

you know. That is just not part of the discussion. They are going to apply a test. It is my impression they will either put in a rational basis test, which generally is lower, which is just minimal. Rational says really anything, if you can just kind of touch base or connect it, it works. There is a reasonable test. Reasonable implies some logical connection, justification for what you are doing. There then is a higher, called a compelling state interest, test that would really require you to show almost beyond overwhelming odds that this classification ought to be the way. All three have very different legal meanings. If we don't put the "rational" in there, we then allow the Supreme Court of Nebraska to make this conclusion on their own. It is my impression that they, in the past, have used a reasonable test, which is somewhat higher. Tell me your reasoning...

SENATOR LANDIS: Sure.

SENATOR KRISTENSEN: ...for the choice of those three standards because I believe them to be very important.

SENATOR LANDIS: Thank you. It is an excellent question, too. Senator Hall earlier today mentioned that we can't get away from the Fourteenth Amendment, made a charming remark about his constitutional law grade and I am sure it was much higher than what he alluded to, I don't know. That is a standard that this Legislature could not abrogate and will apply to all of our work. That test applies. The court has chosen, on the other hand, to look at other tests in the recent area in taxes. They have looked at the special legislation area, which has been a reasonable test. They have used the state's equal protection concept, and they have threatened the use of the Fourteenth Amendment. So we have been living, it seems to me, under the most recent rounds of decisions, under a reasonable test. You can see where it has gotten us. The source of that is our special legislation language, basically, it seems to me, and specifically this committee amendment, as did the Governor's original language, cut off access to that reasonable test in the special legislation area leaving, I believe, a rational basis test which would be imputed to us through the Fourteenth Amendment and applied by our Supreme Court.

SENATOR KRISTENSEN: And the reason that we have cut that off is because of the phrase here "notwithstanding Article III, Section 18?"