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Judiciary Committee
May 26, 2009

[LR223 CONFIRMATION]

The Committee on Judiciary met at 12:30 p.m. on Tuesday, May 26, 2009, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on gubernatorial appointments and LR223. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Mark Christensen; Colby Coash, Brenda Council; Scott Lautenbaugh; Amanda McGill; and Kent Rogert. Senators absent: None.
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SENATOR ASHFORD: I do want to welcome everyone to the Judiciary Committee. Okay, I think we are ready. Why don't we get started with the gubernatorial appointments for the Community Corrections Council. Before we start with that, I want to introduce my colleagues, Senator Coash from Lincoln is here; Senator Lautenbaugh from Omaha; Senator Lathrop from Omaha; Senator McGill from Lincoln; Senator Council from Omaha; and Stacey Trout is legal counsel; Christina Case is the committee clerk. We have four appointments to the Community Corrections Council. The first one is Eleanor Devlin. Eleanor, I see, is here so welcome. Come on up here and we're very nice. So... [CONFIRMATION]

ELEANOR DEVLIN: (Exhibit 1) I do have copies of my testimony. [CONFIRMATION]

SENATOR ASHFORD: Okay. Why don't we distribute those. [CONFIRMATION]

ELEANOR DEVLIN: My name is Eleanor Devlin. I'm the executive director of NOVA Therapeutic Community. I really appreciate the opportunity to serve on the Community Corrections Council. I have received a great deal of information on their work. I went through it this weekend and I totally support the mission of the council. As the director of NOVA for over 25 years, I have a working knowledge of the treatment system across the state of Nebraska and its connection to the Department of Corrections. NOVA is a behavioral health treatment program providing substance use disorder treatment to adults and adolescents through our residential and outpatient services. NOVA's treatment model, the therapeutic community, is specifically designed for working with the hard core addict many of whom have had contact, a lot of times multiple contacts with the criminal justice system. NOVA's referrals to the adult program come primarily from probation, parole, drug court, public defenders, and other attorneys. We have a referral mechanism in place to accept potential referrals in a timely manner and our treatment plans reflect the individual's criminal justice status and are designed to identify goals to make sure that all of the requirements of their criminal justice connection are taken care of. We fold that into the overall treatment program. It's not only the substance use that we're working with, we also work with other aspects of the individual's lifestyle which needs attention. Another element of the therapeutic community is the sense of responsibility and accountability to self, family, and community. This is reinforced through participation in our daily treatment groups, work

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activities. Everyone in the program is assigned a duty and developing a sense of giving back to others or to the community for that which they have taken by their substance use and a lot of times criminal behavior. Again, I appreciate the opportunity to serve on the council. And I hope that my perspective as a treatment provider will be able to contribute to the work of the council. Thank you. [CONFIRMATION]

SENATOR ASHFORD: Thanks, Eleanor. Any questions of Eleanor? I would agree with you. I think it is a critical element to community corrections. Yes, Senator Coash. [CONFIRMATION]

SENATOR COASH: Thank you, Chairman Ashford. Thank you, Ms. Devlin, for coming down. I've worked with NOVA in the past and I've, I know them to be a quality provider in mental health services. I appreciate the perspective that you could bring with treatment to the Community Corrections. Thank you. [CONFIRMATION]

ELEANOR DEVLIN: Thank you. [CONFIRMATION]

SENATOR ASHFORD: Thank you. Okay. Seeing no other questions, Darrell. Darrell Fisher is the next appointee. [CONFIRMATION]

DARRELL FISHER: (Exhibit 2) Thank you, sir. I also have copies. Chairman Ashford, Vice Chairman Lathrop, members of the Judiciary Committee, good afternoon. My name is Darrell Fisher, that's D-a-r-r-e-l-l. Fisher is spelled F-i-s-h-e-r. And I have been nominated for a position on the Community Corrections Council. Since its inception the Community Corrections Council has implemented a wide array of programs and services which are designed to reduce prison admissions, like drug courts, alternative sentencing guidelines, reporting centers and programs such as specialized substance abuse services. These programs serve the very best interests of society by reducing recidivism through effective treatment and supervision of offenders in the community, all with the proper balance of public safety. Having conducted some research regarding the composition of the current membership of the council there is outstanding expertise and resources represented from all three branches of government. As my application and resume will attest I have been a public servant for more than 30 years. I would very much appreciate the opportunity to work collaboratively with these dedicated individuals on the Community Corrections Council to continue the development and implementation of a comprehensive community corrections strategy for Nebraska. Thank you very much. And I would be happy to answer any questions you may have. [CONFIRMATION]

SENATOR ASHFORD: Thanks, Darrell. Senator Council. [CONFIRMATION]

SENATOR COUNCIL: Yes. Thank you, Mr. Fisher. As a newly appointed member of the Community Corrections Council myself I have had the occasion to attend two meetings

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and address some of the issues as to where we focus our attention next. We have identified the core group that we're working with, felony drug offenders with less than three years. Currently, according to the latest statistics 25 percent of our correctional population are DUI offenders. Do you see any opportunity for Community Corrections Council to develop alternatives to incarceration in the area of driving under the influence? [CONFIRMATION]

DARRELL FISHER: Well, Senator, I don't know how seriously you have looked at DUI courts. I know that drug courts have been implemented in certain geographic regions across the state. I think without question I think they have been successful. I think we would be remiss if we didn't at least explore that opportunity to begin DUI courts. I contacted the Department of Probation as late as this morning and asked them what the percentage was from the most current or the most recent month that statistics are available, nearly 60 percent of all people who are on probation across this state are there for DUI offenses. I think it's time we looked at DUI courts. [CONFIRMATION]

SENATOR COUNCIL: Thank you. [CONFIRMATION]

DARRELL FISHER: Yes, ma'am. [CONFIRMATION]

SENATOR ASHFORD: I absolutely agree with you and that's comforting to know. Thanks, Darrell. Any other questions of Darrell? Okay, seeing none, thank you. [CONFIRMATION]

DARRELL FISHER: Thank you. [CONFIRMATION]

SENATOR ASHFORD: (Exhibits 5 and 6) Senator Rogert has joined us. Welcome. I believe. Do we have...we have two more appointees: Jeff Davis and Tom Dorwart. But I believe they are not here but they have submitted letters, is that correct? [CONFIRMATION]

CHRISTINA CASE: Yes. [CONFIRMATION]

SENATOR ASHFORD: We have letters from both of those appointees. With...any other comments by the public on the issue of the appointees to the Community Corrections Commission? Seeing none, that closes those hearings. And we will have an Exec Session immediately after the public hearing on Senator Council's resolution to deal with the appointments. So that we will do before 1:30. (Laugh) So thank you for coming. And we do appreciate you taking the time, as an appointee, to be here, both of you, because it means a lot that we get to see you and put a face with the job. So thanks. With that, we will go to the resolution. Senator Council, LR223. [CONFIRMATION LR223]

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SENATOR COUNCIL: Yes. Good afternoon, Chairman Ashford, members of the Judiciary Committee. I'm Brenda Council. I represent the 11th Legislative District and I'm here this afternoon to urge the committee's support in advancement of LR223. LR223 is an outgrowth of the rather extensive debate that occurred surrounding LB403, which was the immigration matter. And during the course of that debate, as I'm sure you'll all recall, there were significant issues that arose regarding whose responsibility it is to address these critical issues surrounding immigration. And while this body, this Unicameral advanced LB403 with certain provisions it's even clearer now that some of those may be in jeopardy as a result of the federal action or inaction with regard to the E-Verify system. These are all issues that are beyond the control of state legislative bodies like ourselves. And the intent of LR223 is very simple, very direct, it's to urge the Nebraska Congressional delegation to advance immigration reform legislation. And I know that there may be some people who have some cause for concern with regard to the language of the resolution. But I think the language of the resolution, I think, adequately and fairly represents what I believe to be the consensus of the belief system of the citizens of the state of Nebraska. And that is that, yes, we do have a history of immigrants coming to Nebraska, making positive contributions to the state, that we have within our state boundaries currently some who are not documented but many of whom are providing essential services to the communities in which they live. And that there are families involved. And that our concern as a nation of laws, a nation that believes in fairness and due process that in fashioning reform legislation in the area of immigration that we want all those principles to govern that process. And that is essentially all that LR223 is requesting our Congressional delegation to do is that they advance and vote in support of immigration reform legislation that takes into account the value that we as a state place on family, the value that we as a state and a nation place on due process, that we as a nation and a state place on the rule of law in general. And with that, I know that there are individuals who are here prepared to testify in support of LR223. And I would urge the committee vote in support of the resolution. I'll entertain any questions you may have at this time. [LR223]

SENATOR ASHFORD: Thanks, Senator Council. Yes, Senator Lautenbaugh. [LR223]

SENATOR LAUTENBAUGH: Thank you, Senator Ashford. Thank you, Chairman Ashford. Thank you, Senator Council. What do you mean by "provide a meaningful path to citizenship for undocumented workers currently in the United States and for future workers and close family members?" [LR223]

SENATOR COUNCIL: Well, and again that's a determination to be made by the Congress. But in terms of meaningful that we do provide a path that is workable, that is something that is enforceable. And at the current time we don't, in my opinion, have that meaningful path. And I think if you look at all the legislation that Congress has passed to date, including the immigration reform measure, I think it was 1996, there was a path provided to citizenship. And that's essentially what this language is intended to cover

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and provide for, paths similar to those that Congress has previously enacted. [LR223]

SENATOR LAUTENBAUGH: Do you consider the prior paths successful or did we just kick the can down the road and let the problem continue to grow? [LR223]

SENATOR COUNCIL: Well, you know I think those are enforcement and compliance issues. And at the time there was almost a cap, so to speak. And if you do it by this point in time and beyond that you had no opportunity. And if you've had any occasion to deal with the Immigration and Naturalization Service, it doesn't work as lockstep and as timely as, I think, many citizens of this state and the nation as a whole believe that it does. And we have to streamline that process. And if people aren't satisfying the requirements for obtaining citizenship then we need to take swift and immediate action. But we cannot expect people to go through a process that in many cases last ad nauseam without any resolution. And I can speak without any equivocation because I've tried to assist individuals from throughout the world to go through that lawful process. And, you know, then we become critical when at a point in that process they get frustrated and go another way. I think this reform has to address the problems and the process as well. [LR223]

SENATOR ASHFORD: Thanks, Senator. [LR223]

SENATOR COUNCIL: Thank you. [LR223]

SENATOR ASHFORD: Proponents. Let me just try to lay a few groundwork. Come on up. We are going to take about 25 minutes because we have to have an Exec Session after this and be back at 1:30. So we have 25 minutes. How many proponents do we have? And do we have opponents? Okay, we have four. Good, that should be...we should have plenty of time. So thank you. Go ahead. Hi. [LR223]

DARCY TROMANHAUSER: (Exhibit 3) Okay, hi. My name is Darcy Tromanhauser, D-a-r-c-y T-r-o-m-a-n-h-a-u-s-e-r. And I'm the director of the Immigrant Program at Nebraska Appleseed. Thank you, Senator Council, for introducing this most common sense resolution. We're here simply to urge the committee to move it forward. After this year's debate over LB403, when we heard senator after senator lament federal inaction and call for federal reform, and as we watched Nebraska's communities' great potential for working together disintegrate into bitterly divisive public debates, that will not heal easily for many years. I think we all feel the urgency of this issue. We have a very real possibility for meaningful reform at the federal level this year. The momentum has begun with the President's announcement, in April, the recent Senate hearings on immigration, and the upcoming bipartisan meeting of members of Congress and the White House on June 8. But it's up to all of us to do our part to ensure that this isn't another year without federal action. It's particularly important at this moment in time that our federal delegation hear from the leaders in our state. We're a country with great

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ingenuity. When we face a problem we get together and we fix it. We all know that the system is broken on multiple levels. The details of the federal legislation will need to be determined by Congress. But this resolution very simply asks that our delegation address those various levels and work to pass a solution. It's well past time for a solution. [LR223]

SENATOR ASHFORD: Any questions? Thanks. [LR223]

DARCY TROMANHAUSER: Yes, thank you. [LR223]

SENATOR ASHFORD: Next proponent. [LR223]

ANGEL FREYTEZ: Good afternoon, everyone. My name is Angel Freytez. And for the record it's spelled F-r-e-y-t-e-z. And I'm the acting director of the Mexican-American Commission here today to testify in support of LR223. And I just wanted to start off by thanking Senator Council for presenting this resolution before the committee. It is basically taking the discussion to the next level, which is the federal level. And let me just go back to 2006, because the resolution does not specify the fact of the DREAM Act and the importance of the DREAM Act within the immigration, the overall immigration reform component. Back in 2006, the DREAM Act, instate tuition, and I just don't want to refer to it as the DREAM Act because the DREAM Act is a federal effort happening right now. And at the state level we call it LB239 which is an instate tuition law that allows undocumented students or out of status students to further their education in postsecondary colleges and institutions here in Nebraska. So back in 2006, in most of the organizations, including Senator Schimek that was here, the way we saw the issue of the instate tuition was we didn't see it as an immigration issue but more as an educational issue. And that's why most of the state senators supported back then the instate tuition. The good news about the DREAM Act or the instate tuition law that we have current here in the state of Nebraska is that if for some reason, in 2009, and there are great indications that the DREAM Act will pass at the federal level. We already will be in compliance of federal statute. So that will be the great news of all this debate today in regards to the resolution. The resolution speaks for itself. It's just encouraging our Congressional members to advocate for immigration reform at the federal level. I also wanted to share with you a quote by the latest and newest...and the new appointed Governor from the state of Kansas that made a comment during his inauguration of his first day in office. And it says the following, we will recognize that this new population offers us a tremendous opportunity to fill all the jobs left vacant by retirees, and that these new populations offer us a whole new group of consumers. Unlike states that ignore this population, we will recognize them as a great opportunity. And this is the comment that he made in regards to new populations and Latinos and immigrants. After that speech, the day after there was a vote that took place on the floor in the state of Kansas and it was an attempt to repeal the instate tuition law that was already current in the state of Kansas in 2004. The results were the following, the final vote was 67 no's

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including 21 Republicans that voted no to repeal the law and 50 that voted in the affirmative. So it speaks for itself what's happening and the current trends that we see not just statewide but also nationwide. Here in Omaha a couple of weeks ago, on May 12, there was a very interesting political campaign that basically at the end became a referendum on immigration where the voters of the city of Omaha basically said no to the divisive message and said yes to immigration reform at the federal level. So without further comments, I urge this body to pass this resolution. And I'll be happy to answer any questions you may have. [LR223]

SENATOR ASHFORD: The only...I don't see any other questions. But the only comment I would make to your testimony is that speaking for myself, one of the primary reasons I think why this committee did not advance anything on...any change in the DREAM Act was because of the possibility of action on the federal level. I think there have been, what, three attempts to pass a federal DREAM Act. And the number...I...am I right on that? Three, four,... [LR223]

ANGEL FREYTEZ: Yeah. [LR223]

SENATOR ASHFORD: ...two, three, something. (Laugh) And that...and it's my understanding that...and so in a sense by not acting or doing anything this Legislature, on the DREAM Act, I'm not suggesting that everyone is for or not for it. But I think it is a recognition of the, to some extent, of this Legislature's and this committee's willingness to take...to wait and see what happens on the DREAM Act. And it does appear that you're right, that the President supports the DREAM Act and that on the federal level, the federal version of the DREAM Act and that Senator Schimek was pretty prophetic when she got this bill passed in 2006. So I would just...and that I'm not suggesting that I'm speaking for any other member of the Legislature on their support or nonsupport. But I do think there was some caution exhibited on the DREAM Act in the last Legislature and it was to some extent a result of the federal act, potential of action in that area. But with that, any other...I don't see any other questions. Thanks. Next proponent. [LR223]

KIMBERLY TALCOTT: (Exhibit 4) Good afternoon. My name is Kimberly Talcott, that's T-a-l-c-o-t-t. I'm with Lutheran Immigration Services in Omaha, Nebraska. On behalf of Lutheran Immigration Services, we thank you for the opportunity to present our comments to the committee. There are three things of which we can be certain: (1) The federal immigration system is not supportive of municipalities and states. (2) The United States Citizenship and Immigration Services fee increases of 2007 have resulted in faster processing times for immigration applications but more systematic and intrinsic changes are needed. And (3), hundreds of thousands of families with American ties are separated across oceans and across borders. As we saw with the debate, amendments, and subsequent approval of LB403, our state has felt the need to legislate in the area of immigration because the federal government's current system is

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flawed. This fact was brought up in the LB34 Judiciary hearing leading to LB403's approval. Your committee has studied the needs of Nebraska through your interim study and affirmed in your conclusion that the federal government has primary responsibility over immigration matters. LR223 is the state's affirmation of the federal government's jurisdiction. The United States Citizenship and Immigration Services substantially increased its immigration application fees in the summer of 2007. Perhaps this was thought to be a mini-reform, at least fiscally, to allow for a more efficient service by Homeland Security. Indeed, some immigration applications are being processed faster but true reform needs to happen at a more fundamental level as stated in LR223. The fee increases of 2007 have demonstrated that the United States Citizenship and Immigration Services is fluid enough to sustain immigration reform. Immigration reform is not solely needed to provide options for undocumented workers. Immigration reform will help to reunite families of documented statuses by possibly allowing for more visas, increased support and services at local district offices and consular posts around the world and ensuring that the rights of citizens to petition family members are honored as quickly and as efficiently as possible. As Nebraska citizens, it is our job to tell you as senators and representatives that the current immigration system is not working for our state and our communities. As senators, we urge you to represent the needs of our state and to the federal delegation who can take the federal jurisdictional needs to the federal legislature. This is the goal and value of LR223 and we urge you to please affirm this resolution. [LR223]

SENATOR ASHFORD: Any questions of Kimberly? And thank you for the work...your work and of Lutheran Family Services generally for what you do, much appreciate it. Okay. [LR223]

KIMBERLY TALCOTT: Thank you, we're happy to do it. [LR223]

SENATOR ASHFORD: Next proponent. Senator Schimek. [LR223]

DiANNA SCHIMEK: Good afternoon, Mr. Chairman and members of the Judiciary Committee. It is a great pleasure to be here again today. I...for the record, my name is DiAnna Schimek and I live in Lincoln, Nebraska. I wasn't certain that I wanted to testify today because I thought that there would probably be many people in the room who would want to testify today. And I knew that you had a limited amount of time. And I thought that others probably could make the case. But I am going to take this opportunity because there aren't a lot of people here. And I don't know if that's because a lot of people don't know that this resolution is being heard today or if it's perhaps because people don't think it's that controversial. And I think that is a distinct possibility. And the argument that I wanted to make to you today is that no matter how you feel about the immigration issue, I can't help but feel that most of you have to recognize that something does need to be done one of these days, that things can't continue as they are. And the second point I'd like to make is just because we send a resolution to our

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Congressional delegation doesn't mean that they're going to pay any attention to it, frankly. (Laugh) But I think it would be remiss on the part of our Legislature not to make that attempt, not to have communication with our delegation. In fact, I would take it even one step further and would send a resolution and then have a follow-up meeting with that Congressional delegation. Now the third thing I would like to say is that I've just looked over the language of this again. And if there are pieces of this that some people think are something they don't want to see in such a resolution, I think it would be worth the trouble to try to craft the or tweak the language a bit. Personally, I think it's not... I think it's very good, Senator Council, and I would hope that the rest of the committee would too. [LR223]

SENATOR ASHFORD: She's generally a pretty good drafter. [LR223]

DiANNA SCHIMEK: (Laugh) Yeah. But I think it is important to do this. And the reason I say that is because the federal government may act next year or it may not. I doubt that it's going to act this year on any aspect of the immigration problem, other than maybe the DREAM Act that everybody has been talking about. And I haven't any idea whether that's going to happen or not. But I think our delegation in Washington needs to be aware, if they're not already, the kinds of problems that Nebraska has because we don't have a really good federal immigration policy with regard to path to citizenship, about entrance into the country, those kinds of things. So with that, Mr. Chairman, I would yield the rest of my time, whatever that may be. (Laugh) [LR223]

SENATOR ASHFORD: Thank you, Senator Schimek. Any questions of DiAnna? Yes. [LR223]

SENATOR COUNCIL: Yes. Just a comment. I cannot take credit where credit is not due. [LR223]

DiANNA SCHIMEK: Okay. [LR223]

SENATOR COUNCIL: This language was drafted in large measure by people who have been supportive of the position that I advocated during the debate on LB403. And I want to publicly acknowledge the fact that they are principally responsible. I'm a good editor, so... (Laugh) [LR223]

DiANNA SCHIMEK: I understand that, Senator Council. And I also understand that you are all very limited on time right now. But this is one of the critical issues not only for our state but for our federal government. [LR223]

SENATOR ASHFORD: And it's my understanding that the DREAM Act that's being proposed by the Obama administration and by others in the Congress is actually broader than the DREAM Act that was passed here and that it goes beyond simply

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education and talks about a form of citizenship, generally, for young people who came here at a certain point. It wasn't their choice to come here, they came with their families. And that the DREAM Act would allow those individuals a certain status that would go beyond education, that's my understanding in reading... [LR223]

DiANNA SCHIMEK: I think that's true, Senator Ashford. And that's one of the reasons I've always encouraged people not to call our instate tuition policy... [LR223]

SENATOR ASHFORD: Right. [LR223]

DiANNA SCHIMEK: ...the DREAM Act because it isn't as extensive. [LR223]

SENATOR ASHFORD: It's an aspect, it's certainly an aspect. [LR223]

DiANNA SCHIMEK: It's one aspect of the DREAM Act. That's true. [LR223]

SENATOR ASHFORD: Yeah. And the other quick point I'd make, and I don't want to belabor the point either, and that is to say that to me the tragedy of the policies that came into...or lack of policies, as Senator Council suggests, after the 86...passage of the 86 act, is the failure of the federal government to affect compliance which caused this reunification of family issue to become so predominant. And I think you're right. I think people on all sides of the issue, as noted there are even Republicans who think families ought to be (laugh) be united in the same place. But we obviously appreciate all your hard work on this issue. So... [LR223]

DiANNA SCHIMEK: Thank you. [LR223]

SENATOR ASHFORD: Any other proponents? Opponents? Neutral testifiers? Let me tell you where the committee is...you got to go? Oh, do you think you'll be back because we...okay. (Laugh) Is we are going to continue with the interim study that we did last year. And we plan to go to at least to South Sioux City, Fremont, and Omaha, south Omaha I know, and maybe other cities to think about, you know, what we have done in the Legislature, what we haven't done, where the federal government is. And we can track that through the summer. So we aren't going to just forget about the issue of immigration and its impact on Nebraska citizens. We'll continue to work on the issues. That's just aside from this resolution. But those efforts are going to be...are going to continue on behalf of the committee. And Stacey works very hard on that issue. And (laugh) traveling the state is something she now enjoys doing. So in any event, thank you all for coming and that closes the hearing. I'm sorry, Senator Council. I apologize. [LR223]

SENATOR COUNCIL: No, I waive closing. [LR223]

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SENATOR ASHFORD: Thank you. [LR223]

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Disposition of Bills:

LR223 - Held in committee.

Chairperson

Committee Clerk