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Education Committee
January 30, 2018

[LB718 LB828 LB876 LB877]

The Committee on Education met at 1:30 p.m. on Tuesday, January 30, 2018, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB828, LB876, LB877, and LB718. Senators present: Mike Groene, Chairperson; Rick Kolowski, Vice Chairperson; Laura Ebke; Steve Erdman; Lou Ann Linehan; Adam Morfeld; Patty Pansing Brooks; and Lynne Walz. Senators absent: None.

SENATOR GROENE: (Recorder malfunction)...public hearings. My name is Mike Groene from Legislative District 42. I serve as Chair of this committee. Committee will take up the bills in the posted agenda. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. To better facilitate today's proceedings, I ask that you abide by the following procedures. Please turn off your electronic devices and cell phones. Move to the chairs in the front of the room when you are ready to testify. The order of testimony is introducer, proponents, opponents, neutral, and closing remarks. I may change that as we get to the later bills, if we have a show of hands that we have a large number of testifiers. We will probably alternate proponents and opponents so everybody has a chance to speak and the news media has a chance to hear both sides. If you will be testifying, please complete the green testifier sheet and hand to the committee clerk or page as you come up to testify. If you have written material that you would...if you have written material that you would like distributed to the committee, please hand in to the page to distribute. If you're not going to publicly testify or need to leave early, you can turn in written testimony with a completed green testifier sheet. We need 12 copies for all committee members and staff. If you need additional copies, please ask the page to make copies for you now. When you begin to testify, please state and spell your name for the record. Please be concise. It is my request the testimony will...we're going to go three minutes. As senators will notice, if you really have something pertinent to show, they can ask you a question to finish, but it looks to...with a couple of bills on here, with the input we've had, they might run late into the evening or late in the afternoon, so we're going to try to speed things along, but everybody will have a chance to testify. If you would like your position to be known but do not wish to testify, please sign the white form at the back of the room and it will be included in the official record. For those listening, we have new rules this year because of the electronic correspondence that if you want your e-mail or correspondence included in the record of the hearing, you need to have it in the day before by 5:00. We are not over-staffed here and the clerks have limited amount of time to prepare for the hearing. So if you notice that you sent an e-mail today or late last night, and your name is not mentioned, it's because it came in after the 5:00 deadline. Committee members with us today will introduce themselves beginning at the far right. Senator...

SENATOR LINEHAN: Oh, excuse me. Senator Lou Ann Linehan, Legislative District 39, western Douglas County.

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SENATOR KOLOWSKI: Senator Rick Kolowski, District 31, southwest Omaha.

SENATOR GROENE: Senator Mike Groene, District 42.

SENATOR EBKE: Laura Ebke, District 32.

SENATOR ERDMAN: Steve Erdman, District 47.

SENATOR WALZ: Lynne Walz, District 15.

SENATOR GROENE: Senator Morfeld indicated he had a meeting; he'll be here around 1:30. Senator Pansing Brooks, I'm assuming is just late; she never mentioned anything. Committee members with us...all right...I'd like to introduce the committee staff. To my immediate left is legal counsel, LaMont Rainey. Later in the hearing as each committee counsels handle different bills, Charles Garman will be sitting there. To my right at the end of the table, is committee clerk, Kristina McGovern. Our pages today sitting to the wall over there are Heather Bentley, a student at the University of Nebraska; and Sam Baird, also a student at the university. Please remember that the senators may come and go during our hearings as they may have bills to introduce in other committees. I will be leaving at some time to introduce a bill. Senator Kolowski will have two bills himself, so we might be down to the bench and that will be Senator Morfeld will be the sitting Chair if I have to be gone and Senator Kolowski is having a bill heard. I'd also like to remind our committee members to speak directly into the microphones. Lastly, we are electronically equipped. If you see one of us texting or e-mailing, it's probably back to our offices to our staff to look up information so we sound intelligent when we ask you questions. So we will begin with LB828. Senator Lowe, adopt the Empowerment Savings Account Act.
[LB828]

SENATOR LOWE: Thank you, Chairman Groene and members of the Education Committee. My name is John Lowe, J-o-h-n L-o-w-e, and I represent District 37. Maybe I should have a little computer up here so I look intelligent too. (Laughter) I'm here today to introduce LB828. LB828 would create an Empowerment Savings Account Act. This is a different way of looking at education reform. This bill does not require more tax dollars from our already over-taxed population. But it also does not go as far as many of the most popular school choice ideas. How this will work is pretty simple. Children at the lowest-rated schools, the schools with a ranking of "needs improvement" and who are eligible for the free and reduced lunch will have the option of applying for an Empowerment Savings Account. These accounts can be used by the eligible students for tutoring, educational therapy, testing, or on-line programs if they are approved by the Department of Education. The amount of money going into these accounts would be 3 percent of the average pupil spending in the state. That 3 percent needs to be better clarified if

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this bill advances. For sake of this conversation, I assume the rate would be the average daily attendance cost which would make the amount of money per account \$388.87. The Fiscal Office used an average daily membership cost which would mean \$366.90. Using either amount, it is not a lot of money, but is the kind of money that could help a student who wants to take the ACT Prep or that needs a tutor for a specific subject. The option for the department to approve on-line programs could also be very helpful to children across the state...across the state who might not otherwise have access to certain programs. There may be a way here to allow schools themselves to offer these programs so that money is being reinvested directly back to the schools. This could be very interesting to the schools, the teachers, and to the students who already have a relationship with a school, the teachers. As I mentioned before, LB828 would create accounts for the students that are eligible for free or reduced lunch and attended "needs improvement" schools. The total number of eligible students we are looking at would be 26,000 to 27,600 students according to the Department of Education. Now those numbers are not what are listed on the fiscal note. My understanding is the fiscal note will be updated at some point to reflect the numbers I'm giving you. There appears to have been a misunderstanding in which all the children attending the lowest-rated schools were calculated as covered for by this program, not just the ones eligible for the free or reduced lunch. That, of course, will move the suggested fiscal note down from \$13.4 million closer to \$10 million. I would also like to point out the benefit of these accounts--could bring to a child who is struggling with certain subjects or needs educational therapy. This amount of money might not be enough to pay for them to receive the help through an entire year. But it is enough money to help a child when they won't be able to get as much help from their teachers during Christmas or spring and summer breaks. I have heard the stories of children that struggled in a subject start to make improvements thanks to great teachers and great parents ultimately to lose ground because of the extended leave where they have...or not having their teachers' assistance. This bill could act as a stop gap for such a problem. At the end of the fiscal year for the schools, which is August 31 of each year, any remaining money that was requested but not used would be resubmitted back to the school district. This bill is not intended to attack our public schools or our public school teachers. There are very many great schools in our state and there are thousands of amazing teachers in our state, but with all that...but even with all of this, we still have issues in regards to public school education in Nebraska. LB828 is designed to play a role in helping to address those issues. With that I'd be happy to try to answer any of your questions. [LB828]

SENATOR GROENE: Questions from the committee? Senator Kolowski. [LB828]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Senator, the...I'm trying to understand the use of the money that would be coming to the students with the most need in those identified schools. And I'm...the percentages of those students in schools varies greatly across the state. And the amount of money requested, is that going to be enough to cover all the possibilities of

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the number of districts, the number of schools that might apply for this particular grant?
[LB828]

SENATOR LOWE: The money comes directly from the school district and it is not disbursed through the state; it comes from the specific school district. And that number, the \$366-and-some-odd-cents... [LB828]

SENATOR KOLOWSKI: That's the maximum they could have? [LB828]

SENATOR LOWE: That is the...that would be the number. But it is enough to start the program, to start helping them and to get them some extra help. This is not a total fix. This is a step up.
[LB828]

SENATOR KOLOWSKI: But that money does come out of the school district. [LB828]

SENATOR LOWE: Yes, and the budget that they already have. It is just a set-aside money to help the students. [LB828]

SENATOR KOLOWSKI: And what are districts doing at the current time when they have these students in need and trying to do those bulleted things that you have listed there? [LB828]

SENATOR LOWE: I'm not sure what the school districts are doing at the current time. But I know that there are students out there that need help and this extra money could get them the tutoring that they need. [LB828]

SENATOR KOLOWSKI: And that service would only go to those students that had the empowerment savings account, not to the other students involved. [LB828]

SENATOR LOWE: It would be strictly limited to the students with the...that are in need with the free and reduced lunch...that are on the free and reduced lunch program. And it just has to...and deals just with the schools that are on the... [LB828]

SENATOR KOLOWSKI: The state list of need. [LB828]

SENATOR LOWE: State list of need, yeah. So it's a limited number of schools and it is a limited number of children. [LB828]

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SENATOR KOLOWSKI: Thank you. [LB828]

SENATOR LOWE: Thank you. [LB828]

SENATOR GROENE: Senator Erdman. [LB828]

SENATOR ERDMAN: Thank you, Senator Groene. Senator Lowe, then the way I read the bill, the accounts would only be set up by those students who had parents or guardians who would request those to be set up, is that correct? [LB828]

SENATOR LOWE: That is correct. So it will not be a great number because not all parents, not all students will take advantage of this. But if a parent would like to see their child get some extra help, this is a way for them to do that. [LB828]

SENATOR ERDMAN: Do you have ideas how the district may be able to fund this beside General Fund money or have you been...have you thought about that, how they might find funds to do that? [LB828]

SENATOR LOWE: Well, they already have the funds; and this is just a set aside. The amount of money that we're talking about on most cases is less a tenth of one percent. [LB828]

SENATOR ERDMAN: Okay. [LB828]

SENATOR LOWE: And I believe that there is some waste in each and every school, even though they try very hard to control their spending. I believe there can be a way to help these children because that's what the school system is supposed to do. [LB828]

SENATOR ERDMAN: So what kind of tutoring would these children get? After school? During school? How does that work? [LB828]

SENATOR LOWE: It would be up to the school districts and the state Department of Education to outline if these programs were acceptable. [LB828]

SENATOR ERDMAN: Okay. Okay. Thank you. [LB828]

SENATOR GROENE: Senator Linehan. [LB828]

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SENATOR LINEHAN: Thank you, Chairman Groene. Thank you for bringing this bill, Senator. So I'm trying to wrap my head...so one thing you could do, which Senator Pansing Brooks and I have worked on, kids who are struggling with dyslexia or some kind of reading disorder, so this would enable the parents to have some kind of funding to get their child extra help? [LB828]

SENATOR LOWE: This would have the funding...well, some funding to help them. [LB828]

SENATOR LINEHAN: So...and you're trying to narrow it to it's just where you get low income kids, free and reduced lunch. Right? So it's only those children, it's only in schools that are struggling according to the Department of Education they've got some work to do. So we know... [LB828]

SENATOR LOWE: We're trying to help the students and the schools become better. [LB828]

SENATOR LINEHAN: Okay. Could you use this too for like the University of Nebraska has an on-line high school, I think it's \$200 a course; so they would almost pay for two courses for an on-line high school through the University of Nebraska. [LB828]

SENATOR LOWE: That would almost pay for two courses. And, yes. [LB828]

SENATOR LINEHAN: Okay. All right, thank you. [LB828]

SENATOR GROENE: Anybody else? Senator Lowe, could this be used for a private tutor? [LB828]

SENATOR LOWE: It could be used for a private tutor. [LB828]

SENATOR GROENE: Sylvan or whatever... [LB828]

SENATOR LOWE: Yeah. And as far as the ACT prep, it could be used toward that to help get the students' grades up...or chances of being successful. [LB828]

SENATOR GROENE: Thank you. Any other questions from the committee? Thank you, Senator Lowe. Proponents? How many testifiers do we have on this bill? Thank you. Proponents? Any time you're ready. Any time you're up and you sit down, you're in charge, start speaking. [LB828]

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CLARICE JACKSON: Okay. My name is Clarice Jackson, that's spelled C-l-a-r-i-c-e J-a-c-k-s-o-n, and I am here in support of this bill. I feel that I have a level of experience and expertise when it pertains to how this bill could be perfected. I was an approved supplemental educational service provider for the state of Nebraska when they utilized the tutoring program under the No Child Left Behind Act, and they utilized Title I funding and that funding provided tutoring to families of children in the lowest-performing schools; a lot of them in the Omaha Public School District. And parents were then allowed the opportunity to put their kids in a position to get tutoring. I specifically have a dyslexia tutoring center where we deal with children who struggle to read, write, and spell due to dyslexia. And thanks to both Senator Linehan and Senator Pansing Brooks for their great efforts we are now on our way to addressing that holistically in our school system. But at that time and still currently, that is not really being addressed. And so we have a lot of children who are struggling to read, whose parents are low income and can't afford to pay for tutoring. So when the No Child Left Behind waiver was applied for through the State Board of Education, that took away the parents' opportunity to get the additional help that they needed; yet, their kids were still in low-performing schools. And it was very devastating for a lot of the children that attended Voice Advocacy Center. It caused a huge drop in the children that we're able to serve because they can't pay for tutoring. And as much as I'd like to help all of these kids, because I don't want to turn away one child who is looking in my face and their parent is crying and saying my kid is in the seventh grade and they can't read but on a first grade level. And I know that I have the program to help them, but yet I have a leasing agent that's telling me you need to pay this bill; you need to pay for these lights, and you also have to pay for the things that it costs to run the tutoring program. And so a lot of parents had to be turned away because they couldn't afford to pay for tutoring. And the No Child Left Behind Act supplemental educational service plan was that entity that provided them the opportunity to be able to pick and choose a tutoring service that benefited their children. So it has been devastating. So I am definitely in support of helping the lowest-performing schools. We work in conjunction with the school system. I think that the program worked very well. We've also worked with the State Board of Education; you had to go through a process with them and they approved the tutoring providers, and then a letter was sent out to the parents and the parents were then...they had a tutoring fair that each school came up with which allowed for parents to come out and meet the tutors, the tutoring sites and to choose which one was the best one for them and then those parents were allotted a certain dollar amount. And it depended upon each school district. That's why I said that this bill could be perfected. I think if you guys took a look at the supplemental educational service program through the state that was already in operation that utilized Title I funding, you would find that this would work, because it has worked. And it was very beneficial to parents. [LB828]

SENATOR GROENE: Thank you. [LB828]

CLARICE JACKSON: Thanks. [LB828]

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SENATOR GROENE: Any questions? Senator Kolowski. [LB828]

SENATOR KOLOWSKI: Ms. Jackson, thank you very much for coming today and for your testimony. [LB828]

CLARICE JACKSON: Yes. [LB828]

SENATOR KOLOWSKI: Is there...it seems like there would be duplication of services of any school should be doing these things anyway with all the students. But you're separating them out and you would have a separate group that would have eligibility for this money that others would not have. And yet, those services are there for all the kids. [LB828]

CLARICE JACKSON: It's definitely not duplicating services. Again, like I said, if you have children that are in lowest-performing schools that are not even meeting state standards, there's definitely room for improvement. So we were working in conjunction with those schools to help kids. Like I specifically mentioned, when you're talking about a child that has dyslexia, right now that's not being addressed in the schools. And so children who have dyslexia who struggle to read, write, and spell, which is the most common reading problem, weren't getting the help that they needed. So they were continuing to be pushed forward without having the skills that they needed to learn to read and then read to learn. So, no, the services aren't duplication; they're actually in supplement to the education that the kids are getting in the school system. So we work in conjunction with them. And it worked quite well. [LB828]

SENATOR KOLOWSKI: But it's all coming out of a finite budget for that individual building...based on a student per-head account. [LB828]

CLARICE JACKSON: It came out of Title I funding, the supplemental education program that this tutoring did exist under, yes. And they had the funding. [LB828]

SENATOR KOLOWSKI: Okay, thank you. [LB828]

SENATOR GROENE: Senator Linehan. [LB828]

SENATOR LINEHAN: So can you explain...so the Title I funding for this programming went away or they just spent it differently? [LB828]

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CLARICE JACKSON: They applied for a waiver under the No Child Left Behind Act, and they...every student... [LB828]

SENATOR LINEHAN: Department of Education? [LB828]

CLARICE JACKSON: Yes, the Nebraska Department of Education applied for a waiver so that the schools were no longer required to submit to the regulations of the lowest-performing schools. So I don't know what they changed to supplement that with, because a lot of the parents that were getting tutoring that have talked to me that are still struggling, their kids are still struggling, are saying they took away our ability to get additional help which was helping my child, but we're not getting any additional help within those particular schools. And so I'm not sure what they are doing. I know that they were trying to come up with a plan under the Every Student Succeeds Act, but I'm not quite sure what that looks like. [LB828]

SENATOR LINEHAN: So I'll do some more research on this, but I think what you're telling me is that the state Department of Education applied for a waiver from the federal government so they didn't have to do this program. [LB828]

CLARICE JACKSON: Right. [LB828]

SENATOR LINEHAN: But we did have the program; it was working, you saw it working, but we've gotten a waiver so we're not doing it anymore. [LB828]

CLARICE JACKSON: Exactly. [LB828]

SENATOR LINEHAN: Okay. And when we did it before, it was all federal funds anyway; it wasn't the state or the district funds, it was federal fund, Title I or federal funds. [LB828]

CLARICE JACKSON: Yes. [LB828]

SENATOR LINEHAN: Thank you very much for being here, appreciate it. [LB828]

CLARICE JACKSON: You're welcome. [LB828]

SENATOR GROENE: Senator Walz. You had your hand up earlier. [LB828]

SENATOR WALZ: Okay. All right. I'm just trying to figure this out. [LB828]

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CLARICE JACKSON: Wrap your mind around it. [LB828]

SENATOR WALZ: Thank you for being here. Okay, so a school district shall pay an amount equal to 3 percent of the anticipated average per pupil spending. So are they talking about every student in that school district, 3 percent will go into this fund, or just the eligible students, 3 percent? [LB828]

CLARICE JACKSON: Just the eligible students from what I understand what the bill is. For the lowest-performing schools that is deemed by the Department of Education as being lowest-performing, and the kids that are on free and reduced lunch, ideally low poverty, who would not necessarily have additional funding for tutoring. Like my tutoring services are \$65 an hour. My parents don't have that. And the minimum is twice a week. So most parents can't afford to pay that, yet their children are struggling in a school that is lowest-performing. This bill would give those parents an opportunity to get their children additional help that they need in order to gain academic success. And I have seen it first hand, again, as an approved supplemental provider, tutoring service, how much of a difference this makes in the child's life and the parent's life. It changes their trajectory, especially in reading. [LB828]

SENATOR WALZ: Okay. Thank you. So if there are 100 students, I'm going to make this very easy, that attend Fremont Public Schools, and 30 of them are eligible for this program, only...only those 30 kids, the 10 percent, what was it, I'm sorry, 3 percent, only 30 kids that 3 percent will come out of, not the rest, right? Is that what you're saying? [LB828]

CLARICE JACKSON: I believe... [LB828]

SENATOR WALZ: Or all hundred...how does that work? Sorry. [LB828]

CLARICE JACKSON: No, it's okay, but I will say this--the way that bill is set up and the way that the supplemental services bill was set up, which I think this should be more closely aligned to because we've already done it and it's already worked, and there's already a system that I think each school could migrate back into fairly easily. If you were in that lowest-performing school, a letter is sent out, the parents have the opportunity to choose if they want to participate in that tutoring service, so it's not alienating anyone from taking advantage of that, but it's up to that parent to make that choice of the want to take advantage of that. [LB828]

SENATOR WALZ: Okay, that's a good way to say it. So, as a parent of one of those 100 students, you have the...you can make that decision on whether or not you want that 3 percent of your student's... [LB828]

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CLARICE JACKSON: Yes. [LB828]

SENATOR WALZ: ...cost to go into this empowerment savings plan, right? [LB828]

CLARICE JACKSON: Yes. Yes. [LB828]

SENATOR WALZ: Not all 100 students, 3 percent have to go in. [LB828]

CLARICE JACKSON: Yes. Correct. [LB828]

SENATOR WALZ: Okay. Thank you. Then my next question is, so you just said that your tutoring is about \$65 an hour. [LB828]

CLARICE JACKSON: There about, yeah. [LB828]

SENATOR WALZ: And if I understand what Senator Lowe said, there's about 300-and-some dollars per student that could be used. [LB828]

CLARICE JACKSON: Um-hum. [LB828]

SENATOR WALZ: So that's only going to get that student about four or five hours of tutoring, correct? [LB828]

CLARICE JACKSON: Based on the way the bill is now. That's not how the supplemental service plan worked. It was based on each district's funding budget. Do you understand what I'm saying? So Omaha Public Schools has a particular budget; Bellevue had a particular budget; Millard had a particular budget; and it turned out. Some had...if I'm thinking off the top of my head, I think like Bellevue's total amount that they gave each kid that was in a lowest-performing school was around \$800-and-something dollars. I think OPS, there's was higher than that. I just can't remember the exact number of amount. But the funding mechanism in this particular bill still needs to be worked and tweaked out in my opinion. But it definitely needs to still happen. Does that make sense? [LB828]

SENATOR WALZ: Yeah. I mean, that doesn't get you a whole lot of services for \$300. [LB828]

CLARICE JACKSON: Exactly, exactly. Right. But that's just my particular amount that I charge. [LB828]

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SENATOR WALZ: I mean, I don't see how that would be. [LB828]

CLARICE JACKSON: There are different providers that have different things. I think one of the last things that they decided to do before they actually ended the program is they said everybody that wanted to participate in this...they set a dollar amount, a per hour dollar amount that everybody had to agree to to even out so that kids could get the most out the funding if they chose to participate in that. So that could be something that could be done as well. [LB828]

SENATOR WALZ: Okay. And I'm sorry, I didn't get to...where did you say you're from? [LB828]

CLARICE JACKSON: Omaha, Nebraska. Is that what you mean? [LB828]

SENATOR WALZ: No, I mean, what company, what... [LB828]

CLARICE JACKSON: Voice...Voice Advocacy Center; it's a tutoring service for children who have dyslexia. [LB828]

SENATOR WALZ: Okay, thank you. [LB828]

CLARICE JACKSON: You're welcome. [LB828]

SENATOR GROENE: Senator Pansing Brooks. [LB828]

SENATOR PANSING BROOKS: Thank you. Thank you for coming. [LB828]

CLARICE JACKSON: Yes, thank you. [LB828]

SENATOR PANSING BROOKS: So my questions relate to the bulleted points. Have you seen this bill well enough...or maybe I don't know...maybe... [LB828]

CLARICE JACKSON: I read the bill. I may not know everything, but I've read it. [LB828]

SENATOR PANSING BROOKS: Well, I guess I'm just interested because it talks about that the account could be used for on-line programs approved by the department. It goes on to say

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educational therapy or services...tutoring services; neither of those things has to be approved by the department or testing fees. [LB828]

CLARICE JACKSON: That I know is one of the amendments that I believe is going to be put in place is that it needs to be approved because I talked to Senator Lowe and his staff about the State Board of Education was that entity that approved the tutoring providers or services and they were put on a list and that list then was sent out to the parents at those lowest-performing schools, and they got to choose from them. So they vetted them. [LB828]

SENATOR PANSING BROOKS: Okay. And then what about if there are too many students needing help that it can't...I mean, obviously, this is taking dollars out the normal everyday funds of the school. So to create a new fund to basically put dollars out in a community to people who want to come in and help tutor. So I'm just interested...when we have too many children at a place, because I presume that could happen at certain schools that are really struggling schools, how is this supposed to differentiate among students and among threshold levels, as Senator Walz just mentioned, if the money runs out after a very brief time of tutoring, that's not enough tutoring for somebody who really has an issue. [LB828]

CLARICE JACKSON: Yeah, I would hope that the Education Committee would say that and think that and then say, you know, we probably should think about putting more into this particular bill because, again, the supplemental bill definitely had more funding in it. But at any rate, in my time of being a supplemental provider, again, it's the parent's choice and I've never ran into a situation where the parents...there were too many kids that weren't getting service. There were lots of tutoring providers that were approved by the state that could offer anything from on-line tutoring to dyslexia tutoring to math tutoring, and so parents had a wide array of selection and they had the opportunity to make the choice on what was in the best interest of their kids. And getting something specifically for parents with children, what I can speak to specifically, for parents with children who have kids who are dyslexic; this changed the course of that child's life essentially. And so we had children that came in there and came into our tutoring center who had low self-esteem who thought that they were the dumbest child on the planet because they weren't given the instruction that they needed. And then when they started to come to tutoring and their parents began to see the difference in the instruction and the child's grades improved, we had a child that was in the eighth grade that was on first grade reading level, she is now on honor roll and her whole personality has changed. Everybody thought she was an introvert, and the little girl is an extrovert, but because she was dealing with the trauma of being academically not helped in the school system to read, write, and spell adequately, that's what she was perceived to be. [LB828]

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SENATOR PANSING BROOKS: Okay. Well, clearly, I applaud your efforts on dyslexia. And you know that I am adamantly in support of helping dyslexic students, my goal is generally to have the schools help the dyslexic students, not...but clearly those who are out in the community helping those students through tutoring, that's all viable and positive, but my concern is diluting public dollars to the schools who already have enough trouble and qualms with being able to tutor. I mean, why not more dollars to tutoring within the schools, rather than necessarily bringing it outside the public schools? [LB828]

CLARICE JACKSON: I think the debate is not about bringing it inside; some of the tutoring that was done through the supplemental services did happen in the schools. I mean, some of the tutors that were approved, the schools worked with them and they were able to do the tutoring within the school system. [LB828]

SENATOR PANSING BROOKS: Absolutely. [LB828]

CLARICE JACKSON: I don't think this is about diluting money from the school or not working in conjunction with the traditional public school. We are definitely working with them and we're supplementing them, that's why it was called supplemental education, we were supporting them in their efforts to try to raise their standards because they are lowest-performing for a reason. [LB828]

SENATOR PANSING BROOKS: Thank you. Thank you for coming. [LB828]

CLARICE JACKSON: You're welcome. You're welcome. [LB828]

SENATOR GROENE: Senator Kolowski. [LB828]

SENATOR KOLOWSKI: Thank you, sir. What you're talking about before school or after school, then we're talking about extended learning opportunity time. [LB828]

CLARICE JACKSON: Absolutely, absolutely. [LB828]

SENATOR KOLOWSKI: And we would have a hard time delivering those identified services that we would now be paying for to this fund if we didn't have the availability to students before and after school. Would you agree? [LB828]

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CLARICE JACKSON: Yeah. I think that it depends on the parents, but some parents were taking...their kids were getting the tutoring before school. Mine happened after school; some happened within the school system. Just depends, some were on-line. It just depends on what's in the best interest of the parent and their schedule and their kid's schedule; but it worked. [LB828]

SENATOR KOLOWSKI: Those teachers would come to the building...the school building and deliver there? [LB828]

CLARICE JACKSON: Absolutely. [LB828]

SENATOR KOLOWSKI: Not sending the child to another location. [LB828]

CLARICE JACKSON: Yeah, some tutoring services were held in the school system. So I don't know what your impression is, but this definitely is not something that is adversarial to the school system. And a lot of teachers that I know were quite thankful for the additional help. It works in conjunction with the school; it's a supplement. And I think that this Empowerment Savings Account would do no different. But we're actually working to help make the schools better. And sometimes kids needs a little additional help. And you know over the summer, a lot of times children regress and they need help. And so I know all of you on this panel love children and want the best for our kids. I think we are a state that really is involved and engaged and concerned about the education of our students. And so a tutoring program or anything that is going to help a child that's struggling should be supported. So that's why I'm sitting here at this table. [LB828]

SENATOR GROENE: Do you know if that Title I program still exists? Do you understand it to be that it was a department...it wasn't a statute from this body. [LB828]

CLARICE JACKSON: No, it wasn't a statute from this body. [LB828]

SENATOR GROENE: But it was a regulation and an agreement between the federal government and the Department of Education, the program supplemental. [LB828]

CLARICE JACKSON: Yeah, they applied for a waiver where they didn't have to comply with those standards. And so then that went away. [LB828]

SENATOR GROENE: Do you think it disappeared with the creation of The Every Student Succeeds federal act? [LB828]

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CLARICE JACKSON: I don't think that it disappeared. From what I know from the Every Student Succeeds Act, it still gives you the flexibility to still use those dollars for tutoring. And it is just now up to the local school district if they want to do that. [LB828]

SENATOR GROENE: The money is still available. [LB828]

CLARICE JACKSON: Yes. [LB828]

SENATOR GROENE: And it's applied to the federal government by a local school district or the Department of Education? [LB828]

CLARICE JACKSON: It still flows through the Department of Education to the local school district. But the local school district has the authority to choose to spend those funds however they want to. [LB828]

SENATOR GROENE: And they're not spending it... [LB828]

CLARICE JACKSON: And they're not spending it on... [LB828]

SENATOR GROENE: ...on tutoring anymore. [LB828]

CLARICE JACKSON: Right. [LB828]

SENATOR GROENE: They've changed that, the local administration did it to OPS. [LB828]

CLARICE JACKSON: They've changed that. Yes, yes. So with this bill, what I'm saying is, is this has worked for many, many years across multiple states because states were mandated to do this federally at one point before they applied for a waiver. [LB828]

SENATOR GROENE: So would you say your tutors are experts in one specific area and that's dyslexia? [LB828]

CLARICE JACKSON: Yes. [LB828]

SENATOR GROENE: So a school district couldn't do that. [LB828]

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CLARICE JACKSON: Not at this point. [LB828]

SENATOR GROENE: So your employees are not on the payroll, not on a retirement plan, not on the healthcare... [LB828]

CLARICE JACKSON: No, not at all. [LB828]

SENATOR GROENE: So would you consider that your pinpoint...we would be using tax dollars very effectively and very efficiently pinpointing the problem? [LB828]

CLARICE JACKSON: Absolutely. [LB828]

SENATOR GROENE: Thank you. [LB828]

CLARICE JACKSON: Absolutely. [LB828]

SENATOR GROENE: Senator Erdman. [LB828]

SENATOR ERDMAN: Senator Groene, thank you. Thank you for coming today. So how many students were you tutoring before when they offered that to you? [LB828]

CLARICE JACKSON: We had about 50. [LB828]

SENATOR ERDMAN: Fifty students? [LB828]

CLARICE JACKSON: Yeah, because again, it's at the parents' selection and so parents were allowed to choose which provider they wanted to work with. And some kids didn't have dyslexia, but yeah. [LB828]

SENATOR ERDMAN: So I would assume that those students you had a relationship with that you were tutoring, that relationship goes on today even though if you're not tutoring, is that correct? [LB828]

CLARICE JACKSON: Absolutely. I still hear from their parents all the time. And so I was trying to figure out a way...I opened up a thrift store that after general operating expenses that I could try to compensate and try to help these parents, because it's hard to look a parent in the face

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whose kid was thriving and making success and now they're back in the school system without that support and they're struggling. [LB828]

SENATOR ERDMAN: So what has happened...what has happened to those students that returned back to school? Have they been getting help or not? [LB828]

CLARICE JACKSON: No, not at all. [LB828]

SENATOR ERDMAN: So what you're saying is that you had an opportunity to help these students improve... [LB828]

CLARICE JACKSON: Yes. [LB828]

SENATOR ERDMAN: ...they went back to the school, the school is not doing that as you were doing it, and so these children have fallen behind? [LB828]

CLARICE JACKSON: They have fallen behind. [LB828]

SENATOR ERDMAN: So what you are asking is just continue...let us continue to help these students so they can succeed. [LB828]

CLARICE JACKSON: Absolutely. [LB828]

SENATOR ERDMAN: Makes a lot of sense. [LB828]

CLARICE JACKSON: Makes a lot of sense to me too. [LB828]

SENATOR GROENE: Senator Kolowski. [LB828]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Ms. Jackson, again, are you saying that the district had no staff trained in dealing with the difficulties these kids had? [LB828]

CLARICE JACKSON: Pertaining to dyslexia, no they did not. And if you... [LB828]

SENATOR KOLOWSKI: Omaha Public Schools have no staff... [LB828]

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CLARICE JACKSON: Omaha Public Schools, Millard, wherever you want to talk about. That's why Senator Pansing Brooks and that's why Senator Linehan went on their reading assessment across the state. Senator Pansing Brooks and Senator Linehan both know from experience that dyslexia is hereditary and that that's why the bill was just introduced last session by Senator Pansing Brooks that just defined dyslexia, but is not addressing dyslexia. And the school systems are not doing that. Ask Senator Pansing Brooks and Senator Linehan, they are not doing it...at all. And kids are struggling. My daughter was one of them. I've shared my testimony down here many, many times, but my daughter unfortunately was killed January 24, 2015, but prior to that, she was a product of the traditional public schools system and she struggled from pre-K to fourth grade unable to read because she had dyslexia. No teachers had knowledge of it; they're not trained in colleges to identify it, to screen for it, or to provide services in school for it. And so to no avail, it's not like I wanted to put my daughter in a private school, I'm a product of the public school system, my dad was a teacher for 34 years at McMillan Junior High. I love teachers. How can I not? My dad was one; my aunts were one. So it's not a traditional public school...I hate traditional public schools, it was what was in the best interest of my daughter. And the traditional public school didn't offer her what she needed. So I had to take her out of that school and I ended up putting her in a private school that addressed her issue. But that was in 19...that was in 2000. And in 2018, I'm still addressing the same issue. Now we have Senator Pansing Brooks and Senator Linehan, who I'm very grateful for, who understand this particular issue and are working very hard and tirelessly to change that in the traditional public school, but it's not happened yet. And so there are many kids, almost 20 percent of the population is dyslexic. And a lot of people that were on the legislative floor last session, before the session went out, when Senator Linehan was talking about her reading bill, which she was very passionate about, I heard a lot of the senators out there talked about their testimonies and their children and their grandchildren and how they struggle to read, write, and spell and their issues in school. And so that's why this Education Committee exists, and that's why I'm here is because I believe you all care about the education of our students. And if we are not giving that to them in the setting they're in and we have an opportunity like this one, that needs some perfecting, to do that, it is our obligation and duty to make sure that all children are succeeding because that's what we say Nebraska is about. [LB828]

SENATOR GROENE: Thank you. Senator Walz. [LB828]

SENATOR WALZ: I just...one quick more question. Sorry about that. So since that program ended, you are tutoring...you have a tutoring service that...can you tell me what children attend...like are they low income? Are they poverty...? [LB828]

CLARICE JACKSON: Very much low income. [LB828]

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SENATOR WALZ: Can you tell me how that works? [LB828]

CLARICE JACKSON: Very much low income. And to be very transparent, I have...I have a hard time turning away kids, because I...they...when I see them I see my daughter. When I see their parents I see me. So the majority of the kids that we are still tutoring are coming to our center for free, to my detriment business-wise. I mean, I hardly had gas to come down here today, but I believe so much in helping these kids. And I feel like it's...it is my daughter's legacy and it is my job to ensure that these kids get the help that they need. And so that's why I'm down here. So I really want you to understand that this...this goes beyond politics or education, this is about what's in the best interest of children. And I want to make sure that they get the help that they need, regardless of if it's my tutoring service or not, whatever they need--let's help them. [LB828]

SENATOR WALZ: Thank you. [LB828]

SENATOR GROENE: Thank you. [LB828]

CLARICE JACKSON: You're welcome. [LB828]

SENATOR GROENE: Very good testimony; very knowledgeable. [LB828]

CLARICE JACKSON: Thank you. Thank you. [LB828]

SENATOR GROENE: I sense your frustration as I sometimes have this so-called competition between a government institution and government employees and the people just wanting to help kids. [LB828]

CLARICE JACKSON: Yeah. You know, people know me as one that supports school choice. I support all schools, traditional, whatever it is, I just want whatever is in the best interest of that child and that family. And it's a universal human right. [LB828]

SENATOR GROENE: Thank you. [LB828]

CLARICE JACKSON: It's in the declaration of human rights. It's that simple. [LB828]

SENATOR GROENE: Thank you. [LB828]

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CLARICE JACKSON: Okay, thank you. [LB828]

SENATOR GROENE: Next proponent. [LB828]

RACHEL TERRY: Good afternoon. My name is Rachel Terry, R-a-c-h-e-l T-e-r-r-y, and I'm glad to be here. I wanted to give a testimony about how far these dollars can go with specifically high school kids. I have two kids in high school right now at Southeast High School here in Lincoln. And we have had an opportunity to get them some extra things that have really changed their lives. And I know that their high school is not one of the ones that would be eligible for this money, and I'm grateful at this point that we've been able to spend a little bit extra on our kids. There have been times in our lives that we wouldn't have been able to, and I would love for other kids to have some of these same opportunities. So one example, my 15-year-old daughter really loves languages and she's been taking Spanish at her high school and it's been going really well and she's continuing to take Spanish. But she also wanted to learn Korean and we were able to find an on-line course that was \$200 and she gets to speak with a Korean TA to practice and it's an accredited high school and it works very seamlessly with her school. So when she finishes a semester, her on-line school sends her high school the grade and it ends up on her transcripts and it's actually on her LPS report card. And I think that's an amazing value for \$200 to be able to have this extra course to learn something that's not available at her school. It's kind of unique. I can't imagine LPS having enough kids who want to learn Korean to offer that, but if there is a kid who wants to, there's a way with our current technology to be able to do that. My son, who is a senior, was using some free on-line sources to learn about computer animation. He was using Khan Academy and Blender and he really liked it and he was spending a lot of time on it and really breezing through it and kind of got through what the school had for computer courses. And so Union College offers a special program for high schoolers with deeply discounted tuition, so he's able to take a few computer science classes there and decided what he really wants to do is computer animation. And he found a university he's applied to that has a program he would love, but the ACT score is quite high to get into this school. And his ACT score, the one time he took it at school, was not nearly high enough. So we got him into a ACT prep class and let him take the ACT as many times as it took to get up into competitive range, which happened to be six times. He thinks he might have a Guinness book of world records there. But I know there are a lot of kids who can't afford to take the ACT six times. And, you know, I'm very grateful that we were able to do that. But I think of all the kids who only get one shot at it, the one time that the school offers it. And I'm very grateful that the school offers it one time for free. I think that's very helpful. But for a kid who is in the same situation as my son being able to take a test prep course and take the test multiple times could mean the difference between getting on to where he wants to go and not. [LB828]

SENATOR GROENE: Any questions from the committee? So Lincoln Southeast is not one of the schools that is needs improvement. [LB828]

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RACHEL TERRY: Right. Yeah, I recognize that. My kids would not be eligible for it, but I would love to see kids in some of these lower income areas have the same kind of opportunities that my kids have had. [LB828]

SENATOR GROENE: Be able to afford the \$200 would...be able to have some opportunity, what your kids had the opportunity is why you're testifying? [LB828]

RACHEL TERRY: Right. Yeah. And, you know, \$360 would let a kid take the ACT six times or take a test prep course. I mean, that's something that could really mean the difference between getting where they want to go and having to settle for less. [LB828]

SENATOR GROENE: Thank you. Any other questions? Thank you. Any other proponents? [LB828]

DEB PORTZ: Good afternoon. My name is Deb Portz, D-e-b P-o-r-t-z. As a former Nebraska private and public school parent, to me school choice brings educational opportunity. I believe the best accountability for children's education will always be that mother who is concerned about her child's one shot at K-12 education. And as hard as any one education system tries, public or private, they will never be able to offer that level of concern and understanding for every child. LB828 for Empowerment Savings Accounts is a parental school choice tool that gives parents more power over their child's specific education needs. I support this as well as many other school choice options that Nebraska is finally discussing in our state Legislature. We often hear the question is school choice legislation fair? I think it depends on how you define fairness. I don't believe fairness in education is a one-size-fits all solution and I commend Senators Linehan and Pansing Brooks for their recent tour of Nebraska schools to look at reading outcomes and needs at individual schools across the state. I'm going to assume that your observations also showed that individual students have individual needs. I believe that local level control in public education in its purest form is parent control over the education of their individual children. We do have to talk about the elephant in the room and that is money. In the last ten years, Nebraska has increased its cost-per-pupil spending \$3,408 without significant academic outcome improvement for minority populations according to the Nebraska Department of Education. We now spend \$12,929 for almost 320,000 public school students. School choice in and of itself is a way to free up more state dollars for education. A good example is tax credit scholarships for low-income students at private schools. For educational savings accounts like this bill proposes, local school boards have power over deciding how local budgets funded by property taxes, as well as state and federal funding are spent in their districts. With that power, some monies are dedicated to some children for very good programs, but not all children. For example, Senator Morfeld is the executive director of the non-profit Civic Nebraska that currently has after-school enrichment program contracts with Lincoln Public Schools. These

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contracts serve a need for some students, but not all students utilize that need or program and the taxpayers do pay for it. How is allowing a parent whose child will benefit from taking an on-line course or an ACT prep or reading tutoring any less valuable? It is still a need within our education system in Nebraska. It is just the parent deciding what that need is; and that can enlighten government of the actual need. Which do we think can be more effective for education success? And I think it's a little bit of both. America is having a good conversation of ideas of how to improve public education. We need to have that conversation in Nebraska with less of the political posturing from the teachers' union and multi-million dollar advertising campaigns. Since Nebraska is behind with implementing some of the innovative levers that are improving educational outcomes that have already been tested in other states, we have an advantage to look at other states with similar needs and challenges that Nebraska has and to see which of the tried solutions have turned into best practices with successful outcomes. We can do this with educational savings accounts like LB828 proposes here. Thank you. [LB828]

SENATOR GROENE: Thank you. Any questions? Senator Pansing Brooks. [LB828]

SENATOR PANSING BROOKS: Thank you for coming, I appreciate it. I think part of it is we're quibbling what school choice is and what the schools can do and afford to do. And I don't think you would think that every single choice that a parent wants should be fulfilled. Do you? Do you feel that? That every single choice that they want... [LB828]

DEB PORTZ: I think that parents know their children better than... [LB828]

SENATOR PANSING BROOKS: Clearly. Clearly, a parent would know a child better. [LB828]

DEB PORTZ: And I think that it is our obligation to try to help children succeed. We can get into a discussion of all the different types of school choice tools aside from educational savings accounts that parents might choose for their children. Do I believe that that parental choice should drive K-12 education? Yes. [LB828]

SENATOR PANSING BROOKS: Okay. So you think that every parent should be able to choose what should happen to their child? [LB828]

DEB PORTZ: Yes. [LB828]

SENATOR PANSING BROOKS: Okay. And so every single program that a parent wants, the public school should respond to and create? [LB828]

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DEB PORTZ: Not necessarily public schools. [LB828]

SENATOR PANSING BROOKS: Okay. [LB828]

DEB PORTZ: If we're talking about the realm of what we talk about school choice. [LB828]

SENATOR PANSING BROOKS: But the state should pay for every single choice that a parent wants? So that includes all the resources... [LB828]

DEB PORTZ: The state should pay to effectively educate children. [LB828]

SENATOR PANSING BROOKS: I agree with that. Thank you very much. [LB828]

SENATOR GROENE: Miss, you've heard of AP classes? [LB828]

DEB PORTZ: Um-hum. [LB828]

SENATOR GROENE: Isn't that already where tax dollars are being used to get into Doane College, Hastings College, other community colleges where tax dollars are giving students opportunities outside the class? [LB828]

DEB PORTZ: Yes. [LB828]

SENATOR GROENE: Do you see any difference between this and doing it for elementary students? [LB828]

DEB PORTZ: Are we...well, you kind of hit a nerve on me; are we looking at the effectiveness of AP classes in our public schools? [LB828]

SENATOR GROENE: No, it's just a program that being paid for by tax dollars outside of the standard public schools. So I just...I'm trying to help you here. [LB828]

DEB PORTZ: No, I know, I understand. [LB828]

SENATOR GROENE: I don't want to get into AP classes. [LB828]

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DEB PORTZ: Okay, okay. [LB828]

SENATOR GROENE: Because some had good experience and I'm sure some have had bad, so that we're not here for that. But do you see the similarity here? [LB828]

DEB PORTZ: So we offer AP classes; we offer IB classes; Senator Morfeld has an after-school program; we have various different programs that a local state board of...I mean, a local board of education can say in their general fund--we're going to do this program, this program, and this program this year. [LB828]

SENATOR GROENE: Thank you. [LB828]

DEB PORTZ: And they have control over that. And so you have seven people deciding those programs that are offered. That's not necessarily going to fit the needs of every child. And I think one of the things that this type of program can do is educate the government where is the need. Because you might assume that the need is in a particular area, but you might find that the reading need is a lot greater than you think. And that can be driven by parents. [LB828]

SENATOR GROENE: Thank you. Any other questions? Any other proponents? [LB828]

DEB PORTZ: Thank you. [LB828]

SENATOR GROENE: Any other proponents? Do we have any letters in support? Opposition? Any opposition testimony? [LB828]

ANN HUNTER-PIRTLE: (Exhibit 1) Good afternoon, Chairman Groene, members of the committee, I'm Ann Hunter-Pirtle, Executive Director of Stand for Schools, a nonprofit dedicated to advancing public education in Nebraska. We oppose LB828 which would redirect public school district funds toward private savings accounts. This bill would exacerbate educational disparities rather than reduce them, invite potential fraud on the part of fly-by-night service providers and invite the financial institutions offering these kinds of savings accounts to engage in profiteering at taxpayer expense. In almost every case, schools with low test scores have high concentrations of poverty. In fact, national standardized test scores are more highly correlated with parental income than any other variable. That is not destiny, it is not indicative of children's potential--test scores are picking up other disparities in students' lives. As just one example, a 2012 Brookings Institution report found that by age 5, children in poverty had heard on average 30 million fewer words spoken than their wealthier peers. The opportunity gap begins early. By forcing districts with the greatest number of students facing poverty-related challenges

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to redirect more than \$13 million to private savings accounts, LB828 would reduce the resources available for instruction, mental and behavioral health services, and other interventions where they are needed most. Supplemental services may indeed be helpful and appropriate for some students, but funding them at the expense of classroom education is not the right mechanism. Supplemental services call for supplemental funding. There's no evidence that this kind of transfer saves taxpayers money. In fact, by eliminating economies of scale, it costs them more. In other states, notably Arizona, which have adopted such private savings accounts, on-line purveyors of low-quality, unproven tutoring, and education therapy services spring up overnight to capitalize on these funds from families. This bill provides minimal oversight of such sectors, leaving parents vulnerable to fraud, and districts at a loss to serve their most at-risk students. An article in today's Washington Post outlines that those kinds of savings accounts have been conceived and supported by the Koch network and its supporters as a back door to vouchers. Further, by promising to cover bank fees, LB828 invites the financial institutions that manage these kinds of savings accounts to charge exorbitant fees at taxpayer expense. For these reasons, we oppose the bill and urge you not to vote it out of committee. Thank you and I'm happy to take questions. [LB828]

SENATOR GROENE: Senator Erdman. [LB828]

SENATOR ERDMAN: Thank you, Senator Groene. Thank you for coming. So did you hear the testimony from the lady that did the tutoring? [LB828]

ANN HUNTER-PIRTLE: I did. [LB828]

SENATOR ERDMAN: Did you hear her say that the students that she worked with did quite well and then they went back into the public school and they're not being taken care of there? So what is your solution if we put these students back in public school, how are they going to get ahead? [LB828]

ANN HUNTER-PIRTLE: I think the funding mechanism she described is different. And our problem with this bill is the funding mechanism, not the existence of supplemental services. [LB828]

SENATOR ERDMAN: I'm not talking about the funding. Tell me about how you expect those students that went back to school to be caught up and be taught what they need to be taught, irregardless of the funding. I'm not talking about the funding. I'm talking about the procedure to teaching students. [LB828]

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ANN HUNTER-PIRTLE: I don't want to speak for Ms. Jackson, but what I heard her say was that the supplemental education service program which used federal Title I funds to pay for supplemental education was effective. And I think, you know, if there was a bill that called for supplemental funds to provide supplemental education, we might very well support that. [LB828]

SENATOR ERDMAN: Wouldn't it be appropriate to work on trying to find some funds to help her do that? [LB828]

ANN HUNTER-PIRTLE: Yeah. And we'll be talking about a couple of bills later today that would make just those kind of investments in the future of our state. [LB828]

SENATOR GROENE: Senator Linehan. [LB828]

SENATOR LINEHAN: I'm not as knowledgeable about Title I funds and federal funds as I would like to be, but has Title I funds been reduced in Nebraska in the last three years? Do you know? [LB828]

ANN HUNTER-PIRTLE: I don't know that off the top...I'd be happy to find that out and let you know. [LB828]

SENATOR LINEHAN: Okay, because I don't think we've had a reduction in Title I funds. And what I'm hearing and I don't...this is Senator Lowe and others to follow up maybe, if there were Title I funds for this program, it was getting funded; and the Department of Education, which they have done historically in Nebraska, asked for a waiver from the federal program and they got the waiver. So it's not like the money is not there, we've just decided to use it for something else. But maybe I'm confused. [LB828]

ANN HUNTER-PIRTLE: Yeah, I don't know the back drop on that Title I waiver. I'd be happy to follow up on that. [LB828]

SENATOR LINEHAN: Because we asked for...we've asked for waivers from the federal Department of Education before, of which I'm sure some times they're right, but I'm questioning the value of this waiver if we asked for it. So let's... [LB828]

ANN HUNTER-PIRTLE: Sure. I understand. [LB828]

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SENATOR LINEHAN: Thank you. That's all I have. [LB828]

SENATOR GROENE: Any other questions? Senator Walz. [LB828]

SENATOR WALZ: Yeah. I should have asked her before, but I'll ask you. So if somebody...if these funds are used and a student decides to go to a tutoring service, do those services outside of the public school have to follow the same rules and regulations as the public school? Do you know? [LB828]

ANN HUNTER-PIRTLE: As my reading of the bill was that certain categories of service providers, notably tutors and educational therapy providers, as I understood it, would not be subject to Department of Education regulations. And that's part of our concern. In other states, Arizona in particular, what's happened once these funds become available is that fly-by-night providers pop up to take advantage of them without offering quality. [LB828]

SENATOR WALZ: Thank you. [LB828]

SENATOR GROENE: Any other questions? Who defines quality? Is that a personal opinion of your group? Or has there been any parents complaining in Arizona that they were taken advantage of? Or just something that you have an opinion. [LB828]

ANN HUNTER-PIRTLE: There's a ballot initiative going on in Arizona; there's so many parents who are so concerned about these types of savings accounts and the effect that they've had on public schools, as well as the low-quality providers that have sprung up to take advantage of them, that there's a ballot initiative to try to repeal them at the moment. So it's a widespread belief, it's not just my opinion. [LB828]

SENATOR GROENE: A ballot initiative could say a hundred signatures on it. I could start one and get ten. [LB828]

ANN HUNTER-PIRTLE: I believe they've gathered a hundred thousand so far. [LB828]

SENATOR GROENE: Thank you. Any other questions? Thank you. [LB828]

ANN HUNTER-PIRTLE: Thanks. [LB828]

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SENATOR GROENE: Any other opponents? Got three e-mails of correspondence in opposition: Bert Peterson, of Hastings; Nebraska Association of School Boards; and NSEA. Any neutral testimony? Senator Lowe, would you like to close on your bill? [LB828]

SENATOR LOWE: Yes, thank you Chairman Groene and members of the Education Committee. LB828 is a bill designed to help the neediest students in our state by allowing them a choice to build upon what they have learned in public school. This choice would allow parents to apply for a school district funded empowerment savings account. These accounts are designed to help students receive extra tutoring, extra therapy, test practice, pay for tests, and have the option to take an on-line program. This bill is entirely about helping the students in this state without increasing the tax burden on our citizens. I firmly believe that these 40-some school districts can find the way to fund these programs. And I made a mistake in my opening. It is less than 1 percent, not less than one-tenth of a percent. So in many cases we are looking at less than 1 percent of the schools in the district total funding. Less than 1 percent to help the neediest children in the lowest-rated schools in our state. I feel that it is important to reiterate that there is a possibility here to allow school districts to be an option to provide these services for the accounts so that they can be used. This might not be an option for all districts or all students, but it could be a way to help address some of the concerns to this bill. I'm open to discussions on this bill to see if there are things that could be added or changed to move this bill forward. Senator Kolowski, you said that we would separate the students from the other students. I believe we already do with the AP classes and with the honors programs. So there is some separation of students going on already. Senator Walz, the 3 percent, is an average of all the students across the state. It is taken from that money the 3 percent is derived. And there's... [LB828]

SENATOR WALZ: Of every student 3 percent would go...? [LB828]

SENATOR LOWE: Of every student...so that it is balanced across the state. One school district doesn't get more than another school district, it is the...is the \$366.90 or \$388.87, depending on the numbers that we would agree to eventually. Senator Patty Pansing, you had concerns over the bullet points and we would be willing to make those changes so that they would all be approved by the department, just to make that sure. And, you know, these programs would not be fly-by-night programs. They would all have to be approved by the Department of Education. So I just want to put that out there. And I've heard that we are still receiving Title I funding, but it does not have to go to specific services anymore. And with that I'd like to answer any questions that anybody has. Oh, one more thing, Senator Groene, you have a total of 236 students over three districts that could take advantage of this; Senator Ebke--19; Senator Erdman--222; Senator Morfeld and Patty Pansing--649 students could be helped by this; Senator Walz--331; I have 122. Senator Linehan and Kolowski--there wasn't enough information out there, but I believe Senator Kolowski, you have a pretty good district. Thank you. [LB828]

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SENATOR GROENE: Will you...one of the testifiers said you were working with an amendment with them, but you don't have an amendment for the committee. [LB828]

SENATOR LOWE: We do not have an amendment yet, but we are open for changes to make this bill move forward to help these students. [LB828]

SENATOR GROENE: All right, thank you. Any questions for...Senator Patty Pansing Brooks, I believe was first. [LB828]

SENATOR PANSING BROOKS: Okay. Thank you, Senator Lowe. And I appreciate you speaking to each of our issues. I just...I believe your heart is in the right place on this and I want to speak about my great fear. And this will happen as every discussion of vouchers, every discussion of charters comes forward, and that is the fear that by diluting public funds, we are not able to handle what is going on in the schools right now. And I think that there is anger on both sides. And what I need to remind myself is that anger is based in fear. And it's the fear that there is a national attack on the public schools nationally; there's an attack on public postsecondary institutions nationally, and so it's very hard not to feel that every single thing that comes in like that...this is another further attack. And that's the problem is that everything is seen as everything is going wrong with the public schools. We have to take money away from them because they can't do it, rather than saying how can we do it. How can we work with the institutions that we have to make them stronger, to make them better, the work that we've done looking at dyslexia is work, not to necessarily take it away from the schools, but to say--schools, handle this, do this. So I'm not frustrated at you; I'm frustrated at the national movements that attempt to discredit what is our number one...in Lincoln, Nebraska, the number one attribute...one of the main attributes that we have is for drawing businesses is our public schools. So to continue to try to divert funds and to continue to try to thwart what is going on that's right in our schools. There are schools that are not handling dyslexia across the state. Ms. Jackson is correct on that. But there are other schools that are dealing with the markers of dyslexia and dealing with the issues. Lincoln Public Schools is doing a really good job. And there are other districts across the state that are doing a really good job. So when you come, understand that the frustration isn't because you have a good idea and we want to thwart your business, the idea is government, in my opinion, education cannot be run like a business. We have people that we are going to lose money on. We have poor people that have less education. We're going to lose money on those people. We have people that are more severely handicapped than others; we're going to lose money on those people. A business's direction and a corporation's direction is to make money. That is the legal requirement for a corporation and a business--make money, make sure the shareholders make money. So you come in here and...not you, excuse me, but the bills that come forward on charters and vouchers and all these things, to make it more efficient, to make it a business, in my opinion, are very difficult to do and thwart the goals of public education which is to take care of everybody. Can we do it better? Absolutely. [LB828]

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SENATOR GROENE: Senator Pansing Brooks. [LB828]

SENATOR PANSING BROOKS: I know, but you... [LB828]

SENATOR GROENE: Appreciate your floor speech. [LB828]

SENATOR PANSING BROOKS: Well, I...you had a floor speech too that you just gave, so I get to. [LB828]

SENATOR GROENE: I'm Chairman. [LB828]

SENATOR PANSING BROOKS: Oh, oh. Oh. [LB828]

SENATOR GROENE: No, anyway, I did not give a floor speech. I'm just joking. But we have a long day. [LB828]

SENATOR LOWE: Senator Pansing Brooks, that is why...we're not limiting this outside the school district...to outside the school. The school can develop a program and use this money specifically, because the teachers are used to teaching these students. The students are used to being with these teachers. This would allow those teachers in the public school system to continue on to help that student that is struggling. And so if a school would like to set up a program to tutor these students or to come up with some other programs to help them, this money would be allowed to do that in the public school systems. [LB828]

SENATOR PANSING BROOKS: Thank you, Senator Lowe. [LB828]

SENATOR LOWE: Thank you. [LB828]

SENATOR GROENE: Just, Senator Lowe, that was a joke. Senator Walz. [LB828]

SENATOR WALZ: Thank you. I just have a question--it says the parent or guardian of an eligible student may apply to the department, ya, ya, ya, if the parent or guardian of such eligible student shall have access to such account via a debit card connected to the eligible student's name. How does that work? [LB828]

SENATOR LOWE: Well, it's a way to control the money; it's a way to put the money into an account that the school district can take money back out again once it's done. Not everybody will

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use the full \$366. And so there will be money left over, they will be able to withdraw it back out of that account. It's set up by the school district. [LB828]

SENATOR WALZ: So the parent receives a debit card, they can go to... [LB828]

SENATOR LOWE: They can go on-line to the University of Nebraska high school; they can use it to pay for that AP class through that or whatever class the student may need, they can use the debit card. It can only be used for these explicit things. It can't be used to go shopping at some store. [LB828]

SENATOR WALZ: So they each get \$360-some. [LB828]

SENATOR LOWE: Yeah. [LB828]

SENATOR WALZ: Okay. I just don't feel it's going to go very far, but... [LB828]

SENATOR LOWE: Well, we're in tight money times right now. If I could ask for 50 percent I would do that to help these students, but we don't have the money to do that right now. And so right now we're starting from ground level and we're trying to work it in. [LB828]

SENATOR WALZ: Thank you. [LB828]

SENATOR GROENE: Did you have questions, Senator Morfeld, or were calling a page? [LB828]

SENATOR MORFELD: No, I was calling a page. Thank you, Senator. [LB828]

SENATOR GROENE: Senator Kolowski. [LB828]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Senator, one of the sections here, Section 4 talks about schools cannot seek additional revenue to fund this payment, talking about the amount of money that you're looking at per student, a lot of districts raise funds or have a foundation that is connected to the school district that assists with a lot of the bullet points like you have here. Does that then eliminate those from being successful sources of income for those projects within a particular district? [LB828]

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SENATOR LOWE: I would say it opens it up to another program to allow continual tutoring for these students or continual classes. I believe another program, if there's outside funds, could be used for that. [LB828]

SENATOR KOLOWSKI: I'm just looking at the one line--schools cannot seek additional revenue to fund this particular program. It's already paying for AP classes for some kids. [LB828]

SENATOR LOWE: Just this one program, this one program. So if a student gets say tutoring out of this and uses it all up, they may be able to go to another program with the school from the outside sources to continue on their tutoring. There's nothing stopping that. [LB828]

SENATOR KOLOWSKI: I just think there's a lot of districts that might have something going on right now that would be bumped by that one sentence alone. So, thank you. [LB828]

SENATOR LOWE: Thank you. [LB828]

SENATOR GROENE: Any other questions? Thank you, Senator Lowe. That ends the hearing on LB828. And Senator Kolowski will be presenting LB876, change special education reimbursements. We're going to take a five-minute break or shorter. [LB828]

BREAK

SENATOR GROENE: Could everybody take a seat and get ready to resume? We are in for a long day, and I'm going to ask, including myself, the committee members...we have to remind ourselves, and I have to remind myself, this hearing is for the public. They're the second house. So let's keep our questions precise and short. If you want to make a political statement, and I do too, at least couch it in a question to the testifier. And let's keep our questions precise. And I would ask those testifying to keep your questions precise also, because a lot of people want to be heard today. And we have a long day. So with that, we will begin LB876, and Senator Kolowski. [LB876]

SENATOR KOLOWSKI: Good afternoon, Chairman Groene and members of the Education Committee. My name is Senator Rick Kolowski, R-i-c-k K-o-l-o-w-s-k-i, representing District 31 in southwest Omaha. I'm here today to introduce LB876 to require that school districts are reimbursed for 80 percent of special education funding. Currently, the state reimburses about 48 percent of special education costs. Special education costs are significant and unavoidable costs across school districts in the state, all school districts in the state. If the state takes a larger share of the costs, it will relieve strains on local budgets. This will allow districts to lower property

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taxes, especially in districts that do not receive equalization funding. There will be those following me who can give examples of the work our special education teachers do and the importance of this funding. I would be happy to answer any questions you might have. [LB876]

SENATOR GROENE: Any questions from the committee? [LB876]

SENATOR KOLOWSKI: Thank you. [LB876]

SENATOR GROENE: Proponents? [LB876]

SENATOR MORFELD: Your talk worked. [LB876]

SENATOR GROENE: He's got a chance to close. Go right ahead. [LB876]

JENNI BENSON: (Exhibit 1) Good afternoon, Senator Groene and members of the Education Committee. My name is Jenni Benson, J-e-n-n-i B-e-n-s-o-n, and I am the president of the Nebraska State Education Association. And I am one of those special education teachers that Senator Kolowski said would testify. I have taught special education for over 30 years. I know that the children in need of special education services are the most vulnerable of our citizens. The compassion, care, and services our education family provides these children is simply amazing, and yet, in my many years of teaching special education, I have watched as caseloads increased at the same time the needs of the students are also increasing. In the past, special education teachers were more specialized in direct services. Now, with fewer available resources, special education teachers are expected to be experts in a much wider service area, therefore increasing the difficulty of meeting the needs of every student. The facts are that special education teachers are working harder and harder. And yet, there are behavior needs that are increasing and we are unable to provide services for every child that may be needed. Those services, in many cases, allow these children to become independent citizens, contributing to the richness that is the "good life" of Nebraska. I'm going to tell two stories. My first story is about my son. He's 33 years old, he graduated from Lincoln High, and then he also graduated from the United States Military Academy at West Point. He is currently a professor at the United States Military Academy at West Point and he will become a major in the United States Army on March 1. That child started as a three-year-old in special education. Now, there's a different view of what special education services look like, and for my son, it looked like grandparents who could not understand him when he called them on the phone. And we said, what's the problem? So he started in on special education speech language, and was identified with a phonemic processing disorder. He received services while we had him in parochial school for three years. He received services through public schools for speech language pathology. And he received services all the way through fourth grade when he graduated. He is a perfect example of a student that received

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special education services. I think we may have a false view of what that may look like for students across the state. Also, when we're talking about dyslexia. I went into Indigo Bridge Books for coffee last year and this girl said to me, did you teach at Maxey Elementary? And I said, yes, did I have you as a student? She said, no, you had my friend, Holly. Holly was a student of mine and she was in fifth grade, I had her for two years at Maxey. She had probably some of the most severe dyslexia that I have ever worked with. And I said, well, how in the world did you remember that? We're talking 18 years ago. And she said, because I wanted to tell you what Holly is doing now, and how much we remember how much you helped her in school. This was a student I didn't even know, this girl, but she remembered that I taught Holly. And Holly is now married with children and is a very successful photographer and living in, I believe, Ohio. So I am just here to say that this bill does not only solidify the need for special education funding; it provides property tax relief, which is important for all Nebraskans, and it's on the top of the priority list this year. We support LB876. Thank you. [LB876]

SENATOR GROENE: Questions? Senator Linehan. [LB876]

SENATOR LINEHAN: Thank you, Mr. Chairman. Thank you for sharing your story, that's very brave of you. Is the reason it's 80 percent is because the feds pick up 20 percent? Is what the feds...the feds have gone up and down over the years, but I didn't... [LB876]

JENNI BENSON: I just have my handy-dandy cheat sheet right here. [LB876]

SENATOR LINEHAN: Okay. [LB876]

JENNI BENSON: IDEA, for the feds reimburses approximately 14 percent. [LB876]

SENATOR LINEHAN: Okay. [LB876]

JENNI BENSON: We were promised 40 percent, but that hasn't ever happened. [LB876]

SENATOR LINEHAN: Yeah, I'm aware of that. Thank you. [LB876]

JENNI BENSON: Yes? [LB876]

SENATOR GROENE: How many years were you a special ed teacher, and you don't need to tell your age, but...I mean, I'm just curious how it has evolved. [LB876]

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JENNI BENSON: It's evolved... [LB876]

SENATOR GROENE: To the layperson it seems like a lot of the money now is going into paras or individual one-on-one, individuals that aren't actually the teacher but somebody who handles each child. [LB876]

JENNI BENSON: Right. It depends on what the needs are. [LB876]

SENATOR GROENE: Has a lot of it gone that direction instead of what it used to go to, the special teacher? [LB876]

JENNI BENSON: I think that it goes both ways, but I think what has happened is that we have more students that are identified with greater needs. And so teachers are spread thinner, so then you have to get some support help through para professionals. But when we talk about special education, it's also occupational therapy, physical therapy, speech language, a wide variety of services. And we have a lot of medically-fragile children as well that are receiving also health services that are all part of that funding umbrella. [LB876]

SENATOR GROENE: Thank you. Any other questions? Appreciate your testimony. [LB876]

JENNI BENSON: Thank you. [LB876]

SENATOR GROENE: Next proponent. [LB876]

KYLE MCGOWAN: Good afternoon, Senator Groene, members of the Education Committee. My name is Kyle McGowan, K-y-l-e M-c-G-o-w-a-n. Special education is a very important commitment to the state of Nebraska if we believe in educating all children, that means all. And certainly there are a percentage of students in Nebraska, approximately 15 percent according to the NDE Web site, that need some extra assistance. Senator Kolowski is correct, somewhere, we always figured, about between 45 and 50 percent reimbursement for our special ed funding. I have stated before in testimony I was a former superintendent, Crete Public Schools, so that's what I always fall back on my own experience. Crete budgeted last year about \$3 million for special education funding. We're a school of about 2,000 kids, Class B school, budget of about \$22 million. So \$3 million is a pretty significant amount, it's even more significant by scale when you think of the difference between Dorchester is a neighbor with, you know, maybe 100 students. A family moving in and out of a community with a high-needs student can have quite an impact on a school's budget. It is certainly not unusual to have a student with special needs that may cost over \$100,000 a year to educate. So it's a pretty big impact, but pretty important if

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we believe educating all students means all. I think LB876 80 percent reimbursement would be property tax relief, certainly much more than other bills that I've currently heard. So with that, I'll stop my testimony and take any questions. [LB876]

SENATOR GROENE: Senator Linehan. [LB876]

SENATOR LINEHAN: Thank you, Chairman Groene. We do believe it, but it's also the federal law, is it not? [LB876]

KYLE McGOWAN: True. [LB876]

SENATOR LINEHAN: Thank you. [LB876]

KYLE McGOWAN: I wish the feds, you know, provided all the money too. [LB876]

SENATOR GROENE: How much control does the school board or the superintendent have? A child comes in, I hear a lot of the Munroe-Meyer Institute, and I hear unbelievable numbers what it costs to send them there. Who decides? [LB876]

KYLE McGOWAN: Yeah. Special education I would argue may be the most regulated piece in education. So there is many mandates that would require schools to provide services. You could maybe argue, for instance, if you said, you know, the best school on autism is in Florida, that doesn't mean a district has to take that child to Florida. However, providing a quality program that would take care of an autistic child is very limited for instance in the state of Nebraska. You brought up Munroe-Meyer, they are nationally known, it's a very pricey place. So to answer your question, it is certainly a legal requirement for the schools to work within the laws that are provided for by parents. Does that make sense? So it is not as easy as the superintendent gets to decide, there are legal requirements that we mandate. [LB876]

SENATOR GROENE: Do the parents have an input? They say, well, I'm willing to have my child here if you can help them with some tutoring? [LB876]

KYLE McGOWAN: Parents, I believe, have a tremendous amount of authority, legal authority, for those decisions. Things called multidisciplinary teams; you've heard of individual education plans; the assessments, parents choosing who gives those assessments; parents signing off on all of those requirements, like the MDTs and the IEPs. [LB876]

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SENATOR GROENE: So sometimes it's the high expectations of parents that what can be done and what reality can be done sometimes? [LB876]

KYLE McGOWAN: You know, I think when you say high expectations, that's relative. If that's your kid... [LB876]

SENATOR GROENE: I understand that. All right, but thank you. Senator Ebke. [LB876]

SENATOR EBKE: Can you talk a little bit about how the decision is made? For instance, you mentioned autistic kids and whether or not they are able to be served in the district or the district is obliged to send them, for instance, to Munroe-Meyer. [LB876]

KYLE McGOWAN: Right. [LB876]

SENATOR EBKE: How is that decision made by the...what did we call it? [LB876]

KYLE McGOWAN: Multidisciplinary team. [LB876]

SENATOR EBKE: Yeah, the multidisciplinary team. [LB876]

KYLE McGOWAN: Right. So a multidisciplinary team would include parents, would include teachers, would include an administrator that has the authority to make decisions. It's people that would be relevant in that child's education. So much of that really depends on what services are available in your school district already. And when you talk about autism, it's not unlike Down's Syndrome, in that there's quite a spectrum of range. You know, on one range of autism is, you know, very high needs, very disruptive behavior, behavior that would be difficult to be in the classroom without assistance. That's another requirement...there's a legal requirement called "least restrictive environment" that would say that you would need to educate when at all possible a child with their peers in a classroom. So it was certainly on occasion for us at Crete that we did not have the expertise on staff. It's one of the reasons you have educational service units, some of those service units hire experts and then contract them out to different schools at a savings. But we certainly had to send children to Munroe-Meyer, children to the Nebraska School for the Deaf, you know, etcetera. [LB876]

SENATOR EBKE: What kind of added expenses beyond just the tuition, if you will? [LB876]

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KYLE MCGOWAN: Well, transportation alone. I mean, to go from Crete to Omaha. Not only did we have to have a driver, but you would need a person sitting next to that student and, you know, for those services, for however long they take, and then keeping two people up there and then bringing them back. So transportation is huge. [LB876]

SENATOR EBKE: So if you had to send somebody to, for instance, from Crete to Munroe-Meyer, what kind of real dollar amount are you talking about when you add all of the assorted expenses: tuition, all that? [LB876]

KYLE MCGOWAN: So she's baiting me because she was the treasurer of our board when these numbers were coming on. [LB876]

SENATOR MORFELD: At least you know it. [LB876]

KYLE MCGOWAN: So you probably know better than I do, but we could certainly be into \$120,000. [LB876]

SENATOR GROENE: Any other questions? Thank you. Any more proponents? [LB876]

JON HABBEN: Good afternoon, Senator Groene, members of the committee. My name is Jon, J-o-n, Habben, H-a-b-b-e-n, representing the Nebraska Rural Community Schools. This is an interesting issue simply because there's so many pieces and parts to it. And every district has its own issues, and those issues are people. I don't want to mistake anybody that it's all about things, this is about people. My time in education, I've been a part of four rural districts. And all of those districts you had not just the mildly handicapped, but you also had the severely impaired. And you simply had to figure out how to serve them. And that, as Kyle mentioned, there's some teaming, IEPs, IFSPs, multidisciplinary teams, and so on that go through this process of working through the decision. There are certain kinds of assessments that you give students to find out where they are at. You ask for the expertise from the special education folks at your service unit and from the Department of Education, it can get to be pretty involved. And you can also end up taking expertise from the specialists, the OTs, PTs, and in some cases you may be talking to an MD or a DC. There are just a lot of places this information comes in, and your charge is to serve this youngster. Now, P.L. 94-142 promised 40 percent reimbursement. That was a long time ago. Obviously we've added many, many, many requirements and additional services. And as far as adding the money to go with it, that hasn't happened. As was mentioned, 14 percent. Here we are. About a dozen years ago we were at 80 percent in the state of Nebraska, now we're less than 50 percent. The other money that has to be contributed here is what people will talk about when they say this eats into your other general fund moneys available in the rest of the school. And so instead of being able to hire that extra special education teacher or maybe hire that specialist,

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you are trying to co-op, share, do whatever you can do to find those hours that are available to help students. Teletherapy is now becoming a part of the issue. But the bottom line is the reimbursement to serve these kids is inadequate and it does not reach the entire scope of the cost, and the school district bears the rest of that cost. Include students that cost a lot of money, you have heard that testimony. And it happens. My first superintendency was in a school of 150 kids, I could tell you about a couple of kids we had that cost a great deal of money to pay for their education. Not for their medical, because you're not responsible for that, but you are responsible for whatever education is deemed appropriate in the least restrictive environment in the most acceptable way that you can. In unequalized schools, yes, they...it goes straight to property tax. It's just the way it is. Thank you. [LB876]

SENATOR GROENE: Senator Linehan. [LB876]

SENATOR LINEHAN: Okay, I have great empathy for this issue. But you said something, the schools get reimbursed for special ed over and above outside of TEEOSA. And just so people don't get confused, unless I'm confused, right? We fund special ed needs in a different box than the TEEOSA. You said something, it used to be 80 percent and now it's 40 percent. So I'm confused by that statement. [LB876]

JON HABBEN: Yeah. See, a dozen years ago, it's always been a process of submitting the costs above the state or federal reimbursement. You have always had this process. ESUs used to do it, well, they still do, I guess, for a lot of small schools. Because you have to calculate the total cost of the educational service, and then you have to figure out how you submit that for reimbursement by the state and by the feds. And that's just the process that you go through. [LB876]

SENATOR LINEHAN: Okay. [LB876]

JON HABBEN: And it used to be, in the first place I was a superintendent, the reimbursement...and we're talking about K-12, not preschool, we're talking about K-12. For those kids, the reimbursement had actually gotten as high as 70 to 80 percent and then it simply began to tumble, bit by bit. In the last, oh my gosh, the last half-dozen years at least I believe it's been below 55 percent down to the point where it is now. And when we go in to seek additional...for example, a few years ago I testified on a Senator Sullivan bill about raising the reimbursement rate. Well, you go to the Appropriations Committee to do that. [LB876]

SENATOR LINEHAN: So I just want to clarify, I think part of the funding that's gone away, or at least not kept up, is the federal part. [LB876]

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JON HABBEN: Oh, certainly. [LB876]

SENATOR LINEHAN: Because at one point the federal was up to 20 percent. But now somebody said today it's down to 14 percent. [LB876]

JON HABBEN: Fourteen, yes. Yes. So, yeah, I don't want to lay this all on the state and say it's all...no. [LB876]

SENATOR LINEHAN: Federal money has dropped. [LB876]

JON HABBEN: There's a federal deficiency there as well, no question. [LB876]

SENATOR LINEHAN: Okay, thank you. [LB876]

SENATOR GROENE: Senator Ebke. [LB876]

SENATOR EBKE: Okay, so I'm not a mathematician and I don't play one on TV. But let's just say that you've got a kid who is going to cost \$50,000. That's probably not all that unusual. And half of that is paid for through special ed funding, okay? That leaves you with \$25,000 that's picked up by the district, right? So, and those are taken out of general funds. So at some level, for small schools especially, where you do your general funds dollars divided by number of kids to see what your cost per student is, that's going to distort your cost per student, right? [LB876]

JON HABBEN: Yeah, if you calculate it that way, yes. [LB876]

SENATOR EBKE: Is that not the way it's calculated? [LB876]

JON HABBEN: Well, I'm just saying when you get to cost per student it's sort of like one of the questions you asked is, so what did you include in that. It's just one of those things that you can say our cost per student is thus and such, but we didn't include any of the special ed costs. Or our cost per student is thus and such and we didn't include the title costs with the money coming from the federal government. You know, you sort of have to ask that question. [LB876]

SENATOR EBKE: But NDE provides some of those numbers, don't they? The cost per student? [LB876]

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JON HABBEN: Oh, I'm sure, yes. And they'll provide...the general comparison average cost per student they will...they have a list of that going back a number of years. Yeah. [LB876]

SENATOR EBKE: Okay, thanks. [LB876]

JON HABBEN: Yeah, not a problem with that. [LB876]

SENATOR GROENE: Thank you. Any other questions? [LB876]

JON HABBEN: Thank you. [LB876]

SENATOR GROENE: Next proponent. [LB876]

JOHN SKRETTA: (Exhibits 2, 3) Good afternoon, Chair Groene and members of the Education Committee. My name is John Skretta, that's J-o-h-n S-k-r-e-t-t-a. I'm the superintendent of the Norris School District, and I am here representing both the Norris schools as a member of STANCE and also all of our STANCE school districts, of which there are 19. There's some information that's coming around for you. One thing, that's got my contact info on it, and we sent around a directory with STANCE superintendent contacts. So as you're researching this issue and delving into it, we would be happy to compile any sort of data representative of our school districts. Some of which I wanted to share, just a little bit of context with you. There's some talking points that are listed really in the latter half of that first page of the written testimony that's been routed around. But some of the particulars for Norris, just to share that out without taking too much of a deep dive into the numbers. In the Norris School District now we have 256 special needs students, that's out of almost 2,400. So we're actually at about 10.75 percent special education, which is below the state average. As far as staffing goes, and Chair Groene had asked the question previously about just how staffing determinations are made, we have 19 one-to-one special education paras working with some of those students. We have a couple preschool para professionals who are special education required as per Rule 11. We have 13 special education teachers, those are folks who function mostly in a co-teaching capacity within a classroom setting, and that's a reflection of the reference that Jon Habben had made to the "least restrictive environment." Senator Kolowski's bill does something that would result in a tremendous positive swing to school districts. And specifically from the Norris context, '16-17 we spent just over \$2 million on special education expenditures, we were reimbursed for \$905,000 of that. And that's just about 45 percent, so that's a percentage I know you've been hearing repeatedly here. If we went to 80 percent, we go up to \$1.6 million, and that's like a \$700,000-plus swing for us. And I know that that would be incredibly beneficial of the operations of our district. And I know Senator Erdman's passion, as well as the rest of you, for

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property tax relief, and I think that's a very real potential derived benefit, secondary benefit of this bill. So thank you. [LB876]

SENATOR GROENE: Senator Linehan. [LB876]

SENATOR LINEHAN: Thank you, Chairman Groene. Thank you very much for being here today, sir. Is the 80 percent because even though the feds are not at 20 they should be at least at 20, they promised 40? So we're hopeful someday that the feds might catch up and then you would be 100 percent whole, right? That's what... [LB876]

JOHN SKRETTA: Yeah, I think...yeah, and that's part of what I think Senator Kolowski's intent is on this, which is much appreciated in the education community, is basically trying to make schools whole on it. And I think prior testimony from Kyle McGowan referenced some of what...there's not a lot of discretion with these expenditures, they're things that we're largely obligated or mandated to do. And certainly we want to do the best we can, but there are also some pretty stringent legal and regulatory requirements that we're trying to function under. [LB876]

SENATOR LINEHAN: Okay. Thank you very much for being here. [LB876]

SENATOR GROENE: Any other questions? Thank you. [LB876]

JOHN SKRETTA: Thank you. [LB876]

SENATOR GROENE: Proponent? [LB876]

ANN HUNTER-PIRTLE: (Exhibit 4) Hello, again. Ann Hunter-Pirtle, A-n-n H-u-n-t-e-r-P-i-r-t-l-e, executive director of Stand for Schools. I'll be very brief. We support LB876, which would increase reimbursement for special education programs and support services which are required by state and federal law, as they should be. But neither the state nor federal government has ever funded special education services at the levels promised. Special education is the largest unfunded mandate faced by most districts in the state. Current reimbursement rates account for only about half of the expenses our local schools incur, so it's time for the state to step up and pay its fair share toward these critical programs and services. When we do, we'll provide significant property tax relief. For too long, local property taxpayers have been footing a larger and larger portion of this growing bill. Increasing state investment would reduce local property taxes and free up local resources to meet other growing needs. We urge you to support this bill. Thanks. [LB876]

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SENATOR GROENE: Any questions for the testifier? Thank you. Any more proponents? We received five correspondence in support of LB876, Nebraska Association of School Boards, Millard Public Schools, Norfolk Public Schools, Nebraska Planning Council on Developmental Disabilities, Nebraska Child Healthcare Alliance. Is there any opposition to this bill? We have no letters of opposition. Any neutral testimony? We have no letters of neutral testimony correspondence. Senator Kolowski, would you like to close on LB876? [LB876]

SENATOR KOLOWSKI: Yes, thank you. I want to thank the committee for their attention to this particular bill, and thank those who spoke in favor of it today. One of the examples I wanted to share with you is from the Millard Public Schools, where I spent 38 of my 41 years in public education. And that's simply to give you an idea of the third-largest district in the state: 24,000 approximately students. And the special education costs eligible for reimbursement were \$23 million. From that, the district got back \$11.4 million from all the applications that they were legally able to send in for reimbursement. That shows you the impact upon one district's budget. And you heard from the superintendents as to their ability to use that money is so many different ways in their district, if we had the feds and the state reimbursing at the levels that they had promised when this all started, to keep it at that particular level and to bring it home from there. My own background as a high school principal for 15 years at Millard West High School, we had the most severely handicapped and mildly handicapped, as well as severely impaired students in the district in my building. They were very, very special students. They were absorbed by the faculty and by the student body as a whole, and were made part of everything that we did in that school over the time I was there, and it continues to this day. There is nothing that takes the place of caring when you're putting together the things that you do for these students and the needs that they have. It really tugs at your heartstrings when you see what they do and how they do it. And it is expensive, it is something that is very necessary. And I hope somewhere along the way we can see our way clear to look at this and catch up from a property tax relief and every other angle to help districts with this particular challenge at this time. Thank you very much. [LB876]

SENATOR GROENE: Questions? Senator Kolowski? [LB876]

SENATOR KOLOWSKI: Yes, sir. [LB876]

SENATOR GROENE: I keep hearing it's 48 percent funded between the state and the feds. Isn't that about what all school districts...I mean, there's 200...177 that aren't funded at even 10 percent by the state or the feds, because they get no equalization aid. But the Millards and the Westsides and the OPSes, isn't that about what funding is now for an entire school? About 48 percent federal and state, and about 52 percent local? [LB876]

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SENATOR KOLOWSKI: Senator Groene, I don't know all the particulars of every district's budget, and I couldn't respond without knowing that. [LB876]

SENATOR GROENE: I'm just looking at an average number. [LB876]

SENATOR KOLOWSKI: I know the fiscal note on this, to get going back to an 80 percent category, would be just under \$170 million. And that just catches us up. [LB876]

SENATOR GROENE: Is there anything in your bill, we heard something about property taxes here, that would directly tie the extra funding for special ed education to a reduction in property tax authority by the school district? [LB876]

SENATOR KOLOWSKI: Well, it's an automatic. It takes place because you're not putting your money that you had been spending for special education into that particular pot now. It's picked up or assisted by the state or federal dollars that would come in. [LB876]

SENATOR GROENE: It's not a one-to-one. I don't believe in the TEEOSA formula special ed is inside the... [LB876]

SENATOR KOLOWSKI: But it's at an 80 percent level, not a 100 percent. [LB876]

SENATOR GROENE: But anyway, thank you. Any other questions? Do you want to just stay there and open for your next bill? [LB876]

SENATOR KOLOWSKI: Be happy to. Yes, sir. [LB876]

SENATOR GROENE: Help your knees? [LB876]

SENATOR KOLOWSKI: Among everything else, yes. Again, good afternoon, Chairman Groene and members of the Education Committee. My name is Senator Rick Kolowski, R-i-c-k K-o-l-o-w-s-k-i, representing District 31. I'm here today to introduce LB877 which seeks to incentivize all districts to provide early childhood education. As you know, I'm a strong advocate for a high-quality, early childhood education. I would like to thank Senator Walz for introducing a similar bill last year, LB521, which I use introducing LB877. The main difference between our bills is that LB877 sets the weight of early childhood students as a full student instead of the current 60 percent or the 80 percent proposed by LB521. The bill provides incentives to consider high quality and longer periods of time for preschoolers. The bill would make available state

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assistance for early childhood programs for all school districts. Equalized districts would be paid through TEEOSA, and non-equalized districts would be paid through an early childhood education aid. School districts would be eligible to receive 50 percent of additional transportation costs for pre-school children. You will hear more details and specifics from those following me about the benefit of high-quality, early childhood education. I'd be happy to answer any questions you might have. [LB877]

SENATOR GROENE: Senator Erdman. [LB877]

SENATOR ERDMAN: Thank you, Senator Groene. Senator Kolowski... [LB877]

SENATOR KOLOWSKI: Yes. [LB877]

SENATOR ERDMAN: ...on your information, introducer statement of intent, you say there under LB877 it seeks to incentivize all districts by providing early childhood education and the bill provides incentives to consider high-quality education. Under what guise and how do you describe or determine whether it's high quality or not? [LB877]

SENATOR KOLOWSKI: The determiners for high quality would be the same thing that we would look at as we would look at public schools--certification of teachers at a certain level, going through training programs, having received an adequate background, and practice teaching in an early childhood center somewhere within the boundaries of our state. And those kind of measurements would be part of what we would look at, no different than we would K-12 education, looking at it as a whole. [LB877]

SENATOR ERDMAN: Okay. I don't know if that was the answer I was looking for, but it is an answer. [LB877]

SENATOR GROENE: Senator Linehan. [LB877]

SENATOR LINEHAN: Thank you, Chairman. Thank you, Senator Kolowski. So you're saying that we would fund outside the equalization formula, outside TEEOSA, we would be funding preschool, even in schools that aren't getting any equalization aid now. [LB877]

SENATOR KOLOWSKI: Um-hum, depending on what dollars they're looking at or asking for to match what they're doing in early childhood education, depending on what they're doing now. It depends on what is already taking place in that district, or that they want to build for to set up early childhood education opportunities. [LB877]

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SENATOR LINEHAN: But what you're thinking you do this inside the TEEOSA formula? [LB877]

SENATOR KOLOWSKI: I think it would be a combination of both inside and outside the TEEOSA depending on your eligibility for TEEOSA. [LB877]

SENATOR LINEHAN: Okay, all right, thank you. [LB877]

SENATOR GROENE: Senator Erdman. [LB877]

SENATOR ERDMAN: In Section 2, Senator, it talked about transportation...Section 35 it said amends the definition of regular route transportation to improve transport of early childhood education students, how would these students be transported? In a regular school bus? [LB877]

SENATOR KOLOWSKI: Depending on the size of the district and the number of students that you're talking about, it could be anything from a...the size of a regular school bus down to different size vans that kids could safely be strapped into and moved from location to location. We know we have 244 districts with multiple sizes, very different sizes. [LB877]

SENATOR ERDMAN: So the students would have to be in a vehicle that had seat belts? [LB877]

SENATOR KOLOWSKI: Of course. [LB877]

SENATOR ERDMAN: So a regular school bus wouldn't work without seat belts. [LB877]

SENATOR KOLOWSKI: The vans would have the belts. The regular school buses do not have the belts. [LB877]

SENATOR ERDMAN: So these districts don't have to run a separate transportation service for the early childhood students? [LB877]

SENATOR KOLOWSKI: They could use the buses as well, but if they're in a van the belts are there, they use those. If they're in a regular bus, they're just like all the other students. Or there's needs for transportation, whatever that might be. Not every district would do that. [LB877]

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SENATOR ERDMAN: How would the students get there if the district is in need? You pay the parents to bring them there? [LB877]

SENATOR KOLOWSKI: Parents could...pay the parents, you have parent drop off if that's the case. That could happen just like it does right now at any school in the state choose to drive up at 8:00 in the morning. Transportation simply gets them there, it's what we do with them when they're there that's really important. You want them to arrive safely and get home safely every day, but there's the early childhood education is the important part of what's going on. [LB877]

SENATOR ERDMAN: Where I live, transportation could be a very expensive (inaudible). [LB877]

SENATOR KOLOWSKI: Oh, absolutely, absolutely. [LB877]

SENATOR ERDMAN: Very expensive. [LB877]

SENATOR KOLOWSKI: And your school may not opt to have early childhood for a lot of kids that are outside of a certain boundary because of transportation needs. I understand that. [LB877]

SENATOR ERDMAN: If they're going to be able to count the student as a full-time student, they're going to do everything they can to get them to come there. [LB877]

SENATOR KOLOWSKI: Well, that's a decision that that board of education will have to make. [LB877]

SENATOR ERDMAN: And they will. [LB877]

SENATOR KOLOWSKI: You don't want to put anyone in jeopardy though. [LB877]

SENATOR GROENE: Any other questions? Senator Kolowski, right now our constitution says 5 to 21, is that not correct? [LB877]

SENATOR KOLOWSKI: I believe that's correct. [LB877]

SENATOR GROENE: Now if you were a parent who takes care of your children, preschool, 3- to 4-year-olds, and they wanted a high-quality public education, wouldn't they look at this and

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say we're stealing money from our constitutional duty for 5- to 21-year-olds and we're spending money that we'll need for public education for those...that age group by creating another program and taking tax dollars away from the core duties of our public schools? [LB877]

SENATOR KOLOWSKI: That would be one interpretation. Others would say we're broadening that to include early childhood education which got 50 years or more of excellent research behind it, especially that (inaudible) in the state of Nebraska. [LB877]

SENATOR GROENE: But an awful lot of parents already supply that service to their children, is that not true? [LB877]

SENATOR KOLOWSKI: A lot do depending on where they are and if they're choosing a private entity to deliver that service. Correct. [LB877]

SENATOR GROENE: Thank you. Any other questions? Thank you. Proponents? [LB877]

ANN HUNTER-PIRTLE: (Exhibit 1) Good afternoon. I know you're sick of me; I'll be very brief. Ann Hunter-Pirtle, A-n-n H-u-n-t-e-r hyphen, P-i-r-t-l-e, executive director of Stand for Schools. We support LB877. We thank Senator Kolowski for bringing it. My remarks will be brief because the research is so clear. The first years of a child's life are critical for their physical, mental, social, and emotional development. An investment in early childhood programs is an investment in our state's future. And while many school districts offer excellent early childhood programs, they are consistently underfunded in the TEEOSA formula and outside it, despite growing enrollment numbers and student needs. As a result of inadequate state funding, local districts continue to raise levies at a time when Nebraskans are hurting for property tax relief. LB877 would provide some property tax relief by fully funding programs critical to our children's success. It's a win-win; and we urge you to support the bill. Thank you. [LB877]

SENATOR GROENE: Any questions? Thank you. Proponents? [LB877]

JAY SEARS: (Exhibit 2) Good afternoon, Chairman Groene and members of the Education Committee. For the record, I'm Jay Sears, J-a-y S-e-a-r-s, and I'm representing the 28,000 educator members of the Nebraska State Education Association. I'm here to express NSEA's full support for LB877 and we'd like to take the opportunity to thank Senator Kolowski for investing in education. I'm sure his wife will be proud. Just a little inside joke. I've known Senator Kolowski for a couple of years in my life. As you're all aware from previous testimony and studies on the benefits of early childhood education, investing in quality early childhood education programs pays dividends that may reach up to, in some studies, \$13 for every dollar

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invested. You're also all familiar with the brain research that points to the outstanding success of quality early childhood programs in closing the achievement gaps for children, so I won't bore you with those results and those scores. You've all looked at them, you've all gone to the meetings. Instead, I want to remind you that LB877 incentivizes school districts to provide these quality early childhood education programs by increasing the current TEEOSA formula for reimbursement from 60 to 100 percent. LB877 incentivizes equalized districts through TEEOSA and non-equalized districts would be paid through an early childhood education aid that would be through the state aid process also. If I may paraphrase my NSEA Executive Director, Maddie Fennel, because maybe I'll get a bonus, paraphrase--just because they're little doesn't mean they're any less expensive to educate. End of paraphrase. Early childhood students deserve to be supported and weighted for the state aid just as much as their older, full-time fellow students. I urge the committee to forward LB877 to General File for full debate. Thank you. [LB877]

SENATOR GROENE: Questions? Senator Linehan. [LB877]

SENATOR LINEHAN: Thank you, Mr. Chairman. Back to Ms. Fennel's comments here and your follow-up, don't we already do that in TEEOSA, we already decide that state funding we fund some and we don't fund others? [LB877]

JAY SEARS: I believe kindergarten right now is funded at less than 100 percent because there's an assumption that they were only there a half day. In fact, most children now when schools are going a full day so that is adjusted in the formula. [LB877]

SENATOR LINEHAN: But we have all kinds of students across Nebraska that don't get any TEEOSA aid because (inaudible)... [LB877]

JAY SEARS: And that's why we're supporting the bill that has extra aid for those non-equalized school districts, so every 244. [LB877]

SENATOR LINEHAN: So we would give money to a school district for their 3- and 4-year-olds, but not for their 5 to 18-year-olds? [LB877]

JAY SEARS: That's because they don't need it in the formula. [LB877]

SENATOR LINEHAN: Okay. Thank you. [LB877]

JAY SEARS: Yes. [LB877]

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SENATOR GROENE: Correct the record, I believe we fund kindergarten fully if they attend all day. [LB877]

JAY SEARS: Yes. [LB877]

SENATOR GROENE: And I just got an e-mail from previous hearing from the Department of Education, there's only one school out of 245 that does not have full... [LB877]

JAY SEARS: That doesn't do that. So they're funded and so we're asking if you're going full day for early childhood as a 4-year-old and we're counting you in the TEEOSA formula, it should be at 100 percent, not 60 percent. [LB877]

SENATOR GROENE: But there's a big difference in our constitution, the state has a duty from 5- to 21-year-olds. [LB877]

JAY SEARS: Don't mean to correct you, Senator, but I think what we're funding right now is there is provision in TEEOSA that you can count your 4-year-olds in preschool programs for the TEEOSA formula for the next year. [LB877]

SENATOR GROENE: That's a state statute that the state decided to do. It's not mandated by our constitution. [LB877]

JAY SEARS: Yes. Right. Right. I understand that. And when we get that changed, we'll be talking to you about it. Thank you very much, Senator. [LB877]

SENATOR GROENE: You'll never see my grandkids. That's the 4-year-old. [LB877]

JAY SEARS: That's fine, I don't teach, so I'm okay. And I retire in August. [LB877]

JOHN SKRETTA: (Exhibit 3) Good afternoon, Chair Groene and senators, members of the Education Committee. My name is John Skretta, that's J-o-h-n S-k-r-e-t-t-a; I'm the superintendent of the Norris School District. I'm here today representing Norris and the 19 STANCE school districts. There's a brief written testimonial that's coming around that shares some of what we know to be true based upon the great impact that high-quality, early childhood education programs have and why we're all unanimously supportive of LB877 in our group. And in the Norris School District, we're serving just about 60 kids annually through preschool. We have three full-time teachers, four para professionals. The paras are one of the requirements for

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Rule 11 and your annual approval by NDE. Senator Erdman asked a really good question about how do we know the...what constitutes high quality, early childhood programming. One of the things that I want to provide you reassurance of, because a number of folks have made statements and you yourselves are well aware of, cognizant of the research that supports early childhood education and its positive impacts within the state of Nebraska. Every quality is determined by NDE if you're a school system running a preschool and you administer the "gold assessment" three times annually and I believe that includes 51 different objectives on social, emotional, physical, language, cognitive, literacy, and math skills. So there's some pretty good practitioner evidence that you derive with those kids that they are, in fact, progressing. One of the things that I think is so important with early childhood education is when we make that investment up front, we're making an investment in the future of Nebraska. Thank you. [LB877]

SENATOR GROENE: Sir, since 2006, I think, 2007, we started funding for 4-year-olds. When you say 60, what percentage of your kindergarten class attends your preschool? [LB877]

JOHN SKRETTA: We serve...I think we're at about 175 in our kindergarten class. And we serve 60 preschoolers. [LB877]

SENATOR GROENE: So you're a third. [LB877]

JOHN SKRETTA: Yeah, a third roughly. Yep. [LB877]

SENATOR GROENE: And since then you can track test scores improve for those 60 versus in prior that your test scores have increased? [LB877]

JOHN SKRETTA: Well, it's hard to separate out...I can tell you that the readiness...the kindergarten readiness for those kids who have had preschool is substantially improved and that those individual kids' progress over time is excellent. It's hard for me to separate out when we're talking about other regular education students who did not attend preschool programming or whether they did because we may not know that depending on what investments their parents made individually, if that makes sense. [LB877]

SENATOR GROENE: Thank you. Senator Linehan. [LB877]

SENATOR LINEHAN: Thank you, Mr. Chairman. And thank you again for being here. So as you know, just as you are in your school district, we have limited resources...actually have none right now, but so between these two bills, as a superintendent, if you can't have everything, you

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know, it's a hard question, but if you can't have everything, is it more important to make you whole in what you've already got to spend so you have some flexibility? [LB877]

JOHN SKRETTA: So you think you're going to advance one of these for sure? (Laughter) [LB877]

SENATOR MORFELD: Progress. [LB877]

SENATOR LINEHAN: I'm asking... [LB877]

JOHN SKRETTA: No, I'm sorry. I think that's a really difficult dilemma and I'm...I tell you what, to weigh in on that, I would tell you that one thing that's great about LB876 is with special education funding, if you make it whole and you take that kind of leap forward, you also impact early childhood, you impact the entire continuum which is really exciting. The thing I would tell you about early childhood though is that what we're seeing, and I think this is characteristic of Nebraska schools generally, so you'd hear this talking to about anyone in my position, is that there's an increasing demand for preschool. Folks see the benefits and they...parents want their kids to be a part of it. [LB877]

SENATOR LINEHAN: But many parents are willing and are paying for it right now. [LB877]

JOHN SKRETTA: Yes. Yep. [LB877]

SENATOR LINEHAN: Thank you very much. [LB877]

SENATOR GROENE: Thank you. Any other questions? Proponent? [LB877]

JOHN SKRETTA: Thank you. [LB877]

JON HABBEN: My name is Jon, J-o-n, Habben, H-a-b-b-e-n; Nebraska Rural Community Schools Association. This bill, LB521 before it, thank you, Senator Walz, this bill added on, I think, is a really key direction. I think this is one of those areas where no matter which school you're in, you find this need to one level or another. In about '94, in my first superintendency, we started this in a very small school. And we started it very purposefully and we had some money that allowed us to hire a teacher for three hours. And just happened to have that person in the community with the early childhood degree and off we went. And I've been convinced ever since. We did the right thing. We continue every place where it can be started, whether it started

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with a grant or however it started, it continues to be the right thing to do. Now, you may have a parent that says--oh, I'm so glad you're offering that because I didn't want to have pay for childcare, so I'm so glad you're doing this. What I'll tell you about that parent is, they may say that, but they'll be thrilled with the progress of their child. It's sort of like they may toss you out a wrong reason, but there's a right reason for those kids to be there. And it is very powerful. If you're looking for early warning systems on issues that a child may have, great place to start discovering those. And I might mention the dyslexia issue. You start in places early enough to where you start to discover what's happening. My middle son, now a doctor of chiropractic, I wish it would have been discovered really early, because he fought it long enough and he finally fought his way through it. And tough as tough can be, had to go through as a nontraditional student because he sort of quit going to school when he was a sophomore in college. But the point being, you begin to discover these things at an early enough point where they make sense and you feel like you have the ability to intervene. And that ability to intervene, I think, brings confidence to parents that that school district really is watching, really is trying to find a way to intervene. And hopefully that makes that educational process on the early end very, very positive so that the further the child goes into elementary school, they go on as a confident student rather than a student that's afraid. Thank you. [LB877]

SENATOR GROENE: Senator Walz. [LB877]

SENATOR WALZ: Yeah, thank you, Senator Groene. Thank you for coming today. I'm glad that you mentioned that because I also think that it gives us the opportunity to intervene on behavior and mental health issues, and any family issues that there might be, if we can intervene on that and get family's assistance the earlier the better for that child and families. The bill seeks to incentivize all districts; it doesn't mandate. [LB877]

JON HABBEN: Right. [LB877]

SENATOR WALZ: Does it mandate all kids if they did provide this service to attend the school? [LB877]

JON HABBEN: Yeah, that's kind of interesting because I think you will have parents that will say--I don't want to send my child this early, for whatever the reason might be. I think you have to be sensitive to that. I really do. But incenting all school districts, the fact that non-equalized school districts are not going to their property tax in a heartbeat to continue something going forward...a few years ago, you could start this with a grant and then when the grant was over, you were funded partially through TEEOSA. Well, that didn't help 170-plus school districts. They just...it went directly to their property tax and if they didn't feel that they could do that, irregardless of what their levy was, if they didn't feel they could do that, the program ended. And

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this is a way to incent everybody...and I think it's a good point, Senator Walz. I think you...I don't think you walk out and just mandate this and every kid has to go, I don't think that's the direction that the public would welcome. [LB877]

SENATOR WALZ: Right. Yeah, last summer I was talking with the local school district in my area, and it was a very rural community, and they were going to start a preschool program, they had a lot of community support, the board supported them. It ended up that they just couldn't afford it. But in those rural communities, it's so much tougher to find day care, let alone a preschool program that's available. So I think it's good. [LB877]

JON HABBEN: Yeah, combination of both is pretty strong. [LB877]

SENATOR WALZ: Yeah. Thank you. [LB877]

JON HABBEN: You're welcome. [LB877]

SENATOR GROENE: Senator Linehan. [LB877]

SENATOR LINEHAN: Thank you, Chairman Groene. I just want to clarify something because I think I'm right, but maybe I'm wrong. If you have a child two years old or three years old and they have special needs, they are already getting services, right? [LB877]

JON HABBEN: They should be. [LB877]

SENATOR LINEHAN: That starts immediately. I mean, if the pediatrician... [LB877]

JON HABBEN: Right out of the hospital. [LB877]

SENATOR LINEHAN: ...or even in the hospital when a baby is born, so if we have speech issues like the president of the NSEA talked about with her son, they should be getting help regardless of whether there's...the schools have programs for those kids, right? They're supposed to under law. [LB877]

JON HABBEN: Yeah, I don't think you can call it a guarantee, but definitely on exiting that hospital there should be an automatic connection to...there's various names for the person, to immediately begin monitoring and connecting the parents with services. [LB877]

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SENATOR LINEHAN: Right, because it's the federal law. [LB877]

JON HABBEN: Yes, you get right in there and you do that. And a parent may say--no, no, no, no, no, and lock the door on you, but you go after that, yes. [LB877]

SENATOR LINEHAN: Okay. Thank you. [LB877]

SENATOR GROENE: The parent doesn't have to, the parent requests it, right? [LB877]

JON HABBEN: No. [LB877]

SENATOR GROENE: You can't mandate it to the parent. [LB877]

JON HABBEN: A parent has the right to say, no thank you. [LB877]

SENATOR GROENE: And the way you see this bill, it becomes a childhood education shall be considered a local system so you're saying unequalized school districts would get this aid. [LB877]

JON HABBEN: Yeah. The way the bill is set up, I believe, it's like LB521, the idea was you don't limit it to only those districts getting TEEOSA to be incentivized to do this. This is for all school districts. [LB877]

SENATOR GROENE: But also don't you see this...our constitution says 5 to 21, our high school/ kindergarten, that we are taking money...I keep hearing we can't pull any money from the basic funding of our schools, this takes money that could be put into the 5...to the kindergarten through high school funding and dilutes the funding...when an awful lot of parents do this themselves. [LB877]

JON HABBEN: Yeah, the constitutional issue...I wouldn't pretend to answer that with any sort of expertise. I've never seen it, I've never heard people talk about preschool, early childhood, whichever you want to call it, I've never heard them talk about having funding...because these grants at one time or another have been in existence for 25, 30 years. I've never heard that being considered a violation of that. [LB877]

SENATOR GROENE: Weren't the grants created by constitutional amendment? [LB877]

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JON HABBEN: I'm sorry. [LB877]

SENATOR GROENE: Weren't the grants created by constitutional amendment where they put \$40 million in and then they...the money could be used for grants for preschool? I think...anyway... [LB877]

JON HABBEN: Oh, I would tell you that one of the school districts I superintended in had started with a grant 20 years ago. And it made a difference with those kids and you could watch the readiness of kids going into school change over time. I will tell you that we were told occasionally that, you know, this only helps the kids that are at risk. No, it helps all the kids that go. There's no line where it only helps at risk and doesn't help anybody else, no. [LB877]

SENATOR GROENE: But for 20 years, did you see test scores by the time they got to third grade and over change? Or is this all about the ready...they're potty trained and they're ready to sit still when they enter kindergarten; and then from there on there's no difference? As a test, I can't see...I can't find that test scores prove that. [LB877]

JON HABBEN: You know, it can...yeah, it can be that kind of readiness because some kids come to you where they really have those kinds of issues, so it can partially be that. I think with the kindergarten teachers, the elementary principals that directly work with this, they would tell the school board where we were that their ability to read started sooner; their ability to decode started sooner. [LB877]

SENATOR GROENE: That's some students. A lot of students come ready, can read... [LB877]

JON HABBEN: Oh yeah. Yeah. Yeah. [LB877]

SENATOR GROENE: ...can write...know numbers because of parents. [LB877]

JON HABBEN: If you've got a parent or parents that are working on things early and they're spending a lot of time at home, you can make things happen at home. I don't disagree with that in the least. And you may only advance them this much, whereas you advance struggling students this much. I just don't think there's such a clear line that you can say only an at-risk student improves. [LB877]

SENATOR GROENE: Thank you. Thank you. Any other questions? Thank you. [LB877]

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JON HABBEN: Okay, thanks. [LB877]

SENATOR GROENE: Proponent? Any time you're ready. [LB877]

DANIELLE SAVINGTON: Senator, please excuse me because I did not come here originally today to testify to this bill. My name is Danielle Savington, that's D-a-n-i-e-l-l-e S-a-v-i-n-g-t-o-n. But I heard some things that were said and some questions that were asked and I felt kind of compelled that I wanted to talk to you about this issue. My son has a son...my youngest son is a child who got to go to district preschool in my district which is Papillion/La Vista; not all children get to go to the school district's community preschool. It does something really cool in our district, they pair a mix of students that have special needs and students that are neurotypical and don't have any special needs in classrooms together. And by the time the kids leave the preschool and enter the kindergarten, the neurotypical kids have learned something that you're not going to see in the test scores. They've learned things like how to modify a game of duck, duck, goose, so a child with cerebral palsy can participate. They've learned how to work together when a child is having a behavioral outburst so that the class remains calm and steady. And those are the kind of skills that, as a parent, I can try as hard as I want, I can potty train, all those things, but my child isn't going to learn those things at home. And parents who have special needs kids can send their children to special preschools and paid preschools and the children that are there aren't necessarily going to be learning those skills either. So I just wanted to talk about the fact that not all the skills that kids in state-mandated preschools learn are going to be things that show up in testing. And for those kids, like my youngest son who has a behavioural issue, going to the district's preschool enabled us to identify that the reason he hadn't been successful in the Montessori preschool that we paid through the nose for or the other private preschool we also paid through the nose for, was because he had a behavioral issue. By the time kindergarten started, we'd begun the identification process; we begun the IEP and MDT process and he was able to enter the school with some of the accommodations that would help him to be successful already in place. Now he's in third grade; we're still ironing things out, but he's surrounded by inclusive students that have learned those skills that they'll carry on for their lives to make them more compassionate and really more productive members of society. So that's all I wanted to say. [LB877]

SENATOR GROENE: Thank you. Questions? Senator Walz. [LB877]

SENATOR WALZ: Thank you, Senator. Thank you so much for that testimony. That...I mean, test scores are so, so important, but so are just everyday life skills and learning how to adapt and learning how to get along with each other. [LB877]

DANIELLE SAVINGTON: Thank you. [LB877]

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SENATOR WALZ: Very important, so thank you so much for that side of the story. I appreciate it. [LB877]

DANIELLE SAVINGTON: Thank you. I think it's something that our district does really well and it really changes...I mean, when I was a kid, we kind of viewed the special needs kids with a little bit of suspicion; they were all a little different than us. We were nice to them, but we didn't know how to befriend them...that little level of awkwardness. And my older kids, who have been around since the district started doing this and now they're in high school, they don't have that barrier, they just jump in and get involved and form friendships with kids who have all kinds of different disabilities, be they cognitive or physical, and I really credit that to a district that's made that effort to teach those life skills. [LB877]

SENATOR WALZ: Yeah, and that's something the world needs more of today. [LB877]

DANIELLE SAVINGTON: Thank you. Thank you, Senators. [LB877]

SENATOR GROENE: Next proponent? Find my letter list...I didn't go to preschool, so I didn't get organization skills. (Laughter) LB877 support, we have four letters: Nebraska Association of School Boards; Millard Public Schools; Norfolk Public Schools; and Nebraska Child Healthcare Alliance. Opposition? [LB877]

AMBER PARKER: Hello and good afternoon, members of the Education Committee. My name is Amber, A-m-b-e-r, last name is Parker. I'm here to testify as an opponent to LB877. I do have great concerns. And I want to read a little bit of what I have concerns about, but I'm going to go back to a bill. It was in LB773, this was in the One Hundred Fourth Legislature. It was a bill for an act relating to early childhood to create the Early Childhood Workforce Development Task Force to provide for appointment of members to require a report and to declare an emergency, be enacted by the people of the state of Nebraska. Section 1: The Early Childhood Workforce Development Task Force is created. The Buffett Early Childhood Institute at the University of Nebraska shall facilitate the task force. The task force shall include the following members: the Commissioner of Education; the chief executive officer of the Department of Health and Human Services; the Commissioner of Labor or his or her designee; the executive director of the Coordinating Commission for Postsecondary Education, his or her designee; executive director of the Buffett Early Childhood Institute, his or her designee who shall serve as chair of the task force; a representative from the University of Nebraska, other than the representative from the Buffett Early Childhood Institute; one representative from the Nebraska state colleges; two representatives from the community college areas, including one representative from either the Nebraska Indian Community College or the Little Priest Tribal College; one representative from a statewide organization representing the interests of private colleges and universities in

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Nebraska; one representative from a statewide organization representing the interests of school teachers; two representatives from school districts with high concentrations of poverty--one representative shall be from an urban area and one from a rural area; two representatives who work as child care providers in areas with high concentrations of poverty--one practitioner shall be from an urban area and one from a rural area; two representatives from a statewide organization representing the interests of the federal Head Start or Early Head Start program providers. The reason, members, I bring this up is the great concern that I have that the intentions behind this are to mandate early childhood education on the parents here in the state of Nebraska. What I just read to you, I believe is a paper trail of showing that goal. I believe this LB773 did not pass, however, that the Buffett Early Childhood Institute did create their own workforce. I would encourage you to read LB773 and I am greatly concerned that parents truly are not informed of the true goals that are behind LB877. Thank you. [LB877]

SENATOR GROENE: Thank you for your testimony. Any questions? Thank you, that was very interesting. I'm going to have to leave; I have to introduce a bill. I'm going to turn it over to Senator Morfeld to chair until I can come back. [LB877]

SENATOR MORFELD: Okay. Any other opposition testimony? Welcome. [LB877]

GWEN EASTER: Hello. Good afternoon, senators of the Education Committee. My name is Gwen Easter. I'm the founder of Safe Haven Community Center and Safe Haven Early Childhood Preschool Education Academy established in 1999. I've been appointed by Governor Pete Ricketts to be a member of the Early Childhood Interagency Coordinating Council to be a voice for family home child care providers. I'm not here on behalf of the council. I'm here on behalf of my child care business and providers who may...wanted to be here today but couldn't. I'm opposed to LB877 just as I'm opposed to LR270CA. There are thousands of qualified, unique in-home child care licensed, early childhood preschool, child care businesses, and faith-based preschool programs across Nebraska. As I shared with you all before, that many child care providers have prepared children for kindergarten and have supported school-age children academically for decades. And my daycare has definitely has provided a early childhood preschool program and a tutoring program for kids who struggle with reading and have a learning disability such as dyslexia. And I had done that since 1998 as a AmeriCorps VISTA volunteer for the Omaha Public Schools which didn't want to recognize kids. They used the word "learning disability," not dyslexia, but, you know, and that's one of the reasons why I started my organization was to help families with education and housing services because they struggle...a lot of them struggled with getting housing, getting help with rent and utilities and we advocated...I had teachers...and now all of that...my second daycare is gone. Like I told you before, I'm struggling to keep my other daycare open, period. And the fact that this bill supports...would support...give funding to the schools for their program, it would affect daycares across Nebraska. There's 15,000-some daycares. I feel that also the school systems have been

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provided...they use our tax dollars, they get Sixpence funds. They have partnerships that they...they're not helping our...they're not helping children. There's no measurable outcomes. Learning Community is just wasting tax dollars. I mean, they've given over 20...I think it was 20...let me make sure I'm right about this...\$2,600,000 to the Early Childhood Buffett Superintend plan. After they've been told that they have no measurable outcomes, they only have home visit data and things like that, they have nothing to show any difference from what our daycares are doing. We've helped kids and I think that this is just a way to push out providers and take control over parent's rights to choose who teaches their children. And I think this is a waste of money. And the Omaha Public Schools, along with all the rest of these districts need to focus on ages 5 through 12 years and help those kids that are there and leave early childhood education to those who have been doing it, especially people like me. I've been in it since I was 16 years old. [LB877]

SENATOR MORFELD: Thank you, ma'am. Any questions for the testifier. Senator Erdman. [LB877]

SENATOR ERDMAN: Thank you, Senator Morfeld. Thank you for coming today and sharing your testimony. So if I heard your testimony right, you used to have two daycares, now you have one? [LB877]

GWEN EASTER: I have one, and yes, no kids right now because what's happening is that we are competing...I'm competing with the schools across the street, down the street, around the corner, I mean, and the early child Educare, the early childhood centers, 75 North now is going to build another early childhood center like a block away from where I am. And I believe that them wanting funding for the 3- and 4-year-olds is because of the partnerships as well. And I'd like to know who is going to help with this early childhood center? Is some of our tax dollars going to help these early centers? Because they're a business just like we are. Up until they...until you all decided that 3-year-olds have to go to school...see it's leading to them having to have permanent preschools or...what's the word I'm looking for, a little nervous, but...mandatory preschool. This is where this is leading to. No it's not mandatory yet, but it's leading to it. And then I'll tell you something else that I don't like, the Learning Community has a mirandum (phonetic)...Buffett Early Childhood Superintendent Plan, they have a miranda (phonetic) that's connected to the attorney's office before...like you know, truancy, the Gold Center is used...okay, why do they have that in a superintendent plan? And that is because they plan on if a child misses days, that parent could end up right down at the attorney's office. These kind of things that are going on concerns me because most low-income families are the ones that will be abused by these systems. And because of the other work that my organization does, I've seen time and time again the abuse of how families are treated when they come from low-income families. A lot of time, money that is given to the schools to help parents that may need help with rent, utilities, or housing, they don't get the help; they deny them. And a lot of the organizations don't help them

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either. And I know this because advocating for 18 years to help families make sure they stay in their homes or get rent...help with rent or utilities assistance. All I'm saying is that these funds that they're asking for, they're not...this isn't funding that will go in their pockets or their administration, but it doesn't help our children. And we need to make sure the kids are being educated. All children being educated and, I'm sorry, but the public school system is not the answer. [LB877]

SENATOR ERDMAN: So are the public schools in your area offering preschool? [LB877]

GWEN EASTER: Yes, they offer 4-year-olds and then they have Educare. Educare is connected to the school. Now they have another early childhood learning center. Now they're getting ready to do a early childhood...this is all about money. This is all about them making money, forcing us out, and down playing our businesses. I worked hard for my organization and my daycare. I bought a house that I...I started in a small house in north Omaha with my services and then I bought a bigger house to accommodate Safe Haven Community Center, Safe Haven Preschool and all of it is...you know, and what I'd like to do is be able to give back to serving families and children like we was. We were full fledged organization with teachers, with...I had a staff, everything, volunteers, but because of this situation, you know, like I said, because of this situation, they come in our community, they duplicate our programs and services and they decide if you're not the top organization that they think of, then they, you know, ignore you or blackball you or try to portray like you're the angry black woman. Well, when you worked hard for everything that you have, and I've served families, with the purpose of serving and helping children and families. It was never about money for me. [LB877]

SENATOR ERDMAN: Thank you. [LB877]

GWEN EASTER: But I'm suffering behind it. [LB877]

SENATOR ERDMAN: Thank you. [LB877]

GWEN EASTER: And so are the kids that I work with because I...you know... [LB877]

SENATOR MORFELD: Any other questions for the testifier? Senator Pansing Brooks. [LB877]

SENATOR PANSING BROOKS: Thank you. I want to thank you for coming. And I get the quandary. You stepped up when there was great need for many years, where the state wasn't attempting to look at the 3- and 4-year-olds. And now there's a quandary because there's lots of research out there that shows that we need to do more. And it is very difficult for people who put

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themselves out and create a business and I get that. So thank you for coming and alerting us to those issues. [LB877]

GWEN EASTER: Okay. Thank you. [LB877]

SENATOR MORFELD: Thank you, ma'am. Any other opponent testimony? Any neutral testimony? We have a few different letters of support and opposition. I'm not quite sure if Chairman Groene read into the record the letters of support so I'll do it just in case. Letters in support of LB877 were the Nebraska Association of School Boards; Millard Public Schools; Norfolk Public Schools; Nebraska Child Healthcare Alliance. Letters of opposition that we received were 11, do I need to list all of the letters of...do I need to list every...for the record. Okay. Ron and Lynette Nash; Karen Schmeichel; Kathy Hahn; Mary Forester; Nebraska Parental Rights; Nancy Carr; Marilyn Koehn; Jennifer Iler; Rebecca Williams; Vic Stevenart; Amber Parker. And we have a neutral letter from First Five Nebraska. And I'm sorry if I slaughtered anybody's name. Senator Kolowski, would you like to close? [LB877]

SENATOR KOLOWSKI: Yes, sir. Senator Morfeld, thank you very much. I think there's some things we need to think about as I make my closing comments. And one of them is simply the fact that how many dual working parents we have in this state. We lead the country with the number of people that are both working as a husband and wife in a family. And that is a particular pressure and difficulty as far as impact on a budget of family as they have children and where are those kids going before and after school, all the other things that connect with that. What you're hearing is one of about nine bills that will be coming forward that have been looked at and are very important to us as you look at the quality of life of families and the kids that are in those families in the state. And we'll continue to bring those forward and seek the assistance that we hopefully will be able to get in the future. I certainly understand the budget situation we're in, but I also know we have a very important set of decisions to make as to the importance of priorities within those budgets. Prioritizing educational issues like we're looking at and bringing those forward, I think is absolute paramount issue that we've got to look at and help with as we move on. The optional versus mandatory attendance of kids has been talked about. It is about optional and building things over time as far as early childhood is concerned. I sit here 51 years after something happened in our family, and that was when my wife was hired as the director of early childhood education in 1968 in the Westside Community Schools in Omaha. We moved here 52 years ago. And she was hired a year out ahead of time by the superintendent, Vaughn Phelps, because of her elementary and early childhood background at Rockford College; that she came into the situation and was literally grabbed and picked up a year ahead of time because of her background and her abilities in the early childhood area. That program flourished for about the decade that she ran it and then she was on to other things in the Millard District where she finished as a elementary principal. That was 50 years ago. That data, that research, that information, all those things that we know have been applied over those years to where we

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are today. The Buffett Early Childhood money has been talked about as far as the \$50 million that has been given by Susie Buffett, matched by the university with another \$50 million, Sam Meisels runs that particular program, and it's nationally and internationally known, right here in Nebraska, for the quality of what they're getting done and the work they're doing in early childhood education. I think we need to recognize that. No one is saying you must send your child. It's an option and you know the differences in this state as far as size of districts and what we have going as far as 244 districts with 44 of them having 81 percent of the kids. We have great change and differences across our state that need to be looked at and recognized. Parents can then decide, as they need to, to make up their own minds on all these things. I thank you for the hearing today. I thank you for the opportunities we've had to talk about these things. And I think we need to deal with the facts of cases as we look ahead to the decision making on these particular bills. Thank you very much. [LB877]

SENATOR MORFELD: Thank you, Senator Kolowski. Any questions for Senator Kolowski? Thank you. How many people are planning on testifying on the next bill? Okay. Seeing as there's little interest in the next bill, we'll take a five minute break and turn it back over to Senator Kolowski. [LB877]

BREAK

SENATOR HALLORAN: (Exhibit 1)(Recorder malfunction)...strengthened with proper accountability and disclosure to the public. LB718 as amended by AM1553 was drafted not as a reaction to a well-publicized isolated incident that happened on the University of Nebraska last August, as some would have you believe. Yes, it certainly was a catalyst to research this issue more closely. The more my staff and I researched what was happening on college campuses across the nation, as well as the personal letters and emails we received, it became abundantly clear that something needed to be done. I'm not alone in my conclusions. Seven states have already passed similar legislation: Virginia, Missouri, Arizona, Colorado, Tennessee, North Carolina, and Utah. All with broad bipartisan support. Ten states, including California and Illinois, have legislation pending. LB718 was modeled after other state legislation and the work of the Goldwater Institute. LB718 directs the governing boards at the University of Nebraska, Nebraska state colleges, and community colleges to adopt a set of policies governing free speech on its campuses. It also requires that each governing board create a committee of free expression. This committee will provide an annual report to the public, its own governing board, the Governor, and the Legislature. This report shall include any barriers to or incidents of disruption of free expression on campus, and what disciplinary action, if any, was taken against members of the campus community. The campus community, composing of students, faculty, and invited guests. An amended version of LB718 will grant the governing bodies broad discretion to develop policies for free speech, and we'll speak further to that future amendment that we'll be discussing later. After months of the University of Nebraska being in the spotlight on how they

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handled a well-publicized free speech issue, I was encouraged to see that the Board of Regents finally researched, wrote, and approved just last week, last Thursday, a new policy titled "Commitment to Free Expression: Guide for Facilities Use; and Education." As a result of this new policy, many have recommended that we declare victory and withdraw the bill. The major issue I have with their new policy is that it does not include a reporting component to the public, which would hold them accountable for their actions or inaction. Additionally, LB718 is not limited to just the University of Nebraska system, but to all institutions of higher learning within the state. Institutional administrators come and go; board members come and go; and yes, legislators come and go, but a sound and just law stands the test of time. We need to restore the public trust that the rights of students, faculty, and guests have to free expression will be protected within institutions of higher learning. Following my opening, members of FIRE, the Foundation for Individual Rights in Education, will be testifying in regard to the constitutional issues raised by the NU Board of Regents v. Exon. I would be very glad to answer any questions to the best of my ability. [LB718]

SENATOR MORFELD: Thank you, Senator Halloran. I think I will hand it over to Chairman Groene. [LB718]

SENATOR GROENE: Thank you. Is this the closing already? Did I miss it all? [LB718]

SENATOR MORFELD: This is closing. That concludes the hearing. (Laughter) [LB718]

SENATOR HALLORAN: Thank you, committee. [LB718]

SENATOR GROENE: Senator Pansing Brooks. [LB718]

SENATOR PANSING BROOKS: Thank you. Did you bring the amendment, Senator Halloran? Thanks for... [LB718]

SENATOR HALLORAN: The amendment will be discussed. I mean, this was done just as we, how would you say, on the fly in my office this afternoon. [LB718]

SENATOR PANSING BROOKS: Okay. So you don't have the amendment right now? [LB718]

SENATOR HALLORAN: No, but that will be passed around when FIRE gives its presentation. Okay? [LB718]

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SENATOR GROENE: Any questions? Senator Erdman. [LB718]

SENATOR ERDMAN: Senator Groene, thank you. So briefly, if you're going to talk about the amendment, can you describe what your amendment does? What does it change and how...just briefly what does it change on the bill? [LB718]

SENATOR HALLORAN: Well, I would rather leave that up to them, but it will focus mostly on the very specific recommendations that we made for their policy on free speech. And it will address the issue of us requiring them to do something and eliminate that any form of requirement to their discretion on how they do it, which is the basics of the Board of Regents v. Exon. [LB718]

SENATOR ERDMAN: So I can conclude from your comments that because of what you've seen them adopt last Thursday you have then adjusted your bill accordingly. Would that be fair to say that? [LB718]

SENATOR HALLORAN: That would be fair to say that. [LB718]

SENATOR ERDMAN: Okay. So, you noticed they commented about the constitutionality of what you're trying to do? And I believe, Senator Morfeld, you have had a similar situation about talking about your bill being not constitutional. It's not unconstitutional until a judge says it's not unconstitutional. So we do that all the time here, we pass things that aren't constitutional according to some people. [LB718]

SENATOR HALLORAN: Ultimately, yes. [LB718]

SENATOR ERDMAN: Back 10 years ago they passed...they moved the State Fair to Grand Island. That was deemed unconstitutional too, and the State Fair is in Grand Island. So enough said. [LB718]

SENATOR HALLORAN: Very good. Thank you, Senator. [LB718]

SENATOR GROENE: Senator Pansing Brooks. [LB718]

SENATOR PANSING BROOKS: Well, I would just like to add for the record that just because it hasn't been ruled unconstitutional by a court doesn't mean that we can't see on their face that a law, not speaking specifically about this, but we can determine through study and education and

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legal advisors whether or not something is or is not constitutional. So I hope that our general goal is not to wait until the Supreme Court rules it unconstitutional. [LB718]

SENATOR HALLORAN: I agree. And FIRE will speak more eloquently on this issue than I will. [LB718]

SENATOR PANSING BROOKS: Thank you. [LB718]

SENATOR HALLORAN: So unless you have something I can answer. [LB718]

SENATOR GROENE: Senator Kolowski. [LB718]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Senator, I just wanted to double-check and make sure you still have a Board of Regents with the university up through last weekend. Is that correct, they're still in place? [LB718]

SENATOR HALLORAN: Is this a serious question? [LB718]

SENATOR KOLOWSKI: Yes, it is. [LB718]

SENATOR HALLORAN: Yes, sir, there is a Board of Regents. [LB718]

SENATOR KOLOWSKI: And is this in conflict with what you see them doing as far as what you're trying to put forward here? [LB718]

SENATOR HALLORAN: Well, until last Thursday I had nothing to go by, as far as their policy on free speech. I'm talking about last Thursday. So this drafting of this bill took place over the last several months. And we did the best that we could, looking at commonly-held precepts on the first amendment, and we put them in the bill, lacking really anything else to go by from the Board of Regents or the administration on their free speech policy. So as we listen to FIRE, that's following me, we'll be discussing how we can deal with not abridging the Board of Regents v. Exon, and have a bill that will future be amended that will be I think amicable to them, and also will help rebuild the trust with the public. [LB718]

SENATOR KOLOWSKI: So the university does have a free speech article or interpretation and something that they can pass on to the students? That does exist, is that correct? [LB718]

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SENATOR HALLORAN: They would be better to address that. But as of last Thursday is when they announced this most recent policy. [LB718]

SENATOR KOLOWSKI: It didn't exist before? [LB718]

SENATOR HALLORAN: They would be better to address that than I would. [LB718]

SENATOR KOLOWSKI: You have no opinion on it? [LB718]

SENATOR HALLORAN: Well, it wouldn't be good for an opinion on something I'm not sure about. But the fact of the matter is, whatever they had before they felt it was necessary to edit and update it. [LB718]

SENATOR KOLOWSKI: Thank you. [LB718]

SENATOR HALLORAN: You're welcome. [LB718]

SENATOR GROENE: Senator Halloran, have you had any correspondence with anybody at the university about the content of your bill? [LB718]

SENATOR HALLORAN: Not direct correspondence. It was no secret shortly after the incident in August, it was probably mid September, late September that my office made it clear that we were looking at formulating or drafting a bill regarding free speech on campus. And at several interviews on the radio, I made it clear that I was more than willing to work with them on the bill. We had not been in communication, and up until November 16, with the meeting with President Bounds and Chancellor Green, Senator Erdman and Senator Baker...or Brewer, he's not going to forgive me for that, and myself, at that meeting, at that very same time...or at that time, I offered as well, invited them to participate with me to draft this language. And I never heard back from them. [LB718]

SENATOR GROENE: So maybe we will hear today what specifically in this legislation they disagree with. I don't know, maybe the access to campus for purpose of the free speech, I doubt they would disagree with that. Or public hearings of campus or traditional public forums, I don't think they would disagree with that. So I would hope we hear from them what specifically in this legislation they think tramples on free speech rights. Thank you. They haven't talked to you at all about any specific...? [LB718]

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SENATOR HALLORAN: Not specifically, no. [LB718]

SENATOR GROENE: Thank you. Any other questions for Senator Halloran? Proponents? Any proponents? How many proponents do we have? Well, come to the front of the room so we can... [LB718]

JOE COHN: (Exhibit 2) Good afternoon, Chairman and members of the committee. My name is Joe Cohn, and I'm the legislative and policy director at the Foundation for Individual Rights in Education, or as we're better know, FIRE. We're a national nonpartisan organization that deals exclusively with university student and faculty rights. [LB718]

SENATOR GROENE: Could you spell your name? [LB718]

JOE COHN: C-o-h-n, and Joe, J-o-e. We have, over the course of our almost 20 years of existence, defended students on every part of the political spectrum, on every side of every controversial issue on their rights to engage in the marketplace of ideas and speak their minds. And we're here today to support SB7...sorry, LB718, but we're suggesting an amended version to deal with some of the unique constitutional requirements here in the state, in particular, Regents v. Exon. The main holding of the case is a paragraph that says, "In prescribing the powers and duties of the Regents a legislative act must not be so detailed and specific in nature as to eliminate all discretion and authority on the part of the Regents as to how a duty shall be performed." Okay? And that's, you know, designed wisely to try to keep politics out of the day to day operations of institutions. That being said, I doubt your state Legislature intended to ever make it so that only the regents could enforce building codes on your campuses. They apply more broadly because it's important that they are consistent, same with anti-discrimination policies. You don't exempt them from your state anti-discrimination laws and say that only they may produce a policy. And the same should be true of other just broad constitutional requirements, so long as you're not getting into the specific detailed, it must be this policy, copy and paste. So long as you're giving appropriate discretion. And it's on that front that we took a look at the bill, and I have distributed for you a proposed amendment that essentially says that they should adopt a policy, and I'm going to paraphrase: that should promote free speech on campus without infringing on the rights of students, faculty, and their invited guests to engage in expressive activities that have been found to be protected under the First Amendment or under your Nebraska Constitution. And that the policy should ensure that faculty and invited guests who wish to engage in at least noncommercial expressive activity should be permitted to do so freely, so long as their conduct does not unlawfully, materially, and substantially disrupt the function of the institutions. None of that gets into the problem areas of Exon, where it's really getting in the micromanaging. They're going to be the ones creating a policy, it just needs to be one that is favorable to free speech in a...as broadly defined. And then the last operative kind of

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paragraph here, is: the governing body should have the broad discretion in adopting a policy consistent with the act, so long as any time, place, and manner restrictions that they create comply with what the case law says. And that's the standard that's repeated. So they're going to be the ones deciding what their time, place, and manner restrictions will look like, whether or not they want to have restrictions on using volume outside of the library or using, you know, or having crowds outside of their dorms at night. They're going to make all of those detailed descriptions, just as the case requires, for the regents to use and exercise their discretion in figuring out how to execute this concept of protecting free speech on campus. We think this bill is important to do as a Legislature because policies can change. And we don't want the forward progress that's been made last week to disappear when your watchful eye isn't on it any further. So I think your time...forgiving me this time. And I look forward to answering your questions. [LB718]

SENATOR GROENE: Questions? Senator Pansing Brooks. [LB718]

SENATOR PANSING BROOKS: Do you think your amendments are specifically missing from what the Board of Regents intends to do? And why is this necessary? [LB718]

JOE COHN: Yeah, the Board of Regents recent adoption is a pretty broad, you know, policy statement that adopts roughly the Chicago principles, the University of Chicago adopted on campus free speech. But they don't get into some of the nitty-gritty stuff, like getting rid of once and for all free speech zones. So that's one of the things that we look at at FIRE, is that we see campuses all the time make broad, flowery language about promoting free speech. We ask them to do that, we think it's a step in the right direction. But then they need to look at their actual policies further and see if they're actually upholding those standards. Do your computer use policies really meet what the case law says on free speech? Do your distribution policies, you know, actually meet any of those standards? And the answer right now at UNL is still no. And even after the adoption of the policies on Thursday. So they should be commended for taking an important step in the right direction, that's for sure. And I don't want that to be interpreted lightly. I think they have definitely taken an important step in the right direction, but they haven't solved their problem on free speech. You still have a faculty member, even though it's controversial on this board, a graduate student who isn't allowed to teach based on an incident that happened of an exchange of people arguing, the incident that people have referred to before. That's still the status quo today, with or without the Thursday policy revision. So my answer is no, they haven't turned the corner to now be a bastion of free speech that the rest of the country should look at as the model. They could use your help, they could use all of your help to get there. [LB718]

SENATOR PANSING BROOKS: But you're saying that what they've adopted is quite broad, but it's not specifically broad enough? [LB718]

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JOE COHN: Well, so we see in statements, you know, a university say: we will respect free speech because free speech is really important. No, it's really, really, really important. But then when you get into the specifics of each of the policies on narrow areas of how they regulate things, they don't meet up to those standards. So what I'm saying is UNL adopted a policy that commits itself, a policy statement, that we will really, really, really care about free speech on campus. Well, that's really good, that's an important step, but now they need to do that. They need to back that by looking at their written policies as they are, comparing it to the standards that they expressed was the policy that they care about, and reforming those operational policies as necessary. That hard work hasn't happened yet. So definitely an important step in the right direction, to recommit, you know, as a policy statement that these things matter. They should be commended on that without any reservations. I'm not trying to be hesitant in my support for what they have done, but they have more work to do. [LB718]

SENATOR PANSING BROOKS: So I don't know enough about all the particulars of the situation, but it's my understanding that there was one student who was exercising her free speech against another student, who was exercising her free speech. One of those persons has a higher priority of speech, is that correct? Is that what you're saying? [LB718]

JOE COHN: No. I mean, we disagreed with some folks that we working on on this bill on how that individual case it unfolded. I don't want to mince words on that. But the policies you set as a committee are going to be used to always deal with how these things should work. Like having black letter law. And our view was that both students were engaged in free speech. That's why I said, if you want to ask me if UNL has done the right thing, we're still in a situation where one of those students has been punished for speech that they have engaged in. And there's no, you know, sign that that's going to be lifted. So if you're asking me if UNL is in the clear and should be held out as an example of an institution that truly respects free speech because of their vote last week, my answer is no. You still have a student who's not allowed to get back into the classroom as a result of a heated exchange. [LB718]

SENATOR PANSING BROOKS: Arguably because of legislative pressure. [LB718]

JOE COHN: I'm going to stay out of what... [LB718]

SENATOR PANSING BROOKS: That's fine, but we have to work in the realm of the facts we know and the policies we're trying to create... [LB718]

JOE COHN: Right, but... [LB718]

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SENATOR PANSING BROOKS: ...connected to the policies and the facts that have occurred to bring this forward. [LB718]

JOE COHN: I agree. But at the end of the day, what you put in the statute is going to be what's written down on the paper. So I want to make sure that it gets it right, regardless of, you know, I can work with someone and agree with them on 80 percent of things and disagree with them on 20 percent. And I'm not going to...and I'm happy to still work with them in all of the areas of agreement. And that's really where I'm at here, is that I disagreed with some folks who are supportive of this bill and how they interpreted that particular situation, but there's no doubt in my mind that they care about advancing free speech generally. And I want to help them get it right. And I hope that all of this committee, you know, looks at the letters of what's in the writing and make sure that at the end of the day they pass things only if it gets it right. [LB718]

SENATOR PANSING BROOKS: Thank you, Mr. Cohn. [LB718]

JOE COHN: Thank you. [LB718]

SENATOR GROENE: Question for you, for clarification. In defense of the university, the student...both students they're still in school. One is a graduate student, one is an underclass student. They fired the individual as an intern, as a classroom lecturer, not tenured, for decorum and behavior towards a student. They didn't kick the student out of school, is that true? [LB718]

JOE COHN: No, that is true. They did it as an employer. [LB718]

SENATOR GROENE: Doesn't free speech stop with your employment? You can say what you want, but your employer can dismiss you for that behavior? [LB718]

JOE COHN: No, not in all circumstances. And certainly not in the educational setting, where you also have academic freedom concerns. [LB718]

SENATOR GROENE: There's different free speech standards for educational employees versus a bank teller? [LB718]

JOE COHN: Yeah, there are, and...there are. I mean, there are. There's extensive case law on how there's a need for academic freedom, you know, in settings that you don't really have robust exchange of ideas without faculty members being even freer. So whereas, you know, an institution taking an action against a regular staff person who doesn't have classroom

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responsibilities, that's different, because you don't have the academic freedom concerns that are a necessary ingredient for a university to thrive. [LB718]

SENATOR GROENE: And that's on campus or in the classroom? In all settings? [LB718]

JOE COHN: It's different depending on where in which settings, but I'll get really to the nitty-gritty, because I know you have a lot of people here, for time. Inside the classroom there's even broader protections, so long as they're remotely germane to the subject matter of the class, broadly construed, and not using up a tremendous amount of the classroom time. So even if you go off topic, if it's brief, you know, you're not supposed to take actions, so we're not trying to create teachers who are auto-bots. But outside of the classroom, there's so much to the vitality of higher education that doesn't only limit itself to the classroom, where you want thinkers to be able to express themselves. So, you know, if you're concerned about the national trend of fewer and fewer conservative faculty members, and fewer and fewer people of conservative voices being able to speak their minds, then you need to provide really robust protections for people to speak their minds across the board. And, you know, don't fall in love with the club that's going to be used to beat you over the head. You know? Because that at the end of the day is the concern, is that, you know, any time a conservative faculty member says something that isn't, you know, in line with the thinking of the leadership, will that be used against them outside the classroom or within? [LB718]

SENATOR GROENE: Isn't...I'm mean, you're rambling. But isn't that what tenors (sic)...tenure is about? Protection of that? [LB718]

JOE COHN: Well, tenure provides additional protections for more senior folks. But if you just allow full censorship of faculty until they reach tenure, then what you mean is a vast majority of your classes are going to be taught by people who aren't freely able to really speak their minds. And the first amendment in academic freedom doesn't only exist for tenured faculty, it provides additional structural, procedural protections. [LB718]

SENATOR GROENE: Have you seen the paperwork and the agreement between the graduate student and the university? So you don't know for sure what rationale they were fired. [LB718]

JOE COHN: It wouldn't be constitutional either way. You can't get rid of the constitutional free speech rights in the contract like that and still have academic freedom at UNL. And if you're allowing that in your contracts, then you have a much bigger problem here in Nebraska in terms of campus free speech. And that is for sure. And that, at the end of the day, is really what we're looking at, is to make sure that all points of view of people are protected. Now, the other thing about this incident, and I don't really want to make this about this incident, because when we're

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talking about a case and you're talking about a statute, you want a statute that will live in the future and be able to govern how people behave. But with respect to this, you are not talking about a faculty member who got into a confrontation with one of their students, these were, you know, two students, one of them also happened to have teaching responsibilities in another school of the campus, who got into a heated political argument, where I think a lot of people can question the decorum. That's fine. But the first amendment isn't about those judgments, the first amendments are about government punishments for engaging in protected speech. And however you want to slice it, it looks pretty protected to us. I mean, certainly there's grounds to criticize in terms of politeness, etcetera. And those who want to weigh in and express their disappointment should feel free. [LB718]

SENATOR GROENE: A question for you. [LB718]

JOE COHN: Yeah. [LB718]

SENATOR GROENE: Could you field questions and complaints from students? [LB718]

JOE COHN: We do. [LB718]

SENATOR GROENE: There was a quote in the paper that this is the only complaint the University of Nebraska has had, the regents. What is the attitude you hear from teachers, I hear it all the time from...not teachers from school, but I don't like what's going on in class, but I'm afraid of the intimidation or the repercussions if I were to speak up. Do you hear that a lot from students? Isn't that a repression of free speech? [LB718]

JOE COHN: We hear that, and we are concerned about that. We don't think that anybody is imagining that, you know, there are tremendous amounts of pressures on people to be conformist at institutions. And over time, that may sway in terms of the politics. But we hear that quite a bit. And I think that there is, you know, FIRE represents again students on all parts of the political spectrum when they've been censored, but if I had to a rough in my head kind of head count, when it is about politics, it's a majority of the time it's a conservative student who has been censored. At least in 2018 America. And I think that's because censorship is nonpartisan, people censor who they disagree with. But the leadership of institutions across the country, if you just did a headcount, more of that is coming from the left. So when there is a ruffling of just, you know, could combating friction between the politics of someone who has power and someone who doesn't, that's how we're seeing it unfold too often on college campuses. So there's reason to be involved. But we get concerned when the solutions aren't about protecting everyone's free speech rights, no matter where they come from. Because that's really the test of time, is not

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whether or not we can stand up for people who we agree with, but when we can stand up for the people who we think have the most vile opinions that we can think of. [LB718]

SENATOR GROENE: Thank you. Any other questions? [LB718]

JOE COHN: Thank you for the challenging and thoughtful questions, I really appreciate it. And I'm here to help throughout the process moving forward however we can. [LB718]

SENATOR GROENE: Next proponent. Thank you. [LB718]

AMBER PARKER: Hi. My name is Amber Parker, A-m-b-e-r, last name Parker, P-a-r-k-e-r, and I'm here as a proponent to LB718. It's amazing to me that there is a room full of people here that are going to be opponents to a bill that is proposed to protect freedom of speech on our college campuses here in the state of Nebraska. I myself have never been a college student. I struggled through school, would have flunked grades. Another story for another day. But what I will say to you here is that I really do believe that Senator Halloran has something here and was willing to come forward and be put in a lion's den, so to speak. I am tired of seeing the bullying that goes unspoken. I have talked to students, I have worked with other student groups who were even not allowed to have conservative groups on their college campuses. There is definitely something that needs to be done. More concerning, in the Constitution of the United States of America, freedom of speech is a right for every American. I ask you here, what is it for those of you opponents, and I do look forward to hearing, because what I would like to bring up is asking what is going on in the University of Nebraska's campus? Do they only provide the freedom of speech? I would just like to read a posting that I had seen on somebody's post. Coby Mach had posted this, and it greatly concerned me. It said sign posted today in the UNL English Department: Students of color, you are welcome here. Muslim and other non-Christian students, you are welcome here. Queer students, you are welcome here. Female, gender queer, and transgender students, you are welcome here. Students with disabilities and non-neurotypical students, you are welcome here. Poor students, you are welcome here. Undocumented students, you are welcome here. You are an invaluable part of our community. I make a commitment to building an inclusive, supportive space where you can thrive. Then it has a heart with a fist in it, black fist, and then it has like a woman's body. And I can't really...it says, "My body..." I can't tell what it says. "My..." something. But then "m***er f***er." So my question, I hope that those behind us have a good reason to say why they would support if this is something that the English Department gave permission to post. I would love to hear the freedom of speech that they believe should only be spoke on the campuses, and remind them that if that is the case, they are not abiding by the Constitution of the United States of America. Thank you. [LB718]

SENATOR GROENE: Any questions? Thank you. Any other proponents? [LB718]

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CHRIS COUPE: Hi. My name is Chris Coupe, it's C-h-r-i-s C-o-u-p-e. I'm 30 years old and I have been attending classes at Southeast Community College for over 10 years. I do this part time as a hobby because there is nowhere I would rather be than around educated, respectable individuals, and nothing I would rather be doing than wrestling with the minds of our most educated or to be educated. When it comes to the student experience, not faculty experience, not student working as faculty experience, and not students that have been encouraged because of their favorable viewpoints by faculty, but by my personal student experience, is almost unparalleled at Southeast Community College. I read about this bill, I read about it, LB718, on the Higher Education Free Speech Accountability Act yesterday on NebraskaLegislature.gov/bills, a good source of information. I thought I would come in here and share a piece of my mind with my fellow citizens and you board members. I am curious if this bill would prevent a teacher from limiting student speech about certain subject in an introduction to human communications class. In a class I took at Southeast Community College, each student had to write on a sheet of paper what their subject matter would be, then that piece of paper would be passed around the room and approved by each student, or else we would have to pick another subject. Even though I often opted to talk derogatively about Russia in my speeches, I'm happy to report that neither the teacher nor the students objected to my criticisms. However, a student wasn't allowed to debate whether or not AR-15s should be legal or not without the teacher requiring that another student present the other side of the issue wholeheartedly. Keep in mind, not a single student had an issue with it, just the teacher. Although it's always nice to hear both sides of the story, what I find it disturbing is that it couldn't be discussed otherwise. It is said that for every hour spent in school, two hours should be spent studying the subject further outside of class. Why wouldn't we be allowed to present one side of the story without safely assuming the students can easily attain the other side of the story after class? Why do we assume negligence on their part? Not only is negligence assumed, but what they are negligent about is also assumed. Anyways, when I challenged the teacher in person what was on their mind when having us abide by these regulations of speech, they said we haven't learned how to argue in a nonoffensive manner yet, so as to not offend the audience. They said they wanted to have controversial debates for more difficult public speaking classes. You see, my fellow citizens and you board members, they have defined the parameters of the argument inside of our own Southeast Community College. Would this bill hinder or allow for this sort of regulation? I see I probably don't have much time left, but I'm halfway through. That's fine, if you don't want to hear this. It's my experience that they first started introducing the idea of controlling language in English classes that I have attended within this past decade at SCC multiple times. This is my hobby, I know what I'm talking about. They instruct you to appeal to your audience, but then they defined your audience as either themselves or surrounding peers, then proceed to cite statistics by liberal institutions about how statistically liberal institutions are. You see, my fellow citizens and you board members, they have also defined the audience in our English classes as to define the parameters of the argument. So they're starting in English and they're continuing to communications classes. I was talking to a fellow student at Southeast Community College before history class one day about abortion.

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During our private conversation, another individual was becoming offended by what they were hearing while eavesdropping on us. They were so offended by what they were hearing and were so unable to tune out our private conversation that they stood up and said, can you not talk about this before our test? It was a test day, maybe our mutual nervousness was egging-on some sort of conversation to ease our nerves that we wouldn't have had in the first place. Nonetheless, do you see, my fellow citizens and you board members, how the results are playing out and how sensitive my peers--I'm a millennial, I'm 30--how my people have become. I know. I know how sensitive they have become, and I know why, too. I use logic to disseminate between hate speech and freedom of speech. [LB718]

SENATOR GROENE: Young man. You have a light. How much more do you have? [LB718]

CHRIS COUPE: Just the finish this page, and it ends here. I can probably talk quickly and get it done in 45 seconds. [LB718]

SENATOR GROENE: Could you...as a question to you, could you recap it without reading it? [LB718]

CHRIS COUPE: Yeah, basically I have had experiences talking to a logic and philosophy teachers in their cubicle, and I like to debate issues. I love it. I just love debating issues and I love the truth. And I debated with this guy, and he resorted almost immediately to calling me...comparing me to a Nazi SS officer during Nazi Germany times. This was my logic and philosophy teacher, he now teaches comparative religion, and he does not allow you to use religious arguments in his philosophy classes. He does not. And so this is really confusing to me. I mean, inside of SCC there are so many things that are going on, and there is nobody paying attention to it. You'll have a poster right here that says: watch out for your health. Eat healthy. Come over here and eat vegetables for free. And then right next to that poster it will say: come here on Sunday, free ice cream sundaes. It just doesn't make any sense. It seems like for every step they try to take forward, they're going to take another one back. And I think there's a lot of bullying and a lot of bias at Southeast Community College. [LB718]

SENATOR GROENE: So you believe there's a lot of intellectual bullying as a form of attack on free speech? [LB718]

CHRIS COUPE: I believe that it's bullying, yes. I'm not saying that they would prevent it, I'm saying that me especially, because I'm very outspoken in school, I have even liberal professors come up and ask how they can get more attention from their students and get them to speak more. And it's because when every time I say something, they always have something to say back. [LB718]

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SENATOR GROENE: But you have an advantage, you don't care what grades you get. You're not trying to get into med school. [LB718]

CHRIS COUPE: Exactly. [LB718]

SENATOR GROENE: So you don't bite your tongue worrying about retribution on your grading or your test scores. [LB718]

CHRIS COUPE: No. I just respect these teachers, the grade is what they give me. And it just hurts me when they call me names for no reason, because it's what they see, you know, on the TVs in the cafeteria at CNN. You know, they got brand new cafeterias, brand new things at SCC. Teachers have not improved a dime. [LB718]

SENATOR GROENE: Thank you. Is there any other questions for the testifier? [LB718]

CHRIS COUPE: Thank you. [LB718]

SENATOR GROENE: Any other proponent? We have a letter of support of LB718 from the Nebraska Taxpayers for Freedom. Opposition? How many opposition do we have? We'll go three minutes, as we said earlier. [LB718]

AMANDA GAILEY: (Exhibit 3) My name is Amanda Gailey, G-a-i-l-e-y. From the beginning I approached this bill with a great deal of scepticism. The same senators who are sponsoring this supposed paean to free speech have for months been working to punish a grad student who used words they don't like, have described my silent and civil protest of Turning Point USA as "immoral" and "accosting" and a fireable offense. Their political allies have demanded the rescission of the scholarships of black student athletes who peacefully protest state violence, and they have demanded the work and private emails of faculty who have criticized them. How they squared this assault on dissent with a bill that protects "without limitation, ideas and opinions individuals find unwelcome, disagreeable, or even deeply offensive" requires awe-inspiring gymnastics of hypocrisy. Sure enough, a close reading of this bill reveals ulterior motives I can only briefly explain here. In short, the first part of the bill establishes that sanctions must be taken against anyone on campus who interferes with another's free speech. The second part of the bill establishes a committee staffed by regents, faculty, and students, with no provisions for how they will be selected, which is worrisome given TPUSA's history with student elections. Further, the bill requires that the committee provide the Governor and legislators with a report on any kind of potential free speech issues on campus ahead of the legislative session. In other words, it requires the university to deputize potentially partisan onlookers to supply the Governor

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and legislators the materials to conduct targeted attacks and defamations of campus dissenters for political grandstanding purposes. Finally, Section 4(2)(a) in the amended bill contains buried treasure. It specifies that one barrier to free speech that must be reported will be "investigations into students or student organizations for their speech." That's right, the bill characterizes it as a barrier to free speech if someone on campus investigates a student organization for their speech. So you want to know who the Nazis are yelling, Jews will not replace us, on your quad? Too bad. Senators Halloran, Brewer, and Erdman want to make sure nothing impedes the invitation of Nazis to campus. And once they show up, if you so much as investigate what they are up to, or who is behind them, you will have violated their free speech and must be sanctioned. So this bill violates the State Constitution, but I'd like it also to be known that the bill, like the senators' behavior these last months, is an attack on the very principles it hides behind. [LB718]

SENATOR GROENE: Thank you. Questions? [LB718]

AMANDA GAILEY: I'm also employed at the English Department at UNL, and I can't speak for the department. But if I can, as an individual, and insight into some of the current claims that have been re-stoked by people in this room, including people on this committee, I would be happy to. [LB718]

SENATOR GROENE: Well, I will give you a chance, because it's out there about the Web site for the university on the English department. And it's got very little to do with Shakespeare or Chauncey or any of those people. [LB718]

AMANDA GAILEY: Have you looked at our course catalog, sir? [LB718]

SENATOR GROENE: I was just talking about what I was told. [LB718]

AMANDA GAILEY: Do you realize that a class on Shakespeare is taught, I believe, every semester in our department? And that when I listened to inexperienced outsiders criticizing our curriculum for teaching social justice issues last fall, I was in the middle of teaching T.S. Eliot, Walt Whitman, and Emily Dickinson in my courses? Because the people leading this attack have absolutely no interest in the truth. [LB718]

SENATOR GROENE: Excuse me, I asked you about your Web site... [LB718]

AMANDA GAILEY: And I just commented on the Web site. [LB718]

SENATOR GROENE: ...and the mission statement. [LB718]

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AMANDA GAILEY: Yes. The mission statement is not the course catalog. [LB718]

SENATOR GROENE: I didn't ask about the course catalog. [LB718]

AMANDA GAILEY: The course catalog is a listing of courses. [LB718]

SENATOR GROENE: I'm asking about some...a student, an 18-year-old student in Washington state that looks at, and is thinking about majoring in English at the University of Nebraska, and looks at your Web site. [LB718]

AMANDA GAILEY: Yes, what about them? [LB718]

SENATOR GROENE: The mission statement. [LB718]

AMANDA GAILEY: Right, that's our mission statement, not a course catalog. And thankfully, most of our students are aware of the difference, even if senators on this committee are not. [LB718]

SENATOR GROENE: Thank you. I just...you asked me somebody...that you clarify some questionable stuff that a lot of people have. [LB718]

AMANDA GAILEY: It's only questionable when ideologically-driven in experts defame, lie, and distort for political purposes and grandstanding purposes. [LB718]

SENATOR GROENE: Do you...I'll ask you another question. A young lady testified earlier about the list of who's welcome. [LB718]

AMANDA GAILEY: Right. [LB718]

SENATOR GROENE: Does that offend you there was nobody...Muslim was there, but not Christian? [LB718]

AMANDA GAILEY: Yeah, so a couple of things. I believe that free speech rights cover speech that we find offensive, correct? That's what this bill is meant to cover. So even if someone in this room finds that signage offensive, it would still be covered by the Free Speech Act. Second of all, another thing that we teach when we study rhetoric is that because you make one claim it does not preclude other claims from being true. So if I say something like, I appreciate the work

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of Senator Patty Pansing Brooks, that does not mean that I necessarily don't appreciate the work of anyone else on this committee. Saying that Muslims are welcome in our department does not entail that Christians are not welcome in our department. And if not being included in having egos coddled constitutes a violation of free speech, I worry about how a policy like the one encoded in this bill would be enacted in practice. [LB718]

SENATOR GROENE: But you do understand that political speech leads to perception and perception leads to funding, and perception leads to enrollment? [LB718]

AMANDA GAILEY: So are you trying to regulate perception with this bill, or free speech? [LB718]

SENATOR GROENE: No, I am just telling you the political reality of free speech. [LB718]

AMANDA GAILEY: I thought we were talking about the bill and policy, and not whether or not you personally approve of perceptions. [LB718]

SENATOR GROENE: (Interrupting) Thank you for your answer. Any other questions at the...thank you. In the future, we will take one from the right, one from the left. If you're not planning on testifying, then please don't sit in the front row. And people come up, and let's work toward the center so everybody knows when their opportunity to speak is. If that would work for everybody. So when you're done speaking, go to the back of the room, if you would, from the front row. Any time. We're on a tight schedule, so when you're ready, you go. [LB718]

ROB SCHAFER: (Exhibits 4, 5) All right. Thank you very much for having me. And first of all, I would just like to comment that my eye doctor did tell me last week I probably need to get a set of glasses or lasik done, but in looking at the pictures outside the hall versus coming in here I can say that the sense of style with the attire and the haircuts are just noticeably different. So it's just kind of neat to walk these halls and respect the work that everyone has put in over the years here at the Nebraska Legislature. So thank you, first of all, for your work. Chairman Groene and members of the Education Committee, good afternoon. I am Rob Schafer, and I am Chairman of the University of Nebraska Board of Regents. Thank you for the opportunity to appear before you today, and on behalf of the board, in opposition to LB718. First of all, let me say that we appreciate your attention to these important issues around freedom of expression and civil discourse on college campuses. We welcome these conversations. Our 53,000 students, 187,000 alumni in this state, and all Nebraska taxpayers are too important not to have this dialogue, even when it is challenging. And we certainly recognize that members of the Legislature and many Nebraskans are interested in what the university is doing. But I respectfully suggest to you that this bill is the wrong approach. By mandating the development of free speech policies, LB718

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infringes upon the constitutional authority of the Board of Regents to govern the University of Nebraska. This is a responsibility that cannot be delegated, which is why last week we unanimously endorsed a statement deposing any legislation that usurps the duties of the board. The gentlemen who will follow me will go into more detail on this point. What I would like to do at this point is share with you a few things that the regents are for. I think you will be pleased with some of the steps we have taken recently with regard to free speech and inclusion at the University of Nebraska. I hope these give you a sense that we are taking these issues seriously, that we are engaging Nebraskans in the process, and that we are holding ourselves accountable. First, we are for free speech. Unequivocally so. A university must be a place where ideas can be freely exchanged and where robust and open dialogue can occur. We could not expect to be able to fulfill our responsibility to create and disseminate new knowledge otherwise. This is a personal issue for me, as a lieutenant colonel in the Nebraska Air National Guard, I have a deep appreciation for the values that Americans have fought for and died for. We understand that freedom of expression is essential to our missions of teaching, research, and outreach. As a board, we must do everything we can to govern the university in a way that protects that sacred right. And that is why we are for our new policy on free expression, which was approved unanimously by the Board of Regents last week after months-long of working in a process that included many across the state. And that also involved a significant amount of work by our faculty, staff, and students. To be clear, existing board policy explicitly protected the academic freedom of all others of our community, but our new policy reinforces that commitment and outlines specific steps for continued progress. It directs each campus to develop and clearly communicate a plan for which the facilities are open to the public, and which spaces, such as a classroom, are not. And it includes what we believe is a unique and innovative mandate to provide First Amendment educational programs across campuses. I would point out that accountability is built into our policy. Early next year, we are requiring the administration to come back to the board with a public report on the facilities use plans, and any violations of our policy, and any actions taken as a result, as well as First Amendment educational opportunities that were provided. This is an important part of our policy that will allow us as a governing board, and all Nebraskans, to monitor and evaluate our process. I'm personally pleased with the work that has been done over the past few years to advance free expression at the University of Nebraska. Most of the recent headlines have been about a single incident last fall on one of our campuses. It was an unfortunate incident, which demonstrated that our work is never done when it comes to making our university a more welcoming place for all. But an isolated occurrence should not color what is truly a positive story for our university and our state. The reality is that we have been engaged on these issues for a number of years. We are making meaningful progress with the help of Nebraskans, and we are in a great position to be a leader in this conversation that is taking place across college campuses across the country. I feel very good about where we are headed together and where our potential to be...is to become even stronger. Working together, we can accomplish great things on behalf of our students and the people of Nebraska. We welcome the opportunity for members of the Legislature to be involved as we

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continue to move forward. We know we share the same goals for making sure every student has an outstanding experience, that our campuses are places where all can participate in the free exchange of ideas, and where all views can be respectfully heard. While I am confident that we can find a path forward together, the mandates imposed by LB718 go too far. The Board of Regents is the independent body with the constitutional authority to manage and operate the University of Nebraska. Therefore, I respectfully ask you not to advance this bill. Thank you for your time, and most importantly, thank you for your service and hard work on behalf of our great state. I would be pleased to respond to your questions. [LB718]

SENATOR GROENE: Questions? I'm looking at the budget bill from two years ago, it says we will give \$3,398,000 for the Nebraska College of Technical Agriculture; \$2,800,000 Nebraska Forest Service Program; and I remember two years ago, my first year here, we dictated that \$2.5, \$3...maybe it was \$5 million would go to a Clayton Yeutter chair. Also remember dictating that \$25 million would go to a virtual reality UNMC building. Is that unconstitutional that we dictated those funding to a certain source? [LB718]

ROB SCHAFER: I think it's clear under the Exon case that the Legislature's purpose and role is to work with the university as far as establishing funding. [LB718]

SENATOR GROENE: But we dictated that you had to create this chair for Clayton Yeutter. [LB718]

ROB SCHAFER: But I believe the strings were tied to the financing, though. And I think that's different than what we're talking about today. [LB718]

SENATOR GROENE: I think funding money is also...the use of it is free speech, is it not? [LB718]

ROB SCHAFER: I believe then we're getting into the minutia of the daily management and operations of the university, and I think that's where there's probably a disagreement as far as...you know, I'm a strong believer in less government and it ought to be controlled at a local level. I mean, the University of Nebraska Board of Regents is the governing authority for the university and I'm a strong believer that we need less government involved in that process, not more. [LB718]

SENATOR GROENE: So if Senator Halloran had an A bill with \$2 million to establish your new free speech, maybe we could have got it passed. (Inaudible). [LB718]

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ROB SCHAFER: I don't know about that, Chairman. [LB718]

SENATOR GROENE: I'm just kidding you. Anyway, are there any other questions? Senator Pansing Brooks. [LB718]

SENATOR PANSING BROOKS: Thank you. Thank you for coming regent Schafer. I appreciate your service. Have you seen the amendment of Senator Halloran? [LB718]

ROB SCHAFER: As far as the...? [LB718]

SENATOR PANSING BROOKS: Have you seen his amendment? [LB718]

ROB SCHAFER: I've seen the amendment as far as addressing the state colleges and community colleges, yes. [LB718]

SENATOR PANSING BROOKS: So, not the full amendment, though? [LB718]

SENATOR MORFELD: I think that is the full amendment. [LB718]

ROB SCHAFER: I'm not aware of another amendment. [LB718]

SENATOR PANSING BROOKS: So that's a yes, right? [LB718]

ROB SCHAFER: Okay. That would be a yes. [LB718]

SENATOR PANSING BROOKS: And so are you...how do you feel about that amendment? Have you felt that it changes anything or if it is adopted? [LB718]

ROB SCHAFER: I don't believe that changes anything as it pertains to the university. [LB718]

SENATOR PANSING BROOKS: All right, thank you for coming. Appreciate it. [LB718]

ROB SCHAFER: You're welcome. Thank you for having me. [LB718]

SENATOR GROENE: Any other questions? Senator Linehan. [LB718]

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SENATOR LINEHAN: Thank you, Chairman Groene. I have a question on your page 3. Thank you for being here. And it's more just kind of a...I mean, I don't expect you to have an answer, but the middle paragraph, in the third sentence, "It directs each campus to develop and clearly communicate a plan for which facilities" are to be public "and which spaces, such as a classroom, are not." So as much kind of angst as there has been over this issue, does it make sense that each campus come up with this? Wouldn't it...or am I misunderstanding this? [LB718]

ROB SCHAFER: No, I believe the campuses are in a much better position to dictate that. They know the campuses. The Board of Regents isn't going to go and do an inspection of each campus and designate it. It's just the same as if, you know, I assume you have freedom of speech issues here. Out on the steps is free, but I probably wouldn't be free to come in during another hearing and stand in the back in my loudest voice and read the Bible. So I think it's...again, leave it to those that are most closely related in operations to specific campuses or programs in that situation to make those decisions. [LB718]

SENATOR LINEHAN: Okay. All right, thank you. [LB718]

SENATOR GROENE: I got a question. [LB718]

ROB SCHAFER: Sure. [LB718]

SENATOR GROENE: Across the country we hear about splashy news where somebody has been denied...the administration denied a group to bring in Anne Coulter, is a famous one. And wouldn't allow them on campus. Does your new free speech take the administration's authority out to limit who can speak and who can't speak on the campus? Or can the administration still veto? [LB718]

ROB SCHAFER: The administration should not be in a position to veto, just based upon the content of one's speech. Now, if it's someone that's coming in and being offensive or going to create a safety hazard or, you know, something of that nature, then that's completely different. But I believe that there has to be some ability at some point though to say, you know, we got...someone's phoned in, sent an anonymous letter saying they're going to blow something up if so and so speaks. Well, do we make a decision to bring that person in to speak or not? I don't know, that would be a tough decision to make. But I think we need to keep our eyes open... [LB718]

SENATOR GROENE: But on your facility is part of this policy. It looks like if a group wants to bring somebody in and talk to their group, they will be able to use your facilities. [LB718]

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ROB SCHAFER: Oh yeah, I think that's would be more than appropriate. And it shouldn't matter if you're far from the left or far from the right. We should welcome all speech. [LB718]

SENATOR GROENE: I didn't ask if we should. Do you and your policy allow that? [LB718]

ROB SCHAFER: Yes. [LB718]

SENATOR GROENE: All right, thank you. [LB718]

ROB SCHAFER: But we don't want to be censoring speech. [LB718]

SENATOR GROENE: Thank you. Any other questions? Thank you, sir, for taking the time. [LB718]

ROB SCHAFER: You bet. Thank you, again, for having me. [LB718]

SENATOR GROENE: Next opponent. [LB718]

JAY GRABOW: (Exhibit 6) Good afternoon. My name is Jay Grabow, J-a-y G-r-a-b-o-w. I am honored to read a statement in opposition to this bill from Courtney Lawton. "My name is Courtney Lawton. I am the reason Senator Halloran brought this bill. I am a PhD candidate in good standing at the University of Nebraska, and have received excellent student evaluations in my five years as a teaching assistant. Senator Halloran, the introducer of this bill, along with co-sponsors, have targeted me for their own political gain. On August 25, I protested Turning Point USA, a billionaire-funded organization that has been intimidating faculty nationwide through their Professor Watch List and the use of paid staffers who create inflammatory social media campaigns. After verifying that TPUSA was not a registered student organization, I made a sign that read 'Just say no to neofascism.' I stood near the TPUSA recruitment table with my back to the staffer. She came out from behind her table to take photo and video of me to send back to TPUSA. I raised my middle finger to show my contempt for her organization. I walked around the area, calling her a 'neofascist Becky,' a woman who weaponizes her whiteness. I decried her organization, which is anti-public school, anti-university, and anti-DACA. I was joined at various times by as many as four people. I never blocked access to the TPUSA table, I never shouted at the staffer, and I never engaged her in conversation. Far from being silenced, the staffer hosted a TPUSA table the next school day in the same place. I also saw her on campus outside of my work building with a gigantic beach ball that read 'Free speech.' On September 11, she felt free to attend a public hearing of the Lincoln City Council to testify with two members of the neo-Nazi group Blood and Soil against a resolution condemning the violent white nationalist

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presence in Charlottesville," Virginia. "Following this brief encounter, I was the target of a smear campaign in social media. I received violent threats against my person, my family, and my career. I was removed from the classroom because of concerns for my own and my students' safety. Months later, after pressure from Senators Halloran, Erdman, and Brewer and Regent Hal Daub, I was prohibited from teaching ever again at UNL. My education and training have been disrupted because of lies and distortions spread by TPUSA and elected officials. The Nebraska Republican Party has subjected me to a search of my university email account. Republican politicians, including this bill's introducer, punished me because they don't believe in free speech. They believe in suppression of dissent. The very people that claim to be protecting academic freedom and free speech with this bill are the ones who have spent the last five months destroying my life and interfering with my scholarship because they disagree with my politics. I want the record to be clear, the politicians who wrote this bill are not champions of free speech; they have actually worked for months at the behest of Governor Pete Ricketts to crush and silence political dissent. They will never silence me." Thank you. [LB718]

SENATOR GROENE: Any questions from the committee? No questions. Since she isn't here to answer, it's best nobody ask. At least in my opinion. Thank you. [LB718]

JAY GRABOW: Do you have a question, Senator? [LB718]

SENATOR GROENE: No, because she is not here to answer it. Those are her words, and I don't want anybody to put words in her mouth. Me or you. So anyway, is the next...any other questions? [LB718]

JAY GRABOW: Thank you. [LB718]

JOHN WILTSE: (Exhibit 7) Mr. Chairman, members of the committee, I'm John Wiltse, J-o-h-n W-i-l-t-s-e. I'm currently the deputy general counsel for the University of Nebraska. I say currently because I am retiring, and tomorrow is my last day. I have been a lawyer since 1981. I am admitted to practice before the Nebraska Supreme Court, the United States District Court for the District of Nebraska, the Court of Appeals for the Eighth Circuit, and the Supreme Court of the United States. I'm a grandson of John Wiltse, whose name appears on page 84 of the 2013 pamphlet edition of the Nebraska Constitution distributed by the Clerk of the Legislature. But enough about me. I'm here to oppose LB718, read for the first time on January 3. An amendment was introduced by the bill's sponsor on January 17, that amendment is identified as AM1553. There may have been a more recent amendment that I have not seen. I understand that bills have been introduced in other states, but those don't concern me. What matters most to me is the legal context here. There is no other place like Nebraska after all. As you have already heard from Chairman Shafer, on January 25 the Board of Regents adopted a "Commitment to Free

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Expression; Guide for Facilities Use; and Education" policy. I believe you may have been provided with copies of that policy. There is work yet to be done to implement the policy, but I ask you to consider whether this bill is necessary in light of the university's policy. You should be aware as well that the university's bylaws have contained a statement that "institutional control of campus facilities should not be used as a device of censorship" since August of 1973. There is a question whether the adoption of this act would be consistent with Board of Regents v. Exon. In that case, the Supreme Court said that "It is the duty of the Legislature to implement the constitutional provision by enacting legislation that vests the general government of the university and the Board of Regents." That case struck down laws dealing with university facilities because those facilities relate to a function of the general government of the university. In my opinion, LB718 would not pass constitutional muster under Exon. I have tried to avoid legal technicalities, but there is a part of LB718 and the proposed amendment, you would find it in Section 3(6) and (7) that states that the governing body shall adopt a policy which at a minimum contains a provision that "The public areas of a campus are traditional public forums, open on the same terms to any speaker". What I want to say here is that I'm not aware of any controlling court decision that has found that college or university campuses are traditional public forums. Traditional public forum is a legal term that has not been applied to university property. In my written testimony, which I will provide copies of, I quote at length from Bowman v. White, which is an Eighth Circuit decision that was handed down in 2016. In the interest of time, I will not read that quotation to you. But you are welcome to read it. Thank you very much for allowing me to address the committee. Unless you have any questions for me, I will leave you to your important work. [LB718]

SENATOR GROENE: Any questions? So you're not saying that the...it's not a public forum, the university property? [LB718]

JOHN WILTSE: I am saying that university property is not a traditional public forum. [LB718]

SENATOR GROENE: So they have the right to decide who speaks and who doesn't on that property? [LB718]

JOHN WILTSE: The university has a right to control the property that it was entrusted with. The purpose of university property is to further the mission of the university, which is education, research, teaching, service, and extension. [LB718]

SENATOR GROENE: So they could interpret that to decide who speaks and who doesn't on their property? [LB718]

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JOHN WILTSE: Yes, they could have a designated public forum and allow persons to use that if they wish. [LB718]

SENATOR GROENE: But could they also decide who is allowed to speak and who isn't? [LB718]

JOHN WILTSE: Yes, sir, they could. [LB718]

SENATOR GROENE: They could. [LB718]

JOHN WILTSE: Yes, sir. [LB718]

SENATOR GROENE: They could say we don't like what that person has to say so, therefore, we do not want to hear them. [LB718]

JOHN WILTSE: They could not make a decision based on the content of the speech or the viewpoint. They could make a distinction based on subject matter. They could open up a forum for the purpose of only discussing law or only discussing Shakespeare. They can make distinctions based on the status of the speaker; namely, an enrolled student, an admitted student, a member of the faculty, a member of the staff. But the key distinction between a designated public forum and a traditional public forum is that someone who is not affiliated from the university...with the university would have the right to use property that is classified as a traditional public forum. The university is not a park; it is not a public street, which these are the prototypical examples of a traditional public forum. The university is many things, but its lands are dedicated to the mission of the university. [LB718]

SENATOR GROENE: So somebody couldn't come on the campus and put a peach box up and start quoting the Declaration of Independence if they weren't a student. [LB718]

JOHN WILTSE: If the university was not willing to allow that to happen at that particular space, that's correct. [LB718]

SENATOR GROENE: On the Exon case, I've got a couple lawyers--I'm not one, but I can read law. [LB718]

JOHN WILTSE: Yes. [LB718]

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SENATOR GROENE: It's in English. [LB718]

JOHN WILTSE: Yes. [LB718]

SENATOR GROENE: Legislature is allowed to give the Board of Regents general duties, but they can't be so detailed as to how to do it. [LB718]

JOHN WILTSE: Yes. [LB718]

SENATOR GROENE: You can give them a duty to say make sure there is a free speech policy, that it protects the rights of all citizens to speak no matter if they are a student or not. And then we direct you to set up the policy. Is that not clear? [LB718]

JOHN WILTSE: It is not clear from the way that the court wrote that decision. That's what the court is commanding, especially if you're saying that, as I've tried to say, I don't believe that the Legislature can direct the university to create a traditional public forum. And... [LB718]

SENATOR GROENE: But we can give you a duty, a general duty. [LB718]

JOHN WILTSE: There is language, yes. [LB718]

SENATOR GROENE: Defines general duty, the next court case, is that not correct? [LB718]

JOHN WILTSE: That could result in the next court case, yes. [LB718]

SENATOR GROENE: And it could go either way depending on what the judge believes the definition of a general duty is. Is that not true? [LB718]

JOHN WILTSE: I'd like to think it's not as variable as just an individual judge. But it's... [LB718]

SENATOR GROENE: I think I'll disagree with you on that. Anyway I think we have enough history of that, Dred Scott and a few other ones where a judge does make a difference in how things are interpreted. [LB718]

JOHN WILTSE: I think that was a U.S. Supreme Court case decided by the... [LB718]

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SENATOR GROENE: Still a judge, still a judge. But anyway, thank you. Any other questions?
[LB718]

JOHN WILTSE: Thank you. [LB718]

JULIE NICHOLS: (Exhibit 8) Hi. My name is Julie Nichols, J-u-l-i-e N-i-c-h-o-l-s, and I'm here on behalf of myself and students, just general students. I'm sorry. I am going to talk about the First Amendment. I know that that's been pointed out that we shouldn't talk about it, but I think this is the time. I thank you for giving me the accessibility to my lawmakers. I really appreciate the ability to come here and know the faces of the people that we've elected. But with due respect to the committee gathered here and to the authors of this draft, I believe LB718 wishes to reiterate and improve upon the First Amendment while simultaneously violating it. I object to LB718 for the following reasons. The bill is redundant. Freedom of expression and activities related to it are covered by UNL policy and the First Amendment. As a former employee of UNL during a period spanning a decade, I trust that the mechanisms of the university exist to handle matters and complaints regarding alleged violations or attempts to violate free speech within the university community. LB718 actually, and ironically, seeks to violate the First Amendment by interfering in the processes of academic free speech through an undue focus on reporting, monitoring, targeting, and sanctioning those who violate the provisions of the bill. The Regents committee proposed herein to regulate speech cannot have authority to sensor students, staff, or professors' speech, as UNL remains a public university committed to the principles described in Section 3 of this draft, paragraph (1), of this proposed bill. It is the purpose of higher education to encourage discourse, not deem what type of discourse is more or less valuable to students. The public, by virtue of the First Amendment, has a duty to concern itself with attempts on the part of any governing body, including the Legislature of the State of Nebraska, its individual members, and/or the Governor, to restriction of free speech, particularly in higher education and particularly in a public university. Threats of censorship, exemplified as sanctions or attempts to identify and target individuals and departments that seek to preserve the public dialogue and to stimulate critical thinking, are the stuff of authoritarian governments, not republics. It is the mandate of certain disciplines, the study of law among them, that educators and staff at a university encourage students and staff to partake in a collegial and accepting environment that includes open discourse. Section 8 of this bill lacks definition of what consists of infringement and promises a punitive response through undefined sanctions. Section 9 furthers the punitive nature of this bill by asserting "repeat violators." This indicates an agenda on the part of this bill to restrict free discourse and to silence those who practice it as part of their responsibility within administrative and teaching duties. This bill, by virtue of creating a committee under charge of the Board of Regents, seeks to violate the higher authority of the Bill of Rights. Furthermore, the Committee on Free Expression, as described in this proposal, echoes another allegedly purposeful tribunal: the House Committee on un-American Activities. Please reject this bill based on its clear violation of the constitution, what I feel is its clear violation, and

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its suggestion that the committee created through its enactment would empower a few individuals to violate the rights of students, faculty, and staff at a public institution. To illustrate what goes on in a free learning environment, the following quotes have been compiled from a variety of classroom experiences in public institutions. "If I found out my dentist was a lesbian, I'd puke on her shoes." "Stupid towelheads can't speak English." "That long-haired kid, he's a f***ing drug-addict." "They should round all those f*****s up and put them on an island somewhere." "They're...a bunch of Jesus-jumpers." "Indians are stupid. Pilgrims are cool." Should those students be reported? Do you have any questions for me that I probably can't answer? [LB718]

SENATOR GROENE: Could you give us more detail where those quotes came from? [LB718]

JULIE NICHOLS: Let's see. [LB718]

SENATOR GROENE: I'm just curious. [LB718]

JULIE NICHOLS: Those quotes, two of them came in a UNL classroom; one from a middle school; one at Hofstra University on Long Island in a written report; and another one from UNL... [LB718]

SENATOR GROENE: So it's hearsay. Did you hear them yourself? [LB718]

JULIE NICHOLS: I heard them myself, yes, I was present. [LB718]

SENATOR GROENE: You heard two of those in your classroom. [LB718]

JULIE NICHOLS: No, all of these. [LB718]

SENATOR GROENE: You were at Hofstra, so they're all personal quotes that you heard. [LB718]

JULIE NICHOLS: I was either in the classroom or I was teaching in that classroom. [LB718]

SENATOR GROENE: Thank you. Well, that clarifies it. [LB718]

JULIE NICHOLS: Okay, that's fine. [LB718]

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SENATOR GROENE: Thank you--makes what you say more pertinent. [LB718]

JULIE NICHOLS: I did want to point out, since there's been an ongoing struggle to define what should be allowed on university campuses and there seem to be concerns by groups that feel they're getting the short end of the stick in terms of their exposure of their ideas or ideologies, that the last time a speaker was denied a scheduled speaking engagement at the University of Nebraska, it was William Ayers, who was a member of the SDS and Weather Underground, so it was not, in fact, a conservative that was disallowed their speaking engagement at UNL. Anybody else want to chime in? [LB718]

SENATOR GROENE: As to your quotes, it was in your classroom, apparently... [LB718]

JULIE NICHOLS: I was either present in that classroom or it was my classroom, yes. [LB718]

SENATOR GROENE: And that was free speech, as negative and as bad as it was. What did...what was your point,... [LB718]

JULIE NICHOLS: I...yes. [LB718]

SENATOR GROENE: ...that you didn't flunk them out? [LB718]

JULIE NICHOLS: My point is that this goes on within classrooms as part of an educational discourse. [LB718]

SENATOR GROENE: And no disciplinary action was taken in your classroom? [LB718]

JULIE NICHOLS: I, in my personal classroom,... [LB718]

SENATOR GROENE: Yeah. [LB718]

JULIE NICHOLS: ...when I was conducting discussion? [LB718]

SENATOR GROENE: Um-hum. [LB718]

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JULIE NICHOLS: I don't feel that it's appropriate to discipline people for the manner of their speech. I feel that the function of discourse is to understand one another. That's what it's for. [LB718]

SENATOR GROENE: All right, that's good. Appreciate it. Any other questions? [LB718]

SENATOR EBKE: Yeah. [LB718]

SENATOR GROENE: Oh, Senator Ebke. Sorry. [LB718]

SENATOR EBKE: Can...I spent more years than I want to admit in graduate school, (laughter) and... [LB718]

JULIE NICHOLS: I spent more money than I want to admit on graduate school. [LB718]

SENATOR EBKE: (Laugh) I bet you did...and experienced a lot of the kind of collegial discourse that you're talking about. [LB718]

JULIE NICHOLS: Um-hum. [LB718]

SENATOR EBKE: Okay, how do you define that? [LB718]

JULIE NICHOLS: I think... [LB718]

SENATOR EBKE: Were the quotes that you just named, was that an example of collegial discourse? [LB718]

JULIE NICHOLS: I think it's an example of how people talk and how they should also be allowed to talk, however offensive those all, all of those statements, to be. It was not my job in a classroom where I was not teaching, or a classroom where I was teaching, to make a judgment upon those because what you're trying to do is get people of differing viewpoints and differing ideologies to understand one another and to be able to discuss those openly. So, you know, if you turn people loose with that, then it's not always going to sound nice. [LB718]

SENATOR EBKE: I'm not talking about sounding nice, but, I mean, there is something to be said for...I mean I'm all for disagreements. I had more disagreements in... [LB718]

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JULIE NICHOLS: Right. [LB718]

SENATOR EBKE: ...in graduate seminars than, you know...I mean that happens all the time. [LB718]

JULIE NICHOLS: Um-hum. [LB718]

SENATOR EBKE: But then afterwards we went out and had a beer. [LB718]

JULIE NICHOLS: Yeah. [LB718]

SENATOR EBKE: You know, I mean, does that still happen anymore? Do people of different opinions fight, you know? [LB718]

JULIE NICHOLS: I hope so. I think so. I don't think that we're all in a world where... [LB718]

SENATOR EBKE: Let's all go out. (Laughter) [LB718]

JULIE NICHOLS: I mean I...I'll have a beer with...I'd have a beer with you. In fact, I tried to in Crete one night but I didn't make it out there. [LB718]

SENATOR EBKE: Well, there you go. Okay, well, come on out. [LB718]

JULIE NICHOLS: I'd love to actually. [LB718]

SENATOR EBKE: March 8 I think is the next day, yeah. (Laughter) [LB718]

JULIE NICHOLS: And I appreciate that you make yourself available in that way to talk a lot of different people with the different ideas. [LB718]

SENATOR EBKE: Okay. [LB718]

JULIE NICHOLS: But I do think that's what the classroom, on a certain level, is for. Yes, if it's not my class, I'm not going to call that speech down until it becomes so heated that it's really inappropriate. [LB718]

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SENATOR EBKE: Do you think there's anything different between a college classroom or a graduate classroom and...you said one of those comments was from a middle school. [LB718]

JULIE NICHOLS: Um-hum. [LB718]

SENATOR EBKE: Is there a difference? [LB718]

JULIE NICHOLS: I think there is. I think that public schools have their own policies about that. [LB718]

SENATOR EBKE: Okay. [LB718]

JULIE NICHOLS: I was not a teacher in that setting, so I didn't... [LB718]

SENATOR EBKE: But you heard it in that setting. [LB718]

JULIE NICHOLS: Yes, I heard it in that setting. [LB718]

SENATOR GROENE: Thank you. [LB718]

SENATOR EBKE: Thank you. [LB718]

SENATOR GROENE: We... [LB718]

SENATOR EBKE: Are you trying to... [LB718]

SENATOR GROENE: How many more... [LB718]

SENATOR EBKE: ...rush me along there? [LB718]

SENATOR GROENE: What's that? [LB718]

SENATOR EBKE: You trying to rush me along? I don't say anything and then you're trying to rush me along. No, I'm... [LB718]

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SENATOR GROENE: That's the next person though. [LB718]

SENATOR MORFELD: Are you trying to suppress her speech? [LB718]

SENATOR PANSING BROOKS: (Laughter) He already suppressed mine earlier today, so. [LB718]

SENATOR GROENE: You can speak as much as you want, as long as I can speak over the top of you. How many more testifiers are there? One, two, three, four, five, six. [LB718]

DANIELLE SAVINGTON: Yeah, seven, sorry. [LB718]

SENATOR GROENE: All right. Thank you. [LB718]

ERIC BERGER: (Exhibit 9) Chairman Groene, members of the committee, my name is Eric Berger, E-r-i-c B-e-r-g-e-r. I'm a professor of law here at the University of Nebraska College of Law. My primary area is constitutional law, including the First Amendment. I'm speaking here on my own behalf against LB718. In addition to these oral remarks, I have written much more detailed testimony which I'll distribute after I speak, and the written testimony elaborates on the basic points I'll make now. The First Amendment's commitment to free speech is sacred in our society. It's a big part of what makes the United States a special country. Please know that I certainly share devotion to the First Amendment values that I assume inspired LB718. However, I oppose this bill for two basic reasons. First, I think LB718 is a quintessential example of big-government over-regulation. Second, though as I understand it the bill is attempting to protect the First Amendment, it actually intrudes on freedom of speech in several ways. For these reasons, the bill will likely have unintended consequences that will chill far more speech than it protects. So my first objection is that LB718 imposes a burdensome, big-government regulatory scheme on higher public education in Nebraska. It's a basic principle of sound government that legislatures should not impose overbroad regulatory schemes that create more problems than they solve. To be clear, I agree entirely that it's important to give students wide leeway to exchange their views and to expose them to ideas and writings they may find disagreeable. However, as an educator, I also know that teachers are most effective when they can select the educational methods that work best for those goals. To that extent, LB718 undermines good education because it infringes on university instructors' and administrators' ability to figure out how to best educate students. Now, of course, instructors and administrators don't do their jobs perfectly--nobody does--however, they are much better positioned to make sound educational decisions than legislators dictating a regulatory scheme from on high. My second objection to LB718 is that it violates the First Amendment in several ways. Though I understand the sponsors here want to protect freedom of speech, the bill actually undermines freedom of speech. The way

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to protect the First Amendment is not to pass a bill that violates the First Amendment. First, many of the provisions are confusing, so it's difficult actually to know what speech is protected and what speech is prohibited. I teach statutory interpretation but I had trouble making heads or tails out of some of the bill's provisions. This textual incoherence is actually a serious constitutional defect. A core tenant of First Amendment doctrine is that courts will strike down vague laws regulating speech. A law is unconstitutionally vague if a reasonable person cannot tell what speech is permitted and what speech is prohibited, and this criticism applies to many provisions of this bill. Many of the provisions also raise other First Amendment problems. For example, Section 3, clause (2), states it's "not the proper role of the campus to shield individuals" from free speech. It's unclear exactly what this means, but it seems like it could require instructors to assign particular material. To this extent, this provision likely infringes on a teacher's First Amendment rights to decide what to teach. Section 3, clause (3) stipulates institution shall not require students, faculty, or administrators to publicly express views on given...on controversies. This seems to mean that a professor could not assign a debate position to a student in a class about current events. It's obviously crucial for students to learn how to debate controversial issues, and a professor could reasonably decide... [LB718]

SENATOR GROENE: Eric, could you wrap it up? [LB718]

ERIC BERGER: Yes. A professor could reasonably decide that this is a good educational viewpoint. Also, the bill is...that provision also prevents campus administrators from representing the campus's position on public controversies and campus administrators clearly have that First Amendment right. The provision...the bill, in Section 3, clause (9) (sic: (8)), also states that protests and demonstrators that materially and substantially infringe on others shall not be permitted. That's unconstitutional. It's not uncommon in outdoor public settings to have one protest group matched by other protest groups. How do we figure out who's a protestor and who's a counter-protestor? The bill seems to delegate this determination the kind of standardless discretion that the First Amendment prohibits. [LB718]

SENATOR GROENE: Sir, we need to wrap it up. [LB718]

ERIC BERGER: Okay, so I'll just summarize my three basic points. The bill would have unintended consequences in silencing some speakers I imagine you all would want to protect; parts of the bill certainly violate the First Amendment; and the bill would invite expensive lawsuits to figure out the law's meaning and its constitutionalities. So thank you for your time, Senators, and I'm happy to answer questions if you have any. [LB718]

SENATOR GROENE: Any questions? Senator Pansing Brooks. [LB718]

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SENATOR PANSING BROOKS: Thank you for coming today, Professor Berger. I think that the university is fortunate to have you. I know that you are considered an expert nationally on constitutional law, so I appreciate your position and viewpoint. And clearly, as a former law student, if we were at the law school, we argue controversial issues all the time, so if a teacher assigns something controversial, right there it seems like we'd be violating this law. So I appreciate your coming. [LB718]

ERIC BERGER: Well, thank you for that, Senator. I certainly think that's something we do well at the law school and that we pride ourselves on is debating controversial issues and having people from all sides of the political spectrum engage with each other in respectful disagreement. That's certainly an important part of the legal training and I think we do that well. And I worry like a...that a bill like this could tie our hands and chill both professors' and students' speech and, thereby, undermine the value we provide to our students and to the state. [LB718]

SENATOR PANSING BROOKS: And also, I had some of my most controversially--this is late... [LB718]

SENATOR MORFELD: It's 6:00. [LB718]

SENATOR PANSING BROOKS: Yeah, it is 6:00, thank you...conservative professors at the university. I was able to listen to what they had to say and move on and I presume there are still professors on both sides of the spectrum at the school. [LB718]

ERIC BERGER: So certainly at the law school we have great ideological diversity, great political diversity. We have professors on the very far right, professors on the far left, everything in between, and I think that's valuable for students to hear that wide range of opinions. And I also think we do, we certainly try to, and I frankly think we do a good job of modeling respectful disagreement. We often will have panels where we discuss the same issues together and we'll disagree, but I think that kind of in-public disagreement about public issues is an important part of certainly a legal education, but an education more generally. And again, a bill that might make people worry that they're stepping afoul of this Legislature worries me that it could corrupt what I think is a very healthy educational experience. [LB718]

SENATOR PANSING BROOKS: Yeah. I'm glad that things haven't changed at the law school since I was there and now we have the leadership of Dean Moberly and you're still going forward in that manner. Thank you. [LB718]

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ERIC BERGER: Well, I'm glad we have the leadership of Dean Moberly, too, and thank you for your question, Senator. [LB718]

SENATOR GROENE: Yes, Senator Linehan. [LB718]

SENATOR LINEHAN: Thank you, Chairman Groene. You used a word in your comments that I think is very important and I think it's missing from the overall conversation here: respectful. So where's the line? And you obviously train people to be in profession of law, which has to be respectful to be any good. So where does it come where the professor or the student or...where does that come in? [LB718]

ERIC BERGER: So that... [LB718]

SENATOR LINEHAN: I mean having a disagreement on policy is one thing, but how you respect people, that's part of the university's mission, too, right? [LB718]

ERIC BERGER: So I'll give you an educational answer and a constitutional answer. The educational answer is that I try to get my students to engage in respectful disagreement. I actually think the students here, my students and all of our law students, do an excellent job of that. I have students on the right and on the left who are great friends with each other and they love to debate ideas, but they always do it respectfully. I think that's a very important part of being a good lawyer is to express disagreement in a cogent but a very respectful manner, and I think that's an important part of what we train our students to do. As a constitutional matter, free speech is protected whether it's respectful or not. There's certainly speech that I find disagreeable, that I find even obnoxious, but part of the point of the First Amendment is it protects the speech that most or all of us hate, and to the...and the reason for that is the justices on the U.S. Supreme Court and experts in the First Amendment realize that to really protect important free speech, you need to give wide leeway so that we don't chill important speech and that, if we were to try to prohibit or punish disrespectful speech, that would have the negative consequence of chilling important speech. So the whole premise of the First Amendment is we give wide leeway to speech, including speech that, you know, you and I might agree is unfortunate. [LB718]

SENATOR LINEHAN: Thank you. [LB718]

SENATOR GROENE: To follow up on that, speech does not have to be cordial. [LB718]

ERIC BERGER: That's correct, Senator. [LB718]

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SENATOR GROENE: Have you read the university's policy? [LB718]

ERIC BERGER: The new policy... [LB718]

SENATOR GROENE: Yes. [LB718]

ERIC BERGER: ...by the Board of Regents? I've read it. I can't profess to be an expert in everything in it, but I've read it. [LB718]

SENATOR GROENE: You didn't find anything objectionable about that, it? [LB718]

ERIC BERGER: You know, I don't want to...you know, I was...I didn't come prepared to speak on that. [LB718]

SENATOR GROENE: Well, let me give you an example. [LB718]

ERIC BERGER: But I... [LB718]

SENATOR GROENE: Example, let me give you an example. "The University will not facilitate expression in violation of the law or that poses an unreasonable threat to the safety of the University community... Certain kinds of expression (among others), such as: speech that incites violence, fighting words, speech that defames or defrauds, speech that constitutes a genuine threat," unlawful discrimination, or "speech that unlawfully invades privacy, is not protected speech." Who defines that? [LB718]

ERIC BERGER: So these...this...so what this policy is trying... [LB718]

SENATOR GROENE: Is this constitutional? [LB718]

ERIC BERGER: So what this policy is trying to do is it is...the Supreme Court has carved out particular categories of less protected speech and it is those kinds of speech government, including a public university, can regulate. So for example, an incitement to violence is a less protected category of speech that can be regulated. Each of these categories, or, I should say, most of these categories have been defined by the U.S. Supreme Court in constitutional cases. So with the example of incitements to violence, in a case called Brandenburg, the U.S. Supreme Court defined an incitement to violence quite narrowly. So in other words, unless it fits the specific definition, it's fully protected speech. [LB718]

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SENATOR GROENE: So you believe that if somebody at the university understands (inaudible). [LB718]

ERIC BERGER: Oh, yes, absolutely. I don't know who drafted this, but just looking at the list it seems pretty clear to me that they knew the Supreme Court doctrine and they were trying to incorporate that doctrine into the policy to be consistent. [LB718]

SENATOR GROENE: So a student would know what "speech that unlawfully invades privacy" would be. [LB718]

ERIC BERGER: I don't know if a student would know. I also...but I hope my students would know. (Laughter) You know, so, but the, you know, the...I think the purpose is to say...and again, I'm generalizing and I can't summarize the entire Regents' speech policy, but I think the general purpose is to say we at the university deeply value free speech, however, there are certain kinds of speech that, even in a community where we value free speech, they're too dangerous, a true threat. If a student threatens to kill another student, that's technically speech, but the Supreme Court has made clear that kind of speech is less protected by the First Amendment. So I think that's what the university is trying to do. [LB718]

SENATOR GROENE: You said earlier that you have personnel. Is that...were you talking about the Law College that are ultraconservative and some that are ultra-liberal? [LB718]

ERIC BERGER: Yes, I teach at the Law College, so that's my experience. [LB718]

SENATOR GROENE: So that was what you're basing your example on. [LB718]

ERIC BERGER: Yes. [LB718]

SENATOR GROENE: Not other departments? [LB718]

ERIC BERGER: Well, I know in other...I am aware of and know of professors in other parts of the university who are also far on the right or far on the left or everywhere in between, but... [LB718]

SENATOR GROENE: Have you met one in the English department that's far to the right? [LB718]

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ERIC BERGER: I don't teach in the English department. I cannot comment on the politics of the English department. [LB718]

SENATOR GROENE: Or the social science department or the department of...education department? Have you met any of those, know of any of those? [LB718]

ERIC BERGER: I don't know if I know. I don't know if we have a social science department. I don't know if I know anyone in the education department. [LB718]

SENATOR GROENE: No, sociology, sociology department. [LB718]

ERIC BERGER: I can't speak to the politics of people who I don't work with, but I... [LB718]

SENATOR GROENE: Well, I just wanted to clarify that you're talking about the people you know in the department you know. Thank you. Any other questions? Senator Morfeld. [LB718]

SENATOR MORFELD: I haven't said anything all day. [LB718]

SENATOR GROENE: Give your lecture. Everybody gets one lecture. [LB718]

SENATOR MORFELD: Well, first off, welcome to the committee, Professor Berger. Professor Berger was my "con" law professor and my statutory interpretation professor, so you can blame him for anything you disagree with me on. [LB718]

ERIC BERGER: Thank you, Senator. [LB718]

SENATOR MORFELD: (Laughter) But in any case, I can confirm for the committee there are conservative faculty members at the College of Law. I debated Professor Duncan for an hour and a half in his class on the merits of the Affordable Care Act, so that's all I have to say. [LB718]

SENATOR GROENE: Thank you. Any other questions? Thank you, sir. [LB718]

ERIC BERGER: Thank you, Senators. [LB718]

JUDY KING: (Exhibit 10) Okay. My name is Judy King, J-u-d-y K-i-n-g. I'm here to testify in opposition to LB718. We have freedom of speech at the universities. The First Amendment has

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done a great job of protecting our freedom of speech for over 200 years. Senator Halloran's bill does nothing to improve upon the First Amendment. It only creates confusion as to what exactly changes with the bill. Also, it is ironic that this bill that supposedly champions free speech on campus for everyone, is coming from senators who have been attacking the faculty of the university for engaging in peaceful protest and exercising their freedom of speech. It makes me think that the bill has an ulterior motive because clearly the senators sponsoring the bill have no respect for faculty speech. In fact, they had hoped that the organization FIRE--Foundation for Individual Rights in Education--would take a look at the University of Nebraska. FIRE did this and concluded that the campus protest against Turning Point USA is well within the rights afforded by the First Amendment. In response, those senators condemned the findings of FIRE, the very organization they claimed to be authoritative on this topic. So this is not about freedom of speech. It is about partisan legislators trying to control the campus. I was walking through the campus one day to get my football tickets and ran upon...came upon a table that was run by Turning Point, and I thought, hey, great, free speech, you know. I'm an activist so I thought, hey, I'm going to stop and talk to those kids. I thought that's cool. So I stopped and talked to them and I said...I told those kids that, you know, getting involved in important issues, that's great. And then later on, in September of 2017, I saw Kaitlyn Mullen, who was one of the kids at that table, testifying against a city council resolution, along with two other men who reportedly are white nationalists, which is short for neo-Nazi, and one of these individuals had previously been seen on the State Capitol steps wearing a brown shirt, holding a sign that said: Blood and Soil. And I found that alarming. As a side note, the city resolution was a bipartisan resolution. This was a resolution that called for celebration of diversity and intolerance of hate and violence. After doing some research, I found that the people involved in Turning Point are not the conservative group for free speech but white nationalists, partly white nationalists, involved in the exact opposite: shutting down free speech, just like the Nazis tried to do. The legislatures are turning into the thought police in a bastion which should be prized for free thinking and speech. They are using the same playbook as the pro-life groups, using the term "pro-life" when they actually mean anti-abortion. Some of the pro-life groups will vote for one thing: anti-abortion. Nothing else matters to them. Some of the pro-life groups do not care that the politician they vote for also buys illegal drugs to murder inmates that may or may not be guilty for a politician who sends...or for a politician who sends money back to...to back a pedophile like Moore in Alabama. Our legislatures are doing the same thing with this issue. They are using the term "free speech" to actually curtail free speech for some. That's all I have to say. [LB718]

SENATOR GROENE: Thank you (inaudible). Any questions? [LB718]

JUDY KING: Thank you. [LB718]

SENATOR GROENE: I wanted to clarify something... [LB718]

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JUDY KING: Okay. [LB718]

SENATOR GROENE: ...for the record. [LB718]

JUDY KING: Okay. [LB718]

SENATOR GROENE: I've heard two people say this: Kaitlyn. I've never met her. I don't know anything about Turning Point, what I read in the paper, and these two white nationalists at the same city council testifying for free speech or something. [LB718]

JUDY KING: Um-hum. [LB718]

SENATOR GROENE: How do you draw the connection that they're...that... [LB718]

JUDY KING: Did you read her...I didn't bring her statement that she read, but I can get it for you if you'd like. [LB718]

SENATOR GROENE: It...go ahead. [LB718]

JUDY KING: And to say that you are not for a resolution against hate... [LB718]

SENATOR GROENE: No, I... [LB718]

JUDY KING: You know? [LB718]

SENATOR GROENE: I'm just...there's...you've got freedom of association, too, and happen to be in the same room with somebody, doesn't necessarily mean that... [LB718]

JUDY KING: No, but I also did research on Turning Point. [LB718]

SENATOR GROENE: ...you can infer that they believe the same thing. [LB718]

JUDY KING: Correct. I'd agree with you on that. [LB718]

SENATOR GROENE: All right. [LB718]

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JUDY KING: But I did research on Turning Point and found out some of their donors and I can bring that in to you and share it with you if you'd like. [LB718]

SENATOR GROENE: I just wanted clarification. [LB718]

JUDY KING: Okay. [LB718]

SENATOR GROENE: Thank you. [LB718]

SENATOR PANSING BROOKS: I'd like to see it. [LB718]

JUDY KING: Okay. [LB718]

SENATOR GROENE: (Inaudible.) [LB718]

SENATOR PANSING BROOKS: Thank you. [LB718]

JUDY KING: Yep. [LB718]

SENATOR GROENE: Next testifier. [LB718]

SUSAN WATSON: (Exhibit 11) I was going to say good afternoon, but I guess it's good evening now. Senators, I'm here, I'm speaking for myself. I'm also speaking on behalf of my siblings who went to higher education, two of my sons who graduated from higher education schools, my youngest who has got one year left at UNL,... [LB718]

SENATOR GROENE: Did you give your name and spell it? [LB718]

SUSAN WATSON: Oh, Susan Watson, S-u-s-a-n W-a-t-s-o-n. ...and my parents who attended higher education. My father actually went to law school here and in the middle of school went to serve in the army. And they raised me with a very high respect for freedom of speech. In fact, after the situation in Charlottesville, I called my father first thing, asked him what he thought of it, and he said, well, they have the right to free speech. So it's really an important issue to me. But this bill is not a protection of free speech. In fact, it will punish those who use free speech to protest against any speech, including hate speech of all types. This bill is unpatriotic and probably unconstitutional. The U.S. Constitution already allows for freedom of speech for all persons in the First Amendment. Reading through this bill, it is obvious that it is protecting some

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individuals' right to free speech yet it is limiting others'. It is clear that even groups like hate groups would be able to promote their propaganda. They do have a right to free speech. But if students protested them or even engaged them in debate or discussion and their message could not easily be heard or be engaged in by other students who wanted to talk to them, that could be enough to be called an infringement. If you were just debating them on their issue, that could be an infringement and be cause for sanctions, even as they would be exercising their same constitutional right for free speech, and I don't understand how you consider this fair and equal treatment under the law. It is "Equality before the law"--that's our state motto--that is actually democracy in action. This bill would cost the state of Nebraska a great deal of money defending it against legitimate claim of unconstitutionality. You must remember at all times--this is from the Omaha World-Herald. You must remember at all times "that the Nebraska Constitution bars the Legislature from dictating policy to the NU Board of Regents." You had mentioned that it is the discretion of the Board of Regents that you can direct policy to them but you cannot dictate to them how they act on that policy. But that's exactly what you've done to do, how and what to do, in Section 4, paragraph (1), of the Committee on Free Speech (sic)...Expression...Committee on Free Expression, you've told them how many members they have to have, what they have to do to report to you, all those things. So I think you need to not let this bill out of committee. [LB718]

SENATOR GROENE: Thank you for your testimony. Any questions? Thank you. [LB718]

DANIELLE SAVINGTON: Good evening, Senators, Chair. I'm really excited to be here as a part of Nebraska's second house today. I'd like to talk about why I don't think LB718 should advance. Unlike Senator Morfeld who had the... [LB718]

SENATOR GROENE: Could you give your name? [LB718]

DANIELLE SAVINGTON: Oh, I apologize. Danielle Savington, that's D-a-n-i-e-l-l-e S-a-v-i-n-g-t-o-n, and I did not get to take Professor Berger's class. I was in the other "con" law class. And while you got to debate Professor Duncan for "funsies," I had to debate Professor Duncan, who is a nationally renowned constitutional scholar, who is also extremely ultraconservative, for my grade, and I did that because "adulthood." I think this bill, first and foremost, treats college students like addle-minded children, and they are not. They may be young, but they are adults and they have the right and the duty to go to college and be exposed to ideas that they don't necessarily hold closely and dearly to their own hearts. I think that process should begin as early as possible and I think that the university has policies in place that allow a student to say, wait, hold up, my teacher graded me unfairly or my teacher treated me unfairly because of my political ideology. I don't think that this bill supports their ability to be adults at all. Additionally, I like to talk about fiscal responsibility and just last week NU Regents were quoted in the

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Lincoln Journal Star on January 25 as saying that further budget cuts would be devastating to the NU system, and yet this bill, which has a fiscal note of zero, I would point out, does create costs to the university. While these committee members might not be reimbursed for their time on the committee, committees cost money. They incur expenses. And the bill itself does prescribe for their expenses to be reimbursed when they are actual and tangible. So one would presume, if that required any JUSTICE researching or any police investigation researching, those reports cost money to be pulled; any kind of consultation with outside experts or anything like that is going to cost money to the committee. And the other thing that really, really bothers me about this Committee for Free Expression is that in AM1553, which is the only amendment that I have access to at this time, it calls for this committee to produce a publicly available report. Now as we know from testimony and what we've seen recently regarding this August event, when someone is outed publicly and these disciplinary procedures are put into the public's view, death threats happen, really ugly things get said about people. And to be honest, although a lot of really ugly and scary things were said about the graduate student, pretty ugly things were said about the student who reacted at her Turning Point booth as well. And I think that if we make publicly available records that are searchable and everybody can find disciplinary procedures, which is kind of a violation of employment law as it is because disciplinary procedures are confidential, we're really putting a lot of faculty and employees and, at some point, even students that are involved in these incidents, in danger by making this information publicly available. [LB718]

SENATOR GROENE: Thank you. Thank you. Any questions? [LB718]

DANIELLE SAVINGTON: Any questions? [LB718]

SENATOR GROENE: Thank you for your testimony. [LB718]

DANIELLE SAVINGTON: Thank you. [LB718]

ANTHONY SCHUTZ: (Exhibit 13) Hello. My name is Anthony Schutz, A-n-t-h-o-n-y S-c-h-u-t-z. I teach at the law school. I've been there since about 2006. I teach agricultural law, water law, state and local government, and I have a book on the State Constitution, so I'm sort of a State Constitution expert, I guess, if there is one. And so what I'm here today to talk about is really (inaudible) and more generally the separation of powers between the Legislature and the Board of Regents. And I've got two main points that I'll make and I discuss them in more detail in a paper because when law professors speak, they speak, right? So I've got a longer explanation of what it is that I want to talk about, but I've got two main points that I want to talk about today. First is really sort of an explanation of why the Board of Regents as an autonomous university governance mechanism is a good thing. Right? And I think there's three primary justifications for

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it: first, historical; second, practical; and, third, theoretical. Historically speaking, we've had a Board of Regents that's elected for 140 years. It was in the 1860...I'm sorry. It was in the 1875 constitution, proposed originally in the 1871 constitution. It's been there ever since. There have been proposals to change it over time. We've rejected those proposals, not at the polls, but there's been revision commissions that have proposed them and we haven't forwarded them to the voters. It seems to be a firm piece of our State Constitution. State Constitution writing in the late 1800s and early 1900s was very concerned with distributing power across different parts of government. That's why we have an elected State Treasurer; it's why we have an elected Attorney General; it's why we have an elected Secretary of State; it's why our Governor wields relatively little authority within the executive branch, because we wanted to fragment authority as much as we could, and we did that with the Board of Regents as well. And so what the court is left to do in cases that involve the Legislature and the Board of Regents is try to sort of police the boundary between the two, and that's basically what we have as a historical matter. As a practical matter, it makes sense to have a university with an elected Board of Regents that's specifically designed to deal with the problems that they have. It's the only issue they have to deal with is the university. So, for example, if I had 15,000 employees and 55,000 students, a \$940 million budget, and I am basically concerning myself with every aspect of humankind, including perhaps our origins, I would want an expert body dealing with the speech issues that ensue. Professor Berger talked about how complicated that doctrine becomes just on its own. Imagine deploying that in that setting, right? And that's why I think a Board of Regents is a good idea just practically speaking. Theoretically, it also makes some sense from a governmental design perspective. I think it makes...it's pretty ingenious, really. You don't have to worry yourselves with the free speech issues that arise on campus. Those are Schafer's problem, right? Schafer is going to stand to get elected this next time and he's going to have to answer to his constituency. You won't have to. This is also a good thing for the constituency. When I go to vote on my senator, I may agree with my senator's property tax stance, I may agree with his stance on water augmentation projects, for example, but I may vehemently disagree with his stance on the university's speech issue. What do I do? I just have one choice to make over a multifaceted performance. When we separate out the sphere of authority related to the university and place it in the hands of someone else, now my choice with regard to the university is confined to the university. I can like or dislike what Schafer decides to do and I can visit my political preferences on my senator based upon what they did. So it's actually a good thing, right, to separate these spheres of authority. Political accountability is maintained through that sort of autonomy in those separate spheres of authority. The point: You don't have to do it, right? It's not your job and that's a good thing, right, because it's Schafer's job and Schafer is elected and Schafer will be subject to the ire of the electorate in the event he gets it wrong. So with that, I'll leave you with those sorts of thoughts on why the Board of Regents as a separate, autonomous body is a good thing. I could talk about the standards that courts use to divide up power and their relationship to Exon if you want, but I'll be here to answer questions. [LB718]

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SENATOR GROENE: Thank you. Any questions? Senator Linehan. [LB718]

SENATOR LINEHAN: Thank you, Chairman Groene. I'm not a lawyer. I'm lucky enough to have two daughters that have attended UNL. One is still there, so she's probably watching in horror right now. But somebody who is a lawyer and graduated from UNL this morning pointed out to me in our constitution it says the Legislature is the supreme law. What does it... [LB718]

ANTHONY SCHUTZ: Hmm, it doesn't say that. [LB718]

SENATOR LINEHAN: Okay, what does it say? [LB718]

ANTHONY SCHUTZ: Well, it says a lot of things. Our constitution is about 35,000 words long. The federal constitution is about 7,000 words long, so we tend toward detail in our constitution. [LB718]

SENATOR LINEHAN: We do. [LB718]

ANTHONY SCHUTZ: We have a general provision on the separation of powers and it says that, unless otherwise prescribed in the constitution, there is a legislative branch, a judicial branch, and an executive branch. Right? [LB718]

SENATOR LINEHAN: Okay. [LB718]

ANTHONY SCHUTZ: We do, though, have these other provisions that provide for different sorts of authority. So the provision on the Board of Regents provides... [LB718]

SENATOR LINEHAN: What does the...my question is,... [LB718]

ANTHONY SCHUTZ: Go ahead. [LB718]

SENATOR LINEHAN: ...what does it say the Legislature authority is? [LB718]

ANTHONY SCHUTZ: It doesn't. That's the problem, right? That's the difficulty that courts encounter. It's not entirely clear what the legislative authority is, just like it's not entirely clear what the judicial authority is or what the executive authority is. In the main, it's somewhat easy to figure it out. The Legislature's authority is to make laws, right,... [LB718]

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SENATOR LINEHAN: Um-hum. [LB718]

ANTHONY SCHUTZ: ...unless as otherwise provided in the constitution, and the constitution provides that the Board of Regents shall be vested with the general governing authority over the university. [LB718]

SENATOR LINEHAN: Okay, and I'm not a lawyer... [LB718]

ANTHONY SCHUTZ: So the question becomes out of those two... [LB718]

SENATOR LINEHAN: ...and I...we've heard quite convincingly and for a few/couple hours here... [LB718]

ANTHONY SCHUTZ: Sure. [LB718]

SENATOR LINEHAN: ...what the Board of Regents' job is. [LB718]

ANTHONY SCHUTZ: Yeah. [LB718]

SENATOR LINEHAN: But I'm asking you what our job is. [LB718]

ANTHONY SCHUTZ: Exactly. Your job is to leave the Board of Regents alone to a large extent, right. [LB718]

SENATOR LINEHAN: That's our...because that says that in the constitution? [LB718]

ANTHONY SCHUTZ: That's what Exon says, right? [LB718]

SENATOR LINEHAN: Okay, but that's not the constitution. [LB718]

ANTHONY SCHUTZ: No, that's true. That's true but the judiciary's job, right, a constitutionally delegated job for it is to say what the law is with regard to what the words in the constitution mean. [LB718]

SENATOR LINEHAN: Maybe there's a lawyer on the panel that can do this, might be better than me. [LB718]

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ANTHONY SCHUTZ: There might be one of those. (Laugh) But I don't want to make light of it, though, because the question is a good one. What is the relationship between the Legislature and the Board of Regents? [LB718]

SENATOR LINEHAN: I'm not...no, I'm not talking about the Board of Regents. You're a professor of law. [LB718]

ANTHONY SCHUTZ: Yes. The Legislature's authority is limited insofar as its impact on the Board of Regents is concerned. [LB718]

SENATOR LINEHAN: But what is our...are we not charged...I mean you said something else about, you know, the...I...when I go to vote for my senator,... [LB718]

ANTHONY SCHUTZ: Yeah. [LB718]

SENATOR LINEHAN: ...I want to know his position on property taxes. [LB718]

ANTHONY SCHUTZ: Sure. [LB718]

SENATOR LINEHAN: We don't collect property taxes in the state of Nebraska. [LB718]

ANTHONY SCHUTZ: No, I know. That's actually...it's not the greatest example, is it,... [LB718]

SENATOR LINEHAN: Hmm, no, it isn't. [LB718]

ANTHONY SCHUTZ: ...because those are kind of a local issue and we should maybe stay out of it. [LB718]

SENATOR LINEHAN: But it's very...it's very... [LB718]

ANTHONY SCHUTZ: But that's a different committee, I think. (Laughter) [LB718]

SENATOR LINEHAN: But it's very... [LB718]

ANTHONY SCHUTZ: And I think it's probably a different issue. [LB718]

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SENATOR LINEHAN: Excuse me. It's very appropriate that you would say that because most of the people that vote for us do... [LB718]

ANTHONY SCHUTZ: They do. [LB718]

SENATOR LINEHAN: ...look to us for leadership on all these issues, including... [LB718]

ANTHONY SCHUTZ: Yes. And sometimes we abstain from the...sometimes the Legislature abstains on grounds of, like, local control or something along those lines, right. Sometimes it's constitutionally bound to abstain from certain issues, and that's all that I'm arguing here,... [LB718]

SENATOR LINEHAN: Okay. Thank you. [LB718]

ANTHONY SCHUTZ: ...the relationship, though, between...the scope--I should put it this way--the scope of the Board of Regents' authority. [LB718]

SENATOR LINEHAN: That's been made abundantly clear today,... [LB718]

ANTHONY SCHUTZ: Okay. [LB718]

SENATOR LINEHAN: ...their scope of authority. [LB718]

ANTHONY SCHUTZ: Yeah. Okay. [LB718]

SENATOR LINEHAN: Thank you. [LB718]

SENATOR GROENE: Any other questions? Senator Morfeld. [LB718]

SENATOR MORFELD: Thank you, Senator Groene. Professor Schutz, thank you for coming. It seems like all of my professors have come today. [LB718]

ANTHONY SCHUTZ: We didn't have Rick, but we've talked about him so much. [LB718]

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SENATOR MORFELD: Yeah. And thanks, actually, for being really flexible when I was in your state and local government class for allowing me to come to legislative bodies like this and testify,... [LB718]

ANTHONY SCHUTZ: That's right, that's right. [LB718]

SENATOR MORFELD: ...even though it was during the class time. (Laugh) Dean Moberly doesn't need to hear that. But in any case, I mean, so I think the point that Senator Linehan was getting to, and I was looking up the specific part of the constitution, is the fact that the Legislature, "The legislative authority of the state shall be vested in a Legislature consisting of one chamber." And then it goes on to talk about some of our powers to create laws. I guess on one hand I understand...you make a very convincing argument about the need to keep the Board of Regents independent and create their own policies that are unique to the university system. And I think that the issue that I've been hearing from a lot of senators on the floor and in this committee is a lot of people have a hard time disconnecting--a lot of people as in state senators--have a hard time disconnecting the fact that we provide for the budget, which allows for the university to exist in many cases, but we cannot set some of the general policies of the university. [LB718]

ANTHONY SCHUTZ: Indeed. [LB718]

SENATOR MORFELD: Now I'm personally, for public record, in the camp of we need to leave the university alone and sometimes I introduce bills that I know maybe they're constitutionally suspect but it pushes the university to relook at an issue like sexual assault or something like that. But I think that that's the disconnect right now and that's the thing that is being debated quietly among the body before we see a bill like this. [LB718]

ANTHONY SCHUTZ: Um-hum, sure. The extent to which you can tie strings to funding is a common issue when we're talking about vertical separations of power, right? So to what extent can the federal government put strings on its spending authority? It's been litigated, right? There's lots of case law out there on that. We don't have a lot of it on the relationship between the Legislature and the Board of Regents. If we agree that it's a semiautonomous, or largely autonomous, politically accountable elected body but it, nonetheless, relies on the Legislature for an appropriation, not with regard to its own funds but with regard to public funds, the question becomes, how much can we tie to that, right, how many strings can you attach to it? We haven't litigated that issue. But if it's tied to spending, there's a greater chance that it will be acceptable to the court. If it's not tied to spending, it's very difficult to try to argue that what you have is binding on the Board of Regents. This is actually such a good question that, or such a, I don't know, such a difficult issue that the Legislature at different times has asked the Attorney General

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for its Opinion. One of the matters, for example, that we've asked the Attorney General for their Opinion on is the extent to which the Legislature can write a law that requires all university employees to use the same credit card. Right? Can that apply to university personnel? And that was a question that is so uncertain that we sent it to the Attorney General's Office, right? That's how much trepidation we have with this relationship between the Legislature and the Attorney General's Office. The Attorney General's Office responded maybe, right, we think maybe,... [LB718]

SENATOR MORFELD: He's also elected. [LB718]

ANTHONY SCHUTZ: ...yeah, we think maybe. Yeah, that's true, right, and by design. So, yeah, it's a difficult question, If you tie it to funding, it's more likely to be okay, but, again, it could be an overreach. We'd need some case law on that. If it's not tied to funding, it's much more difficult, and then there's the constitutional text which isn't entirely clear at all. [LB718]

SENATOR MORFELD: Thank you. [LB718]

ANTHONY SCHUTZ: You're welcome. Thank you. I have to mention that Dean Moberly is awesome because that seems to be a general theme, and I work for him, so. [LB718]

SENATOR GROENE: Sir, but the State Constitution, we're unique with the people have a lot to say. The first power is the people, according to our constitution; the second is the Legislature. [LB718]

ANTHONY SCHUTZ: It is and we reflect...so go ahead. I'm sorry. [LB718]

SENATOR GROENE: So the people could get in an uproar right now about this and have a constitutional amendment and change Section...whichever it is. [LB718]

ANTHONY SCHUTZ: Indeed. [LB718]

SENATOR GROENE: Yes. [LB718]

ANTHONY SCHUTZ: And in fact, we have responded to Exon in the past. Article VII-14 provides for a Coordinating Commission on Postsecondary Education. The reason why we had to adopt that was because of Exon and Article VII-10, which is was Exon interprets. The Coordinating Commission on Postsecondary Education provides a review mechanism for

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university decisions on like buildings and things along those lines. It also helps us coordinate what the university does with what the community colleges do and what the state colleges do. Legislation couldn't do that because of Article VII-10. So we went back to the drawing board and we said, okay, we want some coordination across these bodies, and we amended the constitution to make it happen. Does that make sense? [LB718]

SENATOR GROENE: But they're reacting to Exon but that could have went the other way and they could have negated Exon by changing... [LB718]

ANTHONY SCHUTZ: They could have. [LB718]

SENATOR GROENE: ...the language, existing language, is that not correct? [LB718]

ANTHONY SCHUTZ: In fact, we could have amended,... [LB718]

SENATOR GROENE: (Inaudible.) [LB718]

ANTHONY SCHUTZ: ...we could have eliminated Article VII-10 altogether and treated them like state colleges. [LB718]

SENATOR GROENE: Yes, so... [LB718]

ANTHONY SCHUTZ: But we haven't. [LB718]

SENATOR GROENE: But it's not sacrosanct, the State Constitution. [LB718]

ANTHONY SCHUTZ: No, no,... [LB718]

SENATOR GROENE: People change it all the time. [LB718]

ANTHONY SCHUTZ: ...not at all. We do change it all the time. [LB718]

SENATOR GROENE: And that's the concern. This whole function what we've done here has been a practice in free speech. [LB718]

ANTHONY SCHUTZ: Exactly. [LB718]

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SENATOR GROENE: They people have raised their head. It isn't just Senator Halloran. It's a lot of folks in the...citizens out there that are concerned about the direction of the university and its instructional staff. [LB718]

ANTHONY SCHUTZ: Indeed. [LB718]

SENATOR GROENE: It's just...it's not three senators. Nineteen seventy-four, I had an English instructor named David Hilger (sic). He got fired for free speech, Hiber, in the 1990s. And let me tell you about a farm kid coming out of the Bohemian Alps and that guy teaching me and telling me about...against...anti-Vietnam War when my brother was over there. [LB718]

ANTHONY SCHUTZ: That was offensive. [LB718]

SENATOR GROENE: He lost that debate with me. [LB718]

ANTHONY SCHUTZ: Sure. [LB718]

SENATOR GROENE: So anyway, I understand free speech, but I also understand the State Constitution. But it can be changed. [LB718]

ANTHONY SCHUTZ: It can, sure. [LB718]

SENATOR GROENE: And the Legislature has the authority. We create the NRDs. We create a lot of things in this state, the Legislature does. [LB718]

ANTHONY SCHUTZ: Um-hum, yeah. [LB718]

SENATOR GROENE: And it can address this statute here, I mean the Exon case, the trial court for the...the Opinion by Boslaugh: "The trial court further found that the provision that the duties and powers of the Board of Regents 'shall be prescribed by law,' means that the Legislature may set forth the powers and duties of the Regents." [LB718]

ANTHONY SCHUTZ: Um-hum. But then if you look at the result in the case, they made exceptions to about six different laws that were generally applicable and couldn't apply to the university as a result. So it...Exon is...some of the language does support the notion that Legislature... [LB718]

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SENATOR GROENE: What side of the fence, what side of the fence you're on? [LB718]

ANTHONY SCHUTZ: Well, yeah, I mean, you do have to follow the case until it's overruled, or at least that's my position. [LB718]

SENATOR GROENE: But that's the law until it's overruled. [LB718]

ANTHONY SCHUTZ: That's true, that's true. [LB718]

SENATOR GROENE: I mean I'm not advocating... [LB718]

ANTHONY SCHUTZ: And you are right about the people's reservation of power. In fact, the people can amend the constitution directly through the ballot initiative process and all of that. And so if they're unhappy with the way in which the Regents are proceeding, they have a lot of different choices. One, they can go vote in their Regent election. Two, they could change the constitution to put the Board of Regents under the auspices of the Legislature. But they haven't yet chosen to do that and our constitution drafters 140 years ago said we don't want them under the auspices of the Legislature, we want them to be politically accountable. [LB718]

SENATOR GROENE: But in the state of Nebraska our constitution is truly fluid because the people... [LB718]

ANTHONY SCHUTZ: It is. [LB718]

SENATOR GROENE: ...have a big part in it (inaudible). [LB718]

ANTHONY SCHUTZ: It is. It is, and many state constitutions are that way. They're very often amended. [LB718]

SENATOR GROENE: Not a lot have the power of the initiative as we do. [LB718]

ANTHONY SCHUTZ: That's true. The direct democracy provisions are somewhat unique to us. [LB718]

SENATOR GROENE: Yes. [LB718]

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ANTHONY SCHUTZ: Yes. [LB718]

SENATOR GROENE: I'd love to hear your views on water augmentation. [LB718]

ANTHONY SCHUTZ: There is... [LB718]

SENATOR GROENE: And if you're on the right side of the thing, I'd love you to testify at a bill. [LB718]

ANTHONY SCHUTZ: They might be able to sell their land. I don't know. (Laughter) [LB718]

SENATOR GROENE: Thank you, sir. [LB718]

ANTHONY SCHUTZ: Thank you, Senator. [LB718]

SENATOR GROENE: How many more, three? [LB718]

STEPHEN RAMSAY: (Exhibit 12) My name is Dr. Stephen Ramsay. My name is spelled S-t-e-p-h-e-n R-a-m-s-a-y, and I am Susan J. Rosowski associate university professor of English at the University of Nebraska-Lincoln. I mention my title this evening only to provide some context for my remarks. I'm not representing the University of Nebraska or any of its subunits today, but I am here to speak in strong opposition to LB718. I believe, first, that much of what this bill proposes is illegal under the Nebraska State Constitution and that those parts of the bill that are not are, nonetheless, redundant with respect to the United States Constitution. If this bill were to become law, I seriously doubt that it could withstand the most rudimentary legal challenge. But I am a professional educator, not a lawyer, and my main message for the committee today is this. Political interference by the state government in the operation of the state's colleges and universities is a dangerous proposition. One of the many reasons American colleges and universities are the envy of the world is because political interference in higher education has generally not been part of our political tradition. In this country, the term "state university" means funded by the state, sponsored by the state. This is not the case in much of the rest of the world where "state university" means controlled by the state. A public system of higher education that is not subject to governmental interference is, I believe, one of the proudest achievements of American democracy. This bill openly and drastically violates that tradition. And let us be clear. This bill is not a harmless ceremonial celebration of the First Amendment. It establishes as a matter of state law a standing committee at the university that reports directly to the Legislature. It even specifies the composition of that committee. No other body at the university of Nebraska, for example, including the Board of Regents itself, operates in this way.

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What's more, I believe this bill would have the opposite of its intended effect. While seeming to strengthen free speech protections, it will, nonetheless, have a chilling effect on free speech at our state colleges and universities. Faculty and students will both be left to wonder whether speech otherwise protected under the First Amendment and backed by over 200 years of First Amendment jurisprudence will, nonetheless, fail to meet some mysterious additional standards set by the State Legislature. I believe this bill represents an attempt to refrain rights broadly guaranteed by the U.S. Constitution in terms of narrow, transient political interests. This is a very slippery slope that we approach at our extreme peril. I strongly encourage the committee to vote against this bill. Thank you. [LB718]

SENATOR GROENE: Questions? What is your opinion of the Board of Regents' Commitment to Free Expression? [LB718]

STEPHEN RAMSAY: You know, I think that...I mean I have some quibbles with it. What I do not doubt is the Board of Regents' commitment to free speech and I actually...you know, what's more important to me is that the Board of Regents respect that universities are dynamic environments largely devoted to debating subjects precisely like that, and they are the competent authority to judge these matters. [LB718]

SENATOR GROENE: So when they say, Guide for Facilities Use Plans: University resources, for example, its land and buildings, its library collections, its computer networks, are to be applied first and foremost to the mission of teaching, research, and public service, would you believe some of the stuff that was on the English department's...as a mission statement would...could be suspect under that new directive about... [LB718]

STEPHEN RAMSAY: What are you referring to specifically? [LB718]

SENATOR GROENE: The computer networks. [LB718]

STEPHEN RAMSAY: No, I mean what in the mission statement are you referring to? [LB718]

SENATOR GROENE: Well, I didn't read it, just what I've seen about...I guess I it was e-mailed to me. [LB718]

STEPHEN RAMSAY: I'm sorry, did you just say that you did not read the mission statement? [LB718]

SENATOR GROENE: I did read it. [LB718]

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STEPHEN RAMSAY: Okay. [LB718]

SENATOR GROENE: Somebody did e-mail it to me, a link, about...it was...it went into a bunch of social issues. Instead of anything about the mission about learning, expands...a wide liberal arts and literature, it went into a bunch of social issues. [LB718]

STEPHEN RAMSAY: I actually...I have been teaching the subject of English literature for over 20 years. I find it impossible to discuss the subject without touching on what you are referring to as social issues. I don't know how you study literature in the absence of human culture and its issues and justice and social, so forth. I don't know what that is, don't know what that would look like. [LB718]

SENATOR GROENE: They should tie together. [LB718]

STEPHEN RAMSAY: Yes, they are tied together in the study of human culture, yes, no question about it, and I don't... [LB718]

SENATOR GROENE: Well, we'll just (inaudible). [LB718]

STEPHEN RAMSAY: ...and I don't know anyone in my entire profession who would disagree with that statement. [LB718]

SENATOR GROENE: I know a lot who would. [LB718]

STEPHEN RAMSAY: Not English professors, you don't. [LB718]

SENATOR GROENE: What's that? [LB718]

STEPHEN RAMSAY: Not English professors, you don't. [LB718]

SENATOR GROENE: That's fine, but you work there. The people own it, the university. [LB718]

STEPHEN RAMSAY: Forgive me, people do what? [LB718]

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SENATOR GROENE: Own the university. It's part of the people's property, the University of the State of Nebraska. [LB718]

STEPHEN RAMSAY: Yes, it is, indeed. Yes, it is, indeed. [LB718]

SENATOR GROENE: Yes, thank you. [LB718]

STEPHEN RAMSAY: It is, indeed, and it's...which bears directly on my point of why it amounts to...you know, again, it's...you know, political interference in the work of the university is...or let's say lack of political interference in the work of the university I really think is honestly one of the things we can most be proud of in this country because...and I'll tell you something else. I get e-mail all the time from people in Afghanistan and Iran and Syria and Iraq all the time, for as long as I've been teaching, and one of the reasons they want to come here is because in those places they don't have what we're contemplating doing here. They don't have the...what state universities in those places, I mean, it's controlled by the state. We don't have that here and I don't know why we'd want to start. It's something that, it seems to me, we can be very, very proud of. [LB718]

SENATOR GROENE: Don't infer I...what position I take on this bill by my questioning. I like to play the devil's advocate. It needs to be. It's called free speech and the exchange of ideas, so thank you for your testimony. Anybody else? [LB718]

AYAT ARIBI: Hi, everyone. I'm Ayat, first name A-y-a-t, last name Aribi, A-r-i-b-i, and I'm different than everybody else who is speaking today because everything that everyone is talking about actually affects my day-to-day life and the quality of my education because I'm junior at the university. I also serve on the Student Code of Conduct. I was the chair of diversity/inclusion committee through student government when we had the Black Lives Matter rally and when we had the issue with the three football players who knelt. And I currently serve as the external vice president of student government and I deal with all the diversity issues and I get all the text messages and the e-mails from students concerned about what's on the table today. So I have heard so many stories from students on campus that say they are uncomfortable and it is from the left and it's the right, but I'm a business student and we say the numbers don't lie. And the numbers from what I've collected--but take that with a grain of salt--isn't really coming from the right side of the spectrum. And I've heard so many stories from students but nothing has been done about the intimidation that we receive on campus. I haven't had any state senators come and talk to me about writing a bill in support of the discrimination that the three football players received last year where they received death threats and threats of lynching, especially considering the senator is such...so adamant about free speech and protecting everyone on campus. But we were just told to suck it up and just move on with our lives. But my concern is

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we see this nationwide trend behind the popular notion within conservative circles that universities have a liberal bias. Consistently, these students will leave higher education because they perceive critical thinking, self-critique, and open discussion as attacks on their selfhood, rather than as a process of refining ideas and arguments. All of their accusations about how people who disagree with them are just too sensitive are nothing more than just projection, because the very idea that they should question their own assumptions is something they believe would make them weak. Our constitution already defines free speech, as everybody here who has degrees already mentioned, and I think it's unnecessary for the state to try to meddle in something that I feel like we already have what we need in regard to that subject. I just want you all to think when it comes time for voting for this why this was brought to the table. I personally do believe it was because of the incident that happened, and I was also present at that incident. And to me, it just seems very politically motivated and very inappropriate. And I'm very opposed to this because I feel like enforcing freedom of speech is a contradiction in terms of language and rhetoric as well. And I'll take any questions if you have any. [LB718]

SENATOR GROENE: Questions? So are you okay with the Board of Regents' Commitment to Free Expression? Do you think that helps the students better understand what rights they have and... [LB718]

AYAT ARIBI: I was actually involved in the writing of that document and we spoke with lots of people, so I feel like there is this issue with politics where people assume they know what's best without actually addressing the people that it affects. So we spoke with different groups of students and we spoke with different kinds of faculty and staff, and we had the Board of Regents and other professors and administrators who were involved in the writing of this document that really tried to make a piece of literature that would kind of apply to as general of a student body as possible, whereas like the bill that's on the table today just seems, like I mentioned earlier, very politically mandated. [LB718]

SENATOR GROENE: This university one has a lot of dictates in it, too, and descriptions of what free speech is and where and how, but you have no problem with that. [LB718]

AYAT ARIBI: All I can say is obviously they didn't take me as seriously as maybe like other professors or something, because I'm just 21 and I don't even have a degree, but I think that you just have to work from inside the system. So I would prefer that to the bill that's on the table just because I believe that it is...I can be more generally applied to the student body and to the staff and administration than what is on the table today. [LB718]

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SENATOR GROENE: But you're not implying that free speech can be defined within a subset of citizens that all of a sudden you got a subset here at this campus and they can define what free speech is. You're not trying...saying that, are you? [LB718]

AYAT ARIBI: I think free speech is a very subjective matter and I don't know if I'm credible enough to define what it is. But just as a student, like as a student that's even faced discrimination on our campus and has spoken with administrators and no one like really was very participatory in the conversation about this, it doesn't make sense to all of a sudden try to bring this very biased document about free speech when so many other incidents of free speech have happened and no one cared about our free speech. [LB718]

SENATOR GROENE: Somebody said something that you disagreed with to you. That's free speech, isn't it? Did they threaten you? [LB718]

AYAT ARIBI: I think there's a divide between free speech and hate speech. For instance, I'm involved, like I said, in student government, and two years ago we had a senator--and we're all elected, just like how you all are--he just stood up on the stage and said the "n" word multiple times, which is not the issue. But then we also had multiple fake accounts, even like Twitter, Facebook, Yik Yak, etcetera, that called for like lynching of black students on our campus. And whether it's like just a joke or whatever it is, this is a serious threat. And I am disappointed that some administration didn't take it seriously. But I feel like if this was really about free speech and the protection of students on campus, something would have been done about physical threats to people's lives beforehand, before today. [LB718]

SENATOR GROENE: What should be done? [LB718]

AYAT ARIBI: I don't have the answer for that. I just feel like... [LB718]

SENATOR GROENE: Should they be silenced or should they be (inaudible)... [LB718]

AYAT ARIBI: Not silenced but I think... [LB718]

SENATOR GROENE: ...charged with a crime? [LB718]

AYAT ARIBI: I don't think that's...in my opinion, I don't think that's what should be done. I think what needs to happen is...everyone feels it's very impolite to discuss these things, it's impolite to discuss racism and discrimination and the history of who we are as Americans. I think what needs to be done is a...like the university to commit to what they're supposed to do, which is

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teach, to have a required race and ethnicities class or even just like a civil discourse class, because that student, the conservative student, like her feelings of being upset are definitely true and I'm upset that she felt that way and I was present that day. But it's just she did not want to speak with other people, other people did not want to speak with her. We need to teach people how to be civil in these situations and learn to...like the senator was speaking about earlier, you can be friends with someone that you have a different opinion with and go out with afterwards and try to make that relationship so you no longer have these really strong biases. [LB718]

SENATOR GROENE: But you also have a right not to be friendly, do you not? That's part of free speech. [LB718]

AYAT ARIBI: We don't need to force people to do that. But in the same way our university dictates that, for instance, an English major needs to take a chem 109 course to learn about scientific reasoning, we could also dictate that all students are required to learn about the history of...the actual history of the U.S. and not wash that out to what we're taught these days, and about having civil discourse. So I'm not going to force you to have a conversation with me, but I think institutions of higher education should be, should commit to teaching these students, which are the leaders of the future and the people who are going to... [LB718]

SENATOR GROENE: Thank you. [LB718]

AYAT ARIBI: ...the professionals of the future how to have conversations, not even friendship, just conversations with people that are different than who they are. [LB718]

SENATOR GROENE: Thank you. Any other questions? [LB718]

AYAT ARIBI: Thank you for your time. [LB718]

SENATOR GROENE: One left. [LB718]

LARRY SCHERER: (Exhibit 14) Good evening. Senator Groene, members of the Education Committee, my name is Larry Scherer, L-a-r-r-y S-c-h-e-r-e-r, and I'm here representing Nebraska State Education Association, opposing LB718. Specifically, my comments, I'm going to restrict them to our faculty at the University of Nebraska at Kearney. Sent this bill out to them as a matter of information, asking them if they had opinion on it, and their major concern was the creation of the Committee on Free Speech (sic: Expression), and the duplication of effort. You know, basically they said the university is already...has a number of policies on this, they're not concerned with it, it isn't a problem at Kearney. University of Nebraska at Kearney is not really a

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hotbed of liberalism or radicalism. It's in the center of Nebraska, fairly practical people. They're practical concern was, if we're going to direct the university to create another layer of governance, that might be punitive to them, it might result in them losing their jobs, might take away from the mission of the university and their future, their employment. So that's the point I want to make. I rarely get a chance to disagree with a law professor, but Professor Schutz said that the state college system does not have the same governance protection. It does have the same and so they would have the same constitutional argument, I would guess, as the Board of Regents. Community colleges, which I understand the amendment would apply to, as well, that's more a question of local control. There's a huge difference between the Metro Community College and the Western Nebraska Community College in terms of the culture, in terms of what people feel comfortable doing, and it really, you know, it hasn't been a big issue there. Don't doubt that there are some students that are offended by things other students or their faculty say, but it hasn't been a real issue. So to sum it up, our faculty at UNK are concerned about creating this committee. They don't think it's necessary. They think it's redundant. I'll stop there. [LB718]

SENATOR GROENE: Any questions? You, you're fine with the university in...the Regents' policy? [LB718]

LARRY SCHERER: I thought it was very good, yes. [LB718]

SENATOR GROENE: You are? [LB718]

LARRY SCHERER: Yes, and I think the issue, they left the question of what is a free speech zone at Kearney to be different from UNL, to be different from UNO. I think, you know, in my opinion, that's allowing the local governance at those campuses to make those decisions, which I think it should be, and our faculty are generally comfortable with that. [LB718]

SENATOR GROENE: You started your comments that Kearney isn't a bastion of liberalism, but wouldn't this... [LB718]

LARRY SCHERER: Compared to Lincoln. [LB718]

SENATOR GROENE: This policy is...has no bias. [LB718]

LARRY SCHERER: No. No, it doesn't. I...yeah. [LB718]

SENATOR GROENE: The university's policy has no bias, so in Kearney it would protect young individual... [LB718]

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LARRY SCHERER: Yeah. [LB718]

SENATOR GROENE: ...who has a different, completely different view... [LB718]

LARRY SCHERER: Yeah, it would more likely protect the liberal student in Kearney, I would say. [LB718]

SENATOR GROENE: ...and might have a table up with it, with a very liberal... [LB718]

LARRY SCHERER: Sure, sure. Yeah. [LB718]

SENATOR GROENE: I mean this is not a conservative or liberal free speech... [LB718]

LARRY SCHERER: Totally agree. [LB718]

SENATOR GROENE: ...or... [LB718]

LARRY SCHERER: You know, I'm just saying that this is not coming from a political bent out there. [LB718]

SENATOR GROENE: It protects all. [LB718]

LARRY SCHERER: It protects all. They're concerned about creating another layer of governance, a watchdog entity that might be punitive, in their opinion. [LB718]

SENATOR GROENE: Thank you. [LB718]

LARRY SCHERER: Thank you. [LB718]

SENATOR GROENE: Any other questions? Senator Pansing Brooks. [LB718]

SENATOR PANSING BROOKS: Yeah. I want to thank you for coming. I agree that the chances of a punitive body, similar to like a Star Chamber or something. I mean that's my vision of what the extreme case of what this could be is, and I appreciate your coming forward and... [LB718]

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LARRY SCHERER: Yeah. When I read the rest of the bill it was just (inaudible) First Amendment-type principles that they were putting into a statute and it's the enforcement of it and the accountability, whatever you want to call it, that was worrisome to our faculty. [LB718]

SENATOR GROENE: Thank you. Any other questions? [LB718]

LARRY SCHERER: Thank you. [LB718]

SENATOR GROENE: We have...is there any other opposition? One more? Is there anybody else? [LB718]

DAVID MOSHMAN: Neutral. [LB718]

SENATOR GROENE: All right. [LB718]

SENATOR PANSING BROOKS: Neutral. [LB718]

SENATOR GROENE: I'll remember neutral. Thank you. Go ahead anytime. [LB718]

APRIL JORGENSEN: My name is April Jorgensen, A-p-r-i-l J-o-r-g-e-n-s-e-n. I'm here speaking as an individual. As the Capitol inscription reads, "The Salvation of the State is Watchfulness of the Citizen," and we're paying attention. And in the interest of watchfulness, I just want to note on the record that the people presenting this bill were also helped to their office by large donations by billionaire Governor Ricketts. In fact, according to dataomaha, the Governor paid for nearly 24 percent of Senator Halloran's election campaign. I feel that this information should be considered as you determine the true intent behind this bill and whether this is just doing the Governor's bidding. I would hate to see a Governor create a billionaire oligarchy to undermine the democracy of our state by crushing dissent. I urge you not to advance this bill. [LB718]

SENATOR GROENE: Thank you. Any questions? Senator Erdman. [LB718]

SENATOR ERDMAN: Thank you, Senator Groene. Do you know how much the Governor gave me? [LB718]

APRIL JORGENSEN: Zero dollars. [LB718]

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SENATOR ERDMAN: Huh? [LB718]

APRIL JORGENSEN: Zero dollars. [LB718]

SENATOR ERDMAN: That's it. [LB718]

APRIL JORGENSEN: Yeah. [LB718]

SENATOR ERDMAN: So don't classify me in that group. [LB718]

APRIL JORGENSEN: Apologize. I meant Erdman... [LB718]

SENATOR ERDMAN: Okay. [LB718]

APRIL JORGENSEN: I mean Halloran and Brewer. [LB718]

SENATOR GROENE: I didn't get any money, either, (laughter) so anyway. [LB718]

SENATOR PANSING BROOKS: I didn't either. [LB718]

SENATOR MORFELD: Me neither. There's a recurring thing about us. [LB718]

SENATOR LINEHAN: Okay, that's... [LB718]

SENATOR GROENE: So thank you. Your testimony was good. [LB718]

APRIL JORGENSEN: Thank you. [LB718]

SENATOR GROENE: You've exercised your free speech as a citizen. That's very important. Opposition letters, we received three: Nebraska Community College Association; Nebraska State College Systems; and Carmen Smith from Lincoln, opposition to LB718. Neutral? [LB718]

DAVID MOSHMAN: (Exhibit 15) My name is David Moshman, D-a-v-i-d M-o-s-h-m-a-n. I'm a professor emeritus of educational psychology at UNL and I'm speaking as president of the Academic Freedom Coalition of Nebraska, AFCON, which supports intellectual freedom for students and teachers and researchers in Nebraska's schools, colleges, and libraries. We fully

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support the intent of this bill and most of its provisions, but also have some serious concerns. Over the past 30 years, public colleges across the United States have instituted unconstitutional policies authorizing punishment of broad categories of objectionable speech. UNL's Student Code of Conduct, for example, prohibits "verbal abuse" and endangering the "reputation of any person." In 2014 and 2015, UNL received letters from the Foundation for Individual Rights in Education, FIRE, noting that such language, which can be found in multiple UNL policies, threatens a great deal of speech protected by the First Amendment. Free expression issues in Nebraska higher education are by no means limited to UNL. AFCON has addressed free expression issues at Peru State, Wayne State, and Chadron State, including serious matters in the past few years. We have reason to believe that the state of free expression in the state college system is worse than within the University of Nebraska, in part because it's easier to keep problems hidden. There is, thus, much need for a law like this one that would require all public educational institutions to adhere to strong standards of free expression, and to be transparent about their policies and practices in this regard. We have two general concerns about the bill in its current form, however, First, we're concerned about micromanagement, especially with regard to the mandate requiring each institution to set up a permanent Committee on Free Speech (sic: Expression) and dictating its structure and operations in detail. Based on our experience, we believe most institutions should, indeed, set up a committee, something like what this bill proposes. The present bill goes much too far, however, in dictating the permanent structure and operations of these committees. Second, this bill focuses on free speech outside the core academic environment. It's important to be clear that the bill is not intended to address the academic freedoms of faculty and students in teaching, learning, and inquiry. We suggest amending the bill to require every institution to (1) have an academic freedom policy protecting and promoting the intellectual freedom of students and faculty in curricular and research contexts; and (2) reference its academic freedom policy in its free expression policy. In closing, I want to emphasize how pleased we would be to see a properly amended version of this bill become law, and I understand that FIRE has been working with Senator Halloran today and there is a revised version in progress. Many of the present provisions would greatly aid AFCON's efforts to promote intellectual freedom in education, which ultimately benefits us all. Thank you. [LB718]

SENATOR GROENE: Questions? For somebody who sat through all this to the last, you deserve at least one question. What was your group again? [LB718]

DAVID MOSHMAN: The Academic Freedom Coalition of Nebraska. [LB718]

SENATOR GROENE: Is that affiliated with national? [LB718]

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DAVID MOSHMAN: There's no national. We're a unique Nebraska organization. We were founded almost exactly 30 years ago, in February 1988, initially concerned with intellectual freedom issues of students and faculty in secondary education, but we're a coalition of a variety of organizations, including higher education, and we support intellectual freedom for students and faculty at all educational institutions. [LB718]

SENATOR GROENE: So you look into high schools? [LB718]

DAVID MOSHMAN: Yes. [LB718]

SENATOR GROENE: Hopefully someday I can yell at the ref again without getting thrown out of the gym. [LB718]

SENATOR MORFELD: I've got a bill for that. (Laughter) I do. [LB718]

SENATOR GROENE: I want my free speech back. Thank you. Senator Halloran,... [LB718]

SENATOR PANSING BROOKS: There's more. We're at neutral. [LB718]

SENATOR GROENE: Neutral, he was neutral. Any other neutral? Sorry. I asked. You must have missed it, Spike. [LB718]

SENATOR MORFELD: Mr. Eickholt. [LB718]

SPIKE EICKHOLT: (Exhibits 16 and 17) I know. I'll be quick. Good evening, Chairman Groene and members of the Education Committee. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in a neutral capacity. You're going to receive a copy of our statement, along with our free speech policy and some...the national ACLU free speech policy position. I'm not going to restate those or read from the letter. I'll just try to summarize. I know that you've been here for quite a long time. We are in a neutral capacity. We do support really the spirit and the intent of much of this bill, and I'm speaking actually to the rewrite, the AM1553, to the replacement amendment that Senator Halloran filed after introducing LB718. We do support sort of the spirit and the intent of the bill and really some of the provisions of AM1553 we really would...and we do point are really very good. For instance, Section 5 of the bill does provide for notice. The students know what the free speech policy is on campus and the sanctions. I think that's good. That provides for some due process. Section 3(1) and (2) and really strong commitments to academic freedom that we'd ask the committee to also consider and just note. And then subsection...or Section 3(7), the delegation or clarification of

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"traditional public forum," and that would be the public areas on campus, we do disagree with the University Board of Regents' policy on that. You heard from the counselor earlier where he tried to argue, or did argue, that the university, the public area in the university is not a traditional public forum. We disagree with that. When Danielle Conrad testified on January 25, we urged the Board of Regents to change that distinction or characterization. I think that it is a traditional public forum. I think you've got 40 or 50 years of protests happening on campus that is similar to a street corner, a park. You had it just recently with the Women's March. That was a nonstudent, or at least some nonstudents, starting at the university on clearly a political thing, beginning at the university and continuing to the Capitol. But the reason that we're neutral, I think, ultimately, and you've talked about it really all afternoon and into the evening, is that no matter, really, what this committee tries to do or what the body tries to do, you run into the problem in Exon. And we read Exon really the way the university does, too, and that is Article VII-10 does provide that the Board of Regents has the general governance of the university, the Board of Regents has that power. And if you look at the Exon case, the Legislature passed a series of laws that provided for a variety of different things regarding the management of the university, everything from the university receiving certain gifts over a dollar amount, personnel decisions, the construction of new facilities, and the court simply said the Legislature can't do that. The only way you really make a meaningful free speech policy is to have some sort of sanctions, some sort of remedy, some sort of process for the Legislature to do that, and it's our position that Exon just prohibits the body from doing that. So it's a very good expression of some First Amendment rights and things are important to us. I think we had a good debate today about this, or at least the committee has. But ultimately I think the Board of Regents, it's their decision. I agree with Professor Schutz. [LB718]

SENATOR GROENE: Thank you. Any questions? What's your opinion of the university's... [LB718]

SPIKE EICKHOLT: One point that we did disagree upon was that their characterization or distinction that the public areas, the plazas, the parks, or the green space, if you will, the sidewalks, are not traditional public forum, that they can somehow limit nonstudents, or maybe even students, from using that for traditional speech. We disagree with that. I think it's...we think that's too overbroad. And when we testified before the Board of Regents, we made some suggestions that they did not adopt. That's just an example. [LB718]

SENATOR GROENE: So is there a difference between a publicly owned university by the people, where it's funded by the people, versus a Harvard or Yale, about a public area? [LB718]

SPIKE EICKHOLT: Well, there is. I mean for the First Amendment to apply, you have to have state actions. You have to have the government either providing or limiting someone from doing

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something, so you can't go into a private business or you can't go into someone's home and think you have a right to protest. But when you're talking about traditional public forums, the perfect example is a street corner or the public park where anyone can go there really any time and talk about stuff. The general counsel who testified before made the argument that the university is not a traditional public forum and I think that's too broad. I think that there...I think you have traditionally, at least the last 40 or 50 years, people protesting on campuses. [LB718]

SENATOR GROENE: So what you're saying, I'm not a lawyer, but it's basically by repetitive action of the university that it's become common law. It's free... [LB718]

SPIKE EICKHOLT: Became traditional, um-hum. [LB718]

SENATOR GROENE: Common law is traditional, right? [LB718]

SPIKE EICKHOLT: Right. [LB718]

SENATOR GROENE: And so to deny one and allow, look the other way for another, like the Women's March or... [LB718]

SPIKE EICKHOLT: Right. [LB718]

SENATOR GROENE: ...and then to deny...I'm not going to say anything... [LB718]

SPIKE EICKHOLT: Right. [LB718]

SENATOR GROENE: ...because then you'll it's me, but a different group would be questionable. [LB718]

SENATOR PANSING BROOKS: Good question. [LB718]

SPIKE EICKHOLT: Right. That's right. I mean they don't have to provide (inaudible). They have to be subject neutral, at least viewpoint neutral, perhaps content neutral, as well, depending on other time, place, and manner restrictions that they can't do. I mean, in the middle of the night, they can't be disturbing classes, that kind of thing. [LB718]

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SENATOR GROENE: So if we...if they pass the law, the Legislature did set a general direction that free speech commonly held on any public entity, or whatever, must be also followed by the University of Nebraska. [LB718]

SPIKE EICKHOLT: You could try. [LB718]

SENATOR GROENE: It's a very general... [LB718]

SPIKE EICKHOLT: That would somehow survive Exon, you mean? [LB718]

SENATOR GROENE: Yeah. [LB718]

SPIKE EICKHOLT: Something like that? I mean if you look at the Exon decision... [LB718]

SENATOR GROENE: No, not get around Exon, but just a to say... [LB718]

SPIKE EICKHOLT: Oh, I see, Senator. [LB718]

SENATOR GROENE: ...a general on the free speech issue. [LB718]

SPIKE EICKHOLT: You could. I think if it's going to be so general, it's really just going to be an expression of a like, it's just going to be a general approval, and I don't really know if you can put that in a statute and have any kind of actual meaning,... [LB718]

SENATOR GROENE: Just curious. Thank you. [LB718]

SPIKE EICKHOLT: ...almost like a resolution then. [LB718]

SENATOR GROENE: Any questions besides me? Thank you. Any other neutral testimony? We've had no letters, neutral letters. Senator Halloran, want to exercise your free speech in closing? [LB718]

SENATOR HALLORAN: Let's everybody get comfortable... [LB718]

SENATOR PANSING BROOKS: Please don't take off your coat. [LB718]

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SENATOR HALLORAN: ...(inaudible). [LB718]

SENATOR KOLOWSKI: You've got two minutes. (Laughter) [LB718]

SENATOR GROENE: Turn the red light on. [LB718]

SENATOR MORFELD: Two minutes is board approved. [LB718]

SENATOR PANSING BROOKS: Coat off, holy moly. [LB718]

SENATOR HALLORAN: Excuse me. Well, I would like to express my gratitude for everyone who testified today in expressing their freedom of speech and ability to express themselves. And I would look upon the grace of the committee to give me time to, which won't take much time, but before you exec, to implement what FIRE proposed into this, the body of this legislation. And in summary of what that will do, is it will take away all this onerous issue of us managing what those policies specifically are and will give them, each institution, the opportunity to define those, which, in effect, they have here. All right? And it will also...we will probably...we will also look at minimizing what we have for the definition of what the committee is, just leave it up to the institution. Institutions, God bless them, are very good at forming committees. They'll do it anyway, so we don't have to define that for them. I have all the faith in the world they will form a committee to do that, but that's what I would like to do with the grace of the committee to allow me to do that: implement FIRE's recommendation. And I think ultimately, ultimately it's important for us to address this in some fashion because the University of Missouri did not quickly address it, and I'm not saying that will happen here, but the University of Missouri had an issue with a drop in people applying to go to school there, 35 percent, and a lot of it was because the universities neglected or the legislature, whichever the case might be, neglected to address the issue and address it quickly. And so with that, I will close and put my jacket back on. [LB718]

SENATOR GROENE: Any questions? Question./ [LB718]

SENATOR HALLORAN: Question? [LB718]

SENATOR GROENE: Correct me if I'm wrong, didn't the... [LB718]

SENATOR HALLORAN: Oh, may I make one more comment, Mister... [LB718]

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SENATOR GROENE: Go ahead. [LB718]

SENATOR HALLORAN: Make I make one quick comment? [LB718]

SENATOR GROENE: Yes. [LB718]

SENATOR HALLORAN: Several weeks ago, or a week or so ago--well, it was in the interim just between last Thursday, I guess, because that's when the final...I had a draft of the university's proposal but not a final until Thursday. But about a week ago I had several regents approach me and say, Senator Halloran, why don't you withdraw your bill because the policies that we've formulated are very parallel with what you're having in your bill, and I find that a little bit odd that there was so much angst about those specific policy issues that we were proposing in this bill and yet a couple of regents said they're just very parallel, we have no problem with them. It just, I guess, depends on who the author is, but at any rate...my second close. [LB718]

SENATOR GROENE: But you all...but you do have a...the committee in there, the enforcement at the back end that the university doesn't have. Is that not true? [LB718]

SENATOR HALLORAN: Well, there will be. We will have expectations that the university form a committee to deal with it, but we're not going to define how that committee is made up and... [LB718]

SENATOR GROENE: Did not the Missouri delayed firing an individual who limited free speech? [LB718]

SENATOR HALLORAN: Correct, yeah, that's... [LB718]

SENATOR GROENE: And it was a little bit late, but they did do that also. [LB718]

SENATOR HALLORAN: Correct. [LB718]

SENATOR GROENE: Do you know if the University of Missouri now has a free speech policy? [LB718]

SENATOR HALLORAN: Well, they also passed a law very similar to what this is, Missouri did, but it was after the fact, I mean, way after the fact. [LB718]

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SENATOR GROENE: I would like to add, for the record, that the university did ask Senator Halloran and this committee to delay his...the hearing on this bill until they were able to come out with their policy and I thought that we all thought, Senator Halloran agreed, that that would be good to have both sides of the issue here as we debated, and I think that helped the committee, so thank you, Senator Halloran and the University of Nebraska. That ends the hearing, unless somebody else has a question. [LB718]