court, as you may know, has restricted rules of standing; it's very difficult to qualify as a plaintiff in federal court. And so the court never reached the question; it said that those particular plaintiffs did not have standing. There is one other case pending; that's in Texas. I'm not involved in that lawsuit. And that one was filed about three months ago, I believe--two or three months ago. [LB1001]

SENATOR ADAMS: Senator Haar. [LB1001]

SENATOR HAAR: I have a question. I think there are two issues. One is there's no question if someone is undocumented, they're undocumented. The second one is about subsidy from Nebraska taxpayers. In Nebraska we get about--and this is about--a third of our tax money from income tax, a third from sales tax, a third from property tax. So somebody's been here at least three years to get through high school and so on--with their parents. Their parents have probably been paying income tax, wouldn't you agree, even though it's not...? [LB1001]

KRIS KOBACH: Actually, most statistics--these are done by the Pew Research Center and also by...the Census Bureau does these current population surveys--suggest that roughly half of the illegal alien population is working on the books and therefore paying taxes under a false Social Security number and roughly half is working off the books. So...and the numbers vary from state to state and region to region. But...so probably, you know, a very large portion are not paying income taxes. But they're certainly paying sales taxes, which is I think where you're going here. [LB1001]

SENATOR HAAR: And property tax, probably, in the form of rental. [LB1001]

KRIS KOBACH: Perhaps indirectly, passing along through rent, yes. [LB1001]

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SENATOR HAAR: And if people are...okay, on the books means that they have some kind of false identification, right? [LB1001]

KRIS KOBACH: In most cases, yes. [LB1001]

SENATOR HAAR: Okay, what would that be? False... [LB1001]

KRIS KOBACH: False Social Security number. It may surprise members of the committee, but every year approximately half a million people file under the Social Security number 000-00-0000. So that's... [LB1001]

SENATOR HAAR: Computer doesn't catch that one, huh? [LB1001]

KRIS KOBACH : I...if only it would. There are many problems of communication between the Social Security Administration and I.C.E. [LB1001]

SENATOR HAAR: Now the people that work off the books--what kind of jobs...they have jobs where they're paid cash? Or what would be some kinds of jobs like that in Nebraska, do you suspect? [LB1001]

KRIS KOBACH: Well, looking at the national trends, you could probably say that many of them would be present here. Gardening is a common one. In some cases, restaurants will pay their cooking staff off the books. Some cases, janitorial services. Some cases, meat packing. But meat packing, actually, they tend to pay on the books. [LB1001]

SENATOR HAAR: Pretty much on the books? [LB1001]

KRIS KOBACH: Yeah. Yeah. [LB1001]

SENATOR HAAR: So are most of these companies, or are they individuals that pay people off the books? [LB1001]

KRIS KOBACH: You know, I don't have the statistical breakdown to look at the... [LB1001]

SENATOR HAAR: Okay. Well, that would be interesting. But in some ways, we could actually...a lot of these are Nebraska taxpayers; they're paying income tax, sales tax, property tax. The real issue, then, is one of being here as undocumented. [LB1001]

KRIS KOBACH: Well, I would add this in response to your point. And that is the...an economist, Robert Rector, did a study two years ago looking at tax benefits, because the argument has been made often: Well, maybe an unlawfully present person is, you

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know, paying their way, in a sense, by paying sales taxes and the like. And they found that the...looking at every possible form of tax that an illegal alien household pays--everything from indirect property taxes through rental, to sales taxes, to, you know, cigarette taxes, you name it--and then you look at all of the benefits consumed. They found that an illegal-alien-headed household is usually--or an average of \$19,400 in debt, in terms of the taxes they contribute, are \$19,400 short of the benefits they consume. And this would be one benefit. K-12 education would be another benefit. Most of those benefits--and that was at all levels of government combined--but most followed the state government level. [LB1001]

SENATOR HAAR: That's probably also true of people who live in poverty and are--some way get tax exemptions and all these kinds of things, as well. [LB1001]

KRIS KOBACH: Certainly there would be some U.S. citizens... [LB1001]

SENATOR HAAR: Yeah. [LB1001]

KRIS KOBACH: ...who live in poverty... [LB1001]

SENATOR HAAR: Yeah. [LB1001]

KRIS KOBACH: ...and are in the same situation, yes. [LB1001]

SENATOR HAAR: Who are also taxpayers. So, again, to me, it's important to sort out those two. I mean, you could also argue that people in poverty are being subsidized by Nebraska taxpayers. Even though they pay some tax, they're in the... [LB1001]

KRIS KOBACH: Absolutely. But I think it's important to remember that as legislators, you have absolute authority to create a program to give public benefits to U.S. citizens who are in need, and indeed you have. And many--and most states have created some state-level public benefits. But one thing the federal government has made clear--and federal government has plenary power in this area, meaning that the Congress has all authority to push aside countervailing state law--is that you cannot give in-state tuition benefits to illegal aliens. And the state, under the supremacy clause of the U.S. Constitution, does not have the authority to tell the federal government: Well, we have a better idea. Whether federal law is right or wrong, fair or unfair is something reasonable people can disagree on. But we are a country of laws. And we are a country where the constitution makes federal law supreme over countervailing state law. And that's the fundamental issue here. [LB1001]

SENATOR HAAR: Okay. Thank you very much. [LB1001]

SENATOR ADAMS: Senator Cornett. [LB1001]

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SENATOR CORNETT: Ten states, including Oklahoma before they repealed it, had laws similar to this. [LB1001]

KRIS KOBACH: Um-hum. [LB1001]

SENATOR CORNETT: Oklahoma chose to repeal it, correct? [LB1001]

KRIS KOBACH: Correct. [LB1001]

SENATOR CORNETT: Have any other lawsuits found the other nine states in violation? [LB1001]

KRIS KOBACH: There have only been a total of four lawsuits. One was very fresh in Texas, one very new here in Nebraska; California did find it to be in violation, and then Kansas never got to the question. So the other five states have not had a lawsuit filed. So there's been no resolution...there's only one case in the country where the court answered the question, and that's the case you have in front of you. [LB1001]

SENATOR ADAMS: Senator Avery, did you have another question? [LB1001]

SENATOR AVERY: I did. Thank you, Mr. Chair. One of the things that concerns me about this is it seems to me that we are punishing the children for the misdeeds of their parents. And that leads me back to the question I raised with Senator Janssen. If that is what we are doing here, what does the state of Nebraska gain by what appears to me to be a punitive piece of legislation? And if we are punishing these children for the misdeeds of their parents, do you consider that okay? [LB1001]

KRIS KOBACH: Senator Avery, right now Nebraska is rewarding these children for the misdeeds of their parents. To go to a situation where they would be treated as a nonresident, treated equally to a person from Kansas or a person from Iowa, that would not be punishing them. That would be requiring them to pay the full freight of their education. That would be treating them neutrally, I believe. Secondly, you have to remember that you are actually hurting them at the end of the day, because you are leading them down this road of encouraging them--with an \$11,000 a year subsidy at University of Nebraska-Lincoln--you're encouraging them to remain unlawfully present. They probably--many probably do not know that by remaining unlawfully 12 months, they run into the ten-year bar. By incurring the unlawful presence, you've made it very difficult for them ever to realize the American dream. If I were advising one of these students, I would say at their 18th birthday: You really need to understand that you are now accruing federal law violations under your own name now; you are an adult in the eyes of the law, and you need to go back to your home country; if you want to live the American dream, apply for a student visa, come to the United States legally, get on the

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legal track, then maybe at some point you can adjust your status and perhaps get a green card, and then maybe at some point you can become a U.S. citizen. But by encouraging them--leading them down this primrose path--you are making it very difficult, almost impossible, for them...well, under current law there is no way they can adjust their status. And as far as what do we gain--by what you characterize as a punitive measure, I would say you're not punishing anyone; you are stopping treating U.S. citizens unfairly, because, of course, U.S. citizens are paying more than twice as much as these illegal aliens--U.S. citizens who have never broken the law, U.S. citizens who just want to come here to Nebraska to get a fine education. And you're also gaining taxpayer...you're reducing an illegal subsidy that Nebraska taxpayers are being forced to spend. Because of this Legislature's illegal action, Nebraska taxpayers are being forced to subsidize the education of those people unlawfully here. If you pass Senator Janssen's bill, all you will be doing is returning it to parity and saying: Well, if you want to take your risk and you're illegally present in the United States, the state of Nebraska is not going to help you and reward you for your illegal presence; we're simply going to treat you like anybody else from a foreign country who pays out-of-state tuition or anybody else from outside of the state of Nebraska who pays out-of-state tuition. You have to remember you're giving away that subsidy of in-state tuition, and you give away subsidies every year--this committee does. And I think you should think about whom you are subsidizing, because there are...you could take that money, you could reduce the in-state tuition rates for Nebraska residents, you could reduce out-of-state tuition rates for U.S. citizens coming from other states. But I don't know why you would put at the top of your list subsidizing people who are unlawfully present. One would think that a legislator's responsibility would be first to U.S. citizens, second to lawfully present aliens, and third to unlawfully present aliens. [LB1001]

SENATOR AVERY: Seems to me you could also argue that, without this incentive, these students would not be enrolling in the university, in colleges and community colleges and they would not be paying any tuition at all, so the institutions are losing tuition that they might otherwise gain. [LB1001]

KRIS KOBACH: Well, the argument has been made. But if this were only one or two students, I think then the argument might carry some merit. But once you start talking about 30, 40, 50 students, then you're talking about adding enough students to the university's payroll--or to the university's rolls that, essentially, you--the university has to accrue costs, whether it be more T.A.'s that the university has to hire or more--other facilities that need to be provided to the students. So, yeah, on the margin... [LB1001]

SENATOR AVERY: I've never heard the university complain about too many students. (Laughter) [LB1001]

KRIS KOBACH: Well, you probably have heard university officials come to you and ask you for money, and I think they probably do that pretty regularly. And part of it is when

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you bring on in-state students... [LB1001]

SENATOR AVERY: That's because they were paying people like me too much.
(Laughter) [LB1001]

SENATOR ADAMS: Other questions? I'm anticipating--and help me out here as long as you're at the microphone--I'm anticipating a statement about public benefit, saying that granting the difference between in-state and out-of-state is okay because it's not cash. What...how do you put into framework your thoughts on that? [LB1001]

KRIS KOBACH: That was actually...it's interesting you intuitively thought of that argument. That was another argument that was made in the California case. They tried to argue that a benefit is only cash. And that's something that courts, not just in California but all across this country--state and federal courts have rejected the notion that a benefit can only take the form of cash. A benefit can take the form of a reduced price, a subsidy, a grant where no cash changes hands. So to not characterize this as a benefit is difficult, especially when the congressional legislative history makes clear--and I have a bit of it in my testimony; you can read it at your leisure--makes clear they were talking about in-state tuition rates specifically. I would mention one other thing about the lawsuit. And that is, I know that the taxpayer plaintiffs in this lawsuit would like nothing better than to see the lawsuit go away and have this state return itself to compliance with federal law. And I encourage you to do that, although I would note one thing. I believe the way the bill is phrased currently, it would grandfather in those presently attending these postsecondary institutions. And technically that would not make the lawsuit moot. It would have to be written so that the benefits end immediately for all, to bring it into compliance with federal law. But again, I certainly would like it, and I know that the plaintiffs in this Nebraska taxpayer case would like for this suit to go away. [LB1001]

SENATOR ADAMS: Thank you, sir. Are there other questions? Thank you then. Next proponent. [LB1001]

KRIS KOBACH: Thank you. [LB1001]

GARRETT ROE: My name is Garrett Roe, G-a-r-r-e-t R-o-e, and I'm a staff attorney with the Immigration Reform Law Institute. [LB1001]

SENATOR ADAMS: Hold on just a second, Garrett. [LB1001]

GARRETT ROE: Okay. [LB1001]

SENATOR ADAMS: We'll let Becki get situated here. You want to turn the red light off on him, Becki. Did you turn in your sheet, by the way? [LB1001]

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GARRETT ROE: Oh, I did not. Sorry. [LB1001]

SENATOR ADAMS: She's scolding you with that red light. [LB1001]

GARRETT ROE: Oh, is she? Sorry. [LB1001]

SENATOR ADAMS: She helps me police this deal. Thank you. [LB1001]

GARRETT ROE: I did fill it out, though. [LB1001]

SENATOR ADAMS: Good. Good. Now you're good to go. [LB1001]

GARRETT ROE: All right. Okay. My name is Garrett Roe; it's G-a-r-r-e-t R-o-e. And I'm a staff attorney for the Immigration Reform Law Institute. I'm actually working with Professor Kobach on the lawsuit filed against the various universities and colleges in the state. I'm here today to give some testimony explaining the policy reasons why this Legislature should repeal the Nebraska law that grants in-state tuition to illegal aliens. I'm not going to discuss the illegality of the law, because I think he's done that in depth. Instead, I'm simply going to focus on the policy of the current law. The first reason that the Legislature should repeal this is that giving in-state tuition to illegal aliens--the state of Nebraska gets no economic benefit whatsoever from illegal-alien students once they graduate. I think Senator Giese brought this up. Under current law, it's illegal for an employer to employ an illegal alien, whether to hire him or to continue employing him once the employer knows he's unlawfully present. So if an employer were to hire an illegal alien once he graduated from college, that employer would therefore be in violation of federal law. Actually, the Wall Street Journal article which I think this committee got a copy of explains that pretty well. It discusses what happens to an illegal alien once he does graduate from college. Once the alien graduates, the employers cannot hire him, because it's unlawful to hire him. So the illegal aliens are out looking for jobs, but they can't get the jobs that they want. This is because, again, the only individuals who are going to hire that illegal alien are the same ones that hired him before. Typically it's the lower-wage, low-skilled. You know, the higher-skilled employers, like, you know, I don't know, you know, like Hewlett-Packard or something like that--they're not going to hire him, because they go through the proper legal channels. Instead, they're going to end up in the same jobs they had prior to going to college. So the only thing the illegal alien has is a degree that doesn't help them. But he's now paid tens of thousands of dollars in tuition, and the state subsidized, you know, tens of thousands of dollars for him as well. The second reason that the Legislature should repeal this act is that there's no way for the illegal alien to become lawful once he does graduate. I think the current law--Senator Avery brought this up--requires them to sign some kind of affidavit that they'll seek legal presence as soon as they can. But the problem is there's a general prohibition under federal law that prevents an illegal

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alien from changing status--to becoming lawful--unless...or if he is deportable when he seeks that status--when he has worked unlawfully in the country--or if he's applying for an employment visa while he's unlawful. So virtually every single Nebraska--or illegal alien getting the tuition in the Nebraska state under this current law can never become lawfully present, absent some, you know, something like an amnesty taking place. And finally, a reason to repeal this law is the cost to the Nebraska taxpayer. At the University of Nebraska-Lincoln...I see my time is up. [LB1001]

SENATOR ADAMS: Make it quick. [LB1001]

GARRETT ROE: Okay. University of Nebraska-Lincoln currently charges \$187 per credit-hour for in-state tuition. Out-of-state tuition is \$555 per credit-hour. Over a four-year period that's \$44,160 that the state of Nebraska is going to subsidize in tuition payments for illegal aliens. And, again, this is a subsidy that Nebraska can never recoup, because the illegal alien will never be able to work lawfully in the state of Nebraska upon graduation. [LB1001]

SENATOR ADAMS: Okay. Questions for this testifier? Senator Avery. [LB1001]

SENATOR AVERY: That number you just quoted, \$44,000, is what you call a subsidy. [LB1001]

GARRETT ROE: Yes. [LB1001]

SENATOR AVERY: All right. What does that...how much does that leave, then, off the table in in-state tuition that the student would pay if we continued to have the law in place as it is? So it's, like, sixty... [LB1001]

GARRETT ROE: \$187 times 120. I don't have that number in front of me. [LB1001]

SENATOR AVERY: It's somewhere around \$60,000 or \$70,000. [LB1001]

GARRETT ROE: I'd say about \$20,000, probably--\$18,000. [LB1001]

SENATOR AVERY: No, you said the total would be over \$100,000, and you were going to subtract about forty-four... [LB1001]

GARRETT ROE: No. Sorry. The subsidy is \$44,000. [LB1001]

SENATOR AVERY: Over four years. [LB1001]

GARRETT ROE: Over four years, correct. The \$187 per credit-hour is the in-state tuition rate. [LB1001]

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SENATOR AVERY: Um-hum. [LB1001]

GARRETT ROE: So \$187 times 120, what does that equal out to? I don't have a calculator in front of me. [LB1001]

SENATOR AVERY: He's a human calculator. [LB1001]

GARRETT ROE: Okay. [LB1001]

SENATOR AVERY: He knows. [LB1001]

SENATOR _____: No, I... [LB1001]

SENATOR AVERY: It's over \$100,000. Well, the point I made a while ago, I think, is one that we need to consider. [LB1001]

GARRETT ROE: Okay. [LB1001]

SENATOR AVERY: This would be tuition money that we would leave on the table... [LB1001]

GARRETT ROE: Okay. [LB1001]

SENATOR AVERY: ...if we do not admit these students under the current law, because that's an incentive. A lot of these students will not go to college without it. And universities and colleges would forgo that tuition. [LB1001]

GARRETT ROE: So... [LB1001]

SENATOR AVERY: And frankly, I can tell you, university values every student, without regard to their legal status. They also value that tuition money, because I'm paying it right now, and I know they value it. (Laughter) But, I mean, don't you see that argument, that you are, in fact, forgoing an important resource for the universities and colleges if you exclude this category of students? [LB1001]

GARRETT ROE: If I understand your question correctly, it's that if this bill were to be repealed and illegal aliens did not attend college, that \$18,000, \$20,000, whatever it is, that they pay for in-state tuition over four years--the universities would be out that money if you repealed that law. Is that what you're asking? [LB1001]

SENATOR AVERY: Yeah. [LB1001]

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GARRETT ROE: Okay. Well, a couple things on that. One is--I don't know, but based on just about every, you know, every state I've looked at...I haven't looked that hard, you know, that much into it, but, I don't know, the difference as far as how much it costs a University of Nebraska-Lincoln, for instance, to cover an in-state--or the state of Nebraska to cover the in-state tuition costs versus the out-of-state tuition costs...but typically the out-of-state student pays his entire share, with no subsidy from the state, while the person paying in-state gets a large subsidy from the state. So, essentially, the state and the college--they actually lose money whenever an illegal alien is admitted, because the state has to pay that additional amount. So while they may be getting an extra \$20,000 from that student, it, you know, it would cost, you know...or they're losing that \$44,000 that the state is now making up over the four-year college. I don't know if I made that very clear, but that's, you know, that's essentially the difference. So they're not necessarily making money, if that's what you're questioning. I mean, I'm saying they're probably losing money per student. [LB1001]

SENATOR AVERY: Well, I don't think that President Milliken, who is sitting behind you, is going to make that argument... [LB1001]

GARRETT ROE: Okay. [LB1001]

SENATOR AVERY: ...that they're losing money on student tuition. [LB1001]

GARRETT ROE: Okay. [LB1001]

SENATOR ADAMS: Senator Haar, did you have a question? [LB1001]

SENATOR HAAR: Yes. We already established with Mr. Kobach that, actually, many of these undocumented workers are Nebraska taxpayers. So have you factored that into your \$44,000 a year? [LB1001]

GARRETT ROE: Well, again, it goes back to the...one of the, you know, one of the reasons for...no, I have not. But one of the main proponents for arguing that is that they, you know, they can get, you know, they do still pay, you know, some kind of taxes. However, one of the purposes of in-state tuition is, again--because you're subsidizing the lawful work force in the country. And proponents would argue that by, you know, being able to go to college they can advance, you know, in their work capacity--they go from one of the lower-wage skilled jobs to the upper, you know, the higher-wage skilled jobs. Well, as I mentioned earlier, the higher-wage skilled jobs do not hire illegal aliens, because they go through the proper channels of employment. So I don't know if that really makes my point, but the whole point to that is that I have not calculated in, but it does not cover the--I'm sure it doesn't cover the difference. [LB1001]

SENATOR HAAR: Well, I would disagree that the only purpose of the universities and

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in-state tuition is to prepare people--I'm not sure how you put that--but prepare people for the job market. We listen to NPR radio and all, and English majors apparently (laugh) have a pretty hard job market. What I am saying is there are other advantages to having an educated populace simply besides educating them for the work force. And so I think some of those assumptions around how much money is being paid by Nebraska taxpayers and so on need a little more work. [LB1001]

GARRETT ROE: And again, this bill isn't seeking to ban these people from attending college; it's simply seeking to go back to the status quo, where they're treated as a nonresident student just like any other U.S. citizen would be from another country (sic). [LB1001]

SENATOR HAAR: Well, do you think they should be allowed to go to college if they're an undocumented worker paying out-of-state tuition? [LB1001]

GARRETT ROE: I mean, I honestly don't know on that one. I guess it depends. I mean, nothing in federal law prohibits it. By doing so, you do encourage the student to remain in the United States unlawfully over the one-year period, as Professor Kobach mentioned. So I would say the, you know, the better avenue for the student would be to return to their home country, apply to come in as a student on a student visa. That way, at some point, he can transfer to become a, you know, a lawful resident, you know. So, I think, no. I think it's--I think it actually harms the student to admit them to college. [LB1001]

SENATOR HAAR: So the real purpose of this is to protect the students. [LB1001]

GARRETT ROE: No, the real purpose of this law is to, you know, to be in compliance with federal law. If this law is not passed, and a court finds this current law to be unlawful, the state of Nebraska is going to have to subsidize the tuition of every U.S. citizen that's paying nonresident tuition, which will end up costing the state of Nebraska a lot of money. [LB1001]

SENATOR HAAR: Okay. Thank you. [LB1001]

SENATOR ADAMS: Are there other questions? Senator Giese. [LB1001]

SENATOR GIESE: Thank you, Chairman Adams. Mr. Roe, then, in your opinion, the university and the other folks that are in support of the in-state tuition--are they wrong in their opinion? Or are they just--do they look at it from a business standpoint? And I don't want to put words in their mouth, and I'm sure we'll hear that later. But...and I guess that's my question for you. [LB1001]

GARRETT ROE: The way I understand your question is: Do I think that they are

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incorrect that this sort of law helps the student? [LB1001]

SENATOR GIESE: Well, they're in support of... [LB1001]

GARRETT ROE: Right. Of in-state tuition. [LB1001]

SENATOR GIESE: Right. [LB1001]

GARRETT ROE: And you're questioning: Do they--are they wrong? [LB1001]

SENATOR GIESE: Are they wrong in that opinion, in their support of that? [LB1001]

GARRETT ROE: I mean, everybody's entitled to their own opinion. But I think that having a law that gives in-state tuition to illegal aliens and encourages them to remain in the United States, under the, you know, the assumption that maybe someday they'll gain lawful presence by doing so--I think that's wrong, because you're putting this person in a position that they've now spent all this money on tuition and they can do nothing with it in the United States. As I mentioned earlier, there's no legal avenue for the person to then become a U.S. citizen. And, in fact, by attending four years of college in Nebraska, they're effectively barred for ten years from ever even trying to come back to the United States. [LB1001]

SENATOR GIESE: Thank you. [LB1001]

SENATOR ADAMS: Senator Ashford. [LB1001]

SENATOR ASHFORD: Yeah. Is there...a couple questions. First of all, do you find it inconsistent that the federal government provides for K-12 education for any student and then the position that you're taking that in-state tuition is a benefit that should be denied? Do you find...and the reason I ask that is because the underlying K-12 rule is a federal requirement. [LB1001]

GARRETT ROE: Well, the federal... [LB1001]

SENATOR ASHFORD: So is there something inconsistent there? [LB1001]

GARRETT ROE: Okay. Well, the federal requirement comes from a case called Plyler v. Doe. It was a 1982 Supreme Court case; I'm sure you guys are familiar with that case. It was an equal protection case, where the court said that the states cannot deny K-12 education to children of illegal aliens--illegal alien children. So that's where that K-12 education comes from. Whether that's inconsistent or not...I mean, the federal government has plenary power to do what it wants... [LB1001]

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SENATOR ASHFORD: No, I know that. [LB1001]

GARRETT ROE: Okay. Okay. [LB1001]

SENATOR ASHFORD: And I understand. [LB1001]

GARRETT ROE: Okay. [LB1001]

SENATOR ASHFORD: And I'm not trying to cut you...I understand the underpinnings. [LB1001]

GARRETT ROE: Okay. [LB1001]

SENATOR ASHFORD: But what I'm trying to...we're trying to make policy here. And I think that what we have in front of us is a situation where K-12 education is provided by the taxpayers for all students who are here and of school age. Then we have a variety of different higher educational institutions in the state that provide one tuition rate for all students. So community colleges have one tuition, and assumedly if someone graduates from a K-12 school they can go to--whether they're here legally or not--they can go and pay the one tuition; there's nothing that precludes them from doing that. And I'm not aware of any...are you aware of any federal law that would deny a student an opportunity to attend Metro Community College at whatever the tuition is? [LB1001]

GARRETT ROE: No. I don't know of any off the top of my head. [LB1001]

SENATOR ASHFORD: Okay. Okay. And if a state college wants to charge the same tuition for all its students--are you aware of any federal law that would... [LB1001]

GARRETT ROE: I mean, there could be a strained argument that they could. [LB1001]

SENATOR ASHFORD: Okay. (Laugh) [LB1001]

GARRETT ROE: A very strained argument. [LB1001]

SENATOR ASHFORD: How about a non-strained one? [LB1001]

GARRETT ROE: A non-strained argument? I would say that the...under the current law, no. If a state college wants to allow an illegal alien to attend college and pay the nonresident tuition rate, that would be consistent with federal law. [LB1001]

SENATOR ASHFORD: Okay. So what we're really talking about is: Does the University of Nebraska, under federal law, have the legal right to charge in-state tuition to someone who doesn't have legal status here? That... [LB1001]

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GARRETT ROE: Okay. Under federal law, the state of Nebraska could give in-state tuition to illegal aliens like they currently are... [LB1001]

SENATOR ASHFORD: If they give it to everybody else. [LB1001]

GARRETT ROE: ...if they give it to everybody else. [LB1001]

SENATOR ASHFORD: Right. So that's your interpretation of the law as it sits today. But that's the only...so all this discussion...and I understand the part about not being able to work, because...and that was, quite frankly...when we passed LB403, I think the concern that we had in this body was we've got a situation where people who don't have legal status here cannot work and that to allow public money to be used to pay, for example, pay--in any way--pay salaries of someone who doesn't have legal status here is against--is not good public policy, and that shouldn't be the way--the law. And we did do that in LB403: We addressed employers who receive public benefits--we addressed public benefits generally in LB403. Here, though, we've got a little bit different situation. We have federal law, or a Supreme Court case that has not been changed by the Congress, saying it's an equal protection violation not to provide K-12 education. We've got other schools in the state that provide a single tuition rate that would apply to everybody. And then the argument that I'm hearing is somewhat to the effect that it's against public policy...well, it's not good public policy to have these young people here at all, because they can't work, or they're prevented from work. But it seems like the state has gone down the road and many higher-education institutions in the state have gone down the road to providing the ability for these young students to go to school here. So it's not quite as clear as when you're dealing with employment, would you agree with that? [LB1001]

GARRETT ROE: Well...I'm sorry; I was going to make a point, and now I kind of forgot what it was. But the...when it goes...talking about the--the working here, you know, lawfully versus unlawfully, again, you're looking at...oh, sorry, I know what it was. There's two public policy issues you have to look at. One is the people getting--that are--the illegal aliens who are getting the benefit, and they're graduating from college. They're not allowed to work when they graduate. So they end up spending, on their own, you know, thousands of dollars in tuition to obtain a degree that they cannot use--they can never use, unless, you know, Congress passes an amnesty someday. But the other policy issue you have to look at is how it hurts the students that you're trying to help. By allowing them to remain in the United States for over one year, you know, you're essentially ensuring that they will never be able to come back to the United States, at least not for ten years to come back to the United States, possibly ever. So in a way you're hurting--you're really hurting the students that you're trying to help, in keeping this law on the books. [LB1001]

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SENATOR ASHFORD: Are there, I mean, are there cases...there was an article in the New York Times on January 3 that talked about a Guatemalan who's--in the Sunday Times Magazine. It talked about a Guatemalan student who was here...parents were...he came over as a young child and did not have legal status, went to Princeton and Harvard and became a heart surgeon in the Bronx. Essentially what happened was they were able to obtain residency for him here. [LB1001]

GARRETT ROE: Right. [LB1001]

SENATOR ASHFORD: I mean, there are occasions, are there not, where one of these students may do something dramatically good for society? [LB1001]

GARRETT ROE: And you're right. There is a possibility. And here's...and I actually have some of the stuff written down. There's a general prohibition against illegal aliens adjusting, you know, adjusting to legal status. Okay. Proponents of in-state tuition for illegal aliens will say that: Well, it's possible that these students could adjust their status some way. However, the likelihood of it is almost slim to none. I mean, it's very slim. For instance, I'm assuming that this person maybe got what's called a temporary protective status, maybe. [LB1001]

SENATOR ASHFORD: Well, I think they...I don't know all the details of the Princeton case, but I think what happened was that they--there was a need for physicians and...to provide certain care or something, and somehow...well, I don't know what the details are. [LB1001]

GARRETT ROE: Okay. [LB1001]

SENATOR ASHFORD: I guess my point is that there is a societal good to having exceptional students remain in the country even if they don't have--their parents didn't enter it legally, it would seem to me, if they could do some good for society. [LB1001]

GARRETT ROE: But, again, you're looking at immigration policy. And immigration policy is set by Congress. [LB1001]

SENATOR ASHFORD: I know... [LB1001]

GARRETT ROE: Okay. [LB1001]

SENATOR ASHFORD: ...and what bothers me...I get your point. [LB1001]

GARRETT ROE: Okay. [LB1001]

SENATOR ASHFORD: And I'm not arguing with you. [LB1001]

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GARRETT ROE: Okay. [LB1001]

SENATOR ASHFORD: I get your point. What really bothers me is that you have two policies. You have a policy that we want to encourage these children to stay here and be educated; that's a court-imposed rule. And then we provide higher education to students through the community college system. But the countervailing public policy is there is no pathway, in federal law, for them to work. [LB1001]

GARRETT ROE: And keep in mind... [LB1001]

SENATOR ASHFORD: That seems almost--it seems so silly as to be...it belies all sorts of common sense. [LB1001]

GARRETT ROE: Well... [LB1001]

SENATOR ASHFORD: I mean, do one way or another. Either say they can't go to school here K-12--they're illegal; they can't go to school K-12; we're going to preclude them from doing that. And then the last point, I guess, is this. And I get your point, and I'm not...I think it's a valid point. But it seems like we have two very inconsistent federal laws here. The other concern I have is if we have these people here--the university has allowed 40 or 50 of them or 30 or whatever to take this avenue--why isn't the U.S. attorney in here shutting them down? [LB1001]

GARRETT ROE: Well, to answer both...actually, another issue under it draws on that first issue. First off, nobody ever did accuse the federal Congress of being, you know, having common sense. But... [LB1001]

SENATOR ASHFORD: (Laugh) Well...and I wasn't implying that they did. I just was wondering why they... [LB1001]

GARRETT ROE: But you've got to remember, too, that court decision--it's based on the fact that they're children of illegal aliens, okay. So they came through here through no fault of their own. [LB1001]

SENATOR ASHFORD: Right. [LB1001]

GARRETT ROE: Once they turn 18, they're an adult in the eye of the law. So that might be where you're seeing the difference in policy, too--is you're talking about children versus adults. [LB1001]

SENATOR ASHFORD: I get that point. [LB1001]

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GARRETT ROE: Okay. [LB1001]

SENATOR ASHFORD: It's a good answer. How about the second? [LB1001]

GARRETT ROE: I'm sorry. Could you repeat the second one more time? [LB1001]

SENATOR ASHFORD: Well... [LB1001]

GARRETT ROE: I'm sorry. [LB1001]

SENATOR ASHFORD: Well, no, that's fine. I mean, that's fine. I think you've given reasonable responses. I just think you have two very inconsistent policies, for whatever reason. And Congress has failed to act. And why--I guess my last question is why isn't the U.S. attorney prosecuting the university? [LB1001]

GARRETT ROE: That's a good question. [LB1001]

SENATOR ASHFORD: Yeah. [LB1001]

GARRETT ROE: I mean, I... [LB1001]

SENATOR ASHFORD: Or anywhere? I mean, doing it anywhere? [LB1001]

GARRETT ROE: It goes into prosecutorial discretion. [LB1001]

SENATOR ASHFORD: Yeah. [LB1001]

GARRETT ROE: I mean, I don't know why the U.S. attorney... [LB1001]

SENATOR ASHFORD: But in no state anywhere in the United States has any, that I know of, has any criminal action been taken. I assume it's because this is not a violation of criminal law. [LB1001]

GARRETT ROE: Right. It's not a violation of criminal law. [LB1001]

SENATOR ASHFORD: But they could take--they could file a civil action to deny federal funds to the University of Nebraska or to the community college system, and they don't seem to be doing that. So... [LB1001]

GARRETT ROE: It might be the fact that, you know, you've got 10 million to 12 million illegal aliens in the country right now. And they're looking to enforce, you know, various forms of... [LB1001]

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SENATOR ASHFORD: But they have fewer going to college. [LB1001]

GARRETT ROE: If I was going to college? [LB1001]

SENATOR ASHFORD: No. Fewer going to college. [LB1001]

GARRETT ROE: Oh, fewer. Yeah, fewer going to college versus, you know, the numerous amount they've got to, you know, that they're looking to enforce the laws against. [LB1001]

SENATOR ASHFORD: Thanks, Mr. Chairman. Thanks for your answers. [LB1001]

SENATOR ADAMS: Okay. We have more...? Senator Cornett, you had your hand up. [LB1001]

SENATOR CORNETT: I guess the thing that I keep hearing over and over again that disturbs me is: These children should go home when they turn 18. What exactly is your definition of home of someone who's been raised here their entire life? When you turned 18, if you found out your parents had been here illegally and you had to go back to whatever their country of origin was, would that be your home? [LB1001]

GARRETT ROE: Obviously, that's a tough question. [LB1001]

SENATOR CORNETT: And, you know, I'll be really honest, I'm one of the four people that voted for this originally and one of the three that voted for the override, and I will not support it. [LB1001]

GARRETT ROE: Okay. I understand your point. Again, I, you know, obviously this child has been here for a while; he doesn't know his home country. However, if he, you know...sorry--his country of origin. However, if he is discovered by I.C.E., you know, after he turns 18, if he's been here for a year, he's going to be put into deportation proceedings, and he's going to be forcibly removed. At that point, he will not be able to return to what is his new home for at least ten years. So, I mean, it just depends on how one looks at it. [LB1001]

SENATOR CORNETT: I was going to say--but, again, it comes down to what Senator Ashford was talking about. We have an inconsistency in our laws at this time. I am certainly not saying that I think that people should break the law or come here illegally, but I don't think that we should hold their children responsible for their actions. [LB1001]

SENATOR ADAMS: Senator Haar. [LB1001]

SENATOR HAAR: Now Peru State College apparently, the last I heard, is trying kind of

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a unique deal--probably to raise attendance--that they're going to charge in-state tuition to everybody. So could these same students, 20--however many there are--could they go to Peru, then, and it really would not fall within this whole argument? [LB1001]

GARRETT ROE: Yes. And actually in our lawsuit we actually make that point. What happened in Peru...I think it came--started last year, maybe, is when they changed their tuition policy to...and it's a three-year, temporary...they're doing this temporarily for three years, where they're going to charge one rate, no matter if it's in-state or out-of-state. And Peru would actually be, you know, it would be consistent right now, would be consistent with 1623. If they were to not continue that after, you know, the three-year temporary time is up, then they'd, you know, they'd go back to being in violation of 1623. [LB1001]

SENATOR HAAR: So an important part of this whole argument in setting this policy is that Nebraska taxpayers, which we've established include some taxes from illegal immigrants as well, are subsidizing these folks. But in Peru, then, I guess you could say the Nebraska taxpayers are subsidizing people all over the place. [LB1001]

GARRETT ROE: I, again, I don't know Peru. I don't know what it would cost to educate somebody at Peru, whether that tuition rate would actually be less than what the total amount would cover in fees. I just don't know if it would cost less to go to Peru or not or if it would cost more than what the current tuition is. But, under 1623, Peru would be in compliance with that law, because they are charging the same amount of tuition to U.S. citizens as they are to illegal aliens, regardless of residence. [LB1001]

SENATOR HAAR: Okay. [LB1001]

SENATOR ADAMS: Senator... [LB1001]

SENATOR AVERY: Thank you, Mr. Chair. This will be my last question. You are a lawyer. [LB1001]

GARRETT ROE: Yes. [LB1001]

SENATOR AVERY: And you have a degree from an accredited law college, right? [LB1001]

GARRETT ROE: Yes. [LB1001]

SENATOR AVERY: Okay. So you know about the Fourteenth Amendment to the constitution. [LB1001]

GARRETT ROE: Yes, I do. [LB1001]

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SENATOR AVERY: Equal protection. All right. Why wouldn't these students be protected by the equal protection clause of the Fourteenth Amendment? Let me tell you why I ask this. There was a case, I believe in '82: Plyler versus... [LB1001]

GARRETT ROE: Plyler versus Doe. Doe. [LB1001]

SENATOR AVERY: Doe, not Roe, right? [LB1001]

GARRETT ROE: Right. [LB1001]

SENATOR AVERY: ...although you do have your name attached to another very prominent case. [LB1001]

GARRETT ROE: That was also a pseudonym. [LB1001]

SENATOR AVERY: (Laugh) And in that case, the Supreme Court ruled that Texas law that barred children of illegal immigrants access to public education to be unlawful, that they were protected under the equal protection clause. Why wouldn't this law that we're talking about today also come under the equal protection clause? I mean, why can't we...we educate these kids in the public schools. And somebody was talking about this earlier. We do. And nobody is so excited about that that they pack up a hearing room to change that law. Why wouldn't the same argument, that those public school students are protected under the equal protection clause of the Fourteenth Amendment, why wouldn't it apply here? [LB1001]

GARRETT ROE: It's actually a very good question. The reason is because the Fourteenth Amendment applies against the states, not against the federal government. Under the Fourteenth Amendment, in the Plyler v. Doe case, the state could not prevent the illegal alien students from going to K-12. However, Congress does not fall under the Fourteenth Amendment; they fall under the implied equal protection clause of the Fifth Amendment. So the Fourteenth Amendment would not bar Congress from prohibiting illegal aliens from getting this in-state tuition. [LB1001]

SENATOR AVERY: You've had this question before. [LB1001]

GARRETT ROE: It's a good question. [LB1001]

SENATOR AVERY: Well, I'm not sure...I'm not prepared to debate the Fifth versus the Fourteenth Amendment, but... [LB1001]

GARRETT ROE: No. And I can... [LB1001]

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SENATOR AVERY: ...but I do believe that this case has relevance. [LB1001]

GARRETT ROE: And I will say also, in that Plyler v. Doe case, I could go into equal protection theory, if you'd like--versus strict scrutiny versus rational basis. But it essentially also held that illegal immigrants--if there's a state law that's passed that treats illegal immigrants different from others, it falls under the rational basis scrutiny, which is a lower standard. What that case focused on was the children of illegal immigrants. Again, we're looking at adults who are...what we're looking at, again, is: Should people who are 18 years of age and older--and so they wouldn't even fall under the Plyler v. Doe issue. [LB1001]

SENATOR AVERY: Because of their age? [LB1001]

GARRETT ROE: Because they're adults. [LB1001]

SENATOR AVERY: And adults don't have equal protection? [LB1001]

GARRETT ROE: I'm not saying that. I'm saying that the holding under the Plyler v. Doe case focused on children of illegal immigrants. They give them kind of their own special class. [LB1001]

SENATOR AVERY: And that's what we're talking about--children of illegal immigrants. [LB1001]

GARRETT ROE: They were focusing on...well, we're talking about adults now, because we're talking about--under the law, 18 years of age and older. [LB1001]

SENATOR AVERY: I don't buy that. Okay. [LB1001]

GARRETT ROE: Okay. [LB1001]

SENATOR AVERY: Thank you, Mr. Chair. [LB1001]

SENATOR ASHFORD: I just--Mr. Chairman, I just have one last question. [LB1001]

SENATOR ADAMS: Yup. Fire away. [LB1001]

SENATOR ASHFORD: It arose out of your comments on the equal protection clause. What is the definition of "residency" under Nebraska law? [LB1001]

GARRETT ROE: I don't know. There's...are you talking for purposes of in-state tuition? [LB1001]

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SENATOR ASHFORD: Well, what it...well, just generally. How do you--how does one become a resident of a state? [LB1001]

GARRETT ROE: Well, typically, to be a resident you have to have--you have to be physically present. To be a resident under...I mean, there's something called "domicile"; there's something called "residence." I don't know, honestly, what the exact definition is in Nebraska. But if it's like most states, it would be--to be a resident, you would be present in the state; to be domiciled, you'd be present in the state and have the intent to remain. [LB1001]

SENATOR ASHFORD: Intent to remain. And the reason I ask the question is that if the argument...and I clearly understand the argument that you're raising about residency and nonresidency; I clearly understand that. And I've read the cases, and I think you're accurate in your analysis of how the California case initially dealt with that issue. But if residency is the reason...nonresident versus residency is how you determine tuition--if a young person is here, no matter whether they're 17 or 18 or whatever, 19; I think it's 19 in Nebraska anyway. But let's say they're 18 years old; they're a resident of the state of Nebraska because they've lived here for a number of years; they've gone to school here. They are not a nonresident. The only question we're talking about here is the application--or definition of the federal law, which in effect does talk about benefits. If they are a resident, however, under state law, is there anything in the federal law that obviates that state law definition of residency? If a senior in high school is a resident of Nebraska, they may not be legally here--they may not have legal status--but they've resided in Nebraska for whatever--10 years. They've gone to school here, and they have the intent to remain. They apply to the university, and the university gives them in-state tuition. Let's say this law wasn't even here, in effect. The university gives them in-state tuition because they're a resident. It is the federal issue, is it not, that would--where the university would be precluded...or they could make an analysis and say that: Under federal law, we can't give them in-state tuition, because of the federal prohibition. But without this law at all, they're residents; they apply for in-state tuition; they're residents. [LB1001]

GARRETT ROE: This law, meaning... [LB1001]

SENATOR ASHFORD: If it weren't for this law that's in effect that's attempted to be repealed, they're residents. They are residents. Wouldn't you agree that these young people are residents? The federal law on legal status has nothing to do with residency, does it? [LB1001]

GARRETT ROE: Well, there's two issues there. One is that...well, there is a definition of "residence" in federal law. I don't have the definition in front of me right now. [LB1001]

SENATOR ASHFORD: But I don't think that it would--not in this--apply into this case,

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though. [LB1001]

GARRETT ROE: But the two issues are this. One is that by giving the resident tuition to illegal aliens, they're still giving it to them on the basis of residence, so they'd still be in violation of 1623, which is the federal law we've been talking about. [LB1001]

SENATOR ASHFORD: But you're giving them the same tuition as any other residents get. [LB1001]

GARRETT ROE: Right. But you're not giving them the same tuition as all U.S. citizens regardless of residence. And that's the 1623 issue, is that if you give an illegal alien in-state tuition...so you give them tuition based on residence--whether there's a law in place or not a law in place--you still have to give that same tuition rate to all other U.S. citizens. Now there's another issue, which is 8 U.S.C. 1621, which talks about public benefits, which requires, for a state to give any kind of public benefit to an illegal alien, they must affirmatively enact some kind of law stating that they're giving illegal aliens these public benefits. So the state couldn't even give the illegal aliens the in-state tuition without Nebraska first passing that law, period--under another section of the U.S. Code. Do you want me to explain that again? [LB1001]

SENATOR ASHFORD: No. I got it. [LB1001]

GARRETT ROE: Oh, okay. [LB1001]

SENATOR ASHFORD: Thanks, Mr. Chair. [LB1001]

SENATOR ADAMS: All right. Any other questions? Okay. Thank you, sir. Here's what we're going to do. How many proponents are there still? All right. Here's what I'm going to do. As I timed it, given my introduction and everything else and Senator Janssen's introduction, the proponent testimony really didn't get started until about twenty of. And in light of that, we've gone beyond the hour. I'm going to let proponent testimony go until 3:00, and we're ending it, and I will give opposition testimony an equal time. So jump up there. [LB1001]

SUSAN SMITH: My name is Susan Smith; that's S-u-s-a-n S-m-i-t-h. And I'm speaking on behalf of Nebraskans Advisory Group, a group of concerned citizens; all volunteer their time and efforts. In 2006, 30 of our senators, 2 of whom are on this committee--Senators Howard and Cornett--voted to give illegal aliens in-state tuition rates. This is disturbing, because it showed us a failure of our legislators to uphold this basic fiduciary responsibility to properly channel taxpayer funds. It showed us our Legislature is willing to break laws by voting for a bill that is not in compliance with federal immigration laws. It showed us that Nebraskans have to wonder how much of our tax dollars are being, in essence, hijacked, embezzled, or misdirected to further the

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social agenda of some of our legislators. And finally, it is a slap in the face to ask Nebraskans to subsidize education privileges to illegal aliens while American children are denied. At age, these adults are no longer under the control of their parents and can choose to return to their country of origin. And how many of these 44 students that are currently getting this benefit have actually applied for citizenship? If you cut off the benefits and services, illegal aliens will self-deport. You are asking us to compete with illegal aliens for jobs. We have to subsidize the taxes that they don't pay in because they're getting paid under the table or using a fraudulent Social Security number. You can refer to an IRS report from 2006 that says that illegal aliens attribute to over \$1 trillion in unpaid taxes. So I'm asking this committee to leave the law-breaking to the churches and community organizations who aid, abet, induce, encourage, or harbor illegal aliens--8 U.S.C. 1324--and to vote to advance LB1001. And I thank you for your time. [LB1001]

SENATOR ADAMS: Thank you. Are there questions for this testifier? Thank you, ma'am. Next proponent. [LB1001]

DALE MONSELL: Dale Monsell, D-a-l-e M-o-n-s-e-l-l. I just have some brief comments and something more in the way, I guess, of a proposal. But I would say, let these meatpacking companies, the companies who brought the immigrant work force in here, hired them cheap, and have profited from them all these years--let them pay the difference between this in-state and out-of-state tuition. There's nothing stopping them from setting up scholarships; it looks like they can more than pay for it. And another point: Even though these children were educated according to federal law, had to be educated in the elementary schools, it really was not fair. And most likely their parents, working at minimum wage, never paid anywhere near the taxes that would compensate. And keep in mind that in many of these families, working at minimum wage, they could not make it, and they've had welfare in the form of food stamps, so forth. So, in effect, the taxpayer has been subsidizing the profits of these companies. So I'd say let the companies pick up the bill. And fortunately there's not any...I don't know for sure, but it would be desirable if some of these company officials were here today and they could hear what the--we could hear what their response might be. But it looks like this is the answer to the problem--to your problem here, to solve the whole thing--and let them pay the difference. Thank you. [LB1001]

SENATOR ADAMS: Thank you, sir. Questions for this testifier? Thank you then. Next proponent. [LB1001]

DON SCHLEIGER: My name is Don Schleiger; last name is S-c-h-l-e-i-g-e-r. I live at 11425 Corby Plaza, Omaha, Nebraska 68164. I am a blue-collar worker and grew up in Omaha, went to school here, went to the University of Nebraska, in-state tuition, where the state subsidized me for two-thirds of my education, as far as I knew, what they told me at the time--I paid one-third; they paid two-thirds. I lived out in California during the

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'80s and '90s and got a--got to see what the consequences of illegal immigration were in that state before I came back to Nebraska. I definitely can't say all I can say in three minutes. I'm a construction worker. I've had a general contractor's license; I got one out in California in 1989. I'm well aware of what illegal immigration costs people in my industry in Nebraska. I'm competing against people that aren't paying taxes, that aren't paying...they're working in a cash industry, not paying taxes. They're not paying workmen's compensation, carrying insurance. And how I'm supposed to bid against people like that I don't know. But we're here, I guess, to talk about the education thing. And it really--it...I'm--I don't know what word to use--appalled that we're sitting here, and I think for me there's a real shortage of prioritizing what your priorities are here. In Omaha, take, for example, with employment, north Omaha...we have one of the lowest unemployment levels in the nation, and yet north Omaha has 45 percent unemployment. And I doubt south Omaha, where there's high illegal population, that there's anything close to that; I'd say full employment. There's upwards of, according to Senator Council, there's close to 50 percent dropout rate in north Omaha. Now you guys are sitting here talking about subsidizing and you're concerned about illegal immigrants, when here in Omaha--and there again, a disproportionately black community, I don't hear anybody talking about subsidizing them or giving them a greater opportunity. I mean, you guys, until all the residents of this state have the opportunity to go to the University of Nebraska, which is a finite amount of people--everybody, if we all decided to go to the university at once, we all wouldn't be able to go. There's a finite amount of people. And these people in low income are also fighting for low-income grants and loans and things from the community. I mean, it just blows my mind that you guys are so concerned about illegal immigrants when we have such a huge problem in this state. I mean... [LB1001]

SENATOR ADAMS: You need to summarize, sir. Red light is on. [LB1001]

DON SCHLEIGER: It--illegal immigration causes a cash economy, which people are not paying taxes. It causes contractors to actually, in order to survive, get into that. And when there's cash, you guys aren't getting any taxes out of it. And it's pretty easy to do. I think there's a lot of questions that I could answer for you, but I don't think we're going to have the time. But it... [LB1001]

SENATOR ADAMS: I'm going to have to ask you to end your testimony now at this point. Are there questions for this testifier? Senator Haar. [LB1001]

SENATOR HAAR: Yes. Thanks for coming. What do you think is the best...my...we dealt with this last year with a number of bills; and in my opinion, the way that we cut down undocumented immigration is to take away the jobs that they're offered. What do you think--from a contractor's standpoint, what do you think is the best way so that employers do not employ people who are undocumented workers? [LB1001]

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DON SCHLEIGER: Well, I think if the federal government or anybody was serious about illegal immigration, all they'd have to do is give all the citizens a card that can't be forged and has a database that the people can go to. Take, for instance, me. When I was out in California--and what happens in California is what happens in the rest of the country, unfortunately, about 15 or 20 years later--but I had the form in 1989 that, you know, had the 3...I had to have 3 pieces of identification out of about 15 possible. And as a general contractor, if I employed a person without having 3 out of these 15, it was \$10,000-a-person fine. But, several things--one thing, it didn't require me to, I mean, I'm not a document expert, so if you came in with your wife's ID with your picture taped to the front of it, all I got to do is Xerox it, according to the law, and put it in my file cabinet. I don't send it to anybody. Even now, you're not required to send it to anybody. So there I covered my rear end; I'm not going to get fined \$10,000. So it's kind of a, you know, go after big business deals. There's all these loopholes. And it...if you had--the citizens of the United States had something where they came to me, I could go to a database--like E-Verify but something even simpler than that--and I could go on there and see if they were actually documented. Then if I employed them, I'd get fined \$10,000; I'll guarantee you, I mean, that would wipe me out. One person would wipe me out. But I know I'll never, if I get caught--if I get caught...how do I get caught? I don't have to file that with the federal government. There's things that they do--just like building a fence--there's things that they do where it looks like they want to make it look like they're doing something, but actually it's ineffective. If you make it hard for people to get jobs and you don't give them benefits--just like Oklahoma and Arizona, where immigrants are leaving. Nobody rolled the tanks in, you know; the National Guard isn't there throwing people out. They'd leave on their own. And unfortunately they're coming here. And it, I mean, for...what really gets me is that lawmakers, people in the government that rely on taxes of the citizens, are the ones that are allowing and actually kowtowing to this illegal immigration. And it hurts--it holds your wages down. I came here in 1992; I came back to Omaha. It had the lowest unemployment level in the nation: 2.5 percent. That's actually too low. Mercedes-Benz, BMW--they didn't come here because of that. You know, they're not going to compete with other...they went to Mississippi and South Carolina, where there was plenty of unemployment--20 people for every job--not where...in Nebraska they had to steal jobs. And for carpenters, your wages should have been going up just by the free economy the way it works--you know, supply and demand. But it didn't, because all these illegals were pouring in here. So... [LB1001]

SENATOR ADAMS: Excuse me, sir. Senator Haar, has your question been answered? [LB1001]

SENATOR HAAR: Yeah. Yeah. [LB1001]

DON SCHLEIGER: I think it's, you know, I mean, one thing, there's just so many cash industries that, you know, from lawn services to--I mean, there's all kinds of construction-industry things. You know, that's primarily where they're at. And they're

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there because it's a cash industry, and they don't have to have documentation, and it...the idea that it doesn't hurt the state--I defy anybody in here... [LB1001]

SENATOR ADAMS: Thank you, sir. [LB1001]

DON SCHLEIGER: You're going to hear all kinds of emotional... [LB1001]

SENATOR ADAMS: Sir, thank you. [LB1001]

DON SCHLEIGER: Okay. [LB1001]

SENATOR ADAMS: You've more than answered the question. Are there other questions for him. If not, that will end it. And we'll move right away now into opposition testimony. And you have about an hour and 25 minutes. [LB1001]

J.B. MILLIKEN: (Exhibit 4) Good afternoon, Mr. Chairman, members of the committee. My name is J.B. Milliken, M-i-l-l-i-k-e-n. I'm here today to testify in opposition to LB1001 on behalf of the University of Nebraska. I have submitted formal testimony and earlier submitted a letter to this committee, which was signed by leaders of public education at all levels in Nebraska--the Nebraska community colleges, the Nebraska Commissioner of Education, school administrators, the state college system, the Coordinating Commission, and the association of school boards. So I am here today to support a in-state tuition for all Nebraska high school graduates who have attended our schools for three years, as is currently in state law. In 2005 the University of Nebraska Board of Regents adopted a position supporting in-state tuition for immigrant students who meet the conditions which are now established in state statute. At that time the board said: Education is key to improving economic opportunity for individuals, and increasing the level of educational attainment in the state is critical to the economy and quality of life in Nebraska. The board has a special concern for providing increased educational opportunities for underrepresented minorities, so that all people of Nebraska may enjoy the demonstrable benefits of a quality college education. In 2009--this last fall--there were 35 students at the University of Nebraska who qualified for resident tuition under current law that is challenged today. I would note, because of the discussion about costs--which there may be some question about when I finish my remarks--that there are 3 such students at the University of Nebraska-Lincoln, which is exactly half the number of plaintiffs in the lawsuit filed by Mr. Kobach--which I would suggest that the marginal costs of educating those 3 students in a campus of 24,000 students is not--does not create a subsidy paid for by the taxpayers of Nebraska. What does yellow mean, that I'm just about to the end? [LB1001]

SENATOR ADAMS: Just about done. [LB1001]

J.B. MILLIKEN: Okay. (Laughter) Well, that's good. So it's a good thing I submitted my

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formal testimony. And I'm watching with baited breath as this gets ready to turn red. I'll just conclude and hope that I'll get to say anything else I want to say in response to questions--but that it is my view, the view of education leaders at all levels in the state of Nebraska, certainly the view of the University of Nebraska Board of Regents and other leaders at higher education in the state that the current law is in the best interests of the state of Nebraska, and I urge you not to advance LB1001. Thank you. [LB1001]

SENATOR ADAMS: Thank you, J.B. Senator Avery. [LB1001]

SENATOR AVERY: Thank you, Mr. Chair. President Milliken, we had a number of comments made earlier in the proponent testimony that the University of Nebraska and other institutions of higher learning in this state would be providing an unfair subsidy and this would be a detriment to the university if we did this for the students who are of illegal status. I made the comment that I never have known the university to complain about tuition receipts. Would you like to comment further on that--whether, in fact, the university loses money on these students? I think that was the implication. [LB1001]

J.B. MILLIKEN: The education leaders in the state, including the Governor, have adopted an aggressive set of goals for the state of Nebraska to increase our graduation rates at every high school to 90 percent and to have college-going in Nebraska be among the top ten in the nation. That would be a significant increase in the number of students paying in-state tuition at the University of Nebraska. And as I look at the economic conditions going forward, perhaps without a significant infusion of investment from the state of Nebraska...you know, Nebraska is not an enrollment-growth-funded higher education system, as some states are. In some states, for every in-state student that enrolls, there's a concomitant state investment made, which represents the difference between what we like to call the cost of education and the rate that they're paying. Nebraska doesn't have that. We will get in this next fiscal year exactly the same budget from the state of Nebraska that we received two fiscal years ago. No change. And so the state taxpayers will be paying exactly the same amount to support the university. I hope that we will continue to grow our enrollment, including especially from Nebraska residents. And I say that even knowing that what some people might call the subsidy--by performing simple arithmetic on that--will go down. But we are prepared to incur those marginal costs of adding additional Nebraska students to the university because we think that's why we exist, to support higher education in the state of Nebraska. And we will continue to do that. I'd say one or two more things about the issue of cost. The full cost of attendance at, for instance, the University of Nebraska-Lincoln is calculated something between--around \$18,000; that's for in-state tuition plus additional costs associated with it--residence halls, meals, etcetera--money that is going into the economy in Nebraska, either directly into the university to support expenses, tuition, and others or other expenses in the community. So there's a significant investment made by any student, as you well know, Senator, even if you're simply paying in-state tuition. I want to come back to one additional point, still on cost,

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which was raised initially. There was a reference to the confusion when this was originally passed in 2006. I'd second that; I'd say there has been some confusion. And the number-one point of confusion that I find across the state is that we are allowing some students to attend the University of Nebraska without paying any tuition. It's not true. We're charging residents who meet our residency standards, including graduating from a Nebraska high school and attending for three years--charging them in-state tuition. So everybody is paying. The students who qualify under this provision, the 35 that I mentioned at the University of Nebraska system right now, are not eligible for federal financial aid or for state financial aid. And so they're not receiving remissions from the university at any level; they're paying the full in-state rate of tuition. [LB1001]

SENATOR ADAMS: Other questions? Senator Sullivan. [LB1001]

SENATOR SULLIVAN: Yes, thank you, Senator Adams. You make reference in your written testimony to the consideration being given for a Dream Act at the federal level. Any progress or update on the situation with that? [LB1001]

J.B. MILLIKEN: Well, there are probably others that are much better equipped to respond to that question than I am. I continue to hope, as do, I think, people on both sides of this issue, that the federal government will step up and enact a comprehensive immigration policy that will address the issues that we're discussing today. But I don't know; I've had hope before that it would pass, seeing it get close and then not pass. So at this point I don't know. You know, we are not taking a position today on immigration law. The board made it very clear when it took a position in 2005 that this was not about immigration, as far as we were concerned. This was about educational policy; this was about a case where young people, maybe small children, in Nebraska come to Nebraska, are required by federal law to be educated in our schools, then graduate from our schools, our Nebraska high schools, and would be asked to pay three times the rate that the person sitting next to them in class for 12 years is asked to pay. That didn't seem to be fair to us; it didn't seem to encourage educational attainment, even high school completion. If the promise is that you will pay three times what your neighbor will pay, we think that that tends to discourage even high school completion, let alone going on to college. [LB1001]

SENATOR ADAMS: Thank you, J.B. Senator Haar. [LB1001]

SENATOR HAAR: Just quickly, what are the numbers again from last year of students and those at UNL? [LB1001]

J.B. MILLIKEN: For this year's enrollment across the university system, pursuant to this law, the number is 35 students... [LB1001]

SENATOR HAAR: Okay. [LB1001]

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J.B. MILLIKEN: ...3 at UNL, 15 at UNK, and 17 at UNO. [LB1001]

SENATOR HAAR: That's it. Thanks. [LB1001]

SENATOR ADAMS: Senator Sullivan. [LB1001]

SENATOR SULLIVAN: If this piece of legislation were to be repealed, does that completely shut the door for these young people to attend the University of Nebraska? [LB1001]

J.B. MILLIKEN: My understanding of the legislation is that these people would be grandfathered, under the legislation as currently... [LB1001]

SENATOR SULLIVAN: I'm referring about going forward. [LB1001]

J.B. MILLIKEN: ...currently drafted. It would depend on other--I think it would depend almost entirely on other requirements of state law. Would we be allowed to admit students who couldn't demonstrate their legal residency? It's a matter--that would be a matter of state law, I think. I do think that if the question is simply if we eliminated the in-state tuition provision and charged out-of-state tuition to these students who graduate from Nebraska high school, the opportunity would be greatly reduced. We would see significantly lower numbers finishing high school and then going on to the university or the community colleges or state colleges. And I want to make it clear I don't know what their numbers are. [LB1001]

SENATOR SULLIVAN: Right. [LB1001]

J.B. MILLIKEN: I know the University of Nebraska's numbers are 35. [LB1001]

SENATOR SULLIVAN: Thank you. [LB1001]

SENATOR ADAMS: Senator Cornett, did you have a question? [LB1001]

SENATOR CORNETT: No, I did not. [LB1001]

SENATOR ADAMS: Senator Haar. [LB1001]

SENATOR HAAR: Would there be any expense involved in verifying the citizenship of every--at UNL, UNK, and UNO? [LB1001]

J.B. MILLIKEN: It depends what you mean by verify. [LB1001]

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SENATOR HAAR: Making sure--however you do that--background check. [LB1001]

J.B. MILLIKEN: It depends what you mean by that. I mean, asking the question? [LB1001]

SENATOR HAAR: Yeah. [LB1001]

J.B. MILLIKEN: I'm not sure what the expense would be. [LB1001]

SENATOR HAAR: Okay. But there would be some expense at least. [LB1001]

J.B. MILLIKEN: You know, to be honest, I'll probably be--get a phone call as soon as I get back, from the people who are in registrar's office or something saying: You gave away the farm. I don't think there's any major cost associated with asking a question. [LB1001]

SENATOR HAAR: Yeah. Okay. [LB1001]

SENATOR ADAMS: Senator Avery. [LB1001]

SENATOR AVERY: Thank you, Chairman Adams. Would you be willing to help me try to classify this debate we're having today? Is it really an educational issue? Is it really an immigration issue, an economic issue, a moral issue? Is it just a legal issue involved in the '96 federal law? It seems to me...and don't tell me it's all of these things. (Laugh) [LB1001]

J.B. MILLIKEN: You read my mind. [LB1001]

SENATOR AVERY: Help me focus this. [LB1001]

J.B. MILLIKEN: Well, I'm not sure I can, Senator. And I don't envy the task that you have before you. It is a complex question, and there is certainly disagreement on the legal analysis of both federal laws--the benefit and the tuition for residents question, which I...and I think you've received communication on that from--with legal opinion on the other side. So I think it's a legal question that's going to be sorted out by the courts ultimately. I happen to be a defendant in one of those suits, so maybe I'll get to see how that's sorted out firsthand. But as I said before, we, you know, the Board of Regents--the University of Nebraska in general is loath to take a position on immigration law. That's not our job. Our job is educating young people in Nebraska. Our job is trying to put in place encouragements so that people in the 8th grade will take courses in the 9th, 10th, 11th, and 12th that prepare them for college or prepare them for a high-paying career. Our job is to provide access to people once they graduate from high school, and I think we've done a better job of that. But just to give you one statistic that I

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was looking at when--during the earlier testimony: If you look at the kindergarten class in Nebraska today, according to numbers that I was reviewing, when those kindergartners are in 12th grade, 20 percent of that 12th-grade class will be Latino, if they stay in school. That's the demographic profile and how it changes in Nebraska. Now I don't know how many of those students will be documented or undocumented. But I do know that that's one-fifth of the population in that high school class--probably going to be difficult to make our goal of 90 percent high school completion and top ten college-going rate in the nation unless we have a significant percentage of that population going on to college. [LB1001]

SENATOR ADAMS: Go ahead. [LB1001]

SENATOR HAAR: I've been trying to separate this whole thing into parts. And one is certainly the legal matters; another thing is the subsidy versus who are Nebraska taxpayers; and then the third argument we heard pretty consistently is that we're hurting these children. What do you--how do you respond to that? [LB1001]

J.B. MILLIKEN: Yeah. I heard that. It's the first time I've heard that encouraging someone to pursue education--to finish high school, to go on to a community college, state college, or university--harms them. And I think it, you know, in my own mind and given what I get up to do every day of the week--very hard for me to reconcile that. I think it's--that there is no greater benefit than education, that it is the--provides the greatest opportunity for economic advancement. [LB1001]

SENATOR ADAMS: Senator Cornett. [LB1001]

SENATOR CORNETT: Beyond economic advancement, my mother was a very large proponent of education my entire life, and she said the goal of education was to be an educated person. What is your feeling...even if these people are unable to remain in the United States, do you see a benefit in educating them? [LB1001]

J.B. MILLIKEN: Well, your mother was a wise person. And she's right. And, you know, we sometimes, I think, in the interest of shorthand and the interest of appeal to folks who are often interested in the economic impact, reduce it to that. But it is clearly the...one of the primary goals of education--and I think Senator Adams would second this--is to create an educated populace, people who are--have the ability to make informed decisions, good choices, no matter where they are. Ours, of course, is--first and foremost those people in Nebraska is our obligation. [LB1001]

SENATOR CORNETT: I just find it fairly ironic that this country is sending thousands of troops over to other countries so women can have the right to an education and the right to vote, but we're here quibbling about 30-some students. [LB1001]

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SENATOR ADAMS: Other questions? Thank you, J.B. [LB1001]

J.B. MILLIKEN: Thank you. [LB1001]

SENATOR ADAMS: Next opponent. [LB1001]

DiANNA SCHIMEK: (Exhibits 5, 6, and 7) It's the classroom teacher in me coming out, Senator Adams, that I always have handouts when I appear before a committee. Should I go ahead? [LB1001]

SENATOR ADAMS: Please. [LB1001]

DiANNA SCHIMEK: Good afternoon, Senator Adams and members of the committee. For the record, my name is DiAnna Schimek. I live at 6437 Lone Tree Drive, and I am here in opposition to LB1001. And in representing a group called Nebraskans for Educational Equity, which is a very informal group that has gotten together on this very question...so I have filed as a volunteer lobbyist so that nobody could ask any questions about my activities down here. I have two things that you are receiving as of now. But before I reference those at all, I'd just like to make a couple of points about LB239 originally and now its reversal, LB1001. As you all know, I was the introducer of the bill. It did take three different tries to get the legislation passed and finally over a Governor's veto. So I do agree with two of Senator Janssen's statements, that there is a great deal of misunderstanding about the in-state tuition issue. And I don't think that it was very easy to get the message out during the campaigns that this actually isn't a giveaway. It actually is an opportunity for students to pay tuition to the university at reasonable prices. The second thing I agree with him about is that Congress has been remiss in not handling the immigration issue. They are very tardy. And this came up again and again on the floor of the Legislature when we debated. I hope that what we are going to do for you today is to give you a different perspective on this, that--to let you know that we did not believe we are giving benefits to these students, benefits in the legal sense, and we are not in violation of federal law. We feel that those of us who were on the floor of the Legislature looked at it from every angle possible, and we hope to share some of that with you today. This bill, as President Milliken said--it's probably not an immigration issue. It doesn't reference immigration statutes at all; it actually amends the higher education statutes in state law. So we argued very strongly that this is an education issue. Congressional intent is not easily discernible from the record, because it was all over the landscape. There were, I believe...oops. [LB1001]

SENATOR ADAMS: Move right along. Finish up. [LB1001]

DiANNA SCHIMEK: ...2,000 pages of congressional record and lots of different committees, and different agreements were being come to. So it is not even clear in the congressional record. I think what the message is that we would be sending to these

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students who are in our schools today is that they--I think the message would be devastating. I think they would, for the most part, feel that they could not afford to go to college in our state. And I think that you are effectively banning these students from college if you do not allow in-state tuition. I was going to go over the documents, but obviously I talk a lot more than I think I do. (Laughter) [LB1001]

SENATOR ADAMS: You should have practiced your three minutes at home. [LB1001]

DiANNA SCHIMEK: I should have. [LB1001]

SENATOR ADAMS: Are there questions for Senator Schimek? Yes, Senator Sullivan. [LB1001]

SENATOR SULLIVAN: Thank you, Senator Adams. Well, glancing through all of these letters, it's obvious that you would have had a lot more to say. But also with respect to some of these letters, they talk about their dreams and aspirations. So I'd like you to address that a little bit, because that's been brought up that, okay, are we really giving them false hope? [LB1001]

DiANNA SCHIMEK: You are going to hear from some of these students today. And I will attempt to answer you, but I think they will give you a much better answer than I would. But, no, I don't feel that we would be dashing their hopes in the long run. You know, one of the things that's not even been talked about here: not everybody's employed; some people start businesses on their own. There's nothing that would prevent somebody from starting a business from their own. I believe some of the students who have graduated from high school are going to work for nonprofits. And I don't know if that is a problem or not. But I know that some of them are. But more than that, more importantly than that, if you interrupt a student's education at the point where they're really ready to go on to college, the chances that they're going to go back and get that education later are much diminished. So I would rather take the chance that we get the students educated and that meanwhile we continue to work on the federal law. I believe there are other options for students out there once they have completed their education. And I do agree with what's been said here, that education is about more than getting a job. It is about being able to enrich families; it's about being able to enrich communities and enrich your own lives beyond the job market itself. So I think you're giving them a leg up when you see that they have an opportunity for education. [LB1001]

SENATOR ADAMS: Senator Avery. [LB1001]

SENATOR AVERY: Thank you, Mr. Chair. Welcome, Senator. [LB1001]

DiANNA SCHIMEK: Thank you. [LB1001]

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SENATOR AVERY: It's good to see you here. We've talked about the economic dimension of this; we talked about the educational dimension; the legal; we even kind of touched on the moral issue. You have here in your documents a human rights discussion. Would you be willing to comment on that, because we haven't heard that yet today? [LB1001]

DiANNA SCHIMEK: Well, you don't--you haven't seen the list of people who are going to speak, but I think that you will...again, there will be people who will be speaking to that issue. And I would as soon that they did respond. But I think that, Senator Avery, that these students--and it has been mentioned already--that they do possess human rights, just like all of us. And I think it is important that we can continue to treat them--and all immigrants to this country--as people just like you and me. I think we have...you and I and all the members of the committee probably are aware of all the things that have taken place in our history that were, I would say, less than human treatment of some of our immigrants--everything from internment camps to hiring people at just substandard wages, bringing people into this country as slaves or indentured servants. So I think all immigrants have a right to be treated as human beings. And I think that's really what this is all about. [LB1001]

SENATOR AVERY: I did raise the issue with our first testifier about some of the groups that have opposed in-state tuition, not just here in Nebraska, at other places. And knowing that some of those groups have been labeled as hate groups by the Southern Poverty Law Center is very disturbing, because that organization has an impeccable record on the issue of civil rights. And, primarily, they've put this group, F.A.I.R., and others into a category that they've referred to as a network of restrictive immigration groups that are working together. And, you know, it's disturbing when I see organizations with that kind of history being categorized negatively as unfair and...well, if you were calling the Aryan Nations a white supremacist group, I think that's pretty accurate, you know? You don't have to be a rocket scientist to figure that out if you know much about those groups; that's the kind of work they do. Are you at all familiar with the organization F.A.I.R.? [LB1001]

DiANNA SCHIMEK: Not terribly, but I am certainly aware of the group. And, in fact, there were people from F.A.I.R. who testified at previous legislative hearings on this issue and others. So, yes, I'm aware of the organization. [LB1001]

SENATOR ADAMS: Senator Haar, did you have a question? [LB1001]

SENATOR HAAR: Yes. Senator, very briefly, when I went door to door running, I had people on both sides of this issue, and obviously it's very emotional. But when people were against this policy, the Dream Act, it was usually about subsidizing students. Do you know of any research that would kind of...because, obviously, illegal immigrants to some extent are taxpayers. So to say that there's a 100 percent subsidy is certainly not

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correct. [LB1001]

DiANNA SCHIMEK: You're right. [LB1001]

SENATOR HAAR: And I'm just wondering whether there's any additional information on that. [LB1001]

DiANNA SCHIMEK: Yes, and I think you will be presented with some of that as we go along. [LB1001]

SENATOR HAAR: Okay. I'll wait, then. Thank you. [LB1001]

SENATOR ADAMS: Are there other questions for Senator Schimek? Seeing none, thank you. [LB1001]

DiANNA SCHIMEK: Thank you very much. [LB1001]

SENATOR ADAMS: Next opponent. Go right ahead, Marshall. [LB1001]

MARSHALL HILL: (Exhibit 8) Good afternoon, Senator Adams, members of the committee, my name is Marshall Hill, M-a-r-s-h-a-l-l H-i-l-l. I am executive director of the Nebraska Coordinating Commission for Postsecondary Education. That's the organization, the state agency, that the Legislature has created to advise you on higher education policy issues. And so perhaps not what I say but the perspective from which I say it I hope you'll take into account. I'm handing around some information which puts this issue in the context of prior analyses that the commission has done on minority issues in Nebraska higher education. But I'm not going to actually comment on that but mainly respond to previous testimony. This certainly is a messy issue. And Senator Avery, you have defined that in many ways. It's legally, philosophically, economically, emotionally, and morally messy. And our commissioners, I think, in dealing with that and struggling with that in the same way that you do are focusing on two central issues. The current law in all of this confusion tilts toward human compassion. It tilts toward human compassion for people who, through no fault of their own, are caught in a predicament. The proposed bill does not. The students we're talking about are undocumented, but they are living in Nebraska; they're attending our schools and our churches; they're working in our businesses; and they're paying at least some taxes. Proponents of the bill seem to be saying that the U.S. Congress will never deal with this issue--through the Dream Act or in any other way. So they seem to be saying: Let's not develop human capital that we can't use right now. I refuse to believe that the Congress will not be at some point in time forced to deal with this issue. And at that time, we will either have a better educated populace or a less better educated populace. And finally, balancing all of these issues and being uncomfortable about many of them--as you are--our commissioners believe that increasing educational attainment in Nebraska is a good

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thing--the pragmatic realization that having better educated residents is better for the state as a whole. And I'd be pleased to respond to any questions you may have. [LB1001]

SENATOR ADAMS: Thank you, Marshall. Are there questions for Marshall? I guess not. Thank you, sir. Next opponent. [LB1001]

JAY SEARS: (Exhibit 9) Good afternoon. For the record, I'm Jay Sears; that's J-a-y S-e-a-r-s. And I represent the Nebraska State Education Association. I'm having passed out our written testimony, so I won't repeat all that's in there. I know you've all been educated in Nebraska and can read. (Laughter) I figured that would set in soon. [LB1001]

SENATOR HAAR: You assume too much. [LB1001]

JAY SEARS: Senator Avery asked a question about what this issue is really about. And what I want to share with you from our 28,000 educators in the state of Nebraska who work with students on a daily basis is that to us it's a core-value issue. We have a vision statement that kind of goes like this--and that's all I'm going to repeat out of there--is: "Our vision is a great public education for every student." We also have a core value that I've listed there. It's about "equal access to a quality education that is adequately and equitably financed." I don't think that as you read through LB1001 it meets any of our core values, our mission, or our vision as educators in the state of Nebraska. And then I would share with you one last piece of the paragraph in there: Every day, every year our teachers meet students as they come through the door, no matter where they come from, no matter who their parents are, no matter what it is they have to face as a student. They educate them the best they can, given the resources we have in this state. And they always look at and set goals for themselves as educators and for students that you work hard, you get good grades, you go on to college--because the high-paying jobs require a higher education than secondary education. And so what we are doing with LB1001 is taking away the dreams of those children. How do the 28,000 educators that I represent motivate a child for 13 years in our public school education system, as we are required by the federal government to do, and say: Oh, by the way, you graduated in May or June; now you get to pay three times tuition to go to the university system or the state college or whomever? What you have done by having a bill like LB1001 is take the ability of my members to motivate students to do a good job, their requirement as educators. So you can read through the rest of the testimony, but for us it's a core value: Every child deserves a great public education. I thank you for the time to testify before you. [LB1001]

SENATOR ADAMS: Thank you, Jay. Are there questions for Jay? Any of you? Thank you, sir. [LB1001]

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MARLIN PEREZ: (Exhibit 10) Good afternoon, Mr. Chairman and members of the Education Committee. My name is Marlin Perez, M-a-r-l-i-n P-e-r-e-z. I am originally from Los Angeles, California. I am a student at the University of Nebraska-Lincoln. I will be reading the testimony of Joey, an undocumented college student who has lived in Nebraska for 13 years and graduated from a Nebraska high school: Hello, my name is Joey. I'm in my late teens, and I currently attend college here in Nebraska. It is to my understanding that the law that allows me to go to college at in-state tuition rates will be changed. And that change will affect my education in a drastic way. As of right now, I am one-sixth of the way done with my education, and, honestly, I am barely keeping up financially. If the law changes, my chances of becoming a college graduate and a positive member of my community will be shattered. I am an undocumented college student from Mexico, and I moved here when I was 6 years old. At the time, I was confused by my parents' decision of moving, but now as an adult, I see why they did it. In my particular case, my father worked two full-time jobs in Mexico while my mother stayed at home to take care of me, yet she still worked for barely no pay. And even with all that, we were still struggling to barely pay the bills and keep food on the table. Moving to Nebraska was to keep my family from hunger and to give me a better future. Since I moved to Nebraska, I've been attending a public school system, and I honestly love it. Compared to the education I would have received at a public school in Mexico, this is truly a blessing. I have always had good grades, always tried harder to become both a better student and a better person. I don't want to put down my parents for being at the lowest of the working scale, but I thank them for trying harder than anything to give me the opportunity I have today to be better. That is why LB1001 will be devastating for my future. I want to be a helpful part to my community. Please let me. Yours truly, Joey. [LB1001]

SENATOR ADAMS: Thank you, Marlin. Are there questions for this testifier? Senator Haar. [LB1001]

SENATOR HAAR: Yes. Oops. [LB1001]

SENATOR ADAMS: Can't run away that quick. [LB1001]

MARLIN PEREZ: Sorry. [LB1001]

SENATOR HAAR: Thank you very much. It was suggested earlier that we're doing Joey a great disservice, because she needs to know that she needs to go back to Mexico, I guess. How do you respond to that? [LB1001]

MARLIN PEREZ: I think that, as Senator Cornett stated, that how do you tell somebody to go back home when they've been living here for so long? I know that if I was an undocumented person and I'd grown up here in Lincoln and as soon as I graduated if somebody would have told me: Oh, now you have to go back to where you came from--

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would tell them that's not my home; I've learned and grown up here, and I've learned the customs of the American life, basically, as a lot of these students have. They've grown up in America, like, here in the United States, grown up speaking English. And then going back to a country where maybe they don't know how...like, in some particular matters, some students even forget their language. And so then for them to go back to something like that, then they wouldn't even have a way to communicate with others and definitely be in a place where they're going to feel like they're not at home, when here, this is where they grew up. [LB1001]

SENATOR HAAR: Does Joey look different? [LB1001]

MARLIN PEREZ: I don't...I think...I don't...what do you mean by that? Sorry about that. [LB1001]

SENATOR HAAR: (Laugh) Could I tell that Joey was not born in this country by looking at her--or him, I'm not sure? [LB1001]

MARLIN PEREZ: I think in some ways you can. There's some undocumented students that you could tell, you know, their nationality. But either way, I think it's more of people assume that just because you're of a certain ethnicity you might not be legal. And so some people make that assumption. But either way, you might be legal, and people still assume that you're not. So I don't think that Joey, whether it's a he or a she, would look any different. [LB1001]

SENATOR HAAR: Thank you. Appreciate it. [LB1001]

SENATOR ADAMS: Other questions? Seeing none, now I'll let you get away. [LB1001]

MARLIN PEREZ: All right. Thank you. [LB1001]

FRED MEYER: (Exhibit 11) I know how she feels. I'll go real quick. My name is Fred Meyer on the State Board of Education, M-e-y-e-r, and I distributed a letter for the--to read into the record, but I will also read it and answer some of the questions. I have a couple other comments. Dear Senator Adams: On January 25, 2010, the State Board of Education met to review various bills before the Education Committee. After much discussion on LB1001, the board voted to oppose the bill. We are writing to express our continued support for all Nebraska children who wish to pursue the dream of an affordable postsecondary education in our state. To us, the tuition debate should be about educational and economic opportunity and what is best for Nebraska. This position is consistent with the recognition that Nebraska supports a pre-K-16 education system that is seamless and accessible to all Nebraska students. The main purpose of offering resident tuition is to encourage Nebraska students to go to college in Nebraska. Since many students drop out of high school when they realize that they will not have

the financial means to further their education, offering them the opportunity to attain a more affordable college education may also encourage more of them to perform well and graduate from high school here in Nebraska. These are steps that can assist in closing achievement gaps and in increasing the high school graduation rate in Nebraska high schools. The State Board of Education encourages the Education Committee to oppose LB1001 and to keep the doors of education and productivity open to all Nebraska students. Additionally, I think one thing that we've learned about education in Nebraska and everywhere--and I've been on school boards for about 20 years--is that education is very transportable. We educate our own children, that if they receive an education they can go anywhere in the world and accomplish anything they want. Well, one thing that I guess I've..after listening to the testimony here previously, we assume that all students that we educate in Nebraska are going to stay in Nebraska. Do we really want that? No, we don't. I think we want students that we educate here to go to every corner of the world. About--between 20 percent and 30 percent of agricultural products in Nebraska are exported to literally every country in the world. And the more Nebraska ties we have to people who are in management positions and positions of influence in those countries around the world, I think that benefits the Nebraska economy very directly. And as an educator in Nebraska, I think it's very inconsistent for us to, according to federal law, educate all students but as soon as they graduate from high school tell them that we can no longer do that. So with that, I'd be glad to answer any questions. [LB1001]

SENATOR ADAMS: Thank you, Fred. Are there questions for Fred? Thank you for your patience today and your testimony. [LB1001]

FRED MEYER: Thank you. [LB1001]

SENATOR ADAMS: Next testifier. [LB1001]

MARIA FLORES: (Exhibit 12) Hello. [LB1001]

SENATOR ADAMS: Hi. [LB1001]

MARIA FLORES: (Exhibit 12) My name is Maria Flores, M-a-r-i-a F-l-o-r-e-s, and I'd like to give you thanks for inviting us all here to be able to testify and just give a little bit of our insights within our own stories. This is actually my own story. I was at one point an undocumented student, so here I go. First of all, I would like to thank the senators and Education Committee members here today for this opportunity. It is very important for me to give you some insight of my own experience within the LB1001. It changed my life since I graduated from high school, and it will keep making a difference for the rest of my life. When I first got here to the United States, I was about to turn 17 years old. I was pretty sure that this was only a vacation. But since the summer of 1999 was almost over and I didn't see any suitcases getting ready, I did talk to my mom and asked her

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what was going on. All she said to me was: This is going to be the best for all of us. And by us, I mean my four younger sisters and myself, my mom--and myself. Back in Mexico I was going to start the last year of high school. I wanted to go back, no matter what. I was almost done with high school and a technical career of chemical engineer. I knew that if I worked hard enough as a chemical engineer, I could pay for my university. Education has always been a priority within my family. My mom was an elementary teacher back in Mexico. Furthermore, after the entire struggle, I am pretty sure you guessed right: I did not go back to Mexico as I wanted to. I did stay. It was a nightmare at the beginning, because, as I mentioned before, I was almost done with high school back in Mexico. When I first started high school, I know you are probably wondering what grade did I start here? Well, yeah, since I didn't speak any English or know anything about it, they held me back to ninth grade. Yes, I lost three years of my life. At that time, when I started high school, I couldn't understand a whole lot about our lives here in the United States. I was so upset at my mom for bringing us here, and I was really mad about a lot of things. As the time passed by, I started to realize that my mom brought us here for a better future. When I graduated from high school, a lot of things happened. I met a guy, fell in love, and, yes, I thought he was the one. Well, I got pregnant. When I told him, he backed off; he kind of like went away. I was pregnant, but that didn't stop me from graduating. I do know that I did lose the opportunity for a great grant that was given away at that time. That was the Peter Kiewit grant for Latino students to become teachers at that time. So I see that my time is up. [LB1001]

SENATOR ADAMS: You are, but we've got your testimony, and I'll bet you you'd answer any questions that this group might have, wouldn't you? [LB1001]

MARIA FLORES: Sure. [LB1001]

SENATOR ADAMS: Are there questions for this testifier? I guess not. Thank you. [LB1001]

MARIA FLORES: Thank you very much. [LB1001]

SENATOR ADAMS: Go right ahead. [LB1001]

NORMAN PFLANZ: (Exhibit 13) All right. Just one second. Good afternoon, Chairman Adams, members of the Education Committee. My name is Norman Pflanz; the last name is spelled P-f-l-a-n-z. And I'm a staff attorney with the Nebraska Appleseed Center for Law in the Public Interest. We are a nonprofit, nonpartisan public-interest law project, and we're dedicated to equal justice and full opportunity for all Nebraskans. I'm here today to testify in opposition of LB1001, particularly to speak about the legality of our in-state tuition law. Now when Nebraska's law was first developed, careful consideration was given to ensure that it would be in compliance with federal law. As a result, our in-state tuition law, like similar laws in nine other states that span the

geographic and political spectrum of our country, does not conflict with federal law. Relevant federal statutes specifically provide states the option to allow certain undocumented students to pay in-state tuition rates at public universities and colleges. It's important to note at the outset that no legal challenge has overturned any in-state tuition law throughout the country. All in-state tuition laws throughout the United States remain intact and fully operational. In fact, thus far, four courts have rendered decisions on this issue; and, of these, three courts have either found no conflict with federal law or refused to allow the challenge to proceed because the plaintiffs had suffered no legal harm. Now the two federal statutes that we heard about earlier that are often cited by opponents of in-state tuition are 8 U.S.C. 1621 and 8 U.S.C. 1623. Both of these sections regulate immigrant access to state and local, quote, unquote, public benefits, a term that is narrowly defined, narrowly defined under federal law, and does not include in-state tuition. However, even if providing in-state tuition could be deemed a public benefit under these sections, both statutes provide safe harbors--safe harbor exceptions, which actually provide permission to states to provide in-state tuition. And contrary to previous testimony, Section 1623 does not state "all U.S. citizens"; it states "a U.S. citizen." I think that's an important distinction and a mistake that needed to be corrected. Additional support for our law can be found in a February 2006 official opinion of the attorney general of the state of Utah, in which he declared that Utah's in-state tuition law, which is virtually identical to Nebraska's law, does not violate 1621 or 1623. Obviously, previous testimony spoke about the California appeals court case, but the testifier failed to mention that that decision is not a final decision; it's been appealed up to the California Supreme Court. And while the judicial process is playing out, California's in-state tuition law remains in effect. Obviously last week a lawsuit was filed here in Nebraska. The legal issues that we're talking about today will eventually be resolved by a Nebraska court. So it's important to remember that our law is presumed valid until proven otherwise, and it would be unwise to set a, I think, a dangerous precedent of rescinding legislation simply because a lawsuit has been filed. May I sum up? [LB1001]

SENATOR ADAMS: Please do. [LB1001]

NORMAN PFLANZ: Thank you. So for the past four years, Nebraska has had in place in-state tuition policy that reflects our values of ensuring educational opportunity for all our youth. And we recognize that these are the future--they are the future of our communities and our state. I don't think that complex legal issues should confuse what an overwhelming majority of the Nebraska Legislature, leaders of our Education Committee, and families across our state know to be education policy that's in all of our best interests. And for all of these reasons, I would ask the committee to indefinitely postpone this bill and not advance LB1001 to the floor. [LB1001]

SENATOR ADAMS: All right. [LB1001]

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NORMAN PFLANZ: And I thank you for your time, and I would be willing to take any questions. [LB1001]

SENATOR ADAMS: Committee, what questions do you have? All right. Thank you, sir. [LB1001]

NORMAN PFLANZ: Okay. Thank you so much. [LB1001]

JIM CUNNINGHAM: (Exhibit 14) Chairman Adams and members of the committee, good afternoon. My name is Jim Cunningham, C-u-n-n-i-n-g-h-a-m. I'm the executive director of the Nebraska Catholic Bishops Conference, on whose behalf I present this testimony. The Catholic Conference is an association through which the Archdiocese of Omaha and the Dioceses of Lincoln and Grand Island speak and act cooperatively on matters involving mutual interest and concerns, under the direction of the diocesan bishops. The Nebraska Catholic Conference supported LB239 in the 99th Nebraska Legislature and applauded its passage. Nothing has occurred since then to cause a change in position, and therefore the conference wishes to be on record in opposition to LB1001, which proposes to repeal this law. Our perspective on LB239 in 2006 and our position today is that this law is a matter of social justice. A student who has resided for a reasonably long period of time and continues to reside in Nebraska and has successfully attended and graduated from a high school in Nebraska and desires to go on to postsecondary education in Nebraska should have the same opportunities as any other Nebraska student, the same opportunity as the student who is his or her neighbor or classmate--the same as that person--notwithstanding his or her immigration status, which, if unauthorized, is almost always the result of actions taken and decisions made by his or her parents. LB1001 would revoke the opportunity previously authorized that makes Nebraska a stronger, fairer, more welcoming, and more prosperous state due to the fact that more of Nebraska's high school graduates have an opportunity to pursue and attain higher education. These students are not strangers among us here in Nebraska. They are and have been Nebraska residents and are Nebraska high school graduates. Public policy should not treat them as strangers. We urge that you not advance this bill to the full Legislature. Thank you. [LB1001]

SENATOR ADAMS: Thank you, Jim. Are there questions for Jim? Thank you, sir. [LB1001]

JIM CUNNINGHAM: Thank you. [LB1001]

SENATOR ADAMS: Next opponent. [LB1001]

THERESA BARRON-McKEAGNEY: Good afternoon, Senators. My name is Theresa Barron-McKeagney; it's T-h-e-r-e-s-a B-a-r-r-o-n-M-c-K-e-a-g-n-e-y. And I was advised to say that I'm a private citizen, but in my other life I am the director of the School of

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Social Work at the University of Nebraska at Omaha. As I was sitting here listening to all of the testimony, it reminded me of my own family. And so this is sort of like a history lesson for you a little bit. My grandparents and my parents were both immigrants from Mexico. My aunt and uncle also came over with my grandparents, and my uncle went on to serve in World War II. At that time he wasn't asked what his citizenship was. He served valiantly and received the Purple Heart. The same thing happened in the 1950s and '60s, when bracero workers came from Mexico and other countries to work in our fields to make sure that people in America were fed well. With that being said, my ethical principal as a social worker, my value, is social justice. So Senator Avery, when you talked about this issue as being a combination of all of the above, it certainly is for us, as well as an issue of social justice. The principal for social workers is that we challenge social injustice. We pursue social change, particularly with and on behalf of honorable and oppressed individuals and groups of people. Social workers, social change efforts are focused primarily on the issues of poverty, unemployment, discrimination, and other forms of social injustice. These activities seek to promote sensitivity to and knowledge about oppression and cultural and ethnic diversity. Last week a young person visited me with her mother and requested information about going on to the University of Nebraska at Omaha. This young woman is 18 years old, is from Chile. She came with her mother and father when she was 9 years old. Her interest is in pursuing social work. Her father, unfortunately, when here, became ill with kidney disease. So he is on dialysis. She said: Without an opportunity to have in-state tuition, there is no way that I can come to the University of Nebraska at Omaha. So this young girl essentially has been in school for eight years, has contributed to the American Cancer Society through her volunteer efforts, is currently part of the Latina Summer Academy that they host at the College of St. Mary, and her issue is to try and inform young people like herself to go on to school, to continue to maintain a college G.P.A. while in high school. So it is her story that I bring to you today. And when she calls me back and asks: How did it go? I want to be able to tell her: Everything went well and that I want to see you in the classroom. She wants to be a social worker. So I am here to recruit all students, but particularly students that I know will help serve oppressed and vulnerable societies. Thank you very much. [LB1001]

SENATOR ADAMS: Thank you. Are there questions? Thank you, ma'am. [LB1001]

THERESA BARRON-McKEAGNEY: Thank you. [LB1001]

SENATOR ADAMS: Next opponent. [LB1001]

MICHELLE SUAREZ: Good afternoon. [LB1001]

SENATOR ADAMS: Hello. [LB1001]

MICHELLE SUAREZ: My name is Michelle Suarez, and the last name is S-u-a-r-e-z. It's

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a privilege to speak before you this afternoon. I want to talk about the importance of education for all Nebraska residents and why we must say yes to the Dream Act and no to LB1001. I think one of the most profound results of education is the development of a vision for the future, of what we can accomplish. We build logical, rational thinking; we see cause and effect. Through education we begin to see and realize our potential. While I appear before you as a private citizen, I'm an elementary school principal by profession, and we try to help our students see themselves graduating from high school and college. Some teachers put up displays outside their classroom doors referring to the class of 2017 as the high school or 2021 for college. We tell all of our kids that education will transform their lives and allow them to contribute to our society in meaningful ways, and it will. We tell them to reach for the stars and to not let barriers get in their way. The state of Nebraska sends a similar message through organizations such as P-16. I see commercials for "KnowHow2GO" campaign that encourages students to go to college. I've heard Governor Heineman call for an increase in the college-going rate. We talk about the brain drain and how we want to keep our best and brightest close to home. The students who make use of the in-state tuition rate provided through the Dream Act are some of our best and brightest. I'd like us to think for a minute about the struggles that students who do not have legal status endure. First of all, they most likely have made one move or many moves to get to Nebraska. Secondly, we know that only about one out of two students who are undocumented graduate from high school. And lastly, families in this situation, for them to obtain the funds for a college education, they must be among our most resilient, visionary, and hard-working families in our state. I can only imagine that none of us would say no but all of us would want to say yes to these students who have overcome these barriers. When we say yes to all of our students, meaning that all of our residents can attend college in their home state at the in-state tuition price, we are saying yes to more than just one person. I'd like you to think about how education has impacted your life. Most of us come from immigrant families, and one person in our family may have been that pivotal person who had the vision, courage, and determination to attend college. For you it may have been a grandfather, a mother, or perhaps even yourself. For me it was my father and brother. My grandfather was a farm worker from Mexico; my father was a farm worker until he entered the U.S. Army through the Korean conflict. Afterwards he was able to make use of the G.I. Bill to attend a trade school to become an auto body man. My brother attended UNL after he graduated from Scottsbluff High School. Because he attended, three of my siblings and I graduated from college, and we all have advanced degrees. We are all in the education field. My two daughters attend UNL; one plans to become a psychiatrist, and the other plans to become an elementary schoolteacher. And so capacity and contributions build over generations. If we say no to just one student, we say no to many people; we say no to a community of people. If we say yes to one student, we say yes to our future. When we say yes to the Dream Act and no to LB1001, we build capacity and contributions over generations. We give the consistent message that education is for all and that we will be a better state with better-educated residents. Please say no to LB1001, and say yes to a better future for the state of

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Nebraska and all of its people. [LB1001]

SENATOR ADAMS: Thank you, Michelle. Are there questions? Thank you. [LB1001]

MICHELLE SUAREZ: Thank you. [LB1001]

SENATOR ADAMS: Next testifier. [LB1001]

ALEJANDRO AIXALA: (Exhibit 15) Hello. Good afternoon, Chairman Adams and the Education Committee. My name is... [LB1001]

SENATOR ADAMS: Hold on just a second. [LB1001]

ALEJANDRO AIXALA: Sure. [LB1001]

SENATOR ADAMS: Becki, did you get his registration form? Would you turn the red light off then? Fire away. [LB1001]

ALEJANDRO AIXALA: Perfect. I also distributed a written copy of my testimony, because I'm not going to be able to get through all of it. My name is Alejandro Aixala; that's spelled A-l-e-j-a-n-d-r-o A-i-x-a-l-a. I am a staff attorney for the Mexican American Legal Defense and Educational Fund, also known as MALDEF. MALDEF was founded in 1968. We are a national legal nonprofit organization. We employ litigation, policy advocacy, and community education programs to protect the civil rights of Latinos across the United States. We're here today to speak in opposition to LB1001 and in support of Nebraska Revised Statute 85-502, which many people have claimed is in violation of federal law and which we believe is not. And we reiterate that no court to this date has found that it violates federal law. I have some prepared remarks, but I feel like best is for me to respond to some of the comments that have been made. Earlier was mentioned a case--a landmark case in the Supreme Court, Plyler v. Doe in 1982. Actually MALDEF was involved in that case, a case that helped to ensure that all students have equal education opportunities. One of the challenges in that case that Texas actually made to deny undocumented individuals access to the public schools was the fact that they might one day be deported. And the Supreme Court actually responded and said: Well, that's foolish; we should (inaudible) people with public education regardless of immigration status, because there's no assurance--as the Supreme Court said--that a child subject to deportation will ever be deported. An illegal entrant might be granted federal permission to continue to reside in this country or even become a citizen. It would be most difficult for states to justify a denial of education to a child enjoying (inaudible) federal permission to remain. You've heard people say that folks cannot adjust their immigration status. That is untrue. There are numerous statutes through which an individual who is currently here illegally can be legally present. There are many states who've initiated these in-state tuition laws. And also I'd like to respond

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to some of the public policy questions you said...Senator Avery asked: What public purpose do we gain? Well, you have fiscal benefits. Increasing the number of college graduates increases the likelihood that graduates will earn higher wages. They'll generate more income, sales, and property taxes and revenues for the state of Nebraska. Studies show that immigrant college graduates generate approximately \$9,000 more in annual payments to a state than non-college-graduates. Increasing the number of college graduates with higher disposable income also stimulates economies. According to Rand, doubling the rate of Hispanic graduates from college will increase their disposable income collectively by \$14 billion over their lifetime. I'll sum up. Perfect. I want to finish with a quote from Plyler v. Doe, in which the Supreme Court--Justice Brennan--said, remarking on education: The American people have always regarded education and the acquisition of knowledge as a matter of supreme importance. We've recognized that public schools are our most vital civic institution for the preservation of a democratic system of government and is the primary vehicle for transmitting the values on which our society rests. The colleges and universities of the great state of Nebraska are the vehicles for transmitting knowledge and value to all its residents. MALDEF hopes that the doors of these great institutions are not closed to some of the state's most vulnerable children. Thank you for your time. [LB1001]

SENATOR ADAMS: Thank you. Are there questions for this testifier? Senator Ashford. [LB1001]

SENATOR ASHFORD: I just...I'm going to ask you this. [LB1001]

ALEJANDRO AIXALA: Go ahead. [LB1001]

SENATOR ASHFORD: If you look at 8 U.S.C. 1623 in your (inaudible) familiar with that? [LB1001]

ALEJANDRO AIXALA: Um-hum. [LB1001]

SENATOR ASHFORD: Help me understand just very simply, then. Your view is that in-state tuition is not a benefit. [LB1001]

ALEJANDRO AIXALA: In-state tuition is not a public benefit, according to the Department of Homeland Security. Now, even if, let's say, it were. [LB1001]

SENATOR ASHFORD: Okay. Let's assume it is for a second. [LB1001]

ALEJANDRO AIXALA: Okay. Let's go. 1621(d) creates a safe harbor provision, and that safe harbor provision says that if a state provides--if the state wants to provide a public benefit to, quote, unquote, illegal aliens, then they do so so long as they actively--affirmatively provide for such eligibility, is the exact wording, which is what

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LB239 did. It says: We are providing this benefit, in-state tuition. [LB1001]

SENATOR ASHFORD: And 1621(d) and...right. I agree with you. 1621(d) was part of the 1996 act. [LB1001]

ALEJANDRO AIXALA: Yeah. Yes. [LB1001]

SENATOR ASHFORD: And you're not bothered by the argument that there's more specificity in the other statute? [LB1001]

ALEJANDRO AIXALA: In terms of...? [LB1001]

SENATOR ASHFORD: In-state tuition or benefits to education--postsecondary education benefits. [LB1001]

ALEJANDRO AIXALA: In terms of the other federal statute? [LB1001]

SENATOR ASHFORD: Right. [LB1001]

ALEJANDRO AIXALA: 1623? [LB1001]

SENATOR ASHFORD: ...twenty-three. [LB1001]

ALEJANDRO AIXALA: 1623, as we read it and, I think, other courts have read it: As long as you can provide this benefit...it says, unless. You know, you...unless you provide the same benefit to out-of-state citizens... [LB1001]

SENATOR ASHFORD: Right. Right. [LB1001]

ALEJANDRO AIXALA: ...which, if I were, you know, from the state of Kansas and I completed your requirements: I graduated from a... [LB1001]

SENATOR ASHFORD: Okay. So let...this is a very key point. [LB1001]

ALEJANDRO AIXALA: Yeah. [LB1001]

SENATOR ASHFORD: So, in your mind, you could come--you could live in Council Bluffs and you could come into Nebraska and you would...once we passed the 2006 act... [LB1001]

ALEJANDRO AIXALA: Um-hum. [LB1001]

SENATOR ASHFORD: Once we passed that... [LB1001]

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ALEJANDRO AIXALA: Um-hum. [LB1001]

SENATOR ASHFORD: ...you created a standard for these individuals being able to pay in-state tuition. [LB1001]

ALEJANDRO AIXALA: Yup. [LB1001]

SENATOR ASHFORD: That standard applies to anybody that comes into the state from anywhere else. [LB1001]

ALEJANDRO AIXALA: Um-hum. [LB1001]

SENATOR ASHFORD: Correct? [LB1001]

ALEJANDRO AIXALA: As far as I read your statute, yes. [LB1001]

SENATOR ASHFORD: Well, I mean, I think it does, arguably. I mean, assumedly it does. [LB1001]

ALEJANDRO AIXALA: Yeah. [LB1001]

SENATOR ASHFORD: So is it your belief that the...that it is that set of circumstances implied in the 2006 act that satisfy not -3 but the other, -1. [LB1001]

ALEJANDRO AIXALA: 1623. Yeah. [LB1001]

SENATOR ASHFORD: Or 1623 as well. [LB1001]

ALEJANDRO AIXALA: Yeah. 8 U.S.C. 1623. Yes, I do believe that it satisfies. [LB1001]

SENATOR ASHFORD: So it's not all nonresidents who would just--if you live in Kansas and want to go to the university tomorrow... [LB1001]

ALEJANDRO AIXALA: Um-hum. [LB1001]

SENATOR ASHFORD: ...you would pay nonresident tuition. [LB1001]

ALEJANDRO AIXALA: If I... [LB1001]

SENATOR ASHFORD: If you lived in Kansas and applied to go to the university, you did not comply with the '96 act... [LB1001]

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ALEJANDRO AIXALA: Um-hum. [LB1001]

SENATOR ASHFORD: ...you would pay nonresident tuition. [LB1001]

ALEJANDRO AIXALA: I think that is correct. Yeah. [LB1001]

SENATOR ASHFORD: But if you wanted to go to the university and pay... [LB1001]

ALEJANDRO AIXALA: In-state... [LB1001]

SENATOR ASHFORD: ...resident tuition... [LB1001]

ALEJANDRO AIXALA: Yeah. [LB1001]

SENATOR ASHFORD: ...and you were a person within the definition of that act, you would have to apply for legal status when that opportunity... [LB1001]

ALEJANDRO AIXALA: Presents itself. [LB1001]

SENATOR ASHFORD: ...presents itself. [LB1001]

ALEJANDRO AIXALA: Um-hum. [LB1001]

SENATOR ASHFORD: It's...the class, then...and this is the first time I've actually heard this argument. Maybe I haven't read enough. But we did an entire study on this issue two years ago...that the class we're talking about is the class of all students... [LB1001]

ALEJANDRO AIXALA: Um-hum. [LB1001]

SENATOR ASHFORD: ...who are...it has nothing to do with K-12 education in Nebraska. [LB1001]

ALEJANDRO AIXALA: Um-hum. [LB1001]

SENATOR ASHFORD: We're sort of hung up a little bit on policy: I mean, we're paying K-12 education... [LB1001]

ALEJANDRO AIXALA: Um-hum. [LB1001]

SENATOR ASHFORD: ...therefore, as a matter of policy, it makes no sense to deny them--these individuals--resident tuition at the university. [LB1001]

ALEJANDRO AIXALA: Um-hum. [LB1001]

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SENATOR ASHFORD: And that's a separate issue. But the legal issue that's raised by the federal statutes you believe is satisfied by creating this class of resident and nonresident individuals who could avail themselves of the 2006 act. [LB1001]

ALEJANDRO AIXALA: Yes and... [LB1001]

SENATOR ASHFORD: And just so I fully understand this... [LB1001]

ALEJANDRO AIXALA: Go ahead. Yeah. [LB1001]

SENATOR ASHFORD: And you refer back to the other, the more--the larger, more expansive statute. And I've lost it now--not -3 but the other one that you just... [LB1001]

ALEJANDRO AIXALA: 1621. [LB1001]

SENATOR ASHFORD: -1, isn't it? [LB1001]

ALEJANDRO AIXALA: Yeah, 1621. So 8 U.S.C. 1621 is the statute. Sorry. [LB1001]

SENATOR ASHFORD: And how does that help you get there? [LB1001]

ALEJANDRO AIXALA: Well, 1621--what it does is: it says if you provide the benefit...1621, you know--one reading says you can't provide these benefits. But you can in limited instances. And that limited instance is when you take an affirmative step to provide--and say: We are providing these benefits. Right? So -1 speaks to all general benefits; it's not just postsecondary benefits. 1623 is far more specific. [LB1001]

SENATOR ASHFORD: Right. 1623 is much more specific. [LB1001]

ALEJANDRO AIXALA: Yeah; 1623 speaks just to postsecondary... [LB1001]

SENATOR ASHFORD: And you feel they have to be read in pari materia and that therefore you have to give effect to both statutes. [LB1001]

ALEJANDRO AIXALA: I think you would have to look at both of them. [LB1001]

SENATOR ASHFORD: All right. And the second one creates this other class of resident and nonresident persons... [LB1001]

ALEJANDRO AIXALA: Um-hum. [LB1001]

SENATOR ASHFORD: ...whether they went through K-12 education in Nebraska or

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not--if they come into the state, they've lived in the state three years, they fill out the affidavit; it doesn't matter where they're from. [LB1001]

ALEJANDRO AIXALA: Doesn't. Yup. That does not... [LB1001]

SENATOR ASHFORD: I think that's a compelling case. And I would like to know more about that. Can you give me some sort of writing about that? [LB1001]

ALEJANDRO AIXALA: I could. [LB1001]

SENATOR ASHFORD: Or... [LB1001]

ALEJANDRO AIXALA: Yeah, I could. At this point in time I've got... [LB1001]

SENATOR ASHFORD: Not today... [LB1001]

ALEJANDRO AIXALA: Yeah. [LB1001]

SENATOR ASHFORD: ...but in the next week or so? [LB1001]

ALEJANDRO AIXALA: Sure. Sure. [LB1001]

SENATOR ASHFORD: And would you lay out those arguments to me? [LB1001]

ALEJANDRO AIXALA: Sure. [LB1001]

SENATOR ASHFORD: Because that does address this whole--this issue that's sort of been bothering me ever since we went around the state on this issue. With employment, it's much easier. [LB1001]

ALEJANDRO AIXALA: Um-hum. [LB1001]

SENATOR ASHFORD: But with education it's not so easy, because of 1623... [LB1001]

ALEJANDRO AIXALA: Which speaks directly to the issue. [LB1001]

SENATOR ASHFORD: ...which speaks directly to the issue. [LB1001]

ALEJANDRO AIXALA: Um-hum. [LB1001]

SENATOR ASHFORD: And if that creates this clash you're talking about, that's a compelling argument. And I'd like to know how you got there more specifically. [LB1001]

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ALEJANDRO AIXALA: Okay. Okay. [LB1001]

SENATOR ASHFORD: And cite whatever cases you can to get me there. [LB1001]

ALEJANDRO AIXALA: I think at this point we can cite cases, but none of them will be...though they're persuasive, nothing is binding. [LB1001]

SENATOR ASHFORD: Well, there's nothing dispositive... [LB1001]

ALEJANDRO AIXALA: Yeah, exactly. [LB1001]

SENATOR ASHFORD: ...because it hasn't been decided. [LB1001]

ALEJANDRO AIXALA: Exactly. [LB1001]

SENATOR ASHFORD: But the argument is compelling, and I want to know more about that. [LB1001]

ALEJANDRO AIXALA: Okay. [LB1001]

SENATOR ASHFORD: Okay. Thanks. [LB1001]

SENATOR ADAMS: Other questions? Thank you, sir. [LB1001]

ALEJANDRO AIXALA: Thank you for your time. [LB1001]

SHIRLEY A. MORA JAMES: (Exhibit 16) Good afternoon, Mr. Chairman and distinguished members of the Education Committee. My name is Shirley A. Mora James; that's S-h-i-r-l-e-y A. M-o-r-a James, J-a-m-e-s. I'm a civil rights attorney from Lincoln, Nebraska. I'm licensed to practice in all the Nebraska state courts, the federal courts of the District of Nebraska, the U.S. Court of Appeals for the 8th Circuit, and the United States Supreme Court. I'm the current president of the Nebraska Hispanic Bar Association, and I'm here today speaking in that capacity but also as a Nebraskan. I want to expand a little bit on the testimony of both Appleseed and MALDEF, specifically in regard to closely examining a federal guidance letter from the Department of Homeland Security/U.S. Immigration and Customs Enforcement, hereinafter referred to as I.C.E. This letter was addressed to the North Carolina attorney general regarding the issue at hand. On June 9, 2008, I.C.E. wrote a guidance letter in response to the North Carolina attorney general's office. And the following guidance they gave in regard to whether or not North Carolina could allow in-state tuition. The I.C.E. letter stated that granting admission to postsecondary education institution to undocumented students is not a violation of federal immigration law. The I.C.E. letter further stated that, quote, admissions to postsecondary educational institutions is not one of the benefits regulated

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by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and is not a public benefit under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which are the two statutes that you've been previously discussing. Without a doubt, according to I.C.E.'s opinion, college admission to undocumented students is not a benefit under current federal immigration law. Moreover, the I.C.E. letter further stated, quote, therefore the individual states must decide for themselves whether or not to admit illegal aliens into their postsecondary institutions. It is my legal opinion that we did decide that very issue in the Nebraska Revised Statute 85-502, 2006, that Nebraska will grant admission and allow for in-state tuition for our undocumented students here in Nebraska. Therefore I respectfully request that you all vote in opposition to LB1001. I want to thank you for your time and kind consideration in this most important matter, and if you have any questions, I'd be happy to entertain them. [LB1001]

SENATOR ADAMS: Senator Ashford does. [LB1001]

SENATOR ASHFORD: Yeah, I do have a...because for me this is, you know...the comments that were made by the representative from MALDEF are exceedingly compelling, because if you read 1623 on its face, you can...and 1621 is more general and does provide--is more inclusive. I mean, it would allow for...if 1623 wasn't there, 1621 would sort of do the trick for us, in my view, for the proponents of keeping the law. But 1623 was bothersome to me. And when we made our--we did our study on this issue--and we spent months on it--the California case was one of the only cases that was really out there. There are some other perfunctory decisions but nothing really comprehensive, and this was going back, you know, 12 to 18 months. But the comment that was just made is fairly compelling, because in 1623 it says that "notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a state or a political subdivision for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit in no less an amount, duration, and scope, without regard to whether the citizen or national is such a resident." What I'm hearing now is an argument I have not heard before, which is that the class we're talking about here--aside from what the North Carolina attorney general gives his opinion on, which is a broader... [LB1001]

SHIRLEY A. MORA JAMES: No. It was I.C.E. It was the... [LB1001]

SENATOR ASHFORD: Or I.C.E. It's a broader case. But the argument being made here is that the class that is being protected here in Senator Schimek's original bill are those individuals who have lived in the state for--who are undocumented, who have lived in the state for three years, apply to the University of Nebraska, and pay resident tuition under the 2006 state act. Any other person in the United States or anywhere else could come to Nebraska, apply for the same benefit by living here for three years and complying with that statute and that that interpretation of 1623 satisfies the issues in

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1623. [LB1001]

SHIRLEY A. MORA JAMES: Well, that's correct. But I would like to point out, as just, say, a student from Missouri decides that they want to attend the University of Nebraska--they actually have a lower standard to get in-state tuition than the undocumented student. We actually hold the undocumented student... [LB1001]

SENATOR ASHFORD: To the three years. [LB1001]

SHIRLEY A. MORA JAMES: ...to the three years. [LB1001]

SENATOR ASHFORD: But I get that. And that is...a policy decision was made by the Legislature in 2006 for a variety of reasons--you have to be here three years. [LB1001]

SHIRLEY A. MORA JAMES: And it was within their power. [LB1001]

SENATOR ASHFORD: Within their power to do that. [LB1001]

SHIRLEY A. MORA JAMES: Yes. [LB1001]

SENATOR ASHFORD: So, in effect...okay. So do you agree with that interpretation that this class of persons is, that we were describing--residents or nonresidents of the state of Nebraska...a nonresident could come in, comply with that statute, and fulfill the requirements in 8 U.S.C. 1623? [LB1001]

SHIRLEY A. MORA JAMES: Actually, a nonresident U.S. citizen would have a lower standard than the standard that we require--180 days, I believe. [LB1001]

SENATOR ASHFORD: Okay. Okay. But they are legal; they have legal status; they're not undocumented. So if you have an undocumented person under Senator Schimek's bill that was passed into law, the argument is that...this is an argument I've never heard, that that person--maybe I wasn't listening--but that that person is the same as this person from Missouri, who's undocumented in the sense that that person could come in and stay for three years and... [LB1001]

SHIRLEY A. MORA JAMES: Well, they'd have to go to a Nebraska high school for three years... [LB1001]

SENATOR ASHFORD: For three years. [LB1001]

SHIRLEY A. MORA JAMES: ...and graduate. Or... [LB1001]

SENATOR ASHFORD: And that satisfies, you believe, 1623. [LB1001]

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SHIRLEY A. MORA JAMES: Absolutely. No doubt in my mind. If you take a close look at Dr. Olivas from the University of Houston's letter that he mailed in to all your members--now he is the expert; he was the expert in the Kansas federal case that Kris Kobach had litigated and was not successful. And there's a reason why they started in federal court and now have switched to state courts, because they know in federal court they're not going to be successful. I mean, as an attorney--I'm not an immigration attorney; I'm a civil rights attorney. But clearly, when I'm not successful--when I know I'm not going to be successful in state court, I always move my case to federal court. [LB1001]

SENATOR ASHFORD: But we actually...what Senator Schimek's bill and what the law basically does is create a class of undocumented persons, no matter whether they're resident or nonresident, that if they comply with the terms and conditions of that law, the 2006 law, they are being treated the same. [LB1001]

SHIRLEY A. MORA JAMES: Well, I would submit that if they are residents in Nebraska, if they follow the parameters to qualify for in-state tuition, they would be, in fact, Nebraska residents. [LB1001]

SENATOR ASHFORD: I give you that, but... [LB1001]

SHIRLEY A. MORA JAMES: Okay. [LB1001]

SENATOR ASHFORD: ...I mean, they still have to comply with the same... [LB1001]

SHIRLEY A. MORA JAMES: Absolutely. Absolutely. There's no exception in the law as it currently is read. [LB1001]

SENATOR ASHFORD: Thank you. [LB1001]

SENATOR ADAMS: Other questions? Thank you, ma'am. [LB1001]

SHIRLEY A. MORA JAMES: Thank you very much. [LB1001]

MARIA HERNANDEZ: (Exhibit 17) All right. My name is Maria Hernandez. I live at 122 N. 11th Street. It's M-a-r-i-a H-e-r-n-a-n-d-e-z. Okay. Let me begin by saying that undocumented students are not criminals who chose to break the law and enter this country. They were brought here by their parents, as many people have been doing for centuries in search of the American dream--many at an early age, before they can even recall. They are more American than anything else: They speak English; they wear American brands; they watch American shows; they date other Americans; they play sports; and they have American dreams. Most of them have no memory of their birth

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country and consider it as foreign as anyone else. These students aim to pursue their education and better American society as a whole. They have no plans of using their degrees--if they are, in fact, allowed to attain one--in another country. They see the United States of America and Nebraska as their home. Yes, they may have ties to their native country through customs, language, and parents, but in essence what we are dealing with here is with American students who see themselves participating fully in American society. Proponents of LB1001 aim to exclude these students from the great higher education of Nebraska, but what this bill would do would be to exclude Americans from attaining an education. If we deny one segment of our population an education, we are denying our advancement as a whole from moving forward, we being Nebraskans. You may ask how I may claim such statements. I, too, was an undocumented student; I, too, was brought here at an early age by my parents. To answer your question: Can you look at someone and tell they're undocumented? No. Could you look at someone and tell they're American? No. I just had to say that. Okay. I, too, had the same dreams that my peers had: I wanted to attend prom, to participate in homecoming, and, yes, to attend college. Like most of you, I was brought up reciting the Pledge of Allegiance, watching the Super Bowl, understanding the value of the Bill of Rights and our Constitution. Okay. I sat in class listening to stories of past immigrants who were able to achieve success against adversity. Those past immigrants are now at the forefront in all fields, including science, education, and law. What I wanted at the time was to be a part of that process in this country of immigrants that I am not a mere visitor to but that I call home. Being undocumented at the time, I thought that my dreams of college would have to be deferred. Luckily for me, I was able to legalize my status one week before my college applications were due. Furthermore, I was very lucky to legalize my status, but that is unusual. For the vast majority, there currently is no way to apply, and so I am here to speak on their behalf. In 2008 I received my bachelor's degree and will begin a master's program this fall. I plan on being a teacher to blind students and thus paving a path for other Americans to succeed. With the education that I have received, I plan to help my community and the country that has provided me with this opportunity. What this bill would do would be to deny this right to other students. In conclusion, I see the United States of America as my home, like most undocumented students do, who likewise were raised here and want to attain the American dream. I understand that those that favor LB1001 also want what is best for Nebraskans, but the denial of education to any group is the denial of education and advancement to the whole. Thank you. [LB1001]

SENATOR ADAMS: Thank you. Are there questions? How did you...you said in your testimony you managed to... [LB1001]

MARIA HERNANDEZ: Legalize my status. [LB1001]

SENATOR ADAMS: Yeah, get through those hurdles. Tell us what you did. [LB1001]

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MARIA HERNANDEZ: Well, hmm, okay. My parents were actually divorced, and my dad married an American citizen. And so I was a minor, and I was able to attain legal status... [LB1001]

SENATOR ADAMS: Okay. [LB1001]

MARIA HERNANDEZ: ...through that way. [LB1001]

SENATOR ADAMS: Thank you. [LB1001]

MARIA HERNANDEZ: Thank you. [LB1001]

SENATOR ADAMS: Are there other questions? Thank you, then. We have about two minutes left in this side. Go ahead, sir. [LB1001]

DANIEL MARQUEZ: Good afternoon. My name is Daniel Marquez, spelled D-a-n-i-e-l M-a-r-q-u-e-z. I'm here to testify in opposition of LB1001 and to tell my story--where I came from--and give my point of view. My parents immigrated to this country. Initially they were undocumented. They gave up everything they had in their home country, which is Mexico, and they came over here in search of a better life for themselves and for us. Because of the fact that they decided to come over here, today me and my siblings have the opportunity to succeed. My brother is a senior analyst in the president's office at TD Ameritrade. My sister is working for her doctorate in pharmacy at Creighton University. My other sister is attending Loyola University, has a major in biophysics and has a minor in Spanish and math. I am a ninth-grader at Burke High School. I plan on attending college, and I am a member of the JROTC program. I don't understand what the whole point of this law is. It seems to me like the decision is between having kids in college and on the streets. Most kids that are coming, that are here, aren't going back. They can't handle going back to a place where everything is new and everything is different. I know I wouldn't be able to do that. It is a different world out there, and it is not something that I'm accustomed to. We would have to start our lives over and learn new skills to survive. And everything we've learned over here to this point wouldn't really help us. I just want to make sure that you guys realize what this is going to do to us and what is going to happen, what the actual effects of this law would be. Thank you. [LB1001]

SENATOR ADAMS: All right. Thank you, sir. What questions do you have for this testifier? Did you fill out one of those? I guess not. Would you fill that out, please, and leave it with Becki. And thank you for your testimony. And that's going to conclude opposition testimony. That is the hour and 25 minutes or whatever it was. I'd now entertain neutral testimony. How many plan to testify in the neutral? Okay. [LB1001]

MICHAEL NOLAN: (Exhibit 18) Senator Adams, members of the committee, my name

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is Michael Nolan; you spell it N-o-l-a-n. I'm a resident of Norfolk; I live at 1302 Galeta, Unit A. And I'm here speaking on my own behalf; I don't have any permission from my board to take a position on the bill. And the reason I'm speaking on my behalf is just to inject what I think is some demographics that I hope that you'll consider in this discussion. I'll go through them very quickly. If you have any questions, I'll answer them. You'll notice I put a map and enlarged it from the USA article. You're not going to find any colored counties there in Nebraska, except for one place. And if you can see it--if you have bifocals, maybe you can see it--up close to South Sioux City is where the Winnebagos and the Omaha tribes are at, is the only colored place on the map for Nebraska. The next page, you'll see that most of the population across the state in rural areas is--in rural regions is decreasing. The map right below that: If it's not orange or red, it's losing population. The next...these are all from the most recent NIFA housing study, by the way. You'll see the ranking of the cities that have grown and those that are not growing. On the one that's at the bottom is the city I was the city administrator of for 28 years, Norfolk, which a few years ago lost 1,200 jobs. Most of those jobs were held by minorities, and, of course, all of those people left when the food processor closed. The frame right below that shows you the number of Hispanics that were part of the influx between 2000 and 2007. The NIFA study indicates that there were about 40,000 of them. There's an article from the Lincoln Journal Star that indicates that for the foreseeable future the white population will be still in the ascendancy; you'll see that there's growth in the 55- to 64-year-old. You'll see in the next couple of frames that all of the schools in rural Nebraska are pretty much losing school enrollment. And the last frame, which is, I think, the most significant, is what our population will be in 2030 if these forecasts are correct, which is about 2,016,000. And in 1930, the population was 1,377,000, which means in 100 years we will have grown less than 1 million people. So those are things to take into account, I think, when you have this discussion. [LB1001]

SENATOR ADAMS: Thank you, Mike. Are there questions for Mike? Thank you, sir. Next neutral testifier. Hello. [LB1001]

LOURDES GOUVEIA: (Exhibits 19 and 20) Good afternoon. My name is Lourdes Gouveia, L-o-u-r-d-e-s; Gouveia is G-o-u-v-e-i-a. I'm a UNO professor and director of the Office of Latino/Latin American Studies, OLLAS, at UNO. Mr. Chairman, members of the committee, thank you for the opportunity to appear before you today. I'm here to testify from a neutral position. While I have come before you many times and offered my convictions on the issues related to immigration and integration, those views are always, hopefully, hinged or anchored on my research and teaching on immigrant integration. So today I'm not here to state my position on the bill but to try to summarize very briefly probably only one or two points from this rich body of literature of social science research that I think can be very pertinent and I hope you take into account when considering the bill. I've submitted the testimony and a report we just published on demographics of the foreign born. I encourage you to go to our Web site, and there's a lot of materials and research, including the bibliography that accompanies today's

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testimony--that we will actualize the one we have there. Our own OLLAS report on economic and fiscal impact of the immigrants in Nebraska as well as newer reports on this subject show that Nebraska immigrants contribute billions of dollars to the state economy. Latino immigrants are particularly among the highest contributors, with a \$2.8 billion purchasing power in 2007 alone. A newer report--the one that I just mentioned--on demographics shows that the overwhelming majority of immigrants in Nebraska, or 75 percent, are in their prime working age. These are the adults that are often the parents. Most of the children of immigrants today are U.S. citizens; a small number are undocumented. Those who are not U.S. citizens--or undocumented--are likely to have come here very young, like some of the students you have just heard; and they live in mixed-status families, like Daniel's family, from whom you also heard. Immigration is a long process. And despite many hurdles and some other things that you have heard from others here, in time many of these kids and these immigrants, especially the younger ones, are able to adjust their status, although many, of course, spend many years trying to do so. The second point I want to make is that, according to the latest census figures, there are close to 450,000 children under the age of 18 in Nebraska. I actually had to double-check that; it seemed like a lot, but that's what it is. Out of those...yeah...out of those, only about 8,622--less than 2 percent--are not U.S. citizens. The majority of these kids--the less than 2 percent--are under a variety of non-immigrant and immigrant visas and statuses. And, again, a smaller percentage of those are likely to be the undocumented; we don't have...there is no way, from the census data, to ever get at that exact number. But it is safe to say that it's a minute percentage of those children. More to the point, UNO's Center for Public Affairs Research estimated for the purposes of this testimony today, based on the 2006-08 American Community Survey, the number of 19-year-olds--the likely cohort to enter college--who are high school graduates or equivalent, noncitizens, moved to Nebraska in or before 2003, and lived in Nebraska in the prior year--again, sort of the likely cohort that we're talking about. This number is 476--476 kids... [LB1001]

SENATOR ADAMS: Ma'am, can you kind of summarize? Your time is up. [LB1001]

LOURDES GOUVEIA: Okay. Sorry. I did not look at...anyway, I hope these facts are relevant. There is also...to begin to consider...and you may look at the testimony from last time that goes with the other testimony about how small these numbers are, really, that we're really talking about. Let me just, then, summarize by saying there is a lot of other social science research that talks about the social costs associated with the failure to educate immigrant children. And you have asked those questions a lot today. I encourage you to look at the testimony and to look at the references that are associated with it. [LB1001]

SENATOR ADAMS: Fair enough. [LB1001]

LOURDES GOUVEIA: Thank you very much for your time. [LB1001]

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SENATOR ADAMS: Thank you. Are there questions? Thank you. Is there any more neutral testimony? Senator Janssen to close. [LB1001]

SENATOR JANSSEN: Thank you, Senator Adams, members of the Education Committee. And thanks to all the witnesses on both sides for the debate. It was very enlightening on both sides. As I sat back and reflected over the testimony, I realized just how appropriate the title of this bill is in LB1001, because you can read it frontwards and backwards--it says the same things. And I think in this case we're trying to accomplish some of the same things but in a very different manner. When I say that, I mean proponents versus opponents. And I'd also like to note, I have a great deal of respect for the principal author of this original bill, Senator Schimek. Closely watched her career. I had some interest in the Nebraska Legislature before I came here and watched her serve with the senator that warmed the District 15 seat prior to me. And I believe he probably voted for LB239. I'm not certain; I haven't researched that particular vote. But, you know, when I look back over all the testimony today, I still--and very much so--want this bill to come out of committee. I want it to go to the full body for a discussion. And I just--I hit some points; I don't have a prepared closing; I just had some points that I wanted to touch on. And I thought this was very chilling, and it's something I didn't bring when I came in here initially. And I'm pulling this from Professor Kobach's opening testimony. I want to read it again: In addition, it is important to understand that the LB239 actually harms its intended beneficiaries more than it helps them. It makes it unlikely that these aliens will ever become U.S. citizens and realize the American dream. Essentially, the state of Nebraska is luring these young adults to stay in Nebraska with the promise of taxpayer-subsidized tuition. What the aliens are not told is that they end up committing a serious and continuing violation of federal immigration law. They accrue a year or more of unlawful presence in the United States, which bars them from obtaining a visa for ten years and makes it virtually impossible for them to ever obtain a visa after that. Nebraska is leading them down a dead-end road. They would be much better off returning to their country of origin when they reach the age of 18, staying with family members there, and applying for student visas to attend college in the United States legally. Thereafter a lawfully admitted alien can seek to adjust their status, become a permanent resident, and eventually seek citizenship. Now, while I certainly understand Senator Cornett's statement saying that this is their home--this is their home; it's all they've known. I fully understand that. I empathize with that. But to me this seems to be a much better end, a truer way to realize that American dream. My goal in this legislation was to bring to light that this is happening. What if we actually had some counseling going on with these prospective students that said, you know: You would be violating federal law; you are an adult now at 18. I believe we had a bill the other day--we all voted for it--saying 18 was an adult. I think we know that. I think that's generally recognized for most of us. They need to be counseled on this. I would want to be counseled on this and know the rights that I'm throwing away as a citizen, that I'm violating the law. And I did not come in here with that argument, but that's one that I just

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want to drive home, and I hope it's something that you think about when you exec on this. And I know it's a tough bill to have in front of you; I certainly understand that. I think some of the speculation that, among the students, they would not attend college--that is speculation only. I'm certain--I guess I will speculate that most likely they would. It was said that these are our best and brightest students, and I have no reason to doubt that. But under those circumstances, in the state of Nebraska and all states, our best and brightest qualify for numerous scholarships, which would really make this a moot point--as far as in-state or out-of-state tuition. And I'm certain they could benefit society; I want them to benefit society. And I think there are better ways to do it. If we can get the legal status, I want to--I would like to see, as you would, a clearer path toward legal citizenship in this situation. So the reasons I bring this bill--on the surface, I have talked to some people that support me on this bill and, in my opinion, support me for the wrong reasons on this bill. And this bill wasn't brought to, I guess, punish anybody; it certainly was not brought to punish the 44 students that are working toward their education presently in the Nebraska college system. I'm just going to end it with that and thank you very much for your time today and everybody that came. Urge you to push this out to the committee. I know it's something that I certainly had to answer to many times running for this office, and I am certain many people will have to answer this same question during the next election cycle. So I'm going to stay in this chair if you want to ask questions. And I'm also staying in this chair because I've got the next bill up. And I promise it won't take as long, I hope. [LB1001]

SENATOR ADAMS: Are there questions for Senator Janssen? Seeing none, then we're going to end the hearing. But this Chair is taking a five-minute break, as is the committee. So if you plan to stay, that's great; if not, we'll give you five minutes to clear the hearing room. (See also Exhibit 30) [LB1001]

BREAK []

SENATOR ADAMS: Take a seat if you plan to stay. And you're doing the dance wondering where Senator Janssen's at, huh? I've got you. Okay. Gee, Tip, I thought you would have better organized your testimony. Well. Senator Janssen, you're up on LB1061. Fire away. [LB1061]

SENATOR JANSSEN: Thank you, Senator Adams. Members of the Education Committee, it's been a long time. For the record, my name is Charlie Janssen, C-h-a-r-l-i-e J-a-n-s-s-e-n; I represent District 15. I appear today in front of you to introduce LB1061. LB1061 would create a tax equalization grant program. This program would provide tuition equalization grants to students who attend a nonpublic, privately controlled, and nonprofit postsecondary educational institution in Nebraska. The amount would not exceed the student's financial need for tuition and fees for the fall and spring semesters for the minimum number of credit-hours that will qualify the student as a full-time student or \$4,500, whichever is less. Any grant may be renewed for up to three

additional academic years. LB1061 would also create the Tuition Equalization Grant Program Fund. The fund would consist of money appropriated by the Legislature and any other funds received as grants, gifts, or bequests. Funds available would be prorated if they are not sufficient to pay for all grants awarded in an award year. I realize that this is a difficult budget year, and you may have noted that the bill requests no state funds to be deposited in the TEGP Fund. I also realize that Senator Ashford's bill LB413, which I cosponsored, remains in committee. It is important to recognize the importance of our private colleges and their students. And having options for Education Committee to consider is important as we seek to give our high school graduates options for where to continue their education. As you are aware, Nebraska's independent colleges and universities do a fantastic job of preparing the next generation for living productive, fulfilling lives. They award nearly one-half of all bachelor's--they being the private universities and colleges--award nearly one-half of all bachelor's and advanced degrees in our state. They employ almost 5,000 full-time employees and had an estimated fiscal impact of nearly \$1.5 billion in the year 2006. They do all this with only \$246 in taxpayer investment per degree. The University of Nebraska figure is nearly \$50,000 per degree. I think it is appropriate that we examine whether there is more that we can do to keep our independent colleges and universities on a strong financial foundation. My home community of Fremont benefits greatly from having Midland Lutheran College as a prominent member of our community. Midland provides countless educational opportunities not only for its students but also members of the Fremont community at large. Other communities across the state experience the same thing. It is to our benefit to ensure that the colleges and universities continue their good work. I was hopeful that Senator Howard would be here today, as she's a graduate of Midland College. I thank you for your attention. I am pleased to have President Fritz from Midland Lutheran College here with us today. I think LB1061 has merit, and I look forward to comments that you may have on the bill. With that said, I'd be happy to entertain questions. I know there's going to be some witnesses that could probably get a little bit more technical on this than I could--I guess we've all had that type of bill before. But before I step away and answer questions, I'd also like to acknowledge that Senator (sic) Fritz has done a wonderful job at Midland College and will be moving on soon, and we'll be welcoming in a new president there as well. [LB1061]

SENATOR ADAMS: Thank you. Are there questions? Senator Avery. [LB1061]

SENATOR AVERY: Thank you, Mr. Chairman. [LB1061]

SENATOR JANSSEN: You're not going to ask me what the public...? No. [LB1061]

SENATOR AVERY: No. But, you know, I am going to ask you a couple technical questions. If you want to bounce them to somebody else, that'd be all right. But you talk about determining financial need. How would you go about deciding how people qualify for need? [LB1061]

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SENATOR JANSSEN: I'm going to refer your question to a witness that will follow me. [LB1061]

SENATOR AVERY: All right. You also talk about if funds are not...there seems to be an inconsistency, in that funds would be distributed on a first-come, first-served basis, but then you also use language about they would be...if insufficient funds happen to develop--that would conflict with the first-come, first-served--it would be on a pro rata basis. Wouldn't first-come, first-served mean that after you start the process of awarding the aid on a first-come, first-served basis and when it's obligated and you don't have any more left, you stop? [LB1061]

SENATOR JANSSEN: That's what first-come, first-served would mean to me. [LB1061]

SENATOR AVERY: Yeah. [LB1061]

SENATOR JANSSEN: Pro rata would change--would obviously...and it is a conflict, and... [LB1061]

SENATOR AVERY: That's easily corrected. [LB1061]

SENATOR JANSSEN: For that I apologize; I could be better prepared today. I have had a fairly full legislative day thus far, and this one kind of got pushed to my back burner today. [LB1061]

SENATOR AVERY: Wait till tomorrow. (Laugh) [LB1061]

SENATOR JANSSEN: And I've been preparing for tomorrow as well. [LB1061]

SENATOR AVERY: All right, thank you. [LB1061]

SENATOR ADAMS: Other questions? Thank you, Senator. Senator, do you plan to stay around and close? All right. Good afternoon. [LB1061]

STEPHEN FRITZ: Good afternoon, Senator Adams. Members of the Education Committee, my name is Stephen Fritz, S-t-e-p-h-e-n F-r-i-t-z. I'm president of Midland Lutheran College in Fremont, and I appear before you today in support of LB1061, a bill that would create a tuition equalization grant program for students attending Nebraska independent colleges and universities. At the outset let me say that I know the state's budget difficulties are there, and we look at them now and into the near future. It is similar to budget issues that impact all of us in independent higher education. Families of students have lost jobs; the values of their investments have plummeted. Colleges and universities have lost value in their endowments, and donors have become more

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conservative in their giving because of declining incomes and net worth. In spite of those challenges, independent colleges and universities in Nebraska have stepped up to continue to offer quality educational opportunities for more than 28,000 students who attend those colleges and universities. Our colleges have done so despite receiving very little support from the state of Nebraska, especially when compared with states with whom we compete on a regional basis. Nebraska independent colleges and universities awarded more than 40 percent of the bachelor's and advanced degrees in 2007--that's 40 percent of the bachelor's and advanced degrees in the state of Nebraska--while receiving only 0.3 percent of the tax dollars expended on higher education in this state. In 2007, the state investment per degree in the independent sector was \$246, yes, \$246, compared with more than \$26,000 per degree in the Nebraska state college system. It is particularly disheartening to me that we treat nonresident students who attend Nebraska public colleges and universities better than we treat resident students who attend Nebraska independent colleges and universities. Excluding graduate assistant waivers, Nebraska public college and university institutions granted almost \$29 million in tuition waivers to students from outside Nebraska. Compare that with the total \$2.7 million that resident Nebraskans received as student aid to attend Nebraska independent colleges and universities. One of our state colleges even eliminated nonresident tuition, which ensures that non-Nebraskans will receive the same level of taxpayer support as Nebraska residents receive at that college. Recent trends in student enrollment should give us pause for concern. First-time full-time freshman students declined by 13 percent at independent colleges and universities from 2003 to 2008. Those students are the most important cohort in small independent colleges like Midland Lutheran. The same cohort increased by 11.6 percent at campuses of the University of Nebraska system during the same period. Obviously, when attendance decreases at low-taxpayer-cost colleges and increases at higher-taxpayer-cost colleges, state expenditures generally increase. I can also argue that those attendance shifts will inevitably hurt the quality of programs in the public sector, particularly when we are entering a time of declining state revenues. And so in conclusion, I would like to add that Senator Janssen has introduced this bill at our behalf so that we could start a conversation on appropriate state support for resident students who attend Nebraska independent colleges and universities. The program that would be created by LB1061 is similar to the Iowa Tuition Grant program. And I'll spare you the numbers on that, because I'm sure that will come up in your future discussions. I hope this committee will continue to explore ways to assist Nebraska independent colleges in this difficult economic time. The Omaha-World Herald stated it best in last week's editorial about one of my colleagues, Phil Dudley, who is president of Hastings College. The editorial concluded that small private colleges are vital parts of Nebraska life. It is important to the future of our state that our independent colleges survive and thrive. [LB1061]

SENATOR ADAMS: Thank you, sir. [LB1061]

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STEPHEN FRITZ: I would be happy to field any questions that you may have. [LB1061]

SENATOR ADAMS: Are there questions? I have one. [LB1061]

STEPHEN FRITZ: Yes. [LB1061]

SENATOR ADAMS: I can't disagree, frankly, with anything you've said--creative use of the word "equalization" for, I think, to equalize what we're giving to one versus another sector. I have two private institutions in my district that--they're not only an educator, they are in their own sense economic drivers within the 24th District. So let me get right to the question. We create a separate fund at some point, if we ever have any money again, ask for an appropriation to put in it specifically for private institutions. How does that square with our Nebraska Constitution? Now, I may be asking someone who doesn't know the constitution, and, if so... [LB1061]

STEPHEN FRITZ: I do not, sir. [LB1061]

SENATOR ADAMS: Well, and I'll bet Tip is ready to jump all over this when he has a chance. (Laughter) But I find it difficult to set aside moneys particularly for private institutions, and I'll let Tip try to respond to that if you don't want to. [LB1061]

STEPHEN FRITZ: Well, I will; and if I get it wrong, do I have to confess I'm not smarter than a fifth-grader? [LB1061]

SENATOR ADAMS: Well, I'll bet... [LB1061]

STEPHEN FRITZ: But the equalization may be--I wouldn't say misleading, but you have extraordinary value in your private institutions. I think you clearly recognize that value. [LB1061]

SENATOR ADAMS: I do. [LB1061]

STEPHEN FRITZ: But what we ask here...we look at the cost of the public education, the university system. And the average, at \$26,000--it's higher than that at UNL, as to what the taxpayers will pay per degree. What we would ask in this is if it turns out to be \$4,000 per year of consideration for the students, the math is easy. The state taxpayers will be saving money and will be allowing a very strong component of higher education to continue to not only exist but to better thrive--even thrive--in Nebraska. So it makes tax sense; it makes money sense for the taxpayers of Nebraska, in my opinion, sir. [LB1061]

SENATOR ADAMS: All right. May not make constitutional sense to me, but I get your argument. I really do. Thank you, sir. Are there other questions? Tip is just ready to get

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up here and try to answer that question. Thank you. [LB1061]

STEPHEN FRITZ: Thank you. [LB1061]

SENATOR ADAMS: Tip, your time is running. Not really. (Laughter) Thought we needed to have a little levity after the long day. [LB1061]

TIP O'NEILL: (Exhibit 21) There's a reason I went to law school; I couldn't have made it in any other profession. Senator Adams, members of the committee, I'm Tip O'Neill. I'm the president of the Association of Independent Colleges and Universities in Nebraska, represent 15 of them now. Bryan LGH college joined my association over the summer, and so I'm happy to have a third Lincoln institution in my association. He asked--Senator Avery asked a question or two that I may have to have him repeat, because I didn't have my pen out when I was carrying all that stuff, so I may have forgotten it. The issue regarding the constitutionality of a program such as the PEAP program--Postsecondary Education Award Program--which was passed in 1989, or, excuse me, '91, and ultimately repealed by the Legislature in 2003...there was an attorney general's opinion that was requested at the time that that bill was originally introduced, and the attorney general opined at that point that because the aid was going to students and not to institutions, that the program did not violate the Nebraska Constitution with respect to that provision--Article whatever it is. [LB1061]

SENATOR ADAMS: Seven. [LB1061]

TIP O'NEILL: Seven. Section three. [LB1061]

SENATOR ADAMS: Eleven. [LB1061]

TIP O'NEILL: Eleven. Okay. (Laughter) Well, I used to be the legal counsel for the Constitutional Revision and Recreation Committee, so you can tell I learned a lot at that point. But...so we have always acted based on that opinion. And I still think it's--I think that is the correct law. It's similar, certainly, to other states that have had that issue come up before them. The key case in Nebraska was the case of Lenstrom v. Thone that was decided in 1984, that--where the Supreme Court upheld a prior program. So, Senator Avery, could you repeat your question? I apologize. [LB1061]

SENATOR AVERY: I would be happy to. Well, first of all, there is a requirement in the law to award this money based upon student financial need, but there is no language in there to explain how that need would be calculated. [LB1061]

TIP O'NEILL: Well, the need would be calculated based...I think there's language in there that says if you qualify for a subsidized student loan, then you are eligible. And that's the way the need would be defined. If you're eligible for a subsidized student loan,

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then you would be eligible for the program. Students obviously would have to file a FAFSA to determine eligibility for federal financial aid, and if you're eligible for the subsidized student loan, you'd be eligible for the Nebraska grant. If you weren't, you wouldn't be eligible. [LB1061]

SENATOR AVERY: So that could be determined by the... [LB1061]

TIP O'NEILL: Financial aid directors would have to verify it at the individual institutions. [LB1061]

SENATOR AVERY: And not the Postsecondary Coordinating Committee? [LB1061]

TIP O'NEILL: Well, yeah. They would have to verify it to the commission, because I assume the commission would administer the program. [LB1061]

SENATOR AVERY: The other question that I had is a technical one, because the bill reads that the distribution of aid would be based upon first-come, first-served principle. And then it also says that if you don't have enough money to do it that way, you would do it on a pro rata basis. That's inconsistent. [LB1061]

TIP O'NEILL: Yes, it is. First come, first-served would be the appropriate standard in that situation. [LB1061]

SENATOR AVERY: And once it's all obligated, then you don't... [LB1061]

TIP O'NEILL: Right, then you... [LB1061]

SENATOR AVERY: ...take applications anymore. [LB1061]

TIP O'NEILL: Right. I would guess, though, that the amount of the grant would be subject to whatever the appropriation was. I mean, the Legislature or the commission would make a determination: this is the amount of the grant. I think we put in there \$4,500, but that would be probably way too high, at least in the initial phases of the program. So at some point you'd have to say: We're going to appropriate, you know, x amount of dollars to this, and because it looks like there may be x number of students who are eligible, the grant is going to be this. And the Iowa program does not distinguish...there's no sliding scale of how the money actually is distributed. If you're eligible, you get the grant, period. [LB1061]

SENATOR AVERY: Well, how is this different from the Nebraska Scholarship Act? [LB1061]

TIP O'NEILL: The allocation would be different. The Nebraska Scholarship Act

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allocation is based on EFCs of \$2,000 or less. This would be--eligibility would be based on just whether a student would be eligible for a subsidized student loan. And incomes could vary in that situation. I mean, obviously, students who come from families that have more kids in college may, you know, may have a higher income where they'd be eligible for the subsidized student loan than students who came from families where they were the only one in college. [LB1061]

SENATOR AVERY: So this would be a new fund created. [LB1061]

TIP O'NEILL: Yes, it would. [LB1061]

SENATOR ADAMS: Senator Haar. [LB1061]

SENATOR HAAR: So is there any aid bill connected to this now? Or, again, is it just that you then want to find money to put into this? [LB1061]

TIP O'NEILL: It's beginning a conversation, as President Fritz said. And I think LB413 also did that last year. At this point I think it would be unrealistic to put any sort of aid bill on any bill, based on what I've seen in the Legislature so far. I mean...so, I mean, we could put any sort of aid bill on there that you wanted, but the odds of any bill passing with an aid bill in excess of, so far, \$20,000 isn't very good. (Laughter) [LB1061]

SENATOR HAAR: Um-hum. Well, in the future at some point, what would you see would be...I mean you must have kind of an idea of what kind of appropriation this would take--a General Fund appropriation? [LB1061]

TIP O'NEILL: Well, again, I don't know how many...you know, I've never done the modeling to determine how many students in our sector currently would be eligible for that program. But I would say, if you were looking at it from a purely tuition-equalization standpoint, which is what Iowa did when they first started the program back in the 1940s, they said: This is what the state support is per student that's going to an Iowa university--either Iowa State or Iowa U. or Northern Iowa. Iowa does not have a state college system as we have in Nebraska. And they said: We're going to use our independent colleges as our state college system here; if the aid per student is on the average \$4,000 for an undergraduate at an Iowa public university, then we're going to try to peg this grant at \$4,000 so that we can equalize the tuitions between the two. And again, I don't think it's been carried out necessarily in Iowa or any other state totally. [LB1061]

SENATOR ADAMS: Other questions? So Tip, wait a minute. If we were to do this, would that mean, then, that students that have matriculated at the institutions you represent wouldn't be eligible under our current student-based scholarship plan? [LB1061]

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TIP O'NEILL: No. It would be a separate program from that. [LB1061]

SENATOR ADAMS: So they'd have double opportunity. [LB1061]

TIP O'NEILL: They would. [LB1061]

SENATOR ADAMS: On the fiscal side of it...I mean, who can guess? [LB1061]

TIP O'NEILL: Yeah. [LB1061]

SENATOR ADAMS: It's anybody's guess the number of it. It's also anybody's guess what the Appropriations Committee... [LB1061]

TIP O'NEILL: Right. Iowa has more students than we do in the independent sector. Their current appropriation is \$42 million a year. It was \$47 million before the governor cut the budget 10 percent, but they're scheduled to get an additional \$3.5 million in the governor's proposal this year. [LB1061]

SENATOR ADAMS: One of my concerns would be that, let's say, three or four years from now... [LB1061]

TIP O'NEILL: Um-hum. [LB1061]

SENATOR ADAMS: ...the revenue picture is better, and the Legislature or the Appropriations Committee decides to make an appropriation; one of my fears is it would come out of the hide of the Nebraska existing scholarship program rather than new, additional money over and above what we have. See what I'm saying? [LB1061]

TIP O'NEILL: See, I don't agree with that. I would certainly pledge from my standpoint that I wouldn't try to get...I mean, you're talking about, in terms of the current Nebraska scholarship program, the dedicated money now is the money from the lottery. [LB1061]

SENATOR ADAMS: Um-hum. [LB1061]

TIP O'NEILL: There is a General Fund component in there. And, of course, you know, if I would get general funds over here to fund the new program--certainly the Appropriations Committee could take general funds from that program or any other program or just add. I mean, you can always make the argument when you're talking about general funds that any appropriation you get over here is going to reduce the appropriation over here. [LB1061]

SENATOR ADAMS: Yeah. [LB1061]

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TIP O'NEILL: You can't really tell. But that would not be my intent. That would not be our intent. [LB1061]

SENATOR ADAMS: Okay. That's good to know. Well, and on the other issue of constitutionality--I'm not an attorney general and not an attorney. But it sure feels like it. [LB1061]

TIP O'NEILL: Yeah. I'll be happy to provide you with that opinion. [LB1061]

SENATOR ADAMS: Thank you, Tip. [LB1061]

TIP O'NEILL: Um-hum. [LB1061]

SENATOR ADAMS: Are there other questions? Thank you then. [LB1061]

TIP O'NEILL: Thank you. [LB1061]

SENATOR ADAMS: Any other proponent testimony? Opponent testimony, then. [LB1061]

SENATOR ASHFORD: You're pressing your luck. Oh, excuse me, oh. (Laugh) [LB1061]

RON WITHEM: Thank you, Senator Ashford. Nice to see you this afternoon too. (Laughter) [LB1061]

SENATOR ADAMS: Can you hand that over to Becki, Ron? [LB1061]

RON WITHEM: Senator Adams, members of the Education Committee, I'm Ron Withem, R-o-n W-i-t-h-e-m, representing the University of Nebraska. We're appearing in opposition to LB1061. Based on...quite candidly, Senator Adams, some of the comments that you made...Tip went through a little bit of the history of the financial scholarship program in Nebraska. I go all the way back to when we had a single program that had a formula that tended to benefit the publics more than the privates. I was involved in passing legislation that created a second program, the SSAP program. So we had two programs. Then in, I believe...I forget when Tip indicated that the PEAP program passed, but we had three programs. It was during the leadership of Senator Raikes of this committee where the state decided that we'd go back to a single program to support all students whatever type of institution they attended. We'd like to see that program made stronger as opposed to starting down the path of creating another new program. So for that reason, we would oppose LB1061 and would like to see the days return when we can start creating more funds in the Nebraska scholarship program. [LB1061]

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SENATOR ADAMS: Okay. Are there questions for Ron? Guess not, Ron. Thank you. [LB1061]

RON WITHEM: Thank you. [LB1061]

SENATOR ADAMS: Other opposition testimony? [LB1061]

STAN CARPENTER: Senator Adams, members of the Education Committee, I'm Stan Carpenter, S-t-a-n C-a-r-p-e-n-t-e-r, and I am the chancellor of the Nebraska State College System. And we are here today in opposition to LB1061. In addition to what Ron Withem just talked about, we do believe that the nonpublic, private sector provides a very important role in higher education here in Nebraska. And it does provide an opportunity for students to have a choice, and we believe in that. However, given the nature of this bill and given the fact that there will be an aid bill at some point if this legislation is passed, we are very concerned that there would be funds diverted from public institutions of higher education, those institutions that are owned by the state and the citizens of the state. As you know, we have already had to cut nearly \$6 million from our budget in this biennium, and that has resulted in some very serious cuts to our services and to our programs. And we would see this as another or a potential diminution of support for public higher education institutions in the state of Nebraska. And as you know, we have to operate under a different set of circumstances, a more transparent set of circumstances for the state. And the mission that you have determined for us is one of access and one that requires us to provide opportunity gladly to citizens of Nebraska and students who might not otherwise have that chance. And so it seems to us that state support for students ought to first go to public institutions and make sure that they're funded at a level that we can move back to where we were before this devastating economic downturn. And that's our concern, and I'd be happy to answer any questions you might have. [LB1061]

SENATOR ADAMS: Thank you, Stan. Are there questions for Stan? Senator Haar. [LB1061]

SENATOR HAAR: Well, for my education, could you tell me how the scholarship program works now. Is it available to kids going to private schools or not? [LB1061]

STAN CARPENTER: That's my understanding, yes. The scholarship program that's in place now...I'd ask Tip that; he knows better than I. Yes, the answer to that is correct, Senator Haar. This would create another program specifically and only for those students who go to private institutions. [LB1061]

SENATOR ADAMS: Other questions? Thank you, Stan. [LB1061]

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STAN CARPENTER: Thank you, Senator. [LB1061]

SENATOR ADAMS: Other opposition? Neutral testimony then. [LB1061]

MARSHALL HILL: (Exhibit 22) Marshall Hill, executive director of the Coordinating Commission for Postsecondary Education, M-a-r-s-h-a-l-l H-i-l-l. Senator Haar, just to quickly respond to your question: The current program is outlined in the box on the top. The current programs that we administer--they were combined from three previous programs; the money goes into one location. The fund is administered by the Coordinating Commission; it goes to students on the basis of where they choose to go. The commission does not decide how much goes to the independent colleges, how much goes to the university, how much goes to the state college system, and how much goes to students at career schools. Students decide that on the basis of where they choose to go. I'm testifying in a neutral capacity on this bill because the commission has always been supportive of additional financial aid for students in Nebraska, but we do have some concerns about this bill the way it was written. The first of those, Senator Adams, is the constitutional issue. While we believe it's possible to design something that perhaps could pass constitutional muster, we've had to go to great lengths to do that with the current program. We do have some concerns; we've outlined those in that second bullet. I'd mainly like to now point out the principal differences between what this program would do and what we currently have. This would expand student eligibility for financial aid in one higher education sector only--again, expanding eligibility for financial aid in one sector only; that's the nonprofit independent colleges. We're very supportive of the nonprofit independent colleges; they deliver great value to Nebraska. But we have concerns about this differential treatment. Presently the Nebraska Scholarship Program provides funding only to students who are Pell-eligible Nebraska residents--Pell-eligible Nebraska residents. And funding for that program is still not adequate; we have great unmet need. LB1061 would include students who qualify for a federal subsidized loan, a lower level of qualification; so that's a greater degree of expansion than what is proposed in LB956, which will be discussed later. Grants could be provided to out-of-state students as well, under the provisions of this bill. We have concerns that we should first meet the needs of Nebraska students prior to expanding them in other ways. And lastly, I'll mention that if this program were to eventually be established and funded, we would urge that no money be taken from the Nebraska Scholarship Program nor the growth of that program be diminished in order to fund this one. [LB1061]

SENATOR ADAMS: Thank you, Marshall. Are there questions? Senator Haar. [LB1061]

SENATOR HAAR: Yes. Sort of relating back to an earlier bill we had here, are these funds--the Nebraska Scholarship Program funds--available to undocumented workers or people? [LB1061]

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MARSHALL HILL: No, I'm glad you asked that. I'm glad you asked that question. The students referred to in the previous long discussion of the bill are not eligible for any federal financial aid at all. And the prime requirement for eligibility for the Nebraska state Scholarship Program is you must be eligible for the federal Pell grant. [LB1061]

SENATOR HAAR: Okay. [LB1061]

MARSHALL HILL: So because the students are not eligible for that, they're not eligible for this funding either. [LB1061]

SENATOR HAAR: Thank you. [LB1061]

MARSHALL HILL: Nor are they eligible, frankly, for the Access College Early Scholarship Program--this very successful program we're running. [LB1061]

SENATOR HAAR: Okay. Thanks. [LB1061]

SENATOR ADAMS: Other questions for Marshall? Thank you then, Marshall. Any other neutral testimony? All right, and I think Senator Janssen decided to waive his closing, so that will end the hearing on LB1061. And Senator Avery, we'll go to LB745. [LB1061]

SENATOR AVERY: My instructions are to be brief and be seated. (Laughter) [LB745]

SENATOR ADAMS: I didn't say that, Senator. [LB745]

SENATOR HAAR: I did. [LB745]

SENATOR _____: Be seen or seated? [LB745]

SENATOR _____: Seated. [LB745]

SENATOR _____: Oh, seated. [LB745]

SENATOR AVERY: Beat it. (Laugh) Mr. Chairman, my name is Bill Avery, B-i-l-l A-v-e-r-y. I'm a state senator from District 28. I'm here to talk to you about LB745. What this bill does is amend the Nebraska Scholarship Act that was adopted by the Legislature in 2004. That act was designed to enhance the educational opportunity of Nebraska resident students by providing direct financial assistance to eligible students based upon financial need, and they had to be attending eligible postsecondary institutions. LB745 will amend that section of the law referring to the Nebraska Scholarship Act, and it will amend it so that it will recognize only public or private nonprofit colleges and universities in its definition of postsecondary educational institutions. The Nebraska Scholarship Fund in collaboration with the Nebraska lottery

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and the U.S. Department of Education's LEAP program are all administered by the Coordinating Commission for Postsecondary Education under the Scholarship Act. During the 2004-05 academic year, the fund was able to award grants to 12,139 students, totaling more than \$8,300,000. Nebraska's nonprofit independent colleges and universities serve many of the same purposes as do the University of Nebraska system and the state college system and community college system, providing important opportunities for students, helping them prepare for the work force. We have 15 independent colleges and universities in the state. They enroll more than 28,000 students or about a quarter of the postsecondary students in Nebraska. I think testimony was given earlier today that indicated somewhere around 40 percent of all bachelor's and advanced degrees in the state are awarded by our independent colleges and universities, and these are nonprofit. The fiscal impact is significant, of the independent colleges--about \$1.4 billion in revenue generated annually. They employ nearly 5,000 educators and support staff. Over the past eight years, state appropriations have decreased to the independent nonprofit colleges. And they've decreased by about 29 percent while increases in funding for the for-profit schools has gone up 325 percent. Now let me repeat that. The funding from the state to independent nonprofit colleges has decreased by 29 percent while the funding for for-profit schools has gone up 325 percent. It seems to me that that is a misplaced priority. And I'm going to tell you why. We've seen a proliferation of for-profit institutions. It is a growing trend in our state and throughout the nation. They promise that because they are required to compete in the marketplace, that this drives them to innovate at a faster pace than not-for-profit and public schools and therefore they can offer a better product. However, what they're really doing is making themselves a lot of money. The University of Phoenix, the nation's most successful of these institutions, is listed on the NASDAQ stock exchange with a market capitalization of \$7.4 billion. But they've done so by what the Department of Education has found to be inappropriate and illegal practices. The Department of Education has punished the University of Phoenix for insufficient hours spent in the classroom and illegal recruiting practices, resulting in two settlements during the past decade with fines totaling almost \$16 million. The school does have aggressive recruiters, skimpy class hours, I think poorly trained faculty. Nearly all of their faculty are part-time; graduation rates are very low; and the level of instruction can also be low. Another factor that needs to be brought into consideration is that seniors at for-profit career colleges are more than twice as likely to have accumulated dangerous amounts of educational loans when they're compared with seniors at other four-year schools. Levels of excessive debt are overwhelmingly hundreds of thousands of dollars, and these debts overwhelm many of these new graduates. The federal government recently released a report, just last year, showing that almost 200,000 borrowers whose federal loans were due in 2007 were already in default. The schools with the highest share of these defaulters, at 11 percent, were for-profit institutions. Now I think we need to do what we can to help our young adults from accumulating such massive debt and damaging their credit scores even before they become members of the work force. And I know that the recruiting tactics by many of these for-profit institutions encourage them

to incur debt and without any apparent concern for the consequences to the student. The success rates of graduates of for-profit versus nonprofit schools is difficult to calculate, but I think we ought to be mindful of what the driving motivation is for the for-profits. In the end, it's all about the money. In the end, it's not about educating the kids; it's not about whether they're going to have crippling debt. It is, in fact, about the money. It ought to be about a first-rate education. It ought not to be about using these students to fatten the bottom line of their business. I'm suggesting that we ought to consider very carefully whether our tax dollars ought to be spent to assist in this kind of activity. Let me make reference to a couple things. If the committee should decide to advance LB1061, the bill we just heard, which would award grants for tuition to private nonprofits, or if we were to advance Senator Ashford's similar bill, LB413, currently being held in committee, then I think I could argue that my bill is an appropriate companion to either one of those bills. Where they are seeking additional revenue for the nonprofit independents, what I would seek to do would be to divert some of that money away from the for-profits. I think the fiscal note shows that the amount of money involved would be about \$2.6 million. And if this were to become law, that would shift the money to the University of Nebraska, the state colleges, community colleges, and to the private nonprofits. Thank you. [LB745]

SENATOR ADAMS: Questions? Senator Haar. [LB745]

SENATOR HAAR: Senator Avery, I don't favor LB1061, and I don't think I can support this. My younger son got his M.B.A. from the University of Phoenix, and they presented him with a situation that he, you know, where he could work at the same time and get his degree, and nothing else like that was available, at least at that time. And he really turned out...he was very pleased with it. [LB745]

SENATOR AVERY: I know your son Paul. He's a very bright student. [LB745]

SENATOR HAAR: No. No. Michael. [LB745]

SENATOR AVERY: Oh, Michael. [LB745]

SENATOR HAAR: It's the younger one. But Michael...well, I would just say I don't think you can paint with a broad brush all for-profit, because in his case he felt that they really did want him to get a good education. [LB745]

SENATOR AVERY: Well, a lot depends on what the student is able to put into it and willing to put into it as well. But I guess, philosophically, we might be able to agree--maybe not--that this may not be an appropriate use of public money. [LB745]

SENATOR HAAR: Well, if it's supporting...I guess I favor the--what was decided a number of years ago, that this, you know, money ought to follow the student. And I feel

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quite comfortable with that. But...and maybe we disagree on that. [LB745]

SENATOR AVERY: Well, I knew that I would meet with some resistance from this committee, because I have had conversations with you about money following the student. And I can appreciate the merits of that argument. I just happen to think that when it's public money, we ought to be very careful about where it goes. [LB745]

SENATOR ADAMS: Senator Cornett, you've got a question? [LB745]

SENATOR CORNETT: Actually, Senator Haar pretty much answered that. My question is--not all students learn in the same manner, and not all environments are appropriate for all people, and it's just my sentiment that I believe the money ought to follow the student. [LB745]

SENATOR AVERY: I knew you were on that side too. [LB745]

SENATOR CORNETT: I know. We've talked. [LB745]

SENATOR ADAMS: Senator Sullivan. [LB745]

SENATOR SULLIVAN: Thank you, Senator Adams. Senator Avery, can you refresh my memory? You said that the participation on the part of for-profits has increased dramatically, like 300 percent? [LB745]

SENATOR AVERY: Oh, it's been dramatic. [LB745]

SENATOR SULLIVAN: So...and tell me again why. [LB745]

SENATOR AVERY: I think part of it's aggressive recruiting. I think, too, they offer a lot more flexibility to students who have full-time job commitments. And I've seen some advertising where the suggestion is: You know, you don't have to take two years out of your life and spend in the university in sitting in a classroom to learn this and to get your degree; sign up for the University of Phoenix, and we'll get you out of here in a year or year and a half, and you never have to go to class. You know, as someone who spent most of my life in the classroom, I don't think that's a good way to learn. But that doesn't mean that you can't do it. But I think it's just not the best way to go about it. [LB745]

SENATOR SULLIVAN: Okay. And so maybe...I assume we're going to hear from Marshall Hill a little bit. But then on the flip side, what are the controls in terms of distributing funds to the students that are in these different institutions? [LB745]

SENATOR AVERY: You mean the for-profits? [LB745]

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SENATOR SULLIVAN: Yes, um-hum. [LB745]

SENATOR AVERY: Well, what I'm proposing is that there wouldn't be any more public money to distribute. [LB745]

SENATOR SULLIVAN: I know. But what is it presently that, I mean, in terms of how we distribute to the different institutions? [LB745]

SENATOR AVERY: I think it's based on need. [LB745]

SENATOR SULLIVAN: Just on need. [LB745]

SENATOR AVERY: I do not know for sure... [LB745]

SENATOR SULLIVAN: Okay. [LB745]

SENATOR AVERY: ...but I think it is. [LB745]

SENATOR SULLIVAN: All right. Well... [LB745]

SENATOR AVERY: I am sure Marshall knows the answer. [LB745]

SENATOR SULLIVAN: Okay. All right. [LB745]

SENATOR AVERY: He knows the answers to most of these questions. [LB745]

SENATOR SULLIVAN: Okay. Yeah, I know. [LB745]

SENATOR ADAMS: All right. Senator Cornett. [LB745]

SENATOR CORNETT: I just want to clarify a point. When you were talking about that you thought students learn better in a more structured environment, are you opposed to distance learning? [LB745]

SENATOR AVERY: I am not unequivocally opposed, but I think that we have to be careful about distance learning, where there is such a separation from the person who has generated the new knowledge--the person who possesses the new knowledge and the person who is being taught. There is a limit to what you can do with a videoconference tape or some sort of videoconference medium, which is, I think, the way a lot of this distance learning goes. I've seen some pretty creative stuff done on the Internet. But invariably a student gets to the point where: I need to ask a question; I need to see this person; I need to sit down with this person face to face; or I need to be in an environment where students are interacting, talking to each other and talking to

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the instructor, getting questions answered, getting things explained and demonstrated on the board in these little barrels, you know. [LB745]

SENATOR CORNETT: I was going to say, this is a point that you and I are just going to have to disagree on. I have seen some pretty amazing technology that a lot of the private and--private not-for-profit universities...I work for Bellevue University, as you know, which is a nonprofit. And some of their... [LB745]

SENATOR AVERY: Actually, I didn't know that. [LB745]

SENATOR CORNETT: Yeah. Some of their technology is incredible. And it's been approved through the state, right down from master's programs in behavioral health, where they do all the counseling now on-line, all the on-line role playing. [LB745]

SENATOR AVERY: I guess maybe my traditional side is coming out. You know, I hate to see the crusty old professor with the elbows in his sweater with holes in them--I hate to see those guys be replaced. (Laugh) [LB745]

SENATOR ADAMS: You know what, Senator Avery, I'm going to interrupt, if you don't mind, Senator Haar (sic), because Senator Avery and I are of the same mix on that subject, but...and we're right, and all the rest are struggling behind us. Nonetheless, let me follow up on a different line of questioning, and you and I have kind of tossed this around off the side anyway. Aside from whether I like the way that Kaplan or University of Phoenix--and I don't think University of Phoenix is a participator in our grant program--but the Kaplans, the ITTs, and everybody else--how they market, how they advertise, what they charge in interest--on and on it goes. I don't like that either. I feel like what I'm doing is kind of repeating what I said when the president of Midland was up here. I agree with you on just about everything. Here's what I struggle with. You are asking us in this bill to cut out a kind of institution because of the way it operates. So let me say that I agree with you: I don't like the way they operate either, and we ought to cut them out. Then on the food chain, should we cut out Midland Lutheran or Creighton Catholic or Hastings Presbyterian? Because we're now looking at institutions and not students. That's what I'm wrestling with. [LB745]

SENATOR AVERY: Yeah, and I do too. I'm sorry, Tip, but that...you and I have had this conversation. [LB745]

SENATOR ADAMS: Yeah, we have. [LB745]

SENATOR AVERY: I'm torn. I feel more strongly about the for-profits than I do the independent nonprofits. But if I had to--if you forced me to choose, I would say: Put our money in public institutions, tax-supported institutions. Do everything we can to help the independent nonprofits raise money, private donations, and whatever we can do to help

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them, but when it comes to scholarship money, we don't have enough money to be spreading it around in that manner. [LB745]

SENATOR ADAMS: Thank you, Bill. Are there...? Senator Haar. [LB745]

SENATOR HAAR: Well, I think it's really important that we look at outcomes, that that's really what's more important. Because if I had to do distance learning...I taught, like, 40, 30 years ago--long time ago--and I would find that difficult, I think. But, for example, again, Phoenix University, because my son had actual experience with that--I think they were taking a lead in technology in the same way that, you know, we learned about what's going on in Iran and so on. And I'm not sure I understand it all, but I think there is an evolution of technology that makes face-to-face not so difficult. And so I think we have to look at outcomes. In Michael's case, I mean, he had...they worked a lot in teams, and he had teammates all over the world that he worked with, and... [LB745]

SENATOR AVERY: Did he ever...? I'm not supposed to ask questions; never mind. (Laugh) [LB745]

SENATOR HAAR: ...but, well, we can have this discussion some more off mike, but I think we have to look at the outcomes, because the times are a-changing, and I think we're going to have to change as well. [LB745]

SENATOR AVERY: And I've made that case in another committee on which we sit that we have to be current with the technology. But if you take a course and you never see anything but an image on a screen and you never get a face-to-face encounter with the instructor or with fellow students, aren't you missing something? I've seen the light come on in kids' eyes so many times from that face-to-face, more personal classroom setting. And I've watched the lights go off too. (Laughter) [LB745]

SENATOR HAAR: Okay. [LB745]

SENATOR ADAMS: Are there other questions for Senator Avery? If not, we'll take proponent testimony. [LB745]

JONATHAN BRAND: How are you? [LB745]

SENATOR ADAMS: I'm well, thank you. Go right ahead. [LB745]

JONATHAN BRAND: Thank you. Chairman Adams, members of the Education Committee, my name is Jonathan Brand, J-o-n-a-t-h-a-n B-r-a-n-d. And I'm the president of Doane College and also this year the chair of the Association of Independent Colleges and Universities of Nebraska. I appear today in support of LB745. Much of what I was hoping to say Senator Avery has wonderfully already said, but I will

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be brief, given the afternoon that I know you've had. The independent colleges and universities of Nebraska are first and foremost participants and are strongly supportive of the P-16 initiative and the four goals, the four educational goals, primary goals that are embedded in that initiative. We think that those are very strong goals, very achievable goals, and we think that the public institutions and the nonprofit privates together--colleges and universities--can play very strong roles in meeting the goals of P-16. We think that, in partnership with the public colleges and the universities, that we can offer solutions to the state of Nebraska and our current needs. As we think about what the private colleges hope to offer, we--first we look at the fact that we think that, through the educational quality, one of the goals that we're able to achieve is graduating--is educating and graduating students who come from what might be considered traditionally underrepresented minorities in this state. Two, as we know, access and affordability is a major priority for all of us. And this is something else that we think...we discount tuition very heavily, because we know that we have many students...at Doane, for example, over 30 percent of our students are Pell grant eligible. And we know that without tuition discounting, these students will simply not get a college education. Similarly, many of our institutions produce teachers who teach in public institutions and parochial schools throughout the state of Nebraska. Similarly, we are strong supporters in participating in increasing, enhancing science and mathematics education. We graduate students who go into businesses throughout the entire state. And we contribute mightily, we hope and we think, to the communities where we are all located. Now, as we know, every day we don't...there's not one day when we don't wake up and think: We're living in an economic challenging period right now. And that means that, as it relates to P-16, we're just going to have to be smarter with the resources that we have as it relates to independent colleges. Now the independent colleges, as you know from Senator Avery, they're nonprofit. Our main, primary focus is to educate students. Profit is not our motive. And although we do run our colleges with a business model, because we hope to exist in perpetuity, we don't think about profit as our primary goal or motive. We don't have shareholders who expect a return of profit from us. And as a result--and I know that there's some debate about this--we don't support the notion of aid blindly following the student. Because what ends up happening is with these limited resources we're enriching these corporations that have as their primary motive enriching their shareholders. We think that the public institutions and the private institutions--that together we can provide the greatest benefit to our shareholders, which we view as the citizens of the state of Nebraska, and we think that's a much more worthy use of taxpayer support. So I'll end just there by saying that we would very much support LB745 in limiting the institutional eligibility to the nonprofits and to the public institutions. [LB745]

SENATOR ADAMS: All right. Thank you, sir. Questions? Senator Haar. [LB745]

SENATOR HAAR: I believe, for example, that University of Phoenix is owned by the Washington Post. That jumps into my head. But are you quite sure that they're really not

interested in education, that it's profit? [LB745]

JONATHAN BRAND: Well, all I can say is that based on--and it's very hard to get this information--but based on the profits that I see them reporting, when I see an institution, a for-profit institution reporting \$160 million in profits...that's, I think, one of the fundamentals of for-profit corporate law, which is you exist to meet a need, no doubt, but you also exist, first and foremost, to be profitable and to benefit those who are investing in that institution. [LB745]

SENATOR HAAR: Don't you think the most important part is the outcome or not? [LB745]

JONATHAN BRAND: Well, I think the outcome is important. And as I was listening to the questions back and forth with Senator Avery, I'm delighted that your son had a wonderful experience. That's, obviously, for any educator, that's the most important outcome one could expect. But as I look at some of the outcomes of the for-profits, I'm not sure. And I'm not talking individual experiences, I mean large...we're looking at averages; we're looking at large groups of individuals. I'm not sure that the outcomes from the for-profits are at the level that you would want to see them at, especially with state funding going in their direction. I mean, their default rates are very high; their graduation rates are nothing close to the publics or the for-profits (sic). I mean, those are outcomes that I as an educator--concern me a little bit. Obviously, there are students who will have good experiences. And that's wonderful; education is a very independent choice at that level. [LB745]

SENATOR HAAR: Is Doane doing any tele-courses? [LB745]

JONATHAN BRAND: We are. [LB745]

SENATOR HAAR: How come? [LB745]

JONATHAN BRAND: Well... [LB745]

SENATOR HAAR: Why are you doing it? [LB745]

JONATHAN BRAND: Well...and I was thinking about your question. I mean, I think it would be folly for any of us to ignore the fact that our students learn differently than they learned 20, 30, 10 years ago. We have some courses that are uniquely on-line. We have some courses that are a mix of the two. I'm a little bit old school--I don't have any holes in my sweaters, but I think that for every student it's a little bit different. Some students learn well in a classroom. Some learn beautifully...my wife has taken a class on-line through Kaplan; she enjoyed it, without a doubt. And some students require a little bit of both. So to me, it's...we would be all missing an opportunity if we didn't

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recognize that students demand that. I don't know if this is so much a debate about on-line education versus the traditional classroom education. I really think it's much more of a financial issue. And it's more pronounced now because of the economic challenges that we're all facing. I mean, there's not one institution that is (sic) facing challenges. I mean, at Doane College we don't speak in the magnitudes of millions of dollars when we're looking at the end of our fiscal year. We're hoping that we might have a budget where we have a surplus at the end of \$50,000. That's nothing compared to the numbers that I see reported at the end of the fiscal year. [LB745]

SENATOR ADAMS: Senator Cornett. [LB745]

SENATOR CORNETT: Yes, just to clarify something. I'm one of those people that needs my backside in the seat when it comes to taking a class. I'm working on my master's, and I don't learn as well over the computer. But you bring up a point, that we need to respond as educators and the committee to people--to a generation that learns differently now than they did prior. I have a 20-year-old that lives with me who texts her boyfriend who's on the next level of the house... [LB745]

JONATHAN BRAND: Yeah. [LB745]

SENATOR CORNETT: ...rather than talk to him. But... [LB745]

JONATHAN BRAND: You're not alone. [LB745]

SENATOR CORNETT: I know. I don't understand it, but it's the way of the world at the moment. A couple points that I wanted to ask you about. When you talk about the rate of failure--and I'm not necessarily talking about the University of Phoenix--but ITT and Kaplan--that they have a tendency to focus on--I don't want to say marginal students but students that have been less successful and are maybe--in their academic career--and are returning to school and need a different environment. But because they maybe are not as academically prepared, their failure rate is higher. Would that be something you agree with? But that these places give them an opportunity to attempt to further their... [LB745]

JONATHAN BRAND: Yeah, well, I think I would be hard-pressed to disagree, because it's a statement of fact. [LB745]

SENATOR CORNETT: And just because something is for-profit doesn't mean that it doesn't do as well as nonprofit; that is...I mean, do you agree with that, that that's...? [LB745]

JONATHAN BRAND: Well... [LB745]

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SENATOR CORNETT: I mean, you look in the corporate world. For-profit doesn't necessarily mean it's bad... [LB745]

JONATHAN BRAND: No. [LB745]

SENATOR CORNETT: ...in the product it delivers. [LB745]

JONATHAN BRAND: No. And, in fact, in higher education we work very hard to teach our students that you're not an evil human being if you're involved in the for-profit world. [LB745]

SENATOR CORNETT: And the last point that I want to touch on is, when you're talking about the difference between you and University of Phoenix and millions of dollars versus thousands of dollars, you're one small school versus a school that's nationwide. I mean, you're going to see a difference in scale. I mean, it's like comparing apples to oranges when you talk about the dollars. And, you know, when you're talking the economic challenges, I think all schools, you know--Doane College, University of Phoenix, the university system here in the state--everybody is after a limited pool of money. [LB745]

JONATHAN BRAND: It's true. All I can say is--and again, I don't want to repeat what Senator Avery said; of course, now I'm about to--is it's hard just not to see that the limited resources that we are paying, that we're spending in the great state of Nebraska, is making its way right to the pocketbooks of these shareholders. And along the way I'm not sure that the outcomes, again not at an individual level but at a grand level, are what we should expect. I mean, at some level for the state of Nebraska we're investing in education because it's important through P-16. And what I would ask is: Are we making the best use of our limited resources when so many institutions are struggling, not just the publics and the nonprofits--I mean, well, the publics and the nonprofits. Are we making the best use of those resources when these companies are coming out and reporting these multi-multimillion-dollar profits? That would just be my question. Is it really...are we making the best use of those resources? [LB745]

SENATOR ADAMS: Senator Sullivan. [LB745]

SENATOR SULLIVAN: Thank you. Thank you, Senator Adams. Well, it does present an interesting discussion. But I'm thinking in my own mind, and I'd like your reaction to it: You compare a for-profit institution having to answer to their shareholders, but in a similar vein, your board of governors having to answer to the taxpayers of the state. [LB745]

JONATHAN BRAND: Our board of governors. [LB745]

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SENATOR SULLIVAN: Well, I mean, in a way, I mean, because you're getting funding from the taxpayers, so, you know, in terms of levels of accountability. [LB745]

JONATHAN BRAND: Right. Well, we're...as you probably know, in higher education in the nonprofit world--the publics are already required by a variety of open-book laws...we are all, especially after Sarbanes-Oxley, in a period of heavy transparency. I mean, we share openly--on our Web site, you'll see graduation rates, default rates; our budgets are always posted every year. This is very commonplace in higher education. We're held accountable not just by our board of trustees but by our accrediting bodies. [LB745]

SENATOR ADAMS: Other questions? Thank you, sir. [LB745]

JONATHAN BRAND: Thank you. Have a good evening. [LB745]

SENATOR ADAMS: You too. Proponents? Tip. [LB745]

TIP O'NEILL: I'll hurry, Senator. Senator Adams, members of the committee, I'm Tip O'Neill, O-'-N-e-i-l-l. I'm in favor of this bill. I appreciate Senator Avery bringing it forward so that we could at least talk about it. And Senator Haar, I had some comments. You know, I think you're right. We ought to look at the performance; we ought to look at the, you know, who's awarding the degrees, who's making sure students are successful. And, in fact, if we want to allocate the dollars in the grant program based on student success, that would be wonderful as far as we're concerned. I mean, we could have different factors in there. You know, how do we do with minority populations, with racial and ethnic groups, you know, state goals with respect to P-16. I mean, how our completion...who are we enrolling, how we're doing with creating, you know, stem sorts of graduates and math and science teachers, those sorts of things. You know, we could look at a lot of different things. It seems like we don't take a look at this formula very often, and I think that's something that we need to do. And that's really what LB745 is an attempt to do--going to take a look at the formula. There is, though, a difference in terms of a for-profit institution versus a not-for-profit institution and, you know, the big publicly held companies paying their CEOs \$4 million a year, \$5 million a year. Phoenix has one person who's being paid \$11 million in total compensation last year. It is a different world than the world of public and independent colleges and universities. And so I think we do have to look at how we're going to use state resources--where we're going to spend it and where we're going to get the best bang for our dollar. And I happen to think that the public and independent institutions in this state provide fine educational quality. And you probably get the better bang for your buck there. So I'd be happy to answer any questions. [LB745]

SENATOR ADAMS: Okay, Tip. Senator Haar. [LB745]

SENATOR HAAR: Yeah, I would just say that, really, education is globalizing like

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everything else. And somebody like the University of Phoenix touches a global market. [LB745]

TIP O'NEILL: Absolutely. [LB745]

SENATOR HAAR: And probably your colleges and universities are doing the same thing. [LB745]

TIP O'NEILL: Well, we don't get \$4.3 billion in Title IV money, I know that. And that's the amount of money that the University of Phoenix gets in revenues from federal Pell grants and federal loan programs last year--\$4.3 billion. [LB745]

SENATOR HAAR: But your institutions combined don't have the same total membership. [LB745]

TIP O'NEILL: No, we don't have that sort of... [LB745]

SENATOR HAAR: But the statement was made earlier that different students require different education styles, and I really believe in that. And I think also we're going to see that different teachers and different professors have different ways of teaching. And that's something else that all these institutions are going to find, because it is a big change in students and teachers, wouldn't you say? [LB745]

TIP O'NEILL: Sure. But you can make the same argument in the K-12 context too. [LB745]

SENATOR HAAR: You bet. [LB745]

TIP O'NEILL: I mean, you could say that, you know, there are parochial schools, for example, that provide opportunities for certain students and success for certain students that they wouldn't be able to get in the public school setting. [LB745]

SENATOR HAAR: Sure. Sure. I don't disagree. [LB745]

TIP O'NEILL: So, yeah, I agree. [LB745]

SENATOR ADAMS: Other questions? Thank you, Tip. [LB745]

TIP O'NEILL: Thank you. [LB745]

SENATOR ADAMS: Any other proponents? [LB745]

RON WITHEM: Senator Adams, members of the Education Committee, my name is

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Ron Withem, R-o-n W-i-t-h-e-m, here testifying on behalf of LB745--is it? Did I get the correct bill number? I believe. Very briefly, two points I want to make is, number one, the university thinks the students of the state are probably better served having the money flow to them as opposed to flowing to for-profit institutions to enhance their profit at the end of the year. Second point I would make is when--in 2003, I believe Tip indicated, was when the three pre-existing programs were combined into a single program that we have today. There was some modeling that was done in terms of which students attending which sectors would get what percentage of the allocation. The following year after the bill was passed and we had real-live students to plug into the formula as opposed to modeling, the modeling appeared to be not--did not accurately predict what would happen. It did pretty much for the university. It did pretty much, I believe, for the state colleges and the community colleges. But there was an abnormally, counterintuitively high amount that went to the private, for-profit institutions and not as much as was expected to the students attending the private, not-for-profit institutions. So this bill, I think, might help do some historical correction from something that was, I think, unintended consequences when the bill passed in 2003. With that, I'll end my testimony. [LB745]

SENATOR ADAMS: All right. Thank you, Ron. Are there questions? Go ahead. [LB745]

SENATOR HAAR: Yes. Okay, now I'm confused, because you just...my understanding is that the money follows the student, right? So when the student picks an independent college, a nonprofit, a public, or a for-profit, the money follows them. Is that correct in all these cases? [LB745]

RON WITHEM: That's what I heard Mr. Hill represent in his testimony previous. And I believe that's the case. [LB745]

SENATOR HAAR: Okay. [LB745]

RON WITHEM: It's based on the Pell grant eligibility of the students. [LB745]

SENATOR HAAR: Okay. Okay. Thanks. So it is the same? [LB745]

RON WITHEM: Yeah. [LB745]

SENATOR ADAMS: Other questions for Ron? Thank you, sir. [LB745]

RON WITHEM: Thank you. [LB745]

STAN CARPENTER: Senator Adams, members of the committee, I will be brief, given the late hour. My name is Stan Carpenter, S-t-a-n C-a-r-p-e-n-t-e-r. I am the chancellor of the Nebraska State College System, and I'm here today in support of LB745. If I

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didn't make it clear before, I do want to make it clear that we are, in the Nebraska State College System, extremely appreciative of the Nebraska Scholarship Program. And that provides a great deal of funding for our students who have the most significant financial need. And in these very difficult economic times, when resources are scarce, it's important to us to note that this bill would result in almost \$240,000 more for students in the Nebraska State College System who are most needy, who most need the assistance to attend our institutions. And so this would be very beneficial to those students. We have quite a few of our students who are Pell eligible. I don't know the exact percentage, but it's higher than we want. We know that almost 80 percent of our students receive some sort of financial aid. So this bill would, I believe, as Mr. Withem just testified, too, rectify perhaps some unintended consequences of the past, and we'd be in support of it. And I'd be happy to answer any questions you might have. [LB745]

SENATOR ADAMS: Thank you, Stan. Are there questions? Thank you. [LB745]

STAN CARPENTER: Thank you, Senator. [LB745]

SENATOR ADAMS: Any other proponents? Then we'd hear opposition testimony. [LB745]

MARSHALL HILL: (Exhibit 23) Good afternoon. Marshall Hill, Coordinating Commission for Postsecondary Education, M-a-r-s-h-a-l-l H-i-l-l. I hardly know where to start. I guess the first thing I will say, that it seems to me that we're painting with far too broad a brush here. We are characterizing entire sectors of higher education on the basis of the behaviors of one or two or three different types of institutions. And we need to be more careful than that. I think we should all realize that there are great community colleges and there are not-so-great community colleges. There are great public universities and not-so-great public universities. There are reputable for-profit providers, and there are for-profit providers which ought to be put out of business. I'd like to clear up a few points that have been made in passing. And I'm going to sound a bit like an apologist for the for-profit schools, but I'd like you to think of me more as a statement for the students who go to those schools--the students who go to those schools. Doane is a wonderful university. University of Nebraska is a wonderful university. Doane College. But not every student is well-served by that need. The Legislature decided several years ago to fund students and to fund the most needy students first. Nebraska's most needy students are in the for-profit sector. I'm always the guy with the data; so if you will look at the third page, you'll see that 80 percent of the students who are receiving Nebraska state grants and who attend the private career schools have family incomes of less than \$20,000. That's the yellow highlight. These are the most needy students that we have in higher education. So that's where that money has been going. The University of Phoenix is a very large--it's the largest institution in the country. It's very successful in many ways; it's argumentative which ways you agree. But the University of Phoenix does not participate in the Nebraska state grant program. Not one dollar of the

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Nebraska state grant goes to students at the University of Phoenix here. They have never applied. The for-profit sector has problems. I just spent the entire last week as a negotiator at the U.S. Department of Education on the rules that govern the allocation of all federal financial aid--about \$110 billion of financial aid per year. And due to changes in the Higher Education Act recently, I think many of the irregularities of practice in terms of deceptive information, of irregular recruiting practices--I think those will be greatly curtailed by some changes that are coming. Tip mentioned that perhaps we should allocate on the basis of student success. Now, within every sector of Nebraska higher education, we have considerable variety in graduation rates--within every sector, we have considerable variety in graduation rates. But if we take our sectors as a whole, the highest graduation rates are at the for-profit schools. The highest graduation rates as a sector are at the for-profit schools. Now we're not comparing apples to apples, because those are almost exclusively short-term programs of two years or less. And that's important, because the vast majority of students that attend those institutions just cannot conceive of taking four years to do anything. They are overwhelmingly the students who are first-generation college; they are there for a quick trip into a career and so forth. [LB745]

SENATOR ADAMS: Marshall... [LB745]

MARSHALL HILL: Yes, sir. [LB745]

SENATOR ADAMS: ...I'm going to have to give you the red light. [LB745]

MARSHALL HILL: I understand. So I have provided this information to you. Senator Sullivan, there's information about what's happened since the program has started. [LB745]

SENATOR ADAMS: Are there questions for Marshall? Senator Sullivan. [LB745]

SENATOR SULLIVAN: Thank you very much and appreciate your comments, and I'm learning. But you mentioned...well, one thing that runs through my mind is that maybe we can't be all things to all people. And you had indicated that the Nebraska scholarship grants are awarded to the most-needy students. But where does that model come in that somebody mentioned, in terms of distributing the grants across all the institutions? [LB745]

MARSHALL HILL: Yes. [LB745]

SENATOR SULLIVAN: And is there attempt to be equitable in that? [LB745]

MARSHALL HILL: Yes. Well, an institution needs to know about...their financial aid officers need to know about how much money they will have to work with in an

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academic year to deal with prospective students. So based on the last year's allocations to the students who voted with their feet and went to different institutions, we make a target allocation to institutions: Last year you got this much, so this year you're going to get just about that much. So based upon how high that number is for the prior year, that's the formula that tells them how much they are going to have to work with for the next year. Then if they don't use it all, they return it to us; it gets reallocated back to students that are eligible at other institutions. [LB745]

SENATOR SULLIVAN: Do you think the model, the formula, needs to be revisited? [LB745]

MARSHALL HILL: Formulas always need to be revisited. One thing I know about formulas is no one likes them; everyone wants them to change, all of the time. But the formula is based upon identifying Pell-eligible students and letting the money follow those students as they vote with their feet. I personally think that's good public policy. [LB745]

SENATOR SULLIVAN: Thank you. [LB745]

SENATOR ADAMS: Senator Haar. [LB745]

SENATOR HAAR: Again, you're educating me in this whole discussion. Is there any evaluation made of any institution who gets these grant monies? [LB745]

MARSHALL HILL: Yes, several kinds. First, we audit them. Ritchie Morrow, our financial aid coordinator, visits every institution every year to audit, to ensure that the--with auditing practices--to ensure that the dollars are going to the students that they were targeted to go to. Second, the institutions that offer these career education programs have to report to the federal government in ways that Doane and Creighton and the university do not. These are called programs that prepare students for gainful employment. Gainful employment is a term of art. But it causes the types of institutions that do that to have significantly different reporting requirements. So they must report their graduation rates, but they also must report their placement rates. They have to place their students in occupations related to the discipline they studied. The University of Nebraska does not have to report how many history majors they placed in jobs relating to history and so forth. Whether or not this is good policy or appropriate or not, it's been this way for a long, long time, and that's heavily audited by the U.S. Department of Education. [LB745]

SENATOR ADAMS: You have another question? [LB745]

SENATOR HAAR: Yeah. I would assume that federal Pell grants can go to private institutions. [LB745]

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MARSHALL HILL: Yes. Yes. Yes. [LB745]

SENATOR ADAMS: Anyone else? Thank you, Marshall. Next testifier. [LB745]

SANDRA MUSKOPF: (Exhibits 24 and 25) Good afternoon, Chairman Adams and members of the Education Committee. My name is Dr. Sandra Muskopf, M-u-s-k-o-p-f. It's my privilege to serve as president of Kaplan University's Lincoln campus. I appear before you today once again to discuss higher education in Nebraska. We do appear before you today in opposition to LB745 for many of the same reasons we appeared in opposition to LB397, LB398, and LB413 last spring. We opposed those bills at their respective hearings because those bills would have, in the end, stopped our students from receiving any benefits under the Nebraska Scholarship Act. Now LB745 is before you and is a very stark statement by the state of Nebraska that our students should not be entitled to any grants under this program. Currently under the Nebraska scholarship grant program, Nebraska residents who choose to attend one of Nebraska's colleges or universities are eligible for a grant under this program. The state does not dictate where those students have to go. The students are free to choose where they would like to go and what kind of education they would like to receive, and the state is a willing partner in that student's education. The student is free to choose a liberal arts education at Creighton or Concordia, or the student can choose to receive an associate's degree or a bachelor's degree at Kaplan University. It is this choice for the student that makes the Nebraska grant program great. However, LB745 would end that choice. I'd like to tell you a little bit about the types of students we serve at Kaplan and in particular the Lincoln campus, where I'm president. The average age of our student is 30 years old. They are, for the most part, one of three types of students: one, individuals who are returning to the work force; two, those who have been unsuccessful in the traditional university setting; and three, those who are seeking to improve their skills in order to advance their careers. We work hard to provide a comprehensive support system that will complement each of these unique student populations and ensure they get the maximum value from their educational experience. They have chosen to come to Kaplan not because of any kind of dislike for another institution in this state but because we make a commitment to them as students to help them get their degrees and to help them find positions once they graduate from their program. Are we successful in this? We are proud to say that we are. We boast a 92 percent placement rate for our students within six months within their respective fields of study, with an average starting salary of over \$40,000 a year. Our students are placed quickly in positions because we work closely with Lincoln and Omaha businesses and surrounding communities. One thing that we want to be absolutely clear about is that we view this program as aid to the student, not to Kaplan. Our students receive on average an award of less than \$1,700 over their entire program. For an associate's degree that's about \$283 a semester and for a bachelor's degree about \$212 a semester. Some students choose to use that for tuition; several choose to use that for education-related expenses that they may incur

over the life of their degree program. [LB745]

SENATOR ADAMS: Thank you, Sandra. Are there questions? Senator Sullivan. [LB745]

SENATOR SULLIVAN: Thank you, Senator Adams. I need a couple clarifications based on some things that have been said, because a fairly big deal has been made about the fact that Kaplan makes a lot of money and that sometimes your students appear to leave the institution with high debt. So what sort of additional financial aid, foundation support does Kaplan have that provides additional aid and scholarships to your students? [LB745]

SANDRA MUSKOPF: That's a great question. Really it depends on the campus. Here in Lincoln we have...well, we all have, of course, federal grants. We also have--here in Lincoln we have academic grants that students can get. In the north Omaha--the Omaha campus, they have set up a grant program of scholarships with north Omaha high school seniors, where we are permitting high school seniors to come to school at Kaplan and earn degrees while they're finishing their high school education, to show them that there is an opportunity for them: if they're successful in high school and they graduate, there is a chance that they can go to college. We've set up several scholarships that some of those students can actually go to school for their first year without any tuition expense whatsoever. And so it kind of depends on what kind of student needs exist. But we have financial scholarships, and then as well we have the academic scholarships, needs-based scholarships as well as the federal grant and then the student grants for our students. [LB745]

SENATOR ADAMS: Guess no more questions. Thank you. [LB745]

SANDRA MUSKOPF: Okay. Thank you. [LB745]

SENATOR ADAMS: Next testifier. [LB745]

CATHERINE HUGHES: (Exhibit 26) Good afternoon, Chairman Adams and members of the Education Committee. My name is Catherine Hughes, H-u-g-h-e-s, and I am a student at Kaplan University Omaha in the paralegal program. I appear before you today in opposition to LB745. First a little bit about me. I knew that I wanted to be a paralegal before I decided where I would go to school. I checked into several different options. I chose to go to Kaplan because it seemed like the best option for me. I liked the atmosphere and everyone that I met instantly. I liked the smaller class sizes and that it took less time to graduate. I went to UNO years ago. And I loved school; I just did not have the extra help that I needed to get through. Classes were large, and professors were at times very inaccessible. I felt like I would never reach the end. I was much younger then, working full time, with a small child, and I just got overwhelmed. I left a

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job that I had for almost seven years last April. My husband helped me to realize that it was the perfect opportunity to go back to school. I could not be happier with the choice that I made. The benefits of attending Kaplan are almost too many to name. The class sizes are small; I feel like the instructors really want me and my classmates to succeed. I feel like when I go to work as a paralegal I will have the skills and knowledge to succeed. Since I started back to school, I feel like I have found something in myself that I forgot that I had. I am proud of the grades that I get, and I work hard to get them. I feel like I have finally found what I'm supposed to do for the rest of my life. My goals now are to graduate with a 4.0 GPA and to find a job as a paralegal. I believe I will also get my bachelor's degree from Kaplan and maybe even go to law school. I am excited to graduate and start the next chapter of my life, but I definitely will miss school. If LB745 were to pass, it would hurt me and my ability to continue on my road to meet my goals as a paralegal. While the dollar amount is small, in the current economy every bit of assistance that I receive helps. So far I have received \$1,030 from the program and have been able to use it for my tuition costs. We would have to make even more sacrifices in our household to enable me to continue my education, and I just don't know how many more that we can make. Let me close my comments by thanking the members of this committee for your commitment to the Nebraska Scholarship Act. It has enabled me to continue to work towards my degree and a better life for my family. And I would be happy to answer any questions that you may have. [LB745]

SENATOR ADAMS: Are there questions? Thank you. [LB745]

CATHERINE HUGHES: Thank you. [LB745]

NATALIE PEETZ: (Exhibit 27) Natalie Peetz, N-a-t-a-l-i-e P-e-e-t-z, registered lobbyist on behalf of University of Phoenix, testifying in opposition to LB745. You might be surprised to hear me say that I think this discussion has been great today. It's certainly been needed, because this is about education--it's about the future of education, and it's about a world that is changing rapidly. I'm pleased to be up here to represent the University of Phoenix. And unfortunately or maybe fortunately for Jason Pfaff, who couldn't be here today--the director of the Omaha campus--I submit his testimony into the record for you. We have been here before testifying on this discussion last year, again this year. We would again offer to the committee that we would love to be part of this discussion ongoing; it is important. You heard earlier, University of Phoenix does not currently take part in the scholarship fund. Senator Haar, I appreciated your comments about your son's experiences. We are a big fish in the pond, but we also have great outcomes. You can talk to the students. There are over 400,000 alumni now; we have 450,000 students all over. More importantly, I think one thing that's stuck with me since I've been around representing the University of Phoenix is talking to the people that employ these students. They were some of our staunch supporters when we came into Nebraska--companies like Boeing, Union Pacific Railroad--because they have people working for them that are taking courses through the University of Phoenix

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to better themselves, and they like what they're seeing. So there's a lot of success stories. We'd be happy to have you come up to the Omaha campus, take you through how our programs work. We have small class sizes--just a lot of success. In terms of some of the comments that were made, I wanted to just address a couple other things; and I know you've had a long day, so I will be very brief: 70 percent of our current students in Nebraska are female; 24 percent are African-American; 49 percent of our faculty are women; 15 percent of our faculty are African-American women. We have a 96 percent student satisfaction rate. I mentioned the satisfaction we get from our employers. These folks are either...I mean, they're in jobs and they're working, and they're successful at school and life. That's really what this discussion should be about. It should be: How are we going to prepare Nebraska students for the future, to be successful not only in school but in life. And that's why we agree with the policy that the money should follow the students. Even though we're currently not using it, it's an important discussion. And we would urge you to continue down that path. I went longer than I planned. I'd be happy to try to answer any questions that you have. [LB745]

SENATOR ADAMS: Senator Giese. [LB745]

SENATOR GIESE: Thank you, Chairman. Ms. Peetz, one of the things--or a statistic that was brought up earlier was a 92 percent job placement rate. Was it Kaplan? [LB745]

NATALIE PEETZ: Yeah. I'll have to find out the percentage for our students. It would be, I would guess, as high if not higher. [LB745]

SENATOR GIESE: Any other information on it versus a traditional institution, on job placement rates? [LB745]

NATALIE PEETZ: In terms...well, our students are working students, for one. And actually I'm glad you brought that up, because higher education is really changing. And 73 percent of the kids in higher education are nontraditional students, so they are working parents, single parents. If you look at our percentages, we're serving a lot of...sorry--long day. There's just a huge need for this type of education out there. And they're being successful. [LB745]

SENATOR GIESE: Well, I just think that a 90-plus percent job-placement rate is pretty high. [LB745]

NATALIE PEETZ: Yeah, well, most of our students--actually all of our students are working adults, primarily. Average age is around 32; that number is actually going down. But I can't speak for other institutions on that. [LB745]

SENATOR GIESE: Thank you. [LB745]

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SENATOR ADAMS: Senator Haar. [LB745]

SENATOR HAAR: It was implied in some of the earlier testimony that because the University of Phoenix is for-profit that somehow the--valuing education comes second. Do you...how would you react to that? [LB745]

NATALIE PEETZ: You know, again, it's easy to, I think, to pick on a big fish. But I think you have to look at performance and outcomes. I'm going to use an example, I think, of what we excel in in terms of over 30 years' experience in this business. And that would be a discussion that you've been reading about in the paper on textbooks and the cost of textbooks. University of Phoenix about ten years ago entered into some discussions on that issue; they knew it was an issue. Our textbooks are on-line. We put a lot of money into that system of making those accessible to our students. It's part of the fee. So, for example, part of your tuition...it's all-inclusive in terms of the cost of those textbooks that are on-line. So there's not this extra cost on top of your tuition. They're accessible 24 hours a day, 7 days a week. It's an incredible model, and I think you'll see more of it in the future. So just an example of where, I think, when you have...for-profits no doubt have more dollars to invest in technology and innovation. The textbook thing was a matter of dollars, but it was also a matter of the discussion around energy and being more green as well. [LB745]

SENATOR HAAR: Now I don't know if you could--if you have statistics on this or not, but it would have been very difficult for my son to get his M.B.A., because he was already--can't believe it--you know, 35 years old. Do you find that your students tend to be older or not really? Isn't there...? [LB745]

NATALIE PEETZ: Yeah. Our average age right now is 32. [LB745]

SENATOR HAAR: Okay. [LB745]

NATALIE PEETZ: Now that...I think, you know, actually when I started with the University of Phoenix five years ago it was probably 35, 36. [LB745]

SENATOR HAAR: Um-hum. [LB745]

NATALIE PEETZ: The age is going down. And I think it's been alluded to several times today: younger students learn differently. And I know; I have a 14-year-old who loves to learn on-line. It's just a different--it's a different world that we're operating in now. There's room for everybody. And quite frankly, we should all be here working together to find more dollars so that we can get to more students... [LB745]

SENATOR HAAR: More kids, yeah. [LB745]

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NATALIE PEETZ: ...who need this kind of support so that they can be successful.
[LB745]

SENATOR ADAMS: Other questions? Thank you, Natalie. [LB745]

NATALIE PEETZ: Sure. [LB745]

SENATOR ADAMS: Any other opposition testimony? Is there neutral testimony?
[LB745]

DENNIS BAACK: Senator Adams and members of the Education Committee, my name is Dennis Baack, D-e-n-n-i-s B-a-a-c-k, executive director of the Nebraska Community College Association. In years past, we probably would have been here in support of this bill. But it's really interesting to listen to the discussion that's going on here today, because my board had that same discussion last Monday, and some of the exact same things were coming up. And they really came down on the side of students. And they really, really felt very, very strongly that we need to have all kinds of avenues available for students--because the comments were so much similar to what they were going on here. Students learn differently than they did; they're located differently; they have different responsibilities. We need to start recognizing that in higher education, and we need to keep all kinds of avenues available for students to get their education regardless of where they decide to go. We feel very strongly that we should be supporting students and supporting their choices as to what they decide that is best for them for their education. So we kind of...in the past we would have been opposed; we're neutral on this. We think that we ought to continue to give money to students wherever they decide to go. [LB745]

SENATOR ADAMS: Senator Haar. [LB745]

SENATOR HAAR: Do you get any of these funds we're talking about in this bill or not?
[LB745]

DENNIS BAACK: Oh, sure. [LB745]

SENATOR HAAR: Okay, so... [LB745]

DENNIS BAACK: Sure. The community colleges qualify, absolutely. [LB745]

SENATOR HAAR: Okay. Again--my education here. [LB745]

DENNIS BAACK: Absolutely we do. [LB745]

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SENATOR HAAR: Okay. [LB745]

DENNIS BAACK: Absolutely. We have Pell grant-eligible students; we get them. And we do have a lot of Pell-grant-eligible students. [LB745]

SENATOR HAAR: Okay. Good. [LB745]

DENNIS BAACK: Yes. [LB745]

SENATOR HAAR: Thanks. [LB745]

SENATOR ADAMS: Other questions for Dennis? Thank you then. Any other neutral testimony? Senator Avery to close. [LB745]

SENATOR AVERY: Thank you, Mr. Chair. Small change; big impact. There are only a couple of words that I'm changing in the law, and it's tied us up for an hour. Is this something we ought to do? We've heard some persuasive testimony on both sides of this debate. I believe that LB745 is a bill that should be advanced to General File. We have to use our scarce state educational dollars wisely. It's my opinion that we can no longer commit these scarce funds to fatten the profits for the for-profit colleges. We need these monies in our publicly funded schools. So I urge you to advance it. Thank you. [LB745]

SENATOR ADAMS: Thank you, Senator Avery. Are there any final questions for the senator? If not, that will close the hearing on LB745. Senator Cornett, would you run the show? [LB745]

SENATOR CORNETT: Be happy to. Senator Adams, you are recognized to open on LB956. [LB956]

SENATOR ADAMS: Thank you, Senator Cornett. Members of the committee, I'm Greg Adams, A-d-a-m-s, representing the 24th Legislative District. I really will try to make this short. There's not a lot to it. However, let me give you just a moment of context. There isn't a person sitting in front of me right now that doesn't recall that last year we wrestled with some of these same issues. Is our Nebraska Scholarship Program doing what it ought to do? Philosophically, are we in the right place? Tip was before us then with a legitimate concern about distribution of dollars to the schools that he represents. We heard from the for-profits then. And here we are again today with the same issues, which brings me to LB956. In light of our discussions last year, I spent some time during the interim talking with Marshall and the Coordinating Commission and working with committee staff, trying to develop legislation that, for me anyway, would (a) stay within the parameters, philosophically, of what we are currently doing, but (b) was there a way that we could tweak the formula so that potentially there may be a redistribution of

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money? I don't know, but more importantly we might be able to also assist another kind of student, from a financial standpoint. So what the bill does is basically these three things: (a) it changes the name from the Nebraska Scholarship Act to the Nebraska Opportunity Grant. Why? Well, because this bill really isn't about academic scholarship. It is about opportunity--the chance to go to school, the chance to seek higher education in any institution that the students choose; we're not changing that philosophy. But here's what would change. What the bill would suggest to do is to raise the family contribution level--or the eligibility--to \$6,000; that would be the maximum family contribution--to \$6,000. Now what that does--it in essence captures a level of student that is above that Pell eligibility but just has a very difficult time financing a higher education. And there isn't a person sitting up here that doesn't know a student like that, that always kind of falls below the radar on the family income; it's not low enough, and it's not high enough. Bumping that up to \$6,000 might capture some of those folks. The other thing that the bill would do...and by the way, that would increase by 2.5 percent on a regular basis so that we wouldn't have to go back into the bill constantly and readjust that level. The final thing that the bill would do would say that we would raise the level of the award from 25 percent of tuition at the University of Nebraska--and fees--to 50 percent. Those are the three things that it does: changes the name, increases the amount of the award from 25 percent to 50 percent, and that eligibility level up to \$6,000. Those three things--aside from the title, the other two things makes more students eligible, and at the same time it may assist in some of the students that want to go to the private colleges, and it may not. But it seems to me to make sense. With that, I'll take questions. [LB956]

SENATOR HAAR: Would you be--would we be awarding less awards, then, in going from 25 percent to 50 percent of the...? [LB956]

SENATOR ADAMS: You know, I think that would be a possibility, because we're still dealing with a finite pot of money. [LB956]

SENATOR HAAR: Right. [LB956]

SENATOR ADAMS: Yeah. [LB956]

SENATOR HAAR: So that's the other part. [LB956]

SENATOR ADAMS: Yeah. [LB956]

SENATOR HAAR: Okay. [LB956]

SENATOR CORNETT: I apologize, Senator Adams. It's been a long day. (Laughter) [LB956]

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SENATOR ADAMS: It has. I'm struggling a bit myself. [LB956]

SENATOR CORNETT: Further questions from the committee? [LB956]

SENATOR SULLIVAN: Thank you, Senator Cornett. Senator Adams, I'm a little confused, then. If there are more needs out there than we can fulfill... [LB956]

SENATOR ADAMS: Um-hum. [LB956]

SENATOR SULLIVAN: ...then that means, basically, that there's just going to be more needs out there than we can fill, with your... [LB956]

SENATOR ADAMS: Always will be. Yeah. [LB956]

SENATOR SULLIVAN: Okay. So what's the...with that being said, then what's the rationale for this? [LB956]

SENATOR ADAMS: The rationale, as I indicated before--first of all, we're trying to capture that level of student that doesn't meet that Pell eligibility level. We'll raise that family contribution to \$6,000, so we're capturing a new level of student right there. And by going from 25 percent to 50 percent on that award level, that may help students that want to go to the privates and the independents a little bit more. It...but really, it still follows the student, wherever they want to go. And as I heard someone say here, the people vote with their feet. It's where the students want to go. [LB956]

SENATOR SULLIVAN: Okay. Thank you. [LB956]

SENATOR CORNETT: Further questions? Seeing none, we'll open up the testimony to proponents. [LB956]

MARSHALL HILL: (Exhibit 28) Marshall Hill, Coordinating Commission for Postsecondary Education, executive director there, M-a-r-s-h-a-l-l H-i-l-l. Senator Adams did a very good job summarizing this. I just want to say that we've provided you some points you might want to keep in mind and add to Senator Adams' comment. The point that we routinely get financial aid directors together to talk about this program, modifications they think might be necessary to help students--and this is the point that they persistently have brought up over the years: their concern that they can find variable ways to fund the most-needy students, and the students that are most wealthy don't need the help, but they have expressed concern for those students who are just slightly above the family income level to qualify them for federal Pell grants. Is this a departure, Senator Sullivan, from the purity of meeting the needs of the most-needy first? Yes, to some degree but not a great deal, in our opinion. A reasonable question you might have is: What would be the allocation impact of this? We can't tell you that

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right now without querying each of the individual schools on the data for their current student population and then prognosticating that in the future. We do survey them annually, though. We'll be doing that in April. And as soon as we have that information, we'll be glad to share it with you. [LB956]

SENATOR CORNETT: Senator Haar. [LB956]

SENATOR HAAR: Right now, when money is distributed, is it automatically 25 percent, or do some people get 20 percent and some get 15 percent and so on? [LB956]

MARSHALL HILL: It varies. Sorry. [LB956]

SENATOR HAAR: Okay. And how? Do you know? [LB956]

MARSHALL HILL: It varies on the basis of the financial aid directors putting together a package of financial aid. It's as if someone comes to your door hungry, and you look in the refrigerator, and you say: What do I have that I can feed this person? [LB956]

SENATOR HAAR: Yeah. Yeah. [LB956]

MARSHALL HILL: A little of this, a little of that. And for some people that come to you, you can't give them all the opportunities. [LB956]

SENATOR HAAR: But... [LB956]

MARSHALL HILL: So that causes the adjustment. [LB956]

SENATOR HAAR: But is it then...let's say you decide on 20 percent. Do all students get 20 percent then, or, again, is this by student? [LB956]

MARSHALL HILL: I'm going to have to ask Ritchie Morrow... [LB956]

SENATOR HAAR: Yeah. [LB956]

MARSHALL HILL: ...our financial aid coordinator, to answer that. And we will have him turn in a... [LB956]

SENATOR CORNETT: I was going to say, why don't we just have him come to testify? Okay. I was going to say, are there any further questions from the committee for Marshall? All right. Next proponent. [LB956]

RITCHIE MORROW: Good evening, committee. My name is Ritchie Morrow, R-i-t-c-h-i-e M-o-r-r-o-w. I am the financial aid coordinator with the Coordinating

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Commission for Postsecondary Education. Senator Haar, I'll just go ahead.. [LB956]

SENATOR HAAR: Sure. [LB956]

RITCHIE MORROW: ...and let you ask your question. [LB956]

SENATOR HAAR: The question is--we talked about raising the award from 25 percent to 50 percent, and then my question is: Is everyone awarded the 25 percent or 20 percent or whatever for a certain year? Or is it by student, and somehow a second determination is needed? [LB956]

RITCHIE MORROW: It is by student. You might have student A at an institution have the maximum Pell grant eligible, so they might get a smaller state grant awarded to them; whereas student B might only have a \$400 Pell grant, so an award from the scholarship program might be a little bit higher. So it does vary, just depending on how that financial aid director reviews that student. [LB956]

SENATOR HAAR: Okay. Thank you. [LB956]

RITCHIE MORROW: Sure. [LB956]

SENATOR HAAR: Thanks. [LB956]

SENATOR CORNETT: Further questions from the committee? Seeing none, thank you. Next proponent. [LB956]

SANDRA MUSKOPF: Good evening now, Education Committee. I'm Dr. Sandra Muskopf, M-u-s-k-o-p-f. I'm the president of Kaplan University Lincoln Campus. I appear before you in support of LB956. While we haven't seen the specifics of the funding formula, we do believe that the bill would continue to allow Nebraska students to choose the right school for them--right postsecondary school. And through the increased expected family contribution, it would provide opportunity for more students. [LB956]

SENATOR CORNETT: Questions from the committee? Senator Haar. [LB956]

SENATOR HAAR: And again, an education for me. I've seen various institutions like Concordia College go to Concordia University. And in the Legislature we're arguing about the appropriate use of the word "bank." Okay. What is the appropriate use of the word "university"? [LB956]

SANDRA MUSKOPF: Well, Marshall might be able to speak about that better than I. But through my education, my understanding is that that all comes back from the Carnegie classifications many, many hundreds of years ago... [LB956]

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SENATOR HAAR: Okay. [LB956]

SANDRA MUSKOPF: ...in the way that that was set up and identified in terms of what degrees you offer and to what extent. [LB956]

SENATOR HAAR: Okay. I have so much to learn. Thank you. [LB956]

SANDRA MUSKOPF: You're welcome. [LB956]

SENATOR CORNETT: Further questions? Oh, I'm sorry. Go ahead. [LB956]

SANDRA MUSKOPF: It's okay. [LB956]

SENATOR CORNETT: Further questions? Seeing none, thank you. [LB956]

SANDRA MUSKOPF: Okay. Thank you. [LB956]

SENATOR CORNETT: Next proponent. Are there any further proponents? Opponents? Is there anyone here to testify in a neutral capacity? [LB956]

TIP O'NEILL: Senator Cornett and members of the Education Committee, I'm Tip O'Neill, O-'N-e-i-l-l. I'm testifying in a neutral capacity only because I don't testify in favor of anything until I see it modeled, in this area. The 50 percent change in the bill is something that actually we have had in this program. I think Tammy can probably tell you, but I think the first two or three years of the program we--the maximum grant was 50 percent rather than 25 percent. Generally what that does--it gives the financial aid directors more discretion in terms of how they award the money. Not all Pell grant recipients are equal. There are some Pell grant recipients who may have support from other areas, such as grandparents, people like that. So you may definitely have a situation where a student is more needy than another student, even though their family income may be identical. And it's always been our opinion that the financial aid director at the institution is in the best situation to know which students are more needy than others. And that's why we have consistently supported giving as much discretion to the financial aid directors as possible. With that, I'd be happy to answer any of your questions. [LB956]

SENATOR CORNETT: Further questions from the committee? Seeing none, thank you. [LB956]

SANDRA MUSKOPF: Thank you. [LB956]

SENATOR CORNETT: Is there anyone else to testify in a neutral capacity? Senator

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Adams, you are recognized to close. Senator Adams waives closing. That closes the hearings for today. Thank you. [LB956]