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Judiciary Committee
February 27, 2008

[LB963 LB1170 LR224]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 27, 2008, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB963, LB1170, and LR224. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Vickie McDonald; Amanda McGill; Dwite Pedersen; Pete Pirsch; and DiAnna Schimek. Senators absent: None. []

SENATOR ASHFORD: (Recorder malfunction)...and the first bill is Senator Friend's bill. We're going to limit the testimony to 45 minutes per side. We'd ask everybody to keep their testimony to three minutes or so. We have a light system with a blue light, yellow light, and red light that will kind of chart your course through the three minutes, and when the red light comes on we eject you out of the seat. (Laughter) We send the Attorney General after you. But...so we'd ask you to do that. We'll try to keep as much track of the time as close as we can. We'll be as equal as we can be. There's Senator Dwite Pedersen from Elkhorn is here, also his last scheduled hearing, and thank you for his incredible service to the state. So I think we have a quorum, don't we? Do we need one more? One more. Do we have any more senators? (Laugh) Well, I'm going to ask Senator Friend to start. Senator Friend, why don't we go ahead and get started and...with LB, what number is this, LB963. Good afternoon. []

SENATOR FRIEND: (Exhibit 1) Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Mike Friend. For the record, it's spelled F-r-i-e-n-d. I represent the 10th Legislative District in northwest Omaha. I'm here to introduce LB963, which I introduce at the request of Governor Dave Heineman and Attorney General Jon Bruning. I have designated it as a priority bill, as my priority bill for the session. LB963 is simple, dealing with a complicated problem. I think we would all agree with that. It prohibits state agencies and political subdivisions from providing federal, state, or local public benefits to individuals who are not lawfully present in the United States. This prohibition already exists in federal law. The definition of "public benefits" is taken from federal law. It includes grants, contracts, and licenses provided to individuals, and welfare, health, disability, housing, postsecondary education, food assistance, unemployment, and other similar benefits. Federal law does not mandate verification of lawful status. LB963 establishes a uniform verification process throughout state and local government. All individuals who apply for public benefits must execute an affidavit stating that he or she is either a citizen or an alien. If an individual is an alien, then the state agency or governmental entity would be required to verify the alien's immigration status through the Department of Homeland Security's Systematic Alien Verification for Entitlements Program. This is also known as the SAVE system. SAVE is a Web-based program available to government entities...governmental entities, excuse me, that can verify whether or not an alien is lawfully present in the United States. Verification under LB963 will not be required for emergency medical benefits, in-kind emergency disaster

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relief, immunizations and treatment of communicable diseases, and program services or assistance necessary for the protection of life and safety. If federal law requires that granting of a benefit to an individual not lawfully present is there, then a state agency or political subdivision will not have to verify lawful presence. So if the state government is saying that the benefit is legitimate, it's obviously legitimate under our laws as well. LB963 also places a duty on state agencies to file an annual report to the Legislature and Governor on the number of applicants for benefits and the number of applicants rejected pursuant to LB963. Finally, in 2006 LB239 was passed and it granted in-state tuition to certain students who were not lawfully present in the United States, postsecondary students. Section 7 of LB963 repeals that provision. I think you all have an amendment also in front of you, members of the Judiciary Committee. This amendment, and if you do get an opportunity to look at it, at this moment, the first piece of it moves...it says this: Any person who knowingly and willfully makes a false, fictitious or fraudulent statement or representation in an affidavit executed pursuant to Section 4 of this act shall be guilty of a Class III misdemeanor. We changed that from, I believe, a Class IV felony. Also, the second piece...and if I'm wrong about that I'm sure I'll be corrected, either by one of you or somebody behind me. The second piece actually makes the bill more "e-friendly," if you will--electronically friendly. The Department of Labor has obviously, and the state in a lot of ways, have been moving toward this futuristic phase, if you will, and that's what this does. Members of the committee, finally, I, for a long time, like most of you probably and most of the people in this room, I've thought about this issue and, quite honestly, I threw my hands up and said I don't think there's really much I can do about this and I don't think there's much the state can do about it. After careful consideration, discussions with Governor Heineman and also Attorney General Bruning and their staffs, the intent of this bill was also important to me. I didn't want legislation that would be used to gather people, incarcerate them, and send them back to nations of origin. It wasn't...it's not my intent. I didn't want a bill like that. It's my understanding that that's not what the Governor and that's not what the Attorney General want either. I felt like, after pondering this for the amount of time that I pondered it, if the state can control anything what would it be? And I think we might have hit on something here. I would let the committee also know that the judgment of the committee will obviously rule here. I'm open to ideas. I know that there are a couple of other items on the agenda after this one. I'm open to ideas as to how this bill could become better, more favorable, and something that the state of Nebraska can get hold of and actually use. Chairman Ashford, I believe that that's all I have. I'd be happy to answer some questions. [LB963]

SENATOR ASHFORD: Thank you, Senator Friend. Before we go on, I want to introduce Senator Vickie McDonald from St. Paul, Nebraska, and Senator Ernie Chambers has joined us. And as is the case with two of my other colleagues, these two senators will be...this is their last committee hearing and I can tell you that...I can tell you that they are two people I admire very much and it's going to be very difficult to have them leave. But so thank you for your service. And then Senator Pete Pirsch has also joined us. Are

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there any questions? And Senator Steve Lathrop has joined us, but you joined us awhile ago, so...but good to see you. [LB963]

SENATOR LATHROP: Thanks. [LB963]

SENATOR ASHFORD: Any questions of Senator Friend? Yes, Senator Schimek. [LB963]

SENATOR SCHIMEK: Yes, thank you, Mr. Chairman. Senator Friend, welcome to the Judiciary Committee. [LB963]

SENATOR FRIEND: Thank you, Senator Schimek. [LB963]

SENATOR SCHIMEK: I have received some information, and I don't know if you have any idea about it. I'm just going to toss it out there and let people try to respond to it as they come up to the chair. Colorado, as you know, passed something similar, I don't know if it's exactly like, but similar to this bill, and in that particular bill they said that the political subdivision or agency would report on the results of all of this. And so there was a joint budget committee of the legislature then that asked them all to report and 18 departments reported no savings, no savings, no reduction in demand for services, and an additional cost of \$2.3 million to implement this mandate. Do you have any idea how many agencies in the state would be impacted by such legislation? And I notice that there is language in here that said there would be an annual report. Is this the kind of annual report that is envisioned, the same kind that Colorado required? [LB963]

SENATOR FRIEND: The answer to that question you just asked I don't know because I haven't seen Colorado's report. I do know that there's a reporting mechanism associated with this bill to the Legislature and the Governor. It's come to my attention, based on the limited amount of research that I've done, is that not only...there's no fiscal note attached...I mean, there's a fiscal note attached but there's nothing...there's no impact, but that obviously doesn't mean that there's not going to be an impact and I'm not implying that. The answer to your question is, I don't know what Colorado's looks like and what they have to report to their legislature and their governor, but I have been told that it's a situation that, in order to achieve the type of knowledge that Colorado now has, that it's important for us to pursue this. Now I...that's just a general... [LB963]

SENATOR SCHIMEK: But the knowledge that they have is there really weren't any people who were getting these benefits who shouldn't. [LB963]

SENATOR FRIEND: And knowledge that they didn't...but I would argue, and I'm not arguing, but I would tell you that I think that that's knowledge they didn't have before. [LB963]

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SENATOR SCHIMEK: Okay. Then we don't have any knowledge right now. Is that correct? [LB963]

SENATOR FRIEND: Well, I wouldn't say that. I think that there is...there are...there is anecdotal information that I've received and others--you know, we all receive it, right--that tells us that there could be significant problems in certain pockets of the state. But giving you documentation and showing you, I know nationwide we do, but that doesn't do us any good here. I mean, we need to get specifics and I think the verification program can potentially provide us specifics. And what people have communicated to me--Workforce Development in the Labor Department, if you will--that the SAVE Program isn't an extremely costly measure, you know, for any subdivision. [LB963]

SENATOR SCHIMEK: That the what program? [LB963]

SENATOR FRIEND: The SAVE Program. The...let me give you the...Homeland Security Systematic Alien Verification for Entitlements Program, which is a Web-based...which is a Web-based tool to check the verification of individuals. [LB963]

SENATOR SCHIMEK: Well, all I can say is there is another state, at least, that has had the experience and they really didn't find anything and they spent a whole lot of money on it and I just would wonder if this would really net us anything. The other thing I have to say, of course, is that I'm very offended that you would be trying to do away with the in-state tuition bill after the Legislature...(Audience reaction) [LB963]

SENATOR FRIEND: But, Senator Schimek... [LB963]

SENATOR ASHFORD: Hold it just a second, just so we...if I could, Senator Friend, before you answer. [LB963]

SENATOR FRIEND: Absolutely. [LB963]

SENATOR ASHFORD: We won't have any of that outburst at all or I have the discretion to clear the room and I'll do it. So, Senator Friend, you can answer. And there are members of the State Patrol here. We are going to keep...have this be a respectful hearing on both sides and we won't have any outbursts. Senator Friend. [LB963]

SENATOR SCHIMEK: My...the rest of my comment was the Legislature struggled with that issue mightily just two years ago and, as you know, got the necessary votes to override the Governor's veto. And to throw that out there again already just seems to me to be extremely premature, but that's just my own personal comment. [LB963]

SENATOR FRIEND: Thank you, Senator Schimek. [LB963]

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SENATOR SCHIMEK: And you already knew that. [LB963]

SENATOR FRIEND: I did, and I could respond. My intent...my intent with this bill and my intent in the future, and I hope everybody on the committee knows this, (A) is not to offend you; secondly, or (B), (B) I do, I struggled mightily with that as well and I firmly disagreed with the public policy. So, Senator Schimek, I respect what happened, I respect the process that it went through, I respect what you did to accomplish the goals that you accomplished with that measure, but I mightily disagreed with it. So my intent was not to offend...my intent is not and was not to offend you. I just feel strongly about it as well. [LB963]

SENATOR SCHIMEK: And it's not personal offense. [LB963]

SENATOR FRIEND: I know. [LB963]

SENATOR SCHIMEK: It's...it's... [LB963]

SENATOR FRIEND: I understand. [LB963]

SENATOR SCHIMEK: ...just that it would be before us again. Thank you. [LB963]

SENATOR FRIEND: Thank you. [LB963]

SENATOR ASHFORD: Thank you, Senator Friend. It's a quarter of 2:00. We're going to go 45 minutes on the proponent side, Senator Friend, and then 45 minutes on, if need be, on the opponent side. And then we'll have some time for neutral, if there are any neutral testifiers. So that will be the program. Do you have any questions? I'm sorry, does anyone have any? [LB963]

SENATOR LATHROP: I do, if I can ask. [LB963]

SENATOR ASHFORD: Yes. [LB963]

SENATOR LATHROP: Senator Friend, in Section 5 there is a provision in here that the affidavit would be verified through the Systematic Alien Verification for Entitlements Program operated by the Department of Homeland Security. Do you see that provision? [LB963]

SENATOR FRIEND: Yes, I do. [LB963]

SENATOR LATHROP: Is that the same federal program that has, like, about a 20 percent wrong rate? [LB963]

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SENATOR FRIEND: I... [LB963]

SENATOR LATHROP: I know that I've looked into these things with the Department of Homeland Security. They had a verification, because other states have tried to impose this on employers, required that they verify through this system, and they have about a 20 percent rate of being wrong, don't they? [LB963]

SENATOR FRIEND: I...Senator, don't mean to...I don't know that. That's the first I've heard of that, and I'm glad you brought that up. If that's an issue, I think we need to hash that out, but I didn't...had not heard that. [LB963]

SENATOR LATHROP: Your bill is a limitation on entitlement to public benefits. You spelled out what benefits those are. What's the current limitation and what does this do that the current limitations don't already do? [LB963]

SENATOR FRIEND: Well, good question. The limitation is what the bill seeks to provide verification for, but I think that there are code agencies that--and, you know, the Governor and Attorney General Bruning and others can speak to that--the code agencies, they feel like that they have some control over, but those limitations are also...also extend to noncode agencies, which they may not have the type of information and knowledge that they need to make the determinations that they think they need to make. So I don't...I guess what I'm saying is, if I'm answering your question right, yes, it is already in violation of the law to provide some of those, but how do you know unless you're verifying whether you're doing it at all, one way or the other? [LB963]

SENATOR LATHROP: I'm just trying to understand what you're trying to accomplish with the bill. You think that there's already limitations in place that will prevent an undocumented person from receiving public benefits in the state of Nebraska. [LB963]

SENATOR FRIEND: If you knew, would be my assumption, and I think that significant portions of this bill will allow for that knowledge, Senator Lathrop, so.... [LB963]

SENATOR LATHROP: So what changes is... [LB963]

SENATOR FRIEND: The verification. [LB963]

SENATOR LATHROP: ...we use this Homeland Security Web site to... [LB963]

SENATOR FRIEND: That's a significant change. There are a... [LB963]

SENATOR LATHROP: Okay. [LB963]

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SENATOR FRIEND: ...couple of other things, but, yeah. [LB963]

SENATOR LATHROP: That's all I have for you. Thanks. [LB963]

SENATOR ASHFORD: Thank you, Senator Friend. [LB963]

SENATOR FRIEND: Thank you, Mr. Chairman. [LB963]

SENATOR ASHFORD: I assume you will be...or maybe not. Are you going to be around? [LB963]

SENATOR FRIEND: Yes, I will. [LB963]

SENATOR ASHFORD: Okay. Proponents. Governor Heineman. Welcome. [LB963]

GOVERNOR HEINEMAN: (Exhibit 2) Good afternoon, Senator Ashford and members of the Judiciary Committee. For the record my name is Dave Heineman, H-e-i-n-e-m-a-n, Governor of Nebraska. I want to begin by thanking Senator Friend for introducing LB963 on my behalf. LB963 is an attempt to address the issue of illegal immigration in our state in a responsible and measured manner. State policymakers face many dilemmas with the issue of illegal immigration. The federal government has failed to properly regulate and enforce immigration laws. This has resulted in an ever-increasing number of illegal immigrants in our country. When considering this legislation, I looked at whether the state of Nebraska has any responsibility to address the issue of immigration and, if so, what would be the most appropriate action to take in our state's circumstances. I know this is a difficult and emotional issue, but it must be addressed. The bill is targeted solely at protecting the integrity of our public benefit programs and ensuring accountability of public agencies in providing these benefits. This legislation requires state agencies and local subdivisions to verify that any alien who applies for state and local benefits is here legally. All agencies would be required to verify an applicant's legal status by using a uniform accountability system. Senator Friend mentioned the Systematic Alien Verification for Entitlements Program, called SAVE, and I can elaborate in a moment. In order to harmonize our agencies' actions with federal law and program requirements, the proposal would enact into state law the same benefit definitions that exist in federal law. State law would specifically prohibit an illegal immigrant from obtaining any state or local retirement, welfare, health, disability, public housing, postsecondary education, food assistance, or unemployment benefits. The restriction would also apply to any federal benefit that states are authorized to limit under existing law. This legislation would repeal in the in-state postsecondary education benefit that was enacted by the Legislature in 2005. I want to emphasize that benefits such as emergency medical assistance, short-term emergency disaster relief, and the provisions of K-12 education are mandated by the federal government to be provided

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and will not be impacted by this proposal. America is the land of opportunity and Nebraskans support legal immigration, not illegal immigration. It is unfair to those who become legal American citizens to have illegal immigrants provided the same opportunities as those who have followed our laws. This is measured and targeted legislation that addresses the benefit administration process that state and local governments control. Thank you for the opportunity to testify and I'll be glad to answer your questions. [LB963]

SENATOR ASHFORD: Thank you, Governor Heineman. Any questions of the Governor? Yes, Senator Chambers. [LB963]

SENATOR CHAMBERS: Welcome to our lair, Governor Heineman. [LB963]

GOVERNOR HEINEMAN: Thank you, Senator. (Laughter) [LB963]

SENATOR CHAMBERS: In your last paragraph it says, "It is unfair to those who have become legal American citizens to have illegal immigrants provided the same opportunities as those who have followed our laws." How is it unfair? [LB963]

GOVERNOR HEINEMAN: Senator, I believe it's unfair in that there are those who followed the law, became legal American citizens. Once you do that, you're entitled to the benefits. If you're here illegally, you shouldn't receive those benefits. [LB963]

SENATOR CHAMBERS: Well, I'm here, and my people were forced immigrants and I don't feel it's unfair to me if somebody gets assistance that...(Audience reaction.) Now when I'm speaking, I don't want you people to be rude and discourteous. If you don't like what's being said here, then you can go out in the hall. You're accustomed probably to mistreating people, but it's not going to happen in this room. Governor,... [LB963]

GOVERNOR HEINEMAN: Yes, Senator. [LB963]

SENATOR CHAMBERS: ...the point that I'm making is that for it to be unfair for one person, it means that that person is being denied something which otherwise he or she would have. Now what are these people who are described as legal American citizens, what are they being denied as a result of these people described as illegal immigrants being here? [LB963]

GOVERNOR HEINEMAN: Well, if you're here legally, you're entitled to the benefits. If you're not, you shouldn't receive them. [LB963]

SENATOR CHAMBERS: But that doesn't stop somebody who's here legally from receiving them, does it? [LB963]

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GOVERNOR HEINEMAN: No, no. We're saying if you're here legally, you should receive the benefits and you're entitled to the full benefits of any appropriate program. [LB963]

SENATOR CHAMBERS: Well, would those who are here legally have their benefits prorated and they receive lesser benefits if somebody is here illegally? [LB963]

GOVERNOR HEINEMAN: Not that I'm aware of, but let me take this moment, if I can, to expand... [LB963]

SENATOR CHAMBERS: Sure. [LB963]

GOVERNOR HEINEMAN: ...expand upon the question that Senator Schimek asked about the SAVE Program. On Monday, the Attorney General and I and Senator Friend went over and saw a demonstration. Department of Labor is going to testify here in a moment, but they use...they currently use the SAVE Program. And in the process of checking unemployment benefits, for example, last year there were 78 people who were denied the benefit because they were not here legally. Those 78 people, it costs 20 to 25 cents to do this Web-based check. So for about \$1,000, it saved about \$225,000 in benefits going out to the people who were here illegally. So for \$1,000, we saved \$225,000. [LB963]

SENATOR CHAMBERS: Well, seems to me that would, if you're talking about unfairness, that would mean it's unfair to any person who is here legally, whether by immigration or birth. [LB963]

GOVERNOR HEINEMAN: I understand your point. [LB963]

SENATOR CHAMBERS: And the difficulty that I have when this kind of language is utilized, it seems to indicate that based on a person's appearance or language there is a stereotypical attitude which will be applied to all such people, and the presumption is going to be that they have no business being here. And insults, unfair law enforcement will be directed without any distinction as to whether or not somebody is here legally or not. [LB963]

GOVERNOR HEINEMAN: Senator, we're not here in any manner to discriminate. It won't involve the law enforcement activities. In fact, when we talk about unemployment benefits, almost all of that is done over the telephone. No one is looking at the individual person. So hopefully that maybe gives you a greater appreciation that no one is looking at anybody and say, well, automatically someone is going to try and discriminate. We're not trying to do that at all. [LB963]

SENATOR CHAMBERS: Okay. But I was looking beyond just the people at these

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agencies, but the attitude in the society and it's reflected sometimes even in a room like this. But here's a question I would ask you. [LB963]

GOVERNOR HEINEMAN: All right. [LB963]

SENATOR CHAMBERS: It mentions in the...well, anyway in this paragraph, the third or fourth one from the bottom, the types of assistance would not be available: state or local retirement. A person would have to have been in this country and have worked for a period of time to be entitled to retirement benefits whether here legally or illegally. Is that true? [LB963]

GOVERNOR HEINEMAN: I would think so. [LB963]

SENATOR CHAMBERS: So if a person had worked the number of years necessary to be qualified for retirement and had paid into that retirement plan, how is it inappropriate for that person to receive the benefits, the retirement benefits, to which he or she had contributed? [LB963]

GOVERNOR HEINEMAN: Well, hopefully through this program we won't get into a situation that someone might be here illegally for a long number of years, paid into the retirement system, and then you've got to determine whether they're eligible for those retirement benefits. If we're checking up front, then hopefully they would never get into the system. [LB963]

SENATOR CHAMBERS: But what about those who are here now receiving retirement benefits? [LB963]

GOVERNOR HEINEMAN: I trust your judgment to figure that one out. [LB963]

SENATOR CHAMBERS: They will continue to receive those...there's nothing in this bill, in other words, that would prevent anybody from continuing to receive benefits which they are receiving prior to the effective date of this bill? [LB963]

GOVERNOR HEINEMAN: Right. I don't think there's any attempt on our part to go back prospectively at all, that we're focused on the future. How do you deal with the future? [LB963]

SENATOR CHAMBERS: Is there anything in the bill that says it will apply only to things that occur after the effective date of this bill, should it become law? [LB963]

GOVERNOR HEINEMAN: I don't have the bill in front of me, but certainly that's the intent. [LB963]

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SENATOR CHAMBERS: Well, I'll ask the Attorney General. But that's all I want to ask you. Thank you. [LB963]

GOVERNOR HEINEMAN: Thank you, Senator. [LB963]

SENATOR ASHFORD: Yeah, Senator Schimek. [LB963]

SENATOR SCHIMEK: Thank you, Mr. Chairman. Governor, thank you very much for being with us. I just...I don't get it, because the one thing that I understand is that federal law already makes the requirement that people not receive benefits if they are here illegally or undocumented, correct? [LB963]

GOVERNOR HEINEMAN: I think you're correct on that. It's the implementation of that and trying to apply it uniformly and consistently across all state agencies, both code agencies and noncode agencies. [LB963]

SENATOR SCHIMEK: Well, you just mentioned that the Department of Labor had... [LB963]

GOVERNOR HEINEMAN: Right. [LB963]

SENATOR SCHIMEK: ...done this project or program whereby they used SAVE and they were able to show that there were some individuals who were not entitled to those benefits. So why do we need this bill to do this? I don't understand. [LB963]

GOVERNOR HEINEMAN: I think we need the bill to do this to make sure that we're applying it uniformly and consistently across all of state government. I think you could bring almost any noncode agency in there, potentially even some code agencies, and we're not doing it right now. And we need to do it and we all need to understand the policy. [LB963]

SENATOR SCHIMEK: You mean we've got agencies breaking the law? [LB963]

GOVERNOR HEINEMAN: I wouldn't go that far, Senator. What I'm saying is I think we have agencies who are not doing the uniform checking that we should do, and this is a way to ensure that we do. And clearly, the Department of Labor gives us a good example that by checking in fact it does prevent those who shouldn't receive benefits from receiving them. [LB963]

SENATOR SCHIMEK: I don't want to belabor the point, but it just seems to me if it's already federal law and there are agencies not doing that, they are breaking the law then. [LB963]

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GOVERNOR HEINEMAN: Thank you. [LB963]

SENATOR SCHIMEK: Correct? [LB963]

GOVERNOR HEINEMAN: You know, I'm not trying to get into a wordsmith game here or whatever. It really is in terms of execution and implementation of the policy and how you do it. [LB963]

SENATOR SCHIMEK: Thank you. [LB963]

SENATOR ASHFORD: So we're sort of saying...I'm sorry. Senator Lathrop, go ahead. [LB963]

SENATOR LATHROP: No, that's okay. Go ahead. [LB963]

SENATOR ASHFORD: No, go ahead. I'll just...I can save my question to the Attorney General anyway. [LB963]

SENATOR LATHROP: I do have one quick question for you, Governor. Thanks for being here. [LB963]

GOVERNOR HEINEMAN: Absolutely. [LB963]

SENATOR LATHROP: Are you going to testify in favor of the next two bills as well? Are you going to stay here or did you intend to testify on the next two bills? [LB963]

GOVERNOR HEINEMAN: No, I don't, but could I elaborate this way? I thought someone might ask about employer sanctions. I favor them. The challenge, I think, right now is we don't have a similar SAVE system in order to check employers in a federal database. But I think you have a couple bills coming up that we are more than willing to sit down with the sponsors of those bills and see if there's common ground, common consensus, and that we might go forward as one bill, if that helps you. [LB963]

SENATOR LATHROP: So you support them? One of them has to do with...Fulton's has to do...it's a resolution on law enforcement, and the other is a bill that is sanctions for employers who hire unlawful or undocumented workers. [LB963]

GOVERNOR HEINEMAN: I just haven't read either one, but I do think we need to address the employer sanctions to the extent we can. I wish we had a federal database so that every employer could go in and check. But I'm more than willing, and so is my staff, to sit down and talk to you about all those bills. [LB963]

SENATOR LATHROP: Your comment about not having a federal database, what's the

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SAVE thing? You went and saw a demonstration. [LB963]

GOVERNOR HEINEMAN: Okay. [LB963]

SENATOR LATHROP: I have never seen one so I'm just asking you. [LB963]

GOVERNOR HEINEMAN: Okay. Let me explain... [LB963]

SENATOR LATHROP: Will it tell us if an employee is an undocumented worker or not? [LB963]

GOVERNOR HEINEMAN: The SAVE database, the only institutions who are authorized to use it are state and local governments. It's for state and local governments. If we had a similar database that the private sector could use, it would solve a lot of problems. But that's...right now it's only available to state and local units of government. [LB963]

SENATOR LATHROP: Okay. Thank you. That's the only question I had for you. [LB963]

SENATOR ASHFORD: Governor, again, thank you for coming down. [LB963]

GOVERNOR HEINEMAN: Absolutely. [LB963]

SENATOR ASHFORD: And we appreciate you being here. And I understand your dilemma, and we've both been in government a long time. I...the failure of the federal government, the Congress, to act on this issue is the most abysmal situation I have ever seen. And it puts you and us, Senator Friend, and all of us in, I believe, an untenable situation and both from a cost perspective, having to come up with money to do the work of the federal government, and just from a human cost perspective that, you know, if...I just can't imagine a situation where our Omaha Police division are running around, knocking on doors and yanking people out of their homes or whatever it is. That's a federal issue. These are federal violations. And just as a statement, I respect what you're saying, I understand your dilemma, and I think it's real. But it, to me, I've never seen anything, in my experience in being around government, even close to the failure of this policy. [LB963]

GOVERNOR HEINEMAN: Senator, I agree with you totally. [LB963]

SENATOR ASHFORD: Yeah. [LB963]

GOVERNOR HEINEMAN: I think the federal government has failed us, put states in very difficult positions. If you're a border state--Arizona, Texas, other states like that--governors have acted, along...working with their legislatures; it's very, very difficult. And so I hope we can find some common ground. And, you know, I might just add,

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since you and Senator Lathrop are done with LB606, that you guys are shrewd negotiators and maybe you could get everybody together and solve this one, too. [LB963]

SENATOR ASHFORD: Well, I appreciate that, Governor. I just...the last thing that bothers me a bit is that when we did have some discussion on the federal side, from the President about...particularly, about a plan that would solve some of these problems. So that if we did have a violation of the federal law within our borders and some of our people, whether it's agency people or law enforcement people, discovered that individuals are here illegally, at least we would be in a situation where we would not be dumping people down at the border but there would be some constructive way on a human and social level that we would deal with these people. Because they are people. And from my...the understanding I get from, and the people I know that deal with people who are here illegally, all the indications I get is they're very hardworking people that provide, many of them, that provide a service to our state and to our country. And I just, it's just a statement. But...so I fully understand why you're here... [LB963]

GOVERNOR HEINEMAN: Thank you. [LB963]

SENATOR ASHFORD: ...and I don't know what the answer is. Thank you. I guess that's it. [LB963]

SENATOR CHAMBERS: Well, I have one. [LB963]

SENATOR ASHFORD: Oh, Senator Chambers. [LB963]

GOVERNOR HEINEMAN: Senator Chambers. [LB963]

SENATOR CHAMBERS: Governor, I heard the exchange between you and Senator Schimek. Should this bill not pass, what is going to happen? What will we notice happening? [LB963]

GOVERNOR HEINEMAN: Well, I never try to predict the future. I get asked those questions every day by the media. Am I going to veto this bill or not? So I wait until they get on my desk. So in this particular case, I have confidence in you and the Legislature that hopefully we can find common ground and common consensus. You've got a number of bills and hopefully we can move forward together. We certainly did that with LB1024 and the learning community. [LB963]

SENATOR CHAMBERS: Are you saying that you trust my judgment on this bill?
(Laughter) [LB963]

GOVERNOR HEINEMAN: Senator, I've dealt a lot with you in recent years on education

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issues and we did find common ground. I'm still waiting. I know you told me, as I walked out of your office one day, that doesn't mean you're going to support my next tax cut, but there's always hope. (Laughter) [LB963]

SENATOR CHAMBERS: Okay. That's all I have. Thank you. [LB963]

SENATOR ASHFORD: Thank you, Governor Heineman. [LB963]

GOVERNOR HEINEMAN: All right, thank you. [LB963]

SENATOR ASHFORD: Mr. Attorney General. [LB963]

ATTORNEY GENERAL BRUNING: Thank you, Mr. Chairman, members of the Judiciary Committee. I'm Attorney General Jon Bruning, B-r-u-n-i-n-g. I'm testifying today in support of LB963. Senator Friend and the Governor have covered the specific provisions of the bill and the reasons that we believe the bill is needed. I want to highlight two very important points for your consideration as a committee. First, LB963 is not designed to harass anybody seeking benefits. I don't believe this is draconian, I don't believe it's a punitive process. As the Governor noted, medical emergencies, emergency disaster relief, K-12 education, all these things are excluded from the requirements of this bill. This is consistent with federal law; that's why it was done. Under the bill, applicants for the benefits listed by the Governor would, as part of the process, verify by affidavit that they are a citizen or in this country legally. And once that's done, the SAVE Program that you've heard so much about--and I regret that we didn't do a demonstration, that we don't have a PowerPoint or whatever to show you what this thing is, because when you see it it's unbelievable. It takes seconds, absolutely seconds, and it's 20 cents apiece to verify somebody's eligibility. When an applicant for benefits registers or shows up on SAVE as not here legally, that's when their claim is denied. Those are the 78 that the Governor talked about at the Department of Labor. Under average statistics for weeks worked and number of weeks on unemployment and so on, \$225,000 saved simply because 78 people were kicked out of the system out of tens of thousands of unemployment claims. And this took somebody at the Department of Labor seconds. They do four or five in a minute as they look at them. The SAVE Program is very simple, it's reliable, it's cost-effective, a very cost-effective way of checking on a person's eligibility for benefits. Senator, I promise you, in the very near future we will have you and any of your colleagues that are interested over to the Department of Labor. You can see this thing. The reason we ended up not doing it, by the way, is we couldn't figure out a way to do it without real people's Social Security numbers and alien ID numbers and so on up on the board. We didn't want to have...and birth dates and so on. We couldn't figure out a way around the privacy issue, so that's why we have to do it in a closed setting. So you'll hear today from Labor on how that system has worked successfully. You're also going to hear from HHS on how they believe they can incorporate SAVE into their existing verification

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requirements. The other point I want to make is the importance of uniformity. It's the reason we're here today. Under federal law, illegal immigrants are prohibited, as we've discussed, from receiving both state and federal benefits. This bill gives the whole state of Nebraska, not just the agencies the Governor controls but all the agencies, a uniform method to fulfill their responsibilities to the taxpayers to make sure limited state resources go only to those people who are eligible, simplifies the process for benefit applicants, provides a simple and quick means of establishing eligibility. So what it does in the end game, it ensures that all of us here are good stewards of taxpayer dollars. Nebraskans want to help their neighbors who are less fortunate, but we can't be rewarding illegal behavior. Our budget is too tight to extend 2 or 3 or 4 percent to people who aren't in this country legally. At some point you have to draw the line, and so we draw the line at illegal immigration. With that, Mr. Chairman, I'd be happy to take questions. [LB963]

SENATOR ASHFORD: Any questions of Jon? [LB963]

ATTORNEY GENERAL BRUNING: Senator Chambers. [LB963]

SENATOR ASHFORD: Senator Chambers. That's my job, Jon. (Laughter) [LB963]

ATTORNEY GENERAL BRUNING: I was, of course... [LB963]

SENATOR ASHFORD: No, no, that's fine. [LB963]

ATTORNEY GENERAL BRUNING: ...prepared for the senior...yes. [LB963]

SENATOR ASHFORD: No, I get a few and that's the only little...go ahead, Senator. [LB963]

SENATOR CHAMBERS: Mr. Attorney General, we are not often benefited by your presence to testify on bills, even those that you support. So what is there about this bill that brings you before us, whereas on other bills you have not come before us? [LB963]

ATTORNEY GENERAL BRUNING: My office does have numerous bills. Many of them are attempts to tighten the Criminal Code to ensure that Nebraskans are kept safe. This one can save real money. I mean, one department, \$225,000; if we do it across the board it could be millions, tens of millions of dollars perhaps. We don't know until we try. There's a significant impact on this state, I believe. [LB963]

SENATOR CHAMBERS: But you didn't testify one way or the other on the bill to abolish the death penalty though, did you? [LB963]

ATTORNEY GENERAL BRUNING: I did not. I have in the past, of course, many times,

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but I didn't... [LB963]

SENATOR CHAMBERS: But I'm talking about now. [LB963]

ATTORNEY GENERAL BRUNING: Not this year. No, sir. [LB963]

SENATOR CHAMBERS: All right. Now did you have anything to do with the drafting of this bill, you or anybody in your office? [LB963]

ATTORNEY GENERAL BRUNING: Yes. [LB963]

SENATOR CHAMBERS: So you're familiar with the terms in the bill? [LB963]

ATTORNEY GENERAL BRUNING: Yes. Yes, yeah. [LB963]

SENATOR CHAMBERS: Senator Bruning, the fact that this bill says that retirement benefits will not be paid, that means that a person has worked in this country and participated in a program long enough to be entitled to receive those benefits. Well, the Governor didn't have anything to do with drafting the bill, and that's why I wanted to ask you this question because you would know. [LB963]

ATTORNEY GENERAL BRUNING: Uh-huh. [LB963]

SENATOR CHAMBERS: Why is the effect of this bill to cut off retirement benefits which a person is receiving and for which the person has obtained an entitlement through working and paying into that system? Why is this bill designed to cut those people off? [LB963]

ATTORNEY GENERAL BRUNING: Well, I thought about that question as you and the Governor were discussing it. I think there are cases where illegal immigrants have used identities illegally. Identity theft is something we deal with. We receive hundreds of complaints a year in my office about identity theft and there are illegals who work in this country under assumed names with assumed Social Security numbers and they are gathering retirement benefits as they go. Now are they working for those benefits? Perhaps. Are they entitled to those benefits? Does the company want to match? Does the state of Nebraska, for example, want to match at 156 percent the retirement benefit of somebody who has stolen the name of one of its citizens? Probably not. So that's why it is in there, Senator. [LB963]

SENATOR CHAMBERS: Are you...you're telling me that everybody who is receiving benefits in the nature of retirement benefits would have stolen identity. The person, say, is not documented; that person would have stolen somebody's identity and that's how he or she got a job and worked? [LB963]

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ATTORNEY GENERAL BRUNING: I'm not saying everyone, Senator. [LB963]

SENATOR CHAMBERS: Well, if somebody didn't steal an identity and is using his or her actual name... [LB963]

ATTORNEY GENERAL BRUNING: Well, there are other...for example, when we were at Department of Labor they talked about people who are in the country legally, then they...many people, the way they become illegal is they stay. They get here, they realize it's the greatest country in the world, and they refuse to leave. So at one point they were earning benefits. Now they continue to earn benefits but they are in the country illegally. We have to have some incentive to say go back and do it right. [LB963]

SENATOR CHAMBERS: Well, suppose they were here illegally the entire time that they worked, and when they retired, then say that their stay may have expired and they continue to be here. You're saying that they should not be entitled to receive those retirement benefits? [LB963]

ATTORNEY GENERAL BRUNING: I'm saying that might be the incentive they need to get it fixed. If they intend to stay in the country, they have to get it done right. [LB963]

SENATOR CHAMBERS: I know what your argument is, but you're telling me that that person which...that person who is as entitled to receive his or her retirement benefits as anybody else should have those benefits cut off because his or her stay has extended beyond the time when they should be here. [LB963]

ATTORNEY GENERAL BRUNING: Senator, we often... [LB963]

SENATOR CHAMBERS: They forfeit, in other words, every...is there anything in here that says that any amounts that they paid into the retirement program will be refunded to them? [LB963]

ATTORNEY GENERAL BRUNING: We didn't delve into that level of detail, and I think the retirement programs, NPERS and so on, could determine how to do that. But I think... [LB963]

SENATOR CHAMBERS: But that's not in the law, is it? [LB963]

ATTORNEY GENERAL BRUNING: No, it's not, Senator. [LB963]

SENATOR CHAMBERS: And they wouldn't have to do that, would they? [LB963]

ATTORNEY GENERAL BRUNING: Well, I think there would be a scenario where

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somebody would remedy the inadequacy in their stay. If it was somebody who had been here legally and earned those benefits, they could then remedy how they're here, get their card renewed, so to speak. [LB963]

SENATOR CHAMBERS: But I want to stick with my example so I can see how the principle is applied here. [LB963]

ATTORNEY GENERAL BRUNING: The law does not address that level of detail. [LB963]

SENATOR CHAMBERS: So then somebody could receive a windfall from this person by denying him or her the benefits that had been legally and lawfully earned but will be cut off now without reimbursing that person for the money that he or she had paid. Somebody else is going to receive a windfall to which they are not entitled. Isn't that the way it would work? [LB963]

ATTORNEY GENERAL BRUNING: It wouldn't be somebody else. It would be all the taxpayers of Nebraska because we, of course, fund NPERS, the match for state employees, like myself... [LB963]

SENATOR CHAMBERS: But you wouldn't object to the term "windfall" being applicable here, because... [LB963]

ATTORNEY GENERAL BRUNING: No, I would. It's not a windfall. It's my tax dollars and I would pay fewer of them if I don't have to pay them to an illegal. [LB963]

SENATOR CHAMBERS: But if this person has paid in and those benefits are going to be cut off, then why does not that person get a refund? [LB963]

ATTORNEY GENERAL BRUNING: Well, I certainly...under the example you have given, I understand the opportunity for that person to remedy their situation. If they have worked and earned those benefits legally, you would assume they would figure out how to be in the country legally so that they could then begin to reap what they have sown. [LB963]

SENATOR CHAMBERS: But we don't know that... [LB963]

ATTORNEY GENERAL BRUNING: But if they're here illegally, that would be the incentive for them to remedy that. [LB963]

SENATOR CHAMBERS: But being quite frank, those who drafted this bill didn't even consider that, did they? [LB963]

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ATTORNEY GENERAL BRUNING: Not to that level of detail, Senator. [LB963]

SENATOR CHAMBERS: And the bill does not operate prospectively or after the effective date of this bill, things that happen after the effective date of this bill. It is like a blade that will fall immediately and affect... [LB963]

ATTORNEY GENERAL BRUNING: As with many pieces of legislation, that's true. It will become... [LB963]

SENATOR CHAMBERS: But I want to... [LB963]

ATTORNEY GENERAL BRUNING: ...effective either upon the Governor's signature or 90 days there, whatever it is, September...I don't recall, 90 days after. [LB963]

SENATOR CHAMBERS: And you know, you're young so you have to take my word for this. When you've been here three score and ten years, your brain cells become coated with a type of Teflon and things don't stick like they used to. So even though you said it not very long ago, could you tell me again what there is about this bill that brings you here personally? In other words, what are you offering us that is so unique it requires your presence rather than somebody from your office, as you always send somebody here on every other bill no matter how important or significant it has been? [LB963]

ATTORNEY GENERAL BRUNING: This one is a monumental savings to taxpayers. And frankly, as the Chairman mentioned, the federal government has failed to act. So we in the states stand in the position, in the constitutional offices as the Governor and I discussed this issue with Senator Friend, the state needs to do something. The federal government has not. We in the state need to do something. And I feel strongly about it and... [LB963]

SENATOR CHAMBERS: So it's strictly a money issue with you? [LB963]

ATTORNEY GENERAL BRUNING: Well, that is part of it; also, a respect for our laws that I don't see occurring with many illegals. [LB963]

SENATOR CHAMBERS: Which Nebraska... [LB963]

ATTORNEY GENERAL BRUNING: Rather than wait their turn, they cut in line. [LB963]

SENATOR CHAMBERS: Which Nebraska law are you talking about? [LB963]

ATTORNEY GENERAL BRUNING: Our federal laws, our federal immigration laws. [LB963]

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SENATOR CHAMBERS: But you don't mean Nebraska laws are implicated in this immigration issue? [LB963]

ATTORNEY GENERAL BRUNING: Well, certainly Nebraska tax laws are implicated, Senator. [LB963]

SENATOR CHAMBERS: But as far as immigration as such, there are no Nebraska laws on that subject? [LB963]

ATTORNEY GENERAL BRUNING: That's correct; yes, sir. [LB963]

SENATOR CHAMBERS: And you want Nebraska to become an enforcer of federal law? [LB963]

ATTORNEY GENERAL BRUNING: To some degree we already are. [LB963]

SENATOR CHAMBERS: Does Nebraska enforce other federal laws that you know of? [LB963]

ATTORNEY GENERAL BRUNING: Well, I mean, to some degree we do. [LB963]

SENATOR CHAMBERS: Where a law is on the books designed to enforce federal law? This is because you say the federal government is not enforcing its own law, correct? [LB963]

ATTORNEY GENERAL BRUNING: Yes, sir. Yes, sir. [LB963]

SENATOR CHAMBERS: Is immigration a matter of state law? [LB963]

ATTORNEY GENERAL BRUNING: No, it is not. [LB963]

SENATOR CHAMBERS: So--and you understand what I mean when I use this language--it is...the enforcement of immigration law is of no interest or concern to the state as an enforcement entity, is it? [LB963]

ATTORNEY GENERAL BRUNING: It is a concern to the state as a taxing entity. [LB963]

SENATOR CHAMBERS: I said as an enforcement entity, is it? [LB963]

ATTORNEY GENERAL BRUNING: I understand your point, Senator. [LB963]

SENATOR CHAMBERS: I'm correct in what I say, right? [LB963]

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ATTORNEY GENERAL BRUNING: Yes. [LB963]

SENATOR CHAMBERS: Okay. That's all I have. Thank you. [LB963]

SENATOR ASHFORD: Senator Lathrop. [LB963]

SENATOR LATHROP: I do have a few questions, Jon. Thanks for coming down. [LB963]

ATTORNEY GENERAL BRUNING: Yes, Senator. [LB963]

SENATOR LATHROP: It is good to see you here. [LB963]

ATTORNEY GENERAL BRUNING: Thank you. [LB963]

SENATOR LATHROP: Right now the benefits that we're addressing that we want to stop undocumented folks from getting, they're already not supposed to get them. Is that right? [LB963]

ATTORNEY GENERAL BRUNING: That's right. [LB963]

SENATOR LATHROP: And to get them, they have to fill out an application currently. [LB963]

ATTORNEY GENERAL BRUNING: Yes. [LB963]

SENATOR LATHROP: And when they fill out an application, we can ask them for their Social Security number,... [LB963]

ATTORNEY GENERAL BRUNING: Yes. [LB963]

SENATOR LATHROP: ...or we do or we at least could. [LB963]

ATTORNEY GENERAL BRUNING: Yes. [LB963]

SENATOR LATHROP: But what we're going to do here is instead of just making it an application, we're going to make it an affidavit. [LB963]

ATTORNEY GENERAL BRUNING: That's right. [LB963]

SENATOR LATHROP: Now aside from that fact, is there any reason we're not using the SAVE Program, the Systematic Alien Verification Entitlement Program right now?

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[LB963]

ATTORNEY GENERAL BRUNING: I think... [LB963]

SENATOR LATHROP: Do we...I looked through this, I didn't see where this is like we have to accept an authorization from the federal government to do this. So are we using this program right now? [LB963]

ATTORNEY GENERAL BRUNING: Certainly the Governor could and, absent your action, probably will order the agencies under his control to begin using this program. But it's a big bureaucracy and the Governor doesn't control all of it, and I don't control much of any of it. [LB963]

SENATOR LATHROP: Oh, I'm not suggesting that you're... [LB963]

ATTORNEY GENERAL BRUNING: So the only way to really get all of them to pay attention is for you to act. [LB963]

SENATOR LATHROP: I'm not suggesting that you're not...I'm not suggesting that you're not doing something people want you to do or the Governor isn't. [LB963]

ATTORNEY GENERAL BRUNING: Sure, right. [LB963]

SENATOR LATHROP: I just want to know what we're accomplishing that we couldn't do without the bill. Because right now they're not supposed to get it, right now they fill out an application, right now we could use this system; we just haven't yet. [LB963]

ATTORNEY GENERAL BRUNING: Sure. We are establishing a uniform standard to review applicants for state benefits, a uniform standard of determining eligibility and immigration status. You or I or anybody else that applies for a state program has to sign an affidavit saying we're here legally. If you sign it, nothing else is going to happen. If you say I'm not here legally, then they're going to run you through the SAVE Program and determine whether or not you have the proper green card or alien number to receive benefits. [LB963]

SENATOR LATHROP: But how is that...what are we...I'm looking for what's going to be different really, other than changing the form around and beginning to use this computer system. [LB963]

ATTORNEY GENERAL BRUNING: Uniformity. Uniformity will be different. Now some... [LB963]

SENATOR LATHROP: So the affidavit will be uniform? [LB963]

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ATTORNEY GENERAL BRUNING: One affidavit, one system for checking. Right now some agencies do it, some agencies don't; some agencies use SAVE, some don't. We've got a little bit of everything. [LB963]

SENATOR LATHROP: And I don't have a quarrel with what you're trying to accomplish here. I'm just wondering why we need a bill to do it. Why can't we just issue new forms and start using this computer? [LB963]

ATTORNEY GENERAL BRUNING: Because the Public Service Commission and Lifeline doesn't report to the Governor. He can ask them to do it, but you got five commissioners over there that may or may not. The only way they're going to do it is if you say in state law this is the way Lifeline funds must be distributed. This is the way...or whatever it is that the program might be. Lifeline might not be a good example. But the Public Service Commission would be one that doesn't report to the Governor. They don't... [LB963]

SENATOR LATHROP: Are they issuing any benefits over there? [LB963]

ATTORNEY GENERAL BRUNING: Well, I was thinking about Lifeline and Link-Up go to... [LB963]

SENATOR LATHROP: Public Service Commission, I'm thinking of electricity and telephones. [LB963]

ATTORNEY GENERAL BRUNING: Lifeline and Link-Up sometimes go through. Now I'm not sure that would...that may be considered public assistance under here. But there are many agencies that don't report to the Governor, not all of them do. [LB963]

SENATOR LATHROP: Okay. You've answered my question. [LB963]

ATTORNEY GENERAL BRUNING: That's the big difference, I guess, Senator. [LB963]

SENATOR LATHROP: All right. Thank you. [LB963]

ATTORNEY GENERAL BRUNING: Yes, sir. [LB963]

SENATOR ASHFORD: Senator Schimek. [LB963]

SENATOR SCHIMEK: Thank you, Mr. Chairman. And welcome, Mr. Attorney General. [LB963]

ATTORNEY GENERAL BRUNING: Thank you, Senator. [LB963]

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SENATOR SCHIMEK: I don't know if you...I'm sure you probably heard the question that I was asking early on of Senator Friend about the Colorado experience. [LB963]

ATTORNEY GENERAL BRUNING: Uh-huh. [LB963]

SENATOR SCHIMEK: Are you familiar with the Colorado law at all? [LB963]

ATTORNEY GENERAL BRUNING: Somewhat familiar; I wasn't familiar with the results...I mean, certainly I was disturbed by that because I'm hoping that...I mean, it's kind of an awkward hope. I'm hoping there's not a single illegal immigrant receiving benefits. But by the same token, I expect that there are, and it'll be an interesting question I think for you to ask of HHS--do you think anybody is getting through the cracks--because they're trying not to let anybody through. [LB963]

SENATOR SCHIMEK: I know they are. In fact, I don't know if you saw what I saw in the paper several weeks back. It was a letter to the editor from somebody who had worked at HHS for a length of time, no longer works for them. But she said, I don't understand how people can think people are getting through because we always had to ask the questions, we always took care of that. Now that's just one woman speaking, I know that, and maybe there are other places that this is happening. But when I look at Colorado and when I look at what their experience was, I'm just wondering. Did they not do as good a job as you would envision under this bill? Because they spent a whole lot of money trying to do this and didn't have any appreciable results at all as far as finding people who were illegally using the system, I guess. [LB963]

ATTORNEY GENERAL BRUNING: Here's all I can... [LB963]

SENATOR SCHIMEK: And that's what I'm...what I'm saying is, you're talking about saving money, and that's a worthy goal, I guess. But are we sure that's what will actually happen? [LB963]

ATTORNEY GENERAL BRUNING: Well, here's what I can tell you based on what we saw earlier...late last week, earlier this week at Department of Labor. Thousands of people apply for unemployment, 78 of them bumped out of the system as not legal. Given average benefits, that's \$225,000. And these things cost 20 cents apiece to ping off of SAVE. So I'm just not sure what we have to lose. I'm not sure what we have to lose by this. The federal government requires it, this is a cleaner way for us to do it, gives a uniform method of doing it using the SAVE Program that's cheap--20 to 26 cents apiece. And you know, when we bump 78 people out of the system at Labor for unemployment, \$225,000. So maybe there won't be anybody, but it's not going to cost us that much to find out so we might as well. I guess there's not...I don't see a big... [LB963]

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SENATOR SCHIMEK: And I don't know enough about the Colorado experience to know on what they based their expenses,... [LB963]

ATTORNEY GENERAL BRUNING: Yeah. [LB963]

SENATOR SCHIMEK: ...but they had considerable expenses. Anyway, thank you very much for being here. [LB963]

ATTORNEY GENERAL BRUNING: Thank you, Senator. [LB963]

SENATOR ASHFORD: Jon, let me just try to drill down on this just a bit. The immigration issue is a hot political issue, a hot button issue, it's a wedge issue. You're either for illegal immigrants or against them, I guess, which is kind of a silly way to put it. But the way that this issue has been spun nationally, I'm not suggesting it's being spun that way by you or the Governor or anybody else here, but it is a hot button issue, and it's a hot button issue primarily because the federal government has failed to act and the Congress has failed to act and it's Republicans and Democrats alike, for whatever reason, have failed to act. To take an issue like this to the Nebraska Legislature when the issue is a federal issue, and have the Nebraska Legislature vote on an issue which will be spun by some--again, I'm excluding you guys--but to say, well, these Nebraska legislators are for illegal immigrants staying in the state is...that, to me, to put that kind of a vote before our Legislature when they really don't have any...much to say about it, to me, is...it borders on silly. And let me just go another step here. I think...I agree with you. If someone does not...is here illegally and they don't qualify for benefits, they shouldn't receive them. And if you have a system in place that will ferret that out, let's go do it. I mean, let's put it into place. And those noncode agencies that are not under the Governor's control--and I understand there's a jurisdictional issue--but certainly if they refuse to do it, I think there are remedies under federal law that could be imposed on commissioners of a noncode agency to say you go do it. I mean, if there's a system in place to do this, let's do it. I can't imagine a director or the Department of Education or the Public Service Commission saying to the Governor or to anybody or to the U.S. Attorney, sorry U.S. Attorney, we're not going to enforce this...all I'm trying to say is why...again, it gets back to this theme. Why are we here? And I know why we're here, I know why you're here--because this is a problem that you think needs to be addressed. So I'm not suggesting otherwise. I just...that's my issue, that's my problem, is, yes, we can save money, but we can save money right now. And the federal government could have saved us a heck of a lot of money if they would have acted over the last ten years. That's the concern that I have. [LB963]

ATTORNEY GENERAL BRUNING: It takes more than one of us to move the ship of state. The Governor himself can't do it alone, and with the Legislature's help it moves a lot faster. [LB963]

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SENATOR ASHFORD: But I'm not sure the Legislature needs to do anything. (Laugh) I mean, you know, just so people can vote if they're for getting illegal immigrants out of the state? I mean, if someone is here illegally and they're determined to be here illegally, whether we find that out through an employer, as the Governor suggested, some sort of employer verification or whether it's a benefit...then they have to go home. I mean, that's the way it is and I accept that. I just...I think for us to try to do something when the federal government...it's the federal government's job and they failed. We can't do anything. I mean, you can do something and I think you will. As you suggested, if nothing passes you will do something. And I think you should. [LB963]

ATTORNEY GENERAL BRUNING: But it's not enough. That's the issue. [LB963]

SENATOR ASHFORD: Why? Why, Jon? [LB963]

ATTORNEY GENERAL BRUNING: It isn't enough. [LB963]

SENATOR ASHFORD: Okay. Okay. [LB963]

ATTORNEY GENERAL BRUNING: Senator. [LB963]

SENATOR MCGILL: Attorney General, if you feel like it's not enough, in my mind the problem is that there are jobs here for these people to come to. Why are we not talking about a piece of legislation here brought by the Governor? Maybe this would have been a better question for him. But if that's what's drawing people here, why aren't we looking at a bill right now that focuses on that part of the problem? [LB963]

ATTORNEY GENERAL BRUNING: Well, as the Governor mentioned, there's no way for employers to verify. I talked to a guy this morning in Kearney, owns hotels, employs a lot of Hispanic immigrants in the lowest level jobs, cleaning rooms and washing dishes, said they work very, very hard, work harder than any other group that he's got. And I said, how do you verify that they're here legally? He said, I ask for passports, I make them sign something that says they're here legally, I get every kind of document I can get my hands, but there's really no good database to go check. There isn't one there like this. At least, they don't have access to this. So it's a good issue. I mean, I think we do need to do something with employers, but I'm not quite sure there's a way to do it yet. So that's... [LB963]

SENATOR ASHFORD: Just...and just...I mean, under your analysis, if we're going to be making laws or if we're going to be passing legislation on dealing with illegal immigrants, why don't we just create our own rules on illegal immigration? Why don't we suggest--as I think Senator Schimek's bill tried to do, I think, with the university--was to say, all right, with public universities or on the issue of nonresident tuition, because nobody seems to

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be doing anything, we're going to be...we'll create a rule on nonresident tuition. I mean, at some point maybe we in the state need to...I would be happy to have the debate on the floor of the Legislature on what kind of rules we should establish for people who are not here or not documented under the federal system. That's a real debate. But I think the answer would be, well, you can't do that because it's preempted by federal law. So we're kind of...we're in this sort of push-pull situation where we can't make the rules. And I think that's somewhat the point the Governor has made on the tuition bill. You know, that's not really our rule to make. They're here illegally; they shouldn't have nonresident tuition. I understand the logic. But you know, it is difficult to try to enforce federal law on the state level. And I think it's...you know, that's my quandary. But I appreciate your testimony and... [LB963]

ATTORNEY GENERAL BRUNING: Thank you, Mr. Chairman. [LB963]

SENATOR ASHFORD: Senator Chambers. [LB963]

SENATOR CHAMBERS: Mr. Attorney General, you're aware that the U.S. Constitution, and to some extent the state constitution, makes a distinction between citizens and persons. There are some rights, protections, and immunities that accrue to any person, whether a citizen or not. No person can be deprived of life, liberty, or property without due process of law. Well, if this person is not a citizen, then obviously the constitution envisions people other than citizens legally having property in this country. Otherwise you wouldn't say person; you would say no citizen shall be deprived of property without due process of law. So do you think Nebraska could pass a law and say that no person who is not a citizen of the United States may dwell within the state of Nebraska? Could Nebraska pass a law like that? [LB963]

ATTORNEY GENERAL BRUNING: There could be issues, certainly. [LB963]

SENATOR CHAMBERS: It couldn't do it, could it? [LB963]

ATTORNEY GENERAL BRUNING: Probably not. [LB963]

SENATOR CHAMBERS: Because if persons have a right to be in this state, a state cannot pass a law that undoes what the federal constitution allows. The state cannot stop people from passing freely from one state to another, can it? [LB963]

ATTORNEY GENERAL BRUNING: No. [LB963]

SENATOR CHAMBERS: They have the right to do that. The state of Nebraska doesn't do anything about federal farm subsidies, does it? [LB963]

ATTORNEY GENERAL BRUNING: Not directly, no. [LB963]

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SENATOR CHAMBERS: And there are people who believe that farmers are not receiving from the federal government the help they should receive. [LB963]

ATTORNEY GENERAL BRUNING: True. [LB963]

SENATOR CHAMBERS: But the state is not trying to remedy that by filling in the gaps that exist in federal subsidy programs. The state is not doing that, is it? [LB963]

ATTORNEY GENERAL BRUNING: No, it is not. [LB963]

SENATOR CHAMBERS: You are aware that there are groups who have taken it upon themselves to be like posses and vigilante groups to police those who they think have no right to be here. You're aware that there are groups like that developing in this country. [LB963]

ATTORNEY GENERAL BRUNING: Yes. [LB963]

SENATOR CHAMBERS: You're aware that there is a very heated anti-immigrant attitude which does not distinguish on the basis of a person's legality or illegality, as far as status, but rather appearance and language spoken. [LB963]

ATTORNEY GENERAL BRUNING: Certainly that's not why I am here, Senator. [LB963]

SENATOR CHAMBERS: I'm not...you're aware that things like that are happening though, aren't you? [LB963]

ATTORNEY GENERAL BRUNING: There are many things happening. [LB963]

SENATOR CHAMBERS: And do you think that this kind of bill contributes to that when it's not essential for any legitimate interest of the state that such a bill be enacted into law? [LB963]

ATTORNEY GENERAL BRUNING: That is not my intention, Senator, with this bill. [LB963]

SENATOR CHAMBERS: So if the bill has that effect, it is not a wholesome one, is it? [LB963]

ATTORNEY GENERAL BRUNING: My intent is simply to save the taxpayers money, Senator. [LB963]

SENATOR CHAMBERS: But you're aware that in the process of doing that you might

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do something that is worse, as far as the welfare of the state and its people, than the amount of money that you feel will be saved by doing this. [LB963]

ATTORNEY GENERAL BRUNING: I don't agree with that. I wouldn't have done it if I thought that was the case. [LB963]

SENATOR CHAMBERS: And if the bill doesn't pass, I will ask you, what will happen? [LB963]

ATTORNEY GENERAL BRUNING: Well, I think there are certain agencies that probably are watching this testimony now and hurriedly trying to figure out how to have the SAVE Program up and running by the time the Governor shows up at their doorstep. But there are certain agencies that don't report to him. And... [LB963]

SENATOR ASHFORD: I just can't imagine they won't do it. I mean, it's just unimaginable to me that a...excuse me, Senator Chambers. It's just unimaginable to me that--in all deference to everybody here--that a noncode agency, knowing very well this issue, would not avail themselves of the SAVE Program. I just can't...it's just beyond me. I'm sorry, Senator Chambers. [LB963]

SENATOR CHAMBERS: No, that's all right. And he's been on the stand long enough. I don't have anything else, Mr. Attorney General. Thank you. [LB963]

ATTORNEY GENERAL BRUNING: Thank you, Senator. [LB963]

SENATOR ASHFORD: Thanks for your answers, Jon. [LB963]

ATTORNEY GENERAL BRUNING: Thank you, Mr. Chairman. [LB963]

SENATOR ASHFORD: We're going to go to 3:00 on the proponent testimony here. I've talked too much, I'm sorry. Chris. [LB963]

CHRISTINE PETERSON: (Exhibit 3) Good afternoon, Senator Ashford, members of the Judiciary Committee. My name is Christine Z. Peterson, P-e-t-e-r-s-o-n, chief executive officer of the Nebraska Department of Health and Human Services. And I'm here to testify in support of LB963. This legislation requires that all levels of government in Nebraska, with limited exceptions, uniformly verify that individuals applying for services are here legally. I'd like to provide the committee with two examples of the department's efforts in this area. One is Medicaid eligibility, where alien status verification is currently required, and the second is healthcare professional license credentialing, where such verification is planned. An example of a uniform application of a requirement similar to LB963 is Medicaid eligibility under Section 6036 of the federal Deficit Reduction Act of 2005. This federal law, implemented on July 1, 2006, requires state Medicaid agencies

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to obtain documentation of citizenship and identity from all clients applying for Medicaid on or after this date. Individuals already enrolled in Medicaid were required to document their citizenship at the time of their review for eligibility. And this Legislature did help with funding, one-time funding, to bring in the staff to accomplish that. Federal law also requires that any applicants who are qualified aliens under the federal Immigration and Nationality Act must have their eligibility for Medicaid benefits verified through the Systematic Alien Verification for Entitlements Program, known as SAVE, operated by the United States Department of Homeland Security. And we do do that. No Medicaid applicants are exempt from the documentation requirements and states are not authorized to waive or postpone the documentation requirements for any group of applicants or any individual applicant. Neither current federal requirements nor LB963 would impact emergency medical assistance, which is mandated by the federal government to be provided. Under LB963, everyone is treated equally regardless of race, religion, gender, ethnicity, or national origin. This ensures that everyone applying for Medicaid is eligible either as a citizen or a qualified alien. The licensing unit within the department's Division of Public Health is not currently required to verify citizenship prior to issuing a credential to practice a health or health-related profession or occupation. This will change when the Uniform Credentialing Act, LB463, becomes operative December 1, 2008. Under that bill, we will issue a credential only to a citizen of the U.S., an alien lawfully admitted into the U.S. who is eligible for a credential, or a nonimmigrant whose visa for entry or application for a visa for entry is related to such employment in the U.S.. Regulations have been drafted to implement the UCA and they will go to public hearing this spring. These include questions on the application to address the three areas identified in the statute. In addition, the applicant will be required to provide either a Social Security number or a resident identification number, which is also the individual taxpayer identification number. Under LB963, we would add verification through the SAVE Program. I'll try to answer any questions. [LB963]

SENATOR ASHFORD: Thanks, Chris. Any questions of Chris? Senator Schimek. [LB963]

SENATOR SCHIMEK: Thank you, Mr. Chairman. Welcome, Chris. [LB963]

CHRISTINE PETERSON: Thanks. [LB963]

SENATOR SCHIMEK: It's nice to see you, as always. Tell me, what areas then in the Department of Health and Human Services are not checking credentials, I guess, is the I would put that? [LB963]

CHRISTINE PETERSON: There are three, Senator, that we're specifically required by federal law to do based upon previous laws, one of which was PRWORA and the second is... [LB963]

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SENATOR SCHIMEK: Was what? [LB963]

CHRISTINE PETERSON: PRWORA, the personal responsibility...in essence, the welfare bill. [LB963]

SENATOR SCHIMEK: The welfare, yeah. [LB963]

CHRISTINE PETERSON: That was the welfare bill. The second is, there was an original Immigration Reform and Control Act that started the process; PRWORA built upon that. And then the recent Deficit Reduction Act added more strengths to three specific programs, and those come under our public assistance programs. Those are food stamps, Medicaid, and aid to dependent children. In all of those we are required to provide verification of a noncitizen's immigration status. It doesn't verify citizenship. It just says if this person is a noncitizen what their immigration status is. And that's the program that they've been explaining to you. Beyond that, we are in the process, and have been over the last several years, of bringing different programs on. We have a variety of programs, everything from Every Woman Matters to food stamps down to WIC. And as...I think it actually even says in some of the information that's put on the Homeland Security thing that says the PRWORA restrictions do not apply to all federal-, state-, and local-funded activities or programs. They apply only to nonexempt federal public benefits and state and local benefits, and they change on a yearly basis. So as they change, we implement it unless we're specifically prohibited from asking for verification. We are in the process of moving towards that. For instance, Every Woman Matters, at this point, has not required citizenship verification or to use the SAVE Program. [LB963]

SENATOR SCHIMEK: But I guess what I hear you saying is you are at present doing that verification for... [LB963]

CHRISTINE PETERSON: For certain of our programs specifically listed. [LB963]

SENATOR SCHIMEK: ...for the programs that you are allowed to do them? [LB963]

CHRISTINE PETERSON: That we are required to by... [LB963]

SENATOR SCHIMEK: That you're required. [LB963]

CHRISTINE PETERSON: Yes. [LB963]

SENATOR SCHIMEK: Now, okay, and so there's some that are required and some that are not allowed. [LB963]

CHRISTINE PETERSON: What happens is the federal government may be silent on the

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issue and then we have to get kind of an understanding from the federal government if we have the option. For instance, in childcare we do not have the ability to require identification from the parent who's applying for that because the benefit is only for the child, who then we ask for citizenship on the child. So there it's a complex issue that, as we go through this, we verify where we absolutely can and work towards now implementing rules and regs that we will be verifying. We as a code agency can do that. [LB963]

SENATOR SCHIMEK: Can you, off the top of your head--I should have asked maybe somebody else--how many noncode agencies do we have out there? Can you tell me? [LB963]

CHRISTINE PETERSON: I don't know that one. I do not know that one. [LB963]

SENATOR SCHIMEK: I should know it also, but I can't say it right off the top of my head. [LB963]

SENATOR ASHFORD: We'll find out. [LB963]

CHRISTINE PETERSON: I don't. I don't. [LB963]

SENATOR SCHIMEK: Thank you. [LB963]

CHRISTINE PETERSON: Sorry. [LB963]

SENATOR SCHIMEK: Thank you for being with us. [LB963]

CHRISTINE PETERSON: Thank you. [LB963]

SENATOR ASHFORD: Chris,... [LB963]

CHRISTINE PETERSON: Yes. [LB963]

SENATOR ASHFORD: ...you do have a difficult job, and I might say I appreciate the work you've done over the last year in some of the areas we've discussed and I appreciate what you're doing. It sounds like a challenge but it sounds like the federal government isn't being very helpful, or at least they're inconsistent. [LB963]

CHRISTINE PETERSON: I don't know if I would say it's inconsistent. [LB963]

SENATOR ASHFORD: Arbitrary. [LB963]

CHRISTINE PETERSON: I would say maybe silent on some issues. [LB963]

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SENATOR ASHFORD: Silent, one of those words. (Laugh) [LB963]

CHRISTINE PETERSON: And so when they're silent on that, we move forward so that we are being able to provide the verification where we can. [LB963]

SENATOR ASHFORD: Okay, I mean it sounds like you're doing what you're supposed to be doing. [LB963]

CHRISTINE PETERSON: Yes. [LB963]

SENATOR ASHFORD: Okay, thank you. Senator Lathrop. [LB963]

SENATOR LATHROP: Just briefly, are you using SAVE for all the benefits that HHS administers? [LB963]

CHRISTINE PETERSON: No, we are using them specifically for ADC, Medicaid, and food stamps. We do use verification of a Social Security number or birth certificate for others, but right now the only programs that we do SAVE through are those three. We will be implementing it for the licensing and credentialing piece, as well as, as we finish up on some of the other issues and discussions we're having with the federal government. But we will eventually go to all SAVE. [LB963]

SENATOR LATHROP: So you don't need this. HHS doesn't need this bill to use SAVE. It can use SAVE any time it wants. [LB963]

CHRISTINE PETERSON: Yes. As a code agency, if that's the direction, we can. [LB963]

SENATOR LATHROP: I appreciate Senator Friend mentioned that we should--or maybe it was the Attorney General--we should have been able to see this PowerPoint and watch this thing at work. But is this this simple? You put in someone's name, like mine, you put in my Social Security number, you hit the button, and it tells you if the two...if that's actually my Social Security number? Does it do something else besides that? [LB963]

CHRISTINE PETERSON: Senator, the Department of Labor... [LB963]

SENATOR LATHROP: Or do you...maybe you didn't see the demonstration. [LB963]

CHRISTINE PETERSON: Yeah, the Department of Labor is the one who's going to do the discussion on what the SAVE Program actually does. [LB963]

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SENATOR LATHROP: Okay. [LB963]

CHRISTINE PETERSON: I would say one thing about the SAVE Program: That is just the first step in the authenticity or verification. So in looking at the 20 percent that might be inaccurate, if you even pull up the SAVE Web site, it says on there that that's just the first...I don't want to say hoop, but then there also has to be another manual authentication also. [LB963]

SENATOR LATHROP: So the 20 percent, you've heard that, too? [LB963]

CHRISTINE PETERSON: No, I've never heard anything that there was an issue. [LB963]

SENATOR LATHROP: Okay. Well, I'll talk to the Department of Labor. [LB963]

CHRISTINE PETERSON: But supposedly there should be a fail-safe mechanism. This is the first one that checks it out. And then the agency should have another process in place. And I believe Department of Labor does. [LB963]

SENATOR LATHROP: Okay, thanks. [LB963]

CHRISTINE PETERSON: Thank you. [LB963]

SENATOR ASHFORD: Chris...and you've saved...you think...I'm sure you do. You believe you've saved money and become more efficient utilizing these systems. [LB963]

CHRISTINE PETERSON: Uh-huh, I believe we will, Senator. [LB963]

SENATOR ASHFORD: And you have. [LB963]

CHRISTINE PETERSON: To be able to document that, what we're going to do is pull up all the verifications we've had on SAVE that would have been stopped. [LB963]

SENATOR ASHFORD: Fair enough. Okay, thank you. [LB963]

CHRISTINE PETERSON: Thanks. [LB963]

JOHN ALBIN: (Exhibit 4) Senator Ashford, members of the Judiciary Committee, for the record my name is John Albin, A-l-b-i-n, and I'm the agency legal counsel and legislative liaison for the Nebraska Department of Labor. My purpose in testifying here today is to offer the perspective of an agency that's been utilizing the verification system contemplated by LB963 for a number of years. Since the passage of the Immigration Reform and Control Act in 1986, all state unemployment programs have been required

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to verify legal working status of noncitizen claimants. This requirement has been effective. You've heard a lot today about our numbers, I won't give you the full speech on it. But there were 49,353 initial claims filed last year. Of those, 2,505 were noncitizens, and 78 of those noncitizens were not able to establish their legal working status. If you extrapolate out that those claims would have been for the average weekly benefit amount, \$234, and the average duration, 12.3 weeks I think it is right now, that meant there was about \$225,000 that would have been paid to those individuals had they been qualified to pay benefits. I can't speak to Colorado's costs that Senator Schimek cites. I know that our entire bill for 2007 was \$1,035.66 for using the SAVE Program. In order to help you understand a little bit how it works at least in the unemployment benefit program, I've handed out some attachments as was referenced by, I believe, the Governor first. We do take all of our claims electronically one way or the other via the telephone or the Internet. As a part of that initial claim, the individual is asked if they are a United States citizen. If they say they are not a United States citizen, then we request additional verification of their legal working status. We do...the initial verification is electronic, or entered electronically. We ask for their alien number, the alien document number, and the expiration date, if any, of their work authorization. That information...the questions that we ask are set forth on attachment one of the handout that I gave there. That is a real-live claim, but we did redact the personal identifying information there. As was mentioned earlier, the demonstrations that we've given for the Governor and his staff and the Attorney General and Senator Friend and his staff were of live data which, by law, we cannot provide to the general public. We would be happy to provide any member of the committee with a similar demonstration if they would like to see it, either conjunctively or individually. We'd be happy to do that. We do not have, because of the security involved, we don't have just anybody in the claims center who can enter that information, so we hold it for the next day and we have a limited number of people with access to the SAVE system who then enter that information the following day. As anyone who's seen it in place will tell you, if that person is legally authorized to work, you have the answer back almost as quickly as you hit the enter button on the keyboard of your computer. It is really that quick. If they are not legally authorized... [LB963]

SENATOR ASHFORD: John, I'm going to ask you to just sum up. I'm sorry. [LB963]

JOHN ALBIN: All right. If they're not authorized to work, it gets back. You can look on exhibit two, it's just the topic introduction for the SAVE system, exhibit number...or the tutorial for it. Exhibit three shows what we have, what we get back. The first is an individual who was authorized to work because they were refugee status. The second was one that they needed additional information. And the third was one who was never able to establish legal working status. The additional authorization that we request is their driver's license or state ID, a copy of their Social Security number, and their card. So with that, I guess we... [LB963]

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SENATOR ASHFORD: Any questions of John? Senator Chambers. [LB963]

SENATOR CHAMBERS: Mr. Albin, you made an assumption here in your third paragraph: "Assuming the claims would have been established at the average weekly benefit amount." What is the average weekly benefit amount and on what is it based? I meant, like work and income or solid wage? [LB963]

JOHN ALBIN: It is \$234 per week, or at least it was in 2007. It's based upon half of that individual's average weekly wage during their high-earnings quarter. So if they earned \$6,000 during that time period, they could get up to \$3,000 in benefits. [LB963]

SENATOR CHAMBERS: How much would the person be making per week to get the amount that this assumption is based on? [LB963]

JOHN ALBIN: \$234...basically \$468 a week. [LB963]

SENATOR CHAMBERS: The person would get how much per week? [LB963]

JOHN ALBIN: That's how much they would have had to have earned during their high quarter in order to be entitled to the average benefit amount of \$234. [LB963]

SENATOR CHAMBERS: And at the rate of pay of these people who we're told work low-wage jobs, they make an average of \$400-something a week? Is that what you're telling me? [LB963]

JOHN ALBIN: No, I am not telling you that, Senator. I said, simply for purposes of demonstration, we assume that they had an average...they would have had an average claim. We don't know how much their claims would have been because it never gets that far because they're not able to establish that they had legal working status. [LB963]

SENATOR CHAMBERS: So it's not based on the average that a person working these low-wage jobs would get, but an overall average of people working, period, would get. [LB963]

JOHN ALBIN: Yes, that's correct. [LB963]

SENATOR CHAMBERS: So this number could be very high, couldn't it? [LB963]

JOHN ALBIN: It could be high, it could be low. It's an estimate only. [LB963]

SENATOR CHAMBERS: But it could be very high, couldn't it? [LB963]

JOHN ALBIN: I would guess that it's not, but it could be. [LB963]

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SENATOR CHAMBERS: Has your department ever estimated what the average hourly wage of these undocumented workers would be? What kind of jobs do they usually hold in Nebraska? [LB963]

JOHN ALBIN: We don't collect that sort of statistics. [LB963]

SENATOR CHAMBERS: Are they computer technicians, specialists? [LB963]

JOHN ALBIN: Actually, there was one that was a computer person, but I would say typically that's not. [LB963]

SENATOR CHAMBERS: So the exception proves the rule. They're not professors, they're not high-paid employees, are they? When somebody was telling us about individuals working in one of the western states, it was said that these people have the low-paid jobs, working in hotels, washing dishes and so forth. So they wouldn't come anywhere near earning the average amount that other workers are making, would they? [LB963]

JOHN ALBIN: I would assume that that...if that's in fact the case, that that class would be lower than the average claim. [LB963]

SENATOR CHAMBERS: Haven't you heard and read when national reports are given and state-by-state reports are given that these people are holding low paying jobs that nobody wants? And that hasn't been challenged. They generally get low paying jobs, don't they? [LB963]

JOHN ALBIN: I haven't done any study. That's what I've seen reported. I have no reason to dispute the statistic...or what's been reported. [LB963]

SENATOR CHAMBERS: So then we could...so this \$225,000 that was so blithely mentioned to us by the Attorney General and the Governor could be specious, couldn't it? It's just a figure drawn out of the air. It's not based on empirical evidence, is it? [LB963]

JOHN ALBIN: I don't think anyone has ever represented that it was an empirical study of illegal aliens. [LB963]

SENATOR CHAMBERS: No, I'm asking a question and I'd appreciate if you'd answer it. It's not based on empirical evidence, is it? [LB963]

JOHN ALBIN: It's empirical in the sense that that's our average claim and that's our average duration, and that's all we've ever represented it to be. [LB963]

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SENATOR CHAMBERS: But the average is not applied to the particular class of people we're talking about. It includes people who are not members of that class, doesn't it? [LB963]

JOHN ALBIN: It includes everyone who is legally authorized to work and drew benefits. [LB963]

SENATOR CHAMBERS: It includes people who are not within that class, doesn't it? [LB963]

JOHN ALBIN: It would include both low and high income, yes. [LB963]

SENATOR CHAMBERS: But it includes people who are not in the class we're discussing, doesn't it? [LB963]

JOHN ALBIN: I'm not sure I've done a study to tell you who the 78 are. I mean, I remember in my old ALJ days the first case that I did was someone who was earning a rather high-wage job, but their H2B authorization expired and so they wanted to draw benefits and they couldn't because their authorization had been...I would imagine that the predominate share of them are on the lower end of the scale. That's what I read. [LB963]

SENATOR CHAMBERS: So that I can complete and not keep you here too long, you know less about this than you know. Isn't that true? [LB963]

JOHN ALBIN: I don't think I would admit to that. [LB963]

SENATOR CHAMBERS: I think the point has been made. And it's difficult when we're being presented figures that are not necessarily reflective of what they purport to reflect. I doubt that many of these people that are discussed when we talk about these so-called undocumented workers are making over \$400 a week. And I think by you averaging in people who are not parts or members of that class, we get a figure that really tells us nothing that is of value or relevant to what we're trying to determine here today. So when the Attorney General talks to us about all of the money that's being saved, he knows even less than you know, and you know virtually nothing except that this figure doesn't apply to the people that we're talking about. But that's all I have. Thank you. [LB963]

SENATOR ASHFORD: Any other questions of John? [LB963]

SENATOR LATHROP: Could I, just briefly? [LB963]

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SENATOR ASHFORD: Yes, Senator Lathrop. [LB963]

SENATOR LATHROP: I looked at the issue of the undocumented worker and a verification process. There are states you're familiar with--Arizona being one of them--that passed laws that required employers to use a federal database to confirm that one's Social Security number matched the name before an employee could be hired. [LB963]

JOHN ALBIN: Yes. [LB963]

SENATOR LATHROP: And are you also familiar with the fact that they have a rate of about 20 percent of the time they're wrong? [LB963]

JOHN ALBIN: I'm not familiar with that certain...or that particular statistic. I know that one of the weaknesses of that particular system is that it checks to see if a Social Security number is a valid number. It doesn't check to see how many people are using that number. A case we ran into about a year and a half ago, there were five different people using the same Social Security number. [LB963]

SENATOR LATHROP: That may be true. But if you give a Social Security number and it doesn't match your name, it will tell you that the two are not a match, suggesting that the person may be using a phoney Social Security number. [LB963]

JOHN ALBIN: Yes, I believe it does. [LB963]

SENATOR LATHROP: And whether it's 20 percent or somewhere in there, it's like 1 in 5 of the inquiries come back with a bad information. In other words, it's saying that person is not...the Social Security number doesn't match the person. And so that's the problem with taking that tack with undocumented workers. Would you agree with that? [LB963]

JOHN ALBIN: I think with the SAVE system used as it's applied, it's better than the E-Verify system that employers can use. [LB963]

SENATOR LATHROP: That's the term I was looking for, the E-Verify. [LB963]

JOHN ALBIN: We use a...because we have a backup on ours in the sense that if we enter that person's alien authorization number and it comes back with a "need additional information," then we do follow up with that individual and request a copy of their card, their driver's license or state ID card, and their Social Security number. We take those and send them back to Homeland Security a second time. Well, first we check them to make sure there wasn't just a transposition of numbers or something like that and...when they gave it to us. We do run that back through Homeland Security a second time and it's only after that second verification process didn't come through that you end

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up with this class of 78 people. [LB963]

SENATOR LATHROP: So they get the benefit in the meantime or they don't get any benefit in the meantime? [LB963]

JOHN ALBIN: No, it's a federal conformity requirement that we cannot pay unemployment benefits until such time as we've established that the individual is legally eligible to work. [LB963]

SENATOR LATHROP: Okay, that's with those benefits. But let's use those for a second. So how long does it take for us to...out of these 78 people, how many of them do you have to go through and follow up because the match didn't work? [LB963]

JOHN ALBIN: We get the match back almost instantly. Then we send out the letter to the individual asking for the additional information. In part, the process is dependent upon how quickly they get that information back to us. [LB963]

SENATOR LATHROP: Sure. [LB963]

JOHN ALBIN: Once we have that information, we send it on almost the same day, if not next day. Homeland Security, I think the typical response period is a matter of one week, maybe two. Some have gone longer, and I don't pretend to know why some go a lot longer than others. But typically it's a matter of days that we've got a response back, and that was that third screen, or the second screen, one of those two. [LB963]

SENATOR LATHROP: So what was the rate that you had to go to the second step? [LB963]

JOHN ALBIN: The rate we had to go to the second... [LB963]

SENATOR LATHROP: Like 20 percent of the time, 50 percent of the time? [LB963]

JOHN ALBIN: Boy, I don't know, Senator, that we statistically track that, as to how many required a second check. The 78 is the people who either failed to provide us with additional information or failed the second check. [LB963]

SENATOR LATHROP: So you don't have any information about how many times they're wrong? [LB963]

JOHN ALBIN: I don't. I'd be glad to talk to the folks at the claim center and see if they can get me some...if they've got some additional... [LB963]

SENATOR LATHROP: I'd be curious to know the answer to that because every other

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database, the E-Verify is just...I mean, it's subject to litigation across the country because of its notoriously being unreliable. You know that? [LB963]

JOHN ALBIN: I was aware that there were some issues with it, yes. [LB963]

SENATOR LATHROP: Okay, thanks. [LB963]

SENATOR ASHFORD: John, just very briefly, you've already saved this money that we're talking about, whether it's \$200,000 or \$100,000 or whatever. [LB963]

JOHN ALBIN: Yes. [LB963]

SENATOR ASHFORD: The money has been saved because the unemployment benefits have not been paid out, correct? [LB963]

JOHN ALBIN: That's correct. [LB963]

SENATOR ASHFORD: And these individuals had paid in. [LB963]

JOHN ALBIN: Actually, their employer had paid in. [LB963]

SENATOR ASHFORD: Or, well, that's what I mean. But there is money in the system for this person. [LB963]

JOHN ALBIN: Well, probably, let's...yeah. In all likelihood, yes. [LB963]

SENATOR ASHFORD: Well, in many cases, under the way the system works, there's money that pays in, it comes out. So you in fact are doing what you're supposed to do and you've saved money. I guess if I was on the Appropriations Committee, you'd be making a good case for funding the SAVE system. I mean it sounds like that's what you're doing, you're doing it successfully, you're already saving money and you're going to continue to do that. Other than the Department of Labor, you know, Health and Human Services, what other large agencies--and you've been around as long as me--what other large agencies are there that would...where there would be significant savings by using SAVE that have that kind of a need? [LB963]

JOHN ALBIN: I would guess that any agency that generates a large amount of cash benefits. Education would be the first one that comes to mind. [LB963]

SENATOR ASHFORD: Would be Education, Labor, Health and Human Services. [LB963]

JOHN ALBIN: I would think we would be the big three in terms of what's paid out in

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cash. [LB963]

SENATOR ASHFORD: And the rest might be incidentally. Quite frankly, it may be incidental almost. [LB963]

JOHN ALBIN: Boy, I wouldn't want to speculate on that, but I would assume we're the big three cash agencies, yes. [LB963]

SENATOR ASHFORD: I just can't think of...right, I just can't think of that many others. Okay. Thanks very much. Thanks, John. All right. We're going to go...we're going to take three more testifiers and then go to the opponents. Good afternoon. [LB963]

TIM GOODMAN: Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Tim Goodman, spelled G-o-o-d-m-a-n, and I live at 17206 Fairway Drive near Gretna, Nebraska. I'm a lifelong citizen of the state of Nebraska. I'd like to address a couple questions that I've heard the senators ask that I didn't think were properly answered. First question was from Senator Chambers when he asked about what's fair and unfair. And I'd like to suggest that it's unfair to the taxpayers of the state to allow benefit payments to illegal immigrants when these benefits are only supposed to go to legal residents of the state of Nebraska. Another question that was asked was from Senator Schimek and it had to do with, is this okay to have it across the board and the Governor...the departments that report to the Governor? And I would like to remind her of the driver's license employee that was fired when he was verifying documents that were presented to him for issuance of driver's licenses. He was told that it was not his job to verify documentation. It was his job to issue driver's licenses. When he continued to verify these documents, he was fired and he's now a truck driver, the last that I heard. That's all that I had. [LB963]

SENATOR LATHROP: Thank you, Mr. Goodman. Are there any questions? Doesn't look like it. Thank you. The next proponent? [LB963]

DOUG KAGAN: Good afternoon. My name is Doug Kagan and I represent Nebraska Taxpayers for Freedom, spelling my name D-o-u-g K-a-g-a-n. Under current law, illegal aliens can receive in-state college tuition rates but a wounded veteran who served in Iraq or Afghanistan but who now lives in Des Moines, Iowa, or Tarkio, Missouri, cannot receive such rate. This law defies a clear congressional mandate against continuing such statute. Section 505 of the 1996 Illegal Immigration Act specifically states that, and I quote, an alien who is not lawfully present in the U.S. shall not be eligible on the basis of residence with a state for any postsecondary benefit. Implementing the statute will open Nebraska to costly lawsuits challenging the conferral of resident tuition on illegals. The illegal aliens are nationals of foreign countries. Their education is the responsibility of those nations. Though Nebraska students pay tuition for postsecondary public education, state taxpayers heavily subsidize it. Overburdened Nebraska taxpayers, we

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believe, do not approve spending tax money on educating illegals. Furthermore, graduating illegal aliens will compete with lawful citizens for a finite number of Nebraska jobs. Several sectors of the Nebraska economy and geographic areas already are feeling recession effects...(Recorder Malfunction--Some Testimony Lost)...failing to repeal this legislation really offers legal resident status to illegal collegians, amnesty, only encouraging other young illegals and their families to sneak into our state, making it a sanctuary state, to avail themselves of this generous educational benefit and amnesty. Nebraska universities have limited enrollments. Increasing the pressure by accepting illegals will deny opportunities to legal aliens and Nebraska citizens. Illegal immigrants now stand at a higher status than legal foreign exchange students. The low economic status of most illegal alien families qualifies their youth for means-tested financial assistance. Our higher education systems have only finite aid amounts to grant, and that given illegals will deprive Nebraska citizens. Requiring every state agency or local government that administers designated benefits to send a yearly report to the Governor and Clerk of the Legislature evidencing compliance with this legislation and including the number of applicants rejected for cause would highlight how much illegal immigration is really impacting our safety net services and commerce. We have no specific tabulation of costs now. When I looked up research to do this testimony, it was the toughest research I ever did because I couldn't find statistics on Nebraska. In a Nebraska worker's comp case in 2001, the state Compensation Court ruled that an injured illegal alien was entitled to benefits, including voc-rehab, despite his immigration status, costing our Worker's Compensation Fund. In our looming recessive economy, we do not believe it fair to allow illegal aliens to compete in lawful Nebraska commerce and industry, to compete with those in need of social and health services, people who mostly have paid into the tax pool. We urge you to advance this bill to the floor of the Legislature because we believe that it deserves full discussion there. Thank you.
[LB963]

SENATOR ASHFORD: Thank you, Doug. Any questions of Doug? Senator Chambers.
[LB963]

SENATOR CHAMBERS: Mr. Kagan, you sound like a man who understands numbers and figuring, adding, subtracting, multiplying and dividing. Would you say that a family making \$33,000 a year is...how did you describe those illegal people that you were talking about who get resident tuition, their children get resident tuition? You said the low economic status or something like that. [LB963]

DOUG KAGAN: Yes. [LB963]

SENATOR CHAMBERS: What was your term? [LB963]

DOUG KAGAN: Let me see if I can find it. The low economic status. [LB963]

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SENATOR CHAMBERS: Would you say that making \$33,000 a year would be...qualify as low economic status? [LB963]

DOUG KAGAN: All I can tell you is what I've read statistically on the earnings. [LB963]

SENATOR CHAMBERS: No, I'm asking you from your...for your subjective opinion. Would somebody making \$33,000 a year be of low economic status? [LB963]

DOUG KAGAN: I'm not really sure because I live cheap myself, so... (Laugh) [LB963]

SENATOR CHAMBERS: I'm not talking about how much you spend. You might make \$100,000 a week but only spend enough to buy a can of soup and then mix it with a tubful of water and that would be very cheap. But I'm talking about actual income, if the income of the person, disregarding how much is spent, were \$33,000 a year in Nebraska. First of all, your group is called what? [LB963]

DOUG KAGAN: Nebraska Taxpayers. [LB963]

SENATOR CHAMBERS: So you probably are familiar with the average wage of Nebraska families, aren't you? [LB963]

DOUG KAGAN: We have it. I don't have it here with me. I know we've tabulated it, yes. [LB963]

SENATOR CHAMBERS: Have you...from having dealt with it over a period of time, can you give me an approximation of what your feeling is that that amount would be? [LB963]

DOUG KAGAN: I believe it's in the lower 30s. [LB963]

SENATOR CHAMBERS: So if that were the average, it wouldn't be low income or low economic status, would it? Low... [LB963]

DOUG KAGAN: Not on average for a Nebraska earning. [LB963]

SENATOR CHAMBERS: Okay. Well, from figures that we got from the Department of Labor, these 78 people were making an average of \$460 a week, or something like that, which would calculate out to 33...more...\$33,000, at least, a year. So there's a disconnect here someplace. If these are people of low economic status, it's clear they're not making \$460 a week. But the point I want to ask you is what you had indicated about these resident students, they're residents of Nebraska, are being given an opportunity to go to school that a veteran, who lives in Tarkio, Missouri, would not have in Nebraska, or somebody from Iowa. Would it not be the duty of Iowa and Missouri to

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make concessions to their residents? Wouldn't that be true? [LB963]

DOUG KAGAN: For their veterans? They may. [LB963]

SENATOR CHAMBERS: Or anybody who lives there, right. They would have nonresident tuition and they would have resident tuition, and those people who live in Tarkio would get the benefit of Missouri's resident tuition rate, correct? [LB963]

DOUG KAGAN: That's right. [LB963]

SENATOR CHAMBERS: And the Iowan would get the benefit of the Iowa resident tuition rate. [LB963]

DOUG KAGAN: That's right. [LB963]

SENATOR CHAMBERS: And these children are getting the benefit of the resident Nebraska tuition rate. They are residents. That is a requirement, isn't it? [LB963]

DOUG KAGAN: They're illegal residents. [LB963]

SENATOR CHAMBERS: Are they residents? [LB963]

DOUG KAGAN: They're living here, yes. [LB963]

SENATOR CHAMBERS: So they're residents, correct? [LB963]

DOUG KAGAN: That depends on your definition of "resident." [LB963]

SENATOR CHAMBERS: If you live someplace, you're a resident. [LB963]

DOUG KAGAN: You're an inhabitant. [LB963]

SENATOR CHAMBERS: Is the condition of their getting this tuition rate that they be residents of the state of Nebraska? Is that a condition of their obtaining this resident student rate? Must that person be a resident, or don't you know? If you don't know just tell me and I'll leave it alone. [LB963]

DOUG KAGAN: The implication I'm saying is that they have to be a legal resident. "Resident," to me, means legal resident. [LB963]

SENATOR CHAMBERS: No, I'm asking you about the program that you are critical of. You brought up a program that you are criticizing. Mr. Kagan, I am speaking of the program which you brought up, which you criticized, and you said that there are

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students receiving a resident tuition rate which you think those students should not receive. [LB963]

DOUG KAGAN: That's right. [LB963]

SENATOR CHAMBERS: Have I reflected what you said? [LB963]

DOUG KAGAN: That's right, because they're not legal residents. [LB963]

SENATOR CHAMBERS: Are they residents of the state of Nebraska? [LB963]

DOUG KAGAN: No, because they're not legal residents. [LB963]

SENATOR CHAMBERS: That's all I have. Thank you, Mr. Kagan. [LB963]

SENATOR ASHFORD: Any other questions of Doug? Any questions of Doug? Okay, thanks, Doug. [LB963]

DOUG KAGAN: Thank you, Mr. Chairman. [LB963]

SENATOR ASHFORD: One more testifier and then we'll go to the opponents. [LB963]

MICHAEL McALPINE: My name is Michael J. McAlpine. I live at 2323 Mayfair Drive in Omaha. First of all, let me say seven of my brothers, a sister and I all served in the military during World War II. We did it to preserve our way of life. Now I'm an old duffer so, you know, 70 years ago when I was a kid, for example, packinghouse workers were making about the same amount of money they are today. And they say the regular American doesn't want those jobs. Heck no, they don't. They can't live on it. When we had the big building boom in Omaha a few years ago, they built the First National Bank, Qwest Center, Union Pacific. They completed the projects and big headlines came out in the Omaha World-Herald about the millions of dollars that the state, the county and the city lost in taxes because the contractors that were in charge of building those projects hired these people, illegals, as individual contractors, paid them in cash. They paid no Social Security; no state, city or county tax. The rest of us slobs had to make up the deficit caused by their lack of paying their share. I read in the paper in Los Angeles how many hospitals have been closed because of the illegals coming in, getting free medical care, and 15 more on the verge of bankruptcy. The other night watching on TV I saw a small town down in Texas, Mexican border, and I think there was about 7,000 people. They had to close their hospital because it was bankrupt. They were giving free medical care to all the illegals coming in. And that thing could happen right here in River City. You know, I go to the Bag 'N Save at 144th and Center on a Friday afternoon. You can't get up to the courtesy counter because there's so many illegals in there buying money orders to send back to Mexico. You go to the downtown post office and it's the

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same thing. You know, the money that Mexicans send from the United States to Mexico is the second biggest industry in the country of Mexico. You know, and it's evident that our federal government doesn't want to do anything about it, so the state has got to do something to protect their citizens. [LB963]

SENATOR ASHFORD: Thanks, Mr. McAlpine. Any questions of Mr. McAlpine? Just for the record, my understanding of LB963 is that nothing that would...this bill would do nothing to prevent or to stop the hospitals from providing emergency care. [LB963]

MICHAEL McALPINE: Emergency care. [LB963]

SENATOR ASHFORD: Right. [LB963]

MICHAEL McALPINE: Yeah, but they're coming up there for everything. [LB963]

SENATOR ASHFORD: Right. I understand. Thanks, Mr. McAlpine. Any questions? Thank you, sir. [LB963]

MICHAEL McALPINE: You know, in answer to Senator Schimek's question,... [LB963]

SENATOR ASHFORD: We're...go ahead. [LB963]

MICHAEL McALPINE: ...she doesn't know of anybody that's getting the...I've seen an illegal in the grocery store on 90th Street using food stamps. They aren't supposed to be getting them. How do they do it? The paper, The Wall Street Journal and other newspapers, say somewhere between 350,000 and 400,000 illegals are drawing Social Security. Some of them have paid little or nothing. How do they do it? Thank you. [LB963]

SENATOR ASHFORD: Thanks for your comment. [LB963]

SENATOR CHAMBERS: I just have a question. [LB963]

SENATOR ASHFORD: Well, yeah. [LB963]

SENATOR CHAMBERS: How...Mr. McElvie (phonetic), is that... [LB963]

SENATOR ASHFORD: McAlpine. McAlpine. [LB963]

MICHAEL McALPINE: McAlpine, yes. [LB963]

SENATOR CHAMBERS: Okay, would you sit down so they can hear you,... [LB963]

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MICHAEL McALPINE: Sure. [LB963]

SENATOR CHAMBERS: ...that the record can be made? How did you know this person in the store was here illegally? [LB963]

MICHAEL McALPINE: Well, she couldn't talk English. I'm not 100 percent sure. [LB963]

SENATOR CHAMBERS: Oh, you mean... [LB963]

MICHAEL McALPINE: She had her kids with her that interpreted for her. [LB963]

SENATOR CHAMBERS: So anybody who does not speak English, to your way of thinking, is here illegally. [LB963]

MICHAEL McALPINE: Well, probably 99 percent of them. [LB963]

SENATOR CHAMBERS: Parlez-vous francais? [LB963]

MICHAEL McALPINE: Pardon me? [LB963]

SENATOR CHAMBERS: Oh, that's all right. Thank you. [LB963]

MICHAEL McALPINE: She was a young woman. I would guess she was probably about 30, with little kids. [LB963]

SENATOR CHAMBERS: Okay. I don't have anything else. Thank you. [LB963]

SENATOR ASHFORD: That's okay. Thanks, Mr. McAlpine. Thanks for coming down. All right, we're now going to go to the opponent testimony and then the neutral. So, J.B., are you ready? Or no. [LB963]

JAMES MILLIKEN: It's by rank here. [LB963]

SENATOR ASHFORD: Okay. Chuck, come on up. Come on up, Chuck. [LB963]

CHUCK HASSEBROOK: Thank you. [LB963]

SENATOR ASHFORD: Yes, sir. [LB963]

CHUCK HASSEBROOK: Senator Ashford and members of the Judiciary Committee, my name is Chuck Hassebrook, C-h-u-c-k H-a-s-s-e-b-r-o-o-k. I'm chairman of the University of Nebraska Board of Regents and I appear before you today in opposition to LB963, which would repeal the Nebraska DREAM Act adopted by the Legislature over

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the objections and veto of Governor Heineman two years ago. My comments will be limited to the section of the proposed legislation that addresses the residency status of certain undocumented minors for the purposes of determining the rate of tuition to be charged by the state's public postsecondary education institutions. In 2006, the Legislature adopted LB239, which provided the opportunity for undocumented students to attend Nebraska's public colleges and the university at resident tuition rates if they meet certain qualifications. In order for an undocumented student to be classified as a resident for purposes of tuition under current state law he or she is required to have: one, graduated from a Nebraska high school or received the equivalent of a high school diploma in Nebraska; two, resided in Nebraska for at least three years before graduation from high school or receiving the equivalent of a high school diploma in Nebraska; and three, provided an affidavit stating that he or she will file an application, become a permanent resident at the earliest opportunity afforded. Prior to passage of that legislation, these young people paid two to three times the resident tuition rate and that was essentially tantamount to denying them access to higher education, given that they in many cases simply did not have the income levels to pay two to three times the normal tuition rate. In response to that situation, in March of 2005, with no dissenting votes, the Board of Regents adopted a policy statement supporting extension of educational opportunity to certain undocumented immigrants. It reads: Education is the key to improving economic opportunity for individuals, and increasing the level of educational attainment in the state is critical to the economy and quality of life in Nebraska. Therefore, it is the policy of the Board of Regents to support affordable access to higher education for all Nebraskans who are prepared for admission to the university. The board has special concern for providing increased educational opportunities for underrepresented minorities so that all people of Nebraska may enjoy the demonstrable benefits of a quality college education. While the Board of Regents in no way condones illegal immigration, it does support the extension of educational opportunity at resident tuition rates to undocumented immigrants who have attended and graduated from Nebraska high schools and have initiated action to become permanent residents. In my judgment, the question for this legislation is pretty straightforward. We have a group of young people, people who grew up here, people who graduated from school here, people are going to live here and people who have no other home, know no other home. And the question is simply, are we better off, are all Nebraskans better off, is our state better off, our communities better off if we give them the chance to get an education, or are we better off by denying them higher education? I think the answer is pretty clear. I think every Nebraskan, every Nebraskan has a stake in seeing them gain the opportunity to get an education to build their own capacity to give back and help build this state. The fact is... [LB963]

SENATOR ASHFORD: Chuck, I'm going to ask you...I don't want to...ask you to just sum up because we're going to...the red light is on and... [LB963]

CHUCK HASSEBROOK: Okay. Absolutely. [LB963]

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SENATOR ASHFORD: ...and we eject you if you don't. (Laugh) No, I'm just kidding. [LB963]

CHUCK HASSEBROOK: Absolutely. The fact is that the more...majority of these folks are people that have the same...embody the very same values that have made Nebraska strong. They're people of faith. They're people who work hard, have a commitment to their families and have a spirit of entrepreneurship, and they have the potential to become contributing members to building our state and to building stronger communities. The real question is whether they realize that potential depends on what we do, and if we allow them to develop that potential they'll become contributing members. But if we deny them that opportunity by passing legislation by this, we're going to force them...and deny them education, we'll force them into a permanent underclass and prevent them from building that potential. So I would urge you to reject this legislation. Thank you. [LB963]

SENATOR ASHFORD: Any questions of Chuck? Chuck, do you know how many students have availed themselves of this process? [LB963]

CHUCK HASSEBROOK: I haven't heard the latest numbers. Do we... [LB963]

SENATOR ASHFORD: Well, maybe...I'm sorry. Maybe I'll defer to the president. [LB963]

CHUCK HASSEBROOK: Yeah. All right. [LB963]

SENATOR ASHFORD: Any other...any questions of Chuck? Thank you, Chuck, for... [LB963]

CHUCK HASSEBROOK: Thank you. [LB963]

SENATOR ASHFORD: ...coming down. Mr. President. [LB963]

JAMES MILLIKEN: Chairman Ashford, members of the committee, for the record my name is James B. Milliken and I am the president of the University of Nebraska. I join Chairman Hassebrook in expressing the university's opposition to LB963. Educational attainment is one of the single most important contributors to an individual's economic success and quality of life. It is also key to our state's future prosperity. Nebraska has one of the highest high school graduation rates in the nation, but our college-going rate is far less impressive, this at a time when 70 percent of the fastest growing jobs require some kind of higher education. A year or two ago I joined with Governor Heineman to propose that Nebraska increase its college-going rate by 5 percent over the next four years. It's an admirable and inspirational goal, one I hope we achieve. It's one that I also

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believe will be all but impossible to achieve if this bill passes. The students in question, many of them, came to the United States, brought by their parents, at an age when they were young. These children are guaranteed access to the public schools of Nebraska and every other state in the nation by a 1982 Supreme Court ruling which held that a state cannot deny undocumented children a free, public, K-12 education. The court said that a public education has a pivotal role in maintaining the fabric of our society and in sustaining our political and cultural heritage, that deprivation of education takes an inestimable toll on the social, economic, intellectual, and psychological well-being of individual, and poses an obstacle to individual achievement. Now you've heard a number of times today that neither the Congress or the courts have provided clear direction with regard to our national immigration policy and certainly not with regard to students who are undocumented who seek higher education. What happens when that turns yellow? Am I... [LB963]

SENATOR ASHFORD: Just keep talking. [LB963]

JAMES MILLIKEN: (Laugh) [LB963]

SENATOR ASHFORD: I mean, I've got broad discretion. [LB963]

JAMES MILLIKEN: Okay. Thank you. Pending federal legislation would provide a clear path for immigrant children to obtain legal status and to provide them the opportunity to have resident tuition and financial aid; however, there has been no federal legislation passed on this. In its absence, states have taken the lead and Nebraska has been one of these leader states. Texas became the first to pass in-state...to pass legislation to allow undocumented immigrants to receive resident tuition in 2001, was followed by California, New York, Oklahoma, Kansas, Illinois, New Mexico, Utah, Washington, and Nebraska. In my view, the debate over whether to extend resident tuition benefits to undocumented children is one of educational and economic opportunity, not immigration policy. It's unrealistic to think that denying these students the chance to attain an affordable college education will somehow serve as an immigration enforcement strategy, and that those who would be impacted by this legislation will just finish high school and return to their country of birth. Denying them postsecondary education is neither in their interests nor in Nebraska's best interest. The ability of these students to contribute to the economic growth of our state depends in large measure on their ability to finish their high school and college education. Charging resident tuition is an important step in Nebraska to expand educational opportunity to talented young residents of Nebraska. Now a point I heard earlier about the eligibility of financial aid, I want to use this opportunity to address that. [LB963]

SENATOR ASHFORD: Let's do it this way, J.B. [LB963]

JAMES MILLIKEN: Okay. [LB963]

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SENATOR ASHFORD: Why don't we open it up for questions and then...and maybe you can get some answers that way. [LB963]

JAMES MILLIKEN: Great. Can I answer your question first? [LB963]

SENATOR ASHFORD: Does any...why don't we start with my question. [LB963]

JAMES MILLIKEN: Twenty-eight. [LB963]

SENATOR ASHFORD: And where do they attend school? [LB963]

JAMES MILLIKEN: I only know about the University of Nebraska campuses, but there are... [LB963]

SENATOR ASHFORD: Are those...that's all... [LB963]

JAMES MILLIKEN: ...a total of 28 students who are eligible for resident tuition under the law passed by the Legislature two years ago. They are at UNO, UNK, and UNL. [LB963]

SENATOR ASHFORD: And how many...how many resident... [LB963]

JAMES MILLIKEN: And I would suggest, Mr. Chairman,...and indulge me for an additional sentence,... [LB963]

SENATOR ASHFORD: All right. Oh, go ahead. Do you have some more? Okay. [LB963]

JAMES MILLIKEN: ...I would suggest that that is resident tuition that's coming to the University of Nebraska that would not otherwise come to the university. It's a marginal cost and the gain from those 28 students represents tuition coming in, not lost revenue for the difference between nonresident and resident tuition. [LB963]

SENATOR ASHFORD: Is there an entrance requirement? Does each one of the three campuses have a different entrance requirement? [LB963]

JAMES MILLIKEN: We have a set of minimum course requirements which are almost uniform. There's slight variation in them. And we have minimum ACT requirements. [LB963]

SENATOR ASHFORD: All right. And those obviously are applied... [LB963]

JAMES MILLIKEN: Those students are...all students are required to meet those

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minimum course requirements and ACT requirements for admission to the university. [LB963]

SENATOR ASHFORD: Any questions of...any other questions? Senator Lathrop. [LB963]

SENATOR LATHROP: Do I understand your testimony to be that the revenue we receive from those 28 students is more than it costs us to educate them? [LB963]

JAMES MILLIKEN: There...I'm not prepared to go through the analysis... [LB963]

SENATOR ASHFORD: Be careful. Be careful answering that question on the record. (Laugh) [LB963]

JAMES MILLIKEN: Yeah, I recognize that. I'm not prepared to go through the economic... [LB963]

SENATOR LATHROP: Well, once we educate the entire population of students, adding those 28. [LB963]

JAMES MILLIKEN: Senator, let me take a little different stab at that. You know, in the last year we provided, at the University of Nebraska-Omaha, a discounted tuition rate to Iowa residents in three counties in metropolitan Omaha, where we now charge 150 percent of our in-state tuition rate. We made a determination that, given the marginal cost of education and the opportunity to gain additional revenue, that that made sense for us, both as a way to enrich our state by attracting people and providing a talent base for Omaha and the state of Nebraska, but also because of our analysis of what costs would be incurred. Now when we did the analysis with regard to that 150 percent tuition rate, we did estimate that at some point we would need to look at that and see what costs were involved, additional costs, and whether we'd priced it accurately. But initially we assumed that for the first few hundred students coming, that that was a useful and good decision to make. [LB963]

SENATOR LATHROP: Okay. That's all I had. [LB963]

SENATOR ASHFORD: Senator Chambers. [LB963]

SENATOR CHAMBERS: President Milliken, I must catch as catch can. I read in the newspaper that a scholarship was going to be started in the name of a young black UNO student who had been killed by, I guess you'd say, a sniper and the first amount of money...first of all, that the scholarship is being established by...is it the University Foundation? [LB963]

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JAMES MILLIKEN: That's, excuse me, Senator, that's where the funds will come from to establish the scholarship (inaudible). [LB963]

SENATOR CHAMBERS: And how much money does this University Foundation have, if you know an estimate? [LB963]

JAMES MILLIKEN: Its endowment? [LB963]

SENATOR CHAMBERS: Yes. [LB963]

JAMES MILLIKEN: It's about...it's over \$1.5 billion. [LB963]

SENATOR CHAMBERS: \$1.5 million? [LB963]

JAMES MILLIKEN: Yes. [LB963]

(UNKNOWN): Billion. [LB963]

SENATOR SCHIMEK: Bill. [LB963]

SENATOR CHAMBERS: Oh, billion, with a b. [LB963]

JAMES MILLIKEN: Yes. Yes. [LB963]

SENATOR CHAMBERS: There was a misprint in the paper, and I think there was a misprint that was given to the people who announced the amount on television, because they said that this scholarship was being started by that foundation and the amount was \$5,000. [LB963]

JAMES MILLIKEN: No, that's correct, Senator. [LB963]

SENATOR CHAMBERS: Is this a one-time thing where... [LB963]

JAMES MILLIKEN: No, it's to start, the beginning of starting an endowment in Brittany's name to provide a scholarship. [LB963]

SENATOR CHAMBERS: An endowment that starts with \$5,000 from an operation that has over a billion dollars. Let me ask you a question. I'm a poor man, and I mean it. If I will give...if I will scrape up \$5,000 and give, will that foundation give \$100,000? In other words, it is offensive that this operation run by white people will give the impression they're honoring this young woman by starting an endowment with \$5,000. When you have an endowment, that corpus is not used but the income from it. Isn't that the way this would operate? [LB963]

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JAMES MILLIKEN: Correct. [LB963]

SENATOR CHAMBERS: So how much income will come from \$5,000? That's a rhetorical question. Why cannot that foundation put more money into that scholarship endowment? Can you broach that subject with them? [LB963]

JAMES MILLIKEN: I'd be happy to, Senator,... [LB963]

SENATOR CHAMBERS: Okay. [LB963]

JAMES MILLIKEN: ...because I'm the one that directed that the money be put into the scholarship fund to start this, and I...this is about the fourth or fifth one of these I've done in the last year. I first did it for a young student last year at UNL who died tragically; I did it for two students that died in an automobile accident, in their memory, about a month ago returning from Omaha to UNK; and I think there's another student that we established a scholarship, each in the same amount, each with a request that there be some match made. In each case, I spoke to the chancellor of the institution first about it, getting a commitment from them to help raise money for it. So this is not the first one. This is the fourth or fifth within the last 12 months, I'm sorry to say. I wish there were not opportunities to do this. [LB963]

SENATOR CHAMBERS: I understand all of that and the gesture is appreciated. But because of the constituency that I'm concerned about, those students who don't have much money and their parents don't have much money, if there is to be an endowment it should be of sufficient size to do something concrete. And I think the amount is not what it needs to be, so I hope you will take that up with the foundation. [LB963]

JAMES MILLIKEN: I will, but... [LB963]

SENATOR CHAMBERS: And maybe we could get...maybe we could get somebody a Kleenex who's having trouble. [LB963]

JAMES MILLIKEN: Senator, this scholarship and the other three or four that were established were to serve as memorials so our students and faculty and staff at the university and others would remember these students and the contribution, and it would be perpetual. This is not the university's most significant financial aid program. We have programs we've put in place to guarantee that students who qualify under certain financial restrictions would pay no tuition at the University of Nebraska. [LB963]

SENATOR CHAMBERS: I understand all of that. [LB963]

JAMES MILLIKEN: Okay. [LB963]

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SENATOR CHAMBERS: I'm going strictly by what this purports to be--a scholarship fund. It didn't just say a memorial amount that maybe can be used to help purchase incidentals for students who need that. I thought it said a scholarship fund. [LB963]

JAMES MILLIKEN: It is a scholarship because it would go to a student for student costs, in addition to whatever other funds they would receive in scholarships. [LB963]

SENATOR CHAMBERS: If you'd rather I write a letter to the foundation, I'll do that. Or you will talk to them? [LB963]

JAMES MILLIKEN: I would be happy to talk to them. I'm sure it would have more impact if you wrote them. [LB963]

SENATOR CHAMBERS: We'll get together on that and I'll be glad to do what I can. [LB963]

JAMES MILLIKEN: Okay. [LB963]

SENATOR CHAMBERS: Thank you. [LB963]

SENATOR ASHFORD: Any other questions? Just very quickly, how many students are there in the three campuses total, not including the graduate programs? Do you know that? [LB963]

JAMES MILLIKEN: Well, I do, but you're going to require me to do a little math. [LB963]

SENATOR ASHFORD: Generally. [LB963]

JAMES MILLIKEN: Of the four campuses,... [LB963]

SENATOR ASHFORD: Or the four. [LB963]

JAMES MILLIKEN: ...there are just under 48,000 students. [LB963]

SENATOR ASHFORD: All right. Do you know how these 28 students are distributed across the... [LB963]

JAMES MILLIKEN: I do, but without looking I would say they're about evenly distributed, UNO, UNK, UNL. [LB963]

SENATOR ASHFORD: Oh, between the three? All right. So maybe eight or nine in each campus or so. All right. Thank you very much. [LB963]

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JAMES MILLIKEN: Thank you. [LB963]

SENATOR ASHFORD: Further opponent testimony. [LB963]

JONATHAN BENJAMIN-ALVARADO: (Exhibit 15) Good afternoon, Senator Ashford, committee members. My name is Dr. Jonathan Benjamin-Alvarado. I would like to speak today in my capacity as professor of political science and the assistant director of the Office of Latino/Latin American Studies at the University of Nebraska at Omaha. For the record, I would like it to be noted that, while LB963 represents part of a growing trend of legislative efforts across the country to curb the impact of undocumented immigrants in our midst, it is no less a case of misplaced priorities and, at worse, a singularly insulting action to strike fear and uncertainty into the hearts of Latinos in the state of Nebraska, illegal or otherwise. Allow me to clarify why this effort will result in nothing less than a total waste of valuable state time and resources should it be enacted. First, there is no credible evidence provided to support the contention that increased enforcement of immigration statutes and regulations, let alone applications for food stamps, will result in correctly addressing the failure of national immigration policy, which at its core is what we're really talking about here today. To the contrary, there is ample evidence to suggest that the opposite is true. Let me illustrate. Between 1986 and 2006, the number of U.S. Border Patrol agents more than tripled in the United States. The hours they patrol the border increased by a factor of eight. The Border Patrol budget has increased tenfold and, in that period of time, the number of undocumented immigrants has doubled. If this was a business, it would have gone bankrupt a long time ago. In spite of this reality, there is a persistent belief that undocumented immigrants serve as a drain on the welfare system at both the federal and state levels. In fact, undocumented immigrants pay taxes in a number of ways, including income and sales tax. Most of them will use ITINs or false Social Security numbers, as has been noted earlier. Immigrants, regardless of status, will pay on average \$80,000 more per capita more in taxes than they will ever use in government services over the course of their lifetime. In 2006, a voluminous Social Security Administration report held that approximately \$420 billion in benefits from immigrants are now in reserve that they can never claim. Undocumented immigrants are ineligible for the vast majority of state and federal benefits, and are only eligible for those considered important to public health and safety. Perhaps the problem lies more in the fact that the federal government has lapsed in its responsibilities to adequately fund social entitlements, leaving states with what amounts to as an unfunded mandate. We should be looking to Washington rather than at immigrant Nebraskans for the source of that shortfall. In fact, most illegal...most legal immigrants are, have been, and will continue to be ineligible for most federal and state benefits. As a result, healthcare spending for immigrants, whether private or state funded, is approximately half of what is spent on U.S. citizens. Let me finalize by saying I find it highly ironic that as a child of immigrants that this legislation would seek to place yet another obstacle in the way of

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young people seeking to advance themselves, their communities, and this state through the pursuit of higher education, as I did. There is a large and growing body of bright, imaginative and able individuals, Latinos and their children, who can and will serve the well-being and prosperity of Nebraska for generations to come. To stand in the way of the hopes and aspirations of these individuals makes little sense to me. I find this ironic, because as a child of an immigrant this state chose to hire me to teach its children about democracy and, as a child of immigrants, I do so proudly, illegal or otherwise. [LB963]

SENATOR ASHFORD: Any questions? Doctor, thank you. [LB963]

JONATHAN BENJAMIN-ALVARADO: Thank you. [LB963]

SENATOR ASHFORD: Next opponent. [LB963]

STAN CARPENTER: Chairman Ashford, members of the committee, my name is Stan Carpenter. I'm chancellor of the Nebraska State College System. I'm here today to speak against this bill. I will simply say, as briefly as I can, that I would concur with President Milliken's testimony and Regent Hassebrook's testimony as well. We are colleges of opportunity. We are institutions that encourage people to come to us. If they've graduated from a Nebraska high school, we encourage them to take their chance with us and we hope that we can increase their intellectual capacity and their intellectual acuity and make them productive citizens for Nebraska. Having said that, let me move off the practical...or off the philosophical, move to some little practical questions here. As I read the bill, and I don't have it in front of me, but I am concerned, for example, that there's language in there that talks about contracts and does that mean, for example then, that we have to get from everybody that we contract with an affidavit that they are not...that they are legal citizens or here legally? I think there's a question also, as I read the bill, that would indicate to me that if a person is an illegal, they're not entitled to come to our institutions for any tuition rate, whether it's out of state or double or anything else. So I think that this bill, as it's drafted, as I read it, and I don't pretend to be an expert, but it seems to me that it would say if you are not a legal resident of the state of Nebraska or a citizen you may not attend our institutions, and I think that's very counterproductive, obviously, to what we're trying to accomplish as a system of higher education institutions, and I think it's counterproductive for the state of Nebraska to be putting people in that kind of circumstance. So from a practical standpoint, I think there are problems with this bill that would make it difficult for us; that we would have to make sure that each one of our 8,000-plus students signs the affidavit that either they are a citizen or that they're here legally. And that, while that's not a huge, onerous task, it will require additional work for us and for our admissions departments. We worked closely with Senator Schimek as we passed...as she passed this bill a couple years ago. We were in favor of it then and we're in favor of it now. And I hope that you will maintain the status of it. And with that, I will answer any questions

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anyone might have. [LB963]

SENATOR ASHFORD: Any questions of Dr. Carpenter? Seeing none, thank you. [LB963]

STAN CARPENTER: Thank you, Senator. [LB963]

SENATOR ASHFORD: We're going to do three more opponents. How many opponents do we have? We'll do...we're going to do three, three more opponents and then move to the neutral testifiers. [LB963]

LAWRENCE BRADLEY: Thank you. My name is Lawrence Bradley, L-a-w-r-e-n-c-e B-r-a-d-l-e-y. I live at 6068 Country Club Oaks Place, Omaha, Nebraska, and I'm here to testify in opposition to LB963. I want to tell you that recently I've been elected as the commander of the American G.I. Forum. It's a veterans' organization in south Omaha. It was originally started right after World War II by Dr. Hector P. Garcia because a veteran of Mexican-American descent was not allowed to be buried in a certain cemetery. Ever since then we've been...that organization has been looking out for the civil rights for all veterans. We have a motto: Education is our freedom, and freedom should be everybody's business. I want to say that there is some forgotten veterans that are not citizens of the United States, but they were told that if they joined the United States military and fought in Iraq that they would be moved in front of the line to get citizenship, so I want to let everybody know about that and to remind people of that. We have raised money down at the American G.I. Forum. It's not much, but we try. We've given out \$30,000 worth of scholarship money this last year and most of it is earmarked to Latino and Hispanic students. We really don't ask if their parents are undocumented or not. We just see bright, energetic faces willing to learn and willing to make a difference, and I think that's what's best for the state of Nebraska to be competitive locally, regionally, nationally, and certainly internationally. I want to close on saying that there's something being lost here today, or if I can at least make a point, between the people on one side of LB963 and Senator Friend and, you know, what he was trying to do, and then perhaps what's coming up, Senator White and what he'll be trying to do. I want everybody to realize that no matter what, these bills might cause an exodus of a certain, you know, number of population from the state of Nebraska and what that will do is put in jeopardy a congressional seat for the state of Nebraska. So I want you to keep that in mind as you're discussing this bill or compromises for these upcoming bills today. And I really make the bold prediction of what they did in Arizona will cause them congressional seats. Because when you count people for congressional seats, you don't count whether they're illegal or not; you just make a head count. And federal law precludes census takers to ask whether they're undocumented or not; they just do a head count. So no matter what we decide here in the near future, please keep in mind that we could lose a congressional seat and that's a very real issue. Thank you. [LB963]

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SENATOR ASHFORD: Senator Schimek. [LB963]

SENATOR SCHIMEK: Yes, thank you for coming and thank you for your testimony. I'm glad you mentioned that about the veterans, because I just read, I think it was this week, that there are veterans out there who have served in Iraq and other places who have not gotten the citizenship they were promised. There's big huge delays. And I read about one particular person who came back here, I believe to sign some papers so that he could get the process moving again--it had stalled for some reason--and he was killed over in Iraq when he went back, before he got his citizenship. And I think that that's something that a lot of people don't understand about how difficult that citizenship process is and even our veterans, our people who are on active duty, are having trouble in some cases at least getting their citizenship. And so I appreciate your mentioning that particular aspect. Thank you. [LB963]

LAWRENCE BRADLEY: Yes, Senator. [LB963]

SENATOR ASHFORD: Any questions? Thank you. [LB963]

LAWRENCE BRADLEY: Thank you. [LB963]

SENATOR ASHFORD: Good afternoon. [LB963]

SAM FRANCO: Good afternoon to you, sir. [LB963]

SENATOR ASHFORD: Let me remind everyone in the room that if you don't have an opportunity to testify, we do have a sheet over on the side that you may sign and indicate your opposition or support, as you see fit. Go ahead. [LB963]

SAM FRANCO: Yes. Good afternoon, Chairman Ashford and members of the committee, and may I say a personal hello to Senator Chambers, that he and I go all the way back when we were both young men and he was so helpful to us in establishing the Mexican American Commission, and we say thank you to you, sir. And to Senator Schimek, who has always been such a stalwart supporter, and we thank you and we're sorry to see that you guys are going to go. But we welcome all the young people. [LB963]

SENATOR ASHFORD: Thank you. (Laughter) [LB963]

SENATOR SCHIMEK: And not so young. (Laughter) [LB963]

SAM FRANCO: Well, you know, and I can say that. [LB963]

SENATOR LATHROP: He meant new. He meant new. [LB963]

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SENATOR ASHFORD: Oh. Oh, new! New. I'm sorry. [LB963]

SAM FRANCO: And I can say that. Let me just tell you that, you know, I've been listening to a lot of the testimony that's been offered by the proponents, and I've listened to some of the people in the back, you know, and Senator Chambers addressed some of them and told them, you know, that maybe what we all ought to be able to consider that maybe what we need to do is preserve the dignity and the decorum of this meeting. And to that end, Senator Ashford, let me just say to you that myself and all of the opponents expect and we will continue to do that. You know, there's a section here that talks about all...the elimination of all of the benefits. You know, I see that thing, you know, and I ask myself as to why. In a lot of things, I know you guys that are lawyers, you understand, that sometimes we have to go to motive, and I'm going to bring motive up in a little bit again so...and its intent. So you often wonder why is this? Now all of the competent people, those competent professional people that daily administer all of those sections of federal law and state law, you know, I would not go out and say to these people, you know, you're not doing your job. My God, I certainly don't want to insult the professional integrity of any of these people. My God, they work hard and they know exactly what it is they're doing, so I don't want to do that. Now I want to go ahead and speak to that issue of the Nebraska DREAM Act, and thank you to Senator Schimek for being so persistent in wanting to go ahead and to pursue this. Something that has not been mentioned here, the Eighth Circuit upheld the constitutionality of that particular statute at the time when the people in the state of Kansas, who also falls within the Eighth Circuit, and its constitutionality was upheld. Now having said that, let me bring a couple things to you. And, Senator Chambers, I know you'd love this. You know, we talk about facts and there's a term when we talk about facts. Facts are unusual things. No matter how strong your belief may be to the contrary, let me just tell you it's not going to change the facts. And as the Honorable John J. Sirica said, let's set the record straight. Let me just tell you that we've had some people testify here today, Ph.D.s, this young man over here is a Ph.D., we even have an attorney over there, and we have today doctors, we have lawyers, we have engineers, we have teachers. We have just about everything you can think of and I want to say, isn't that just wonderful that throughout all of those past years there were people who sought to be able to provide hope and opportunity, instead have been able to go ahead and to scuttle anything that even resembled opportunity? I submit to you, Mr. Chairman, I would ask an indulgence for an additional minute so I can finish here. And let me just tell you, because I'm getting to the meat of this thing, and I've heard all of you, quite frankly, address this and saying how important it is. But let me tell you that when I look at this, I can go back to when Woody Varner was there and Chancellor Zumberg was there, and today President Milliken was here, we go look at Chancellor Perlman, people that we work with and are strong supporters and believing in the concept and believing in terms not to give you anything other than an opportunity and that's all we ask for. Now let me just tell you one other little thing that I heard the young man before me here talk about.

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[LB963]

SENATOR ASHFORD: Okay, you're...I appreciate your passion. Just sum it up for me because... [LB963]

SAM FRANCO: I'm going to sum it up with this statement here, sir. [LB963]

SENATOR ASHFORD: Okay. Okay. [LB963]

SAM FRANCO: You know there's those of us that are children of immigrant Mexican and Latinos. We served this country with distinction. We went across that whole stinking, bloody Pacific, Palalu, Okinawa, you name it, Iwo Jima. We went to Europe. We went through, from North Africa, went through Sicily and we went up through Normandy in the Battle of the Bulge and we were there, sons of Mexican and Latino immigrants that opened the gates to Treblinka, to Duchow, and Auschwitz to release people who at another time there was another vindictive individual who felt that maybe he had to treat people different. I submit to you that those of us that are here... [LB963]

SENATOR ASHFORD: Time out. [LB963]

SAM FRANCO: Thank you. [LB963]

SENATOR ASHFORD: Thank you. Okay. [LB963]

SAM FRANCO: Any questions? [LB963]

SENATOR ASHFORD: Any questions? Thank you, sir. We have one other... [LB963]

(UNKNOWN): He didn't identify himself in this public meeting. [LB963]

SAM FRANCO: Yes, I did. [LB963]

(UNKNOWN): I didn't hear you spell your name. [LB963]

SAM FRANCO: My name is Severiano Franco. For those of you non-Spanish-speaking people, all you guys can call me Sam. (Laughter) [LB963]

SENATOR ASHFORD: Did you get...Jono got the name. [LB963]

DARCY TROMANHAUSER: Good afternoon. My name is... [LB963]

SENATOR ASHFORD: Let's try to be just a little quiet, if we can. Okay. Sam. Sam, thanks. Okay. [LB963]

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DARCY TROMANHAUSER: (Exhibit) My name is Darcy, D-a-r-c-y, Tromanhauser, T-r-o-m-a-n-h-a-u-s-e-r. I'm here today on behalf of Nebraska Appleseed, which is a nonpartisan, nonprofit, public interest law project that works for equal justice for all Nebraskans. I think I'll try to hit the high points quickly of my testimony. I think it sounds like it was heard earlier that we only have to look one state to the west if we want to fast-forward to what the results of passing this bill in Nebraska would be. Since Colorado passed a very similar bill a couple of years ago, all 18 state departments had to report back and they're finding that they're now spending an additional \$2 million in increased administrative costs every year with no identifiable savings. That's just one of many reasons, as you've heard, to oppose this bill. In addition to creating an expensive new layer of bureaucracy to the tune of \$2 million per year, it is duplicative since, as you've heard, for all important public benefits programs, such as cash assistance, food stamps and Medicaid, those checks are already in place. It's unnecessary. There's no evidence of a problem. Undocumented immigrants are ineligible for almost all public benefits and, in some cases, even immigrants with proper status are ineligible for assistance. It is a common misperception that undocumented immigrants are using public benefits but, in fact, eligible immigrants with status are underutilizing our benefits programs, such as Medicaid and food stamps. So it's no surprise that in Colorado they found no undocumented who were misusing public benefits. It is likely to harm U.S. citizens and eligible immigrants, since all applicants will have to undergo the additional screening. We were hearing about some of the kickback, you know, mistakes that come out of the system and then the delay that it takes in following up on those. It's important to remember that these benefits programs are often helping families who are in crisis and have very immediate needs, so those small delays can be significant. It creates a backdoor repeal of a very important educational law that, in my belief, ensures that we make the best use of an important asset to our state. And possibly most importantly, it reinforces a public...sorry, public misperceptions about immigrants and fans divisiveness. This sends a message from our state's leadership that immigrants are a problem to be solved rather than an important part of our past and our future. And I think we need leadership that raises the level of discourse for the sake of good public policy founded upon facts. Just as two other quick bits of background, there are increasing substantive local and national studies that show that immigrants, including undocumented, are a great benefit to our economies and to creating employment for U.S.-born workers. The Texas Comptroller recently did the most substantive study of the specific impact of undocumented on that state and found that if you were to actually remove undocumented from Texas the gross state product would reduce by \$17.7 billion per year. The undocumented actually paid far more in taxes than they received in benefits at the state level, though at the local level that is an area that we need to work with. And I guess I'll stop. I had one more comment, but I'll stop there. [LB963]

SENATOR ASHFORD: Okay. That's fine. Any questions? Yes, Senator Schimek. [LB963]

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SENATOR SCHIMEK: Yes, thank you. Would you make your one more comment, please, Darcy? [LB963]

SENATOR ASHFORD: I thought someone might ask that question. You may... [LB963]

DARCY TROMANHAUSER: Well, (laugh) it's again a background piece. I think that there's another common misperception that undocumented are simply choosing not to get in line, choosing to just not deal with the system, and I think folks don't realize that for the vast majority of undocumented there is no line to get in because we have not created that line, and I think it's our responsibility. If those folks are here doing work that needs to be done and it's our responsibility to create a legal pathway for them to have the legal status to do the work that we need doing. [LB963]

SENATOR ASHFORD: Thank you. Thanks very much. Okay, that concludes the opponent testimony. Neutral? How many neutral testifiers do we have? Okay, we're going to do 5 minutes because...which will give you 10 minutes on the neutral side, so...and then that will...we'll conclude the hearing after that. [LB963]

AMY PECK: My name is Amy Peck from Peck Law Firm, 12020 Shamrock Plaza in Omaha. I am an immigration lawyer so you might wonder why I'm testifying neutral. The reason is, is because if this legislation passes and others that are being heard today, I make more money. Litigation against states and state laws are the new frontier for immigration lawyers and, you know, basically on the basis of constitutionality, other flawed issues in these laws, preemption issues and whatnot. But in the greater good, I'm opposed. So I'm testifying neutral today. The statistics are...I'm basically going to set forth some facts that haven't been stated today, because there's been a lot of testimony. In 2002, 14 percent of births in Nebraska were to documented or undocumented mothers. These children, Nebraska's children, are U.S. citizens and we need to be very clear about that. Children born in the United States are U.S. citizens, whether or not their parents are documented. I point this out because any time we talk about immigrants, we need to realize we're talking about family units. Any law that's passed affects not only the undocumented person but it affects their families. Many families we see in our office have a combination of documented and undocumented people. The children might be U.S. citizens; one or both spouses, you know, might be undocumented, but typically we see one documented spouse and the other is undocumented. So you can see how we're talking about a large percentage of people having a huge economic impact on our state. It's not just the undocumented. We need to broaden the scope and see it for what it really is. And as was pointed out earlier, it is not easy to immigrate to the United States legally. Once you're here in an undocumented status, it may be impossible for you to legalize, so the folks aren't choosing to stay this way. It's the failure of the federal government really to address this problem. And it's been a huge problem. If you have a business here and you need

unskilled workers, you can't get them here because there are so few unskilled categories in our immigration laws and those that exist fill up within the first day, practically, so you cannot get unskilled workers here legally. And we have a huge need. We do. It's a complex economy. We have a huge need for unskilled workers and we can't get them here legally, so what are you going to do? For decades the U.S. government has looked the other way when workers have come here without papers to fill this economic need, and no reasonable person in this room could deny that that economic need did exist. Over time, these workers married, they bought homes, they've had children, they've invested in businesses and they've paid taxes. Now suddenly the government, the federal government, has decided they're going to enforce immigration laws, but they haven't passed any laws to sort of fill the gaps that have been missing for 40 years. So, you know, we have a very unbalanced system. The states are trying to fill the gaps and the problem with that is it's only adding to the confusion and uncertainty that already exists. So when you have 50 states with 50 different laws, and the federal government is supposed to be preemptive on this but it's not happening, you have this patchwork of laws and you have businesses trying to exist. You know, maybe businesses have multistate offices, and I have that situation. I represent, you know, international companies with 40 different offices in the U.S. They're trying to get an idea of how to stay legal in this patchwork of laws. Families are trying to figure out how, you know, this is going to affect them, and the bottom line is we have no real economic idea of what these laws are going to do to our state. If you look at what's happened in Arizona and Oklahoma, two states that have passed very stringent state laws, the economic indicators are pretty telling. The first data that's coming in is showing housing markets are going down more than the national average. Businesses are closing. We have schools being affected because children are being pulled out, families are moving. So as your population shrinks, of course the economics are going to shrink too. That is not good for the state. So any time the state is stepping in, we need to look at what is this going to do economically to our state. Are families going to move away? Are businesses going to fail to open or close? You know, what's going to happen to our housing market? So the bottom line is, what I'd like to point out, before Nebraska jumps into state legislation, we really need to have a firm understanding of how these laws are going to impact our economy and our families and, you know, we need to look at what's happened out there. We need to study the issue and not just jump into this because it's politically, you know, pandering to a certain constituency or, you know, playing into the emotion that's out there on this issue. So I'd just like to... [LB963]

SENATOR ASHFORD: Amy, let me...we might have some questions. Does anyone have any questions of...? Could I ask you a couple of questions? On the unskilled workers issue, could you explain, just in...very briefly, the quota system and how that works and what's in place today in the federal system? [LB963]

AMY PECK: Okay. We have a few categories for unskilled workers. One is called H2B, and you can only come here temporarily for less than a year at a time, and there's a

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quota on those and it's eaten up basically by the large employers, such as Disney World and some of these seasonal employers who will apply for 30,000 workers at one time, no joke. So that eats the quota up. And so what happens is the small companies that really need them, such as in Nebraska when a landscape company can't get enough college students to mow lawns during the summer, you know, they don't have that particular visa category available to them. And then on the green card side, you can also petition for an unskilled worker but the problem is there's a 20-year wait before they'll be allowed to immigrate. And to compound with that, if you're already here undocumented, there's no mechanism to legalize. [LB963]

SENATOR ASHFORD: Is there a seasonal worker program? [LB963]

AMY PECK: That's the H2B. [LB963]

SENATOR ASHFORD: That's the H2B. How many seasonal workers are there? How many seasonal worker visas are available annually? Do you know that? [LB963]

AMY PECK: I think it's something like 40,000. It's not very many. [LB963]

SENATOR ASHFORD: For the whole country? [LB963]

AMY PECK: For the whole country, that's correct. And unskilled workers, there's only...I believe 5,000 for the green card side, 5,000 a year. [LB963]

SENATOR ASHFORD: Five thousand? Five thousand a year. [LB963]

AMY PECK: Yeah, so it's ridiculous. [LB963]

SENATOR ASHFORD: Is the...legally, the only option if it...just to...if we...just hypothetically, one of these individuals is...and, quite frankly, under existing practice in the state, there are individuals who can be determined to be illegal and under the system that's in place at the Department of Labor today, correct? I mean they have a system that... [LB963]

AMY PECK: The same system? [LB963]

SENATOR ASHFORD: The same system. [LB963]

AMY PECK: Yes, which... [LB963]

SENATOR ASHFORD: So if someone is determined to be illegally here and immigration officials find that out, what happens to that person? [LB963]

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AMY PECK: They'll be placed in deportation proceedings if...and that's the part that's unclear. I don't know what the state is going to do with this particular information, if they're going to turn over an undocumented person that they find out through the system to the federal government. I don't know that, but if they did, they'd be placed in deportation proceedings which, again, affects the whole family. [LB963]

SENATOR ASHFORD: Well, that gets to...what happens to the children? Let's say the children are...have been born in this country...or there's a cost. Somebody has to take care of the children. Their parents are gone. What happens? [LB963]

AMY PECK: Good question. Sometimes they go back to the, you know, countries that they've never seen before, Guatemala, Mexico, wherever it is, where they don't often speak the language. [LB963]

SENATOR ASHFORD: Well, have you had clients like that? [LB963]

AMY PECK: Absolutely. [LB963]

SENATOR ASHFORD: And is there a social...there's a social cost to that. [LB963]

AMY PECK: Absolutely there's a social cost to that. [LB963]

SENATOR ASHFORD: Okay. [LB963]

AMY PECK: And if I could just add that statistic on 20 percent of the data being inaccurate is true. It's the Social Security database is 20 percent inaccurate. There's been all sorts of litigation over this. There was a federal injunction recently enjoining the federal government from moving forward with a program that would require certain verifications to be made, and the federal judge said, the system is so inaccurate I can't...we can't move forward with it. So they enjoined the federal government from moving forward. And that was the E-Verify system, which is very similar to SAVE. They use the same data, which is very inaccurate, so... [LB963]

SENATOR ASHFORD: So that just so I understand what you just said, the SAVE system uses the same data that the other system that has been in... [LB963]

AMY PECK: That the E-Verify does. [LB963]

SENATOR ASHFORD: ...the E-Verify that has been enjoined and... [LB963]

AMY PECK: That's correct. [LB963]

SENATOR ASHFORD: And it's the same data. [LB963]

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AMY PECK: Same Social Security base, that's right. They use...they have an additional component to SAVE, but the majority of it is this Social Security verification. So, yeah, 20 percent inaccurate. [LB963]

SENATOR ASHFORD: Huh. Okay, thanks, Amy. [LB963]

AMY PECK: Thank you. [LB963]

SENATOR ASHFORD: Do we have any other neutral? Okay. And I believe that after this testifier then we'll move on to the next bill. Good afternoon. [LB963]

MARSHALL HILL: (Exhibit) Chairman Ashford and members, my name is Marshall Hill, H-i-l-l. I am the executive director of the Nebraska Coordinating Commission for Postsecondary Education. To remind you, the Coordinating Commission is established in the Nebraska Constitution and statutes to oversee higher education issues, comprised of 11 citizens appointed by the Governor and confirmed by the Legislature. I'm testifying today in a neutral capacity because the commission, as a whole, has not had an opportunity to fully discuss LB963, nor has it provided any specific direction regarding my testimony. But the executive committee of the commission, however, did ask that I provide some information and analysis drawn from recent reports that we've produced or others have. Two aspects of the bill draw the attention of the commission. First, we remain concerned that the educational attainment of Nebraska's minorities, and frankly those of every other state's, remain below that of whites and Asians, leading to higher social support costs, missed economic opportunities, and potentially less rewarding lives. Our commissioners struggle with the complex issues of illegal immigration, as do you, but on the issue of allowing the children of undocumented immigrants, students who graduate from our high schools and meet other conditions, to attend our public institutions at in-state tuition rates, the commissioners have in the past come to the pragmatic realization that better educated residents are simply better for the state than less educated residents. They've also acknowledged that the students in question are likely to come from low-income families and, for that reason alone, they're less likely to attend college in the first place. And finally, because those students are not citizens, they cannot receive federal or state financial aid. So unless they have a helpful patron, access to in-state tuition rates therefore would be the only favorable financial encouragement available to them. The second related concern affects the recently begun but very successful Access College Early Scholarship Program, begun by the Legislature last year. That program pays the college tuition costs of needy high school students who take college courses while still in high school, dual enrollment courses. Students in dual enrollment courses stay in high school at higher rates, they graduate at higher rates, they enroll in college at higher rates, and they persist at higher rates, even if you adjust for the low socioeconomic status of those students. The requirements of LB963 would require verification of citizenship status and quite possibly disqualification

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of...definitely disqualification of nondocumented students. So our concerns about barring those students from the program parallel the points I expressed earlier. Then lastly, I'd like to put these concerns in context. The Coordinating Commission is charged by the Legislature to do statewide higher education planning. The principal mechanism for that is the statewide comprehensive plan for postsecondary education. That's been developed over a long period of time. It's periodically updated. It's developed with full input from the institutions. The materials I've provided, particularly the highlighted areas, speak in many places of the need to address the unequal educational attainment of various population groups in the state. The commission is concerned that the removal of access to in-state tuition rates would further cause differences in educational attainment for just the populations that we most need to move forward. There have been many changes in this country. We all see those. But education, especially higher education, remains the principal tool of economic mobility in our country. To deny access to a useful tool by the people who need it the most causes us considerable concern. Be pleased to respond to any questions you might have. [LB963]

SENATOR ASHFORD: Any questions? Thanks for your testimony. [LB963]

MARSHALL HILL: Thank you. [LB963]

SENATOR ASHFORD: (See also Exhibits 5, 6, 7, 8, 9, 10, 11, 12, 13.) Senator Friend. [LB963]

SENATOR FRIEND: Thank you, Mr. Chairman. Members of the Judiciary Committee, thank you very much. Quickly, it's been alluded or it's been implied a little bit that, you know, we question necessity, all those things. Those are legitimate, I think. Question the accuracy of the SAVE system; I'd like to see some of those numbers. That's valid, valid points. This is not a backdoor attempt to do anything. I dropped this bill in a long time ago. I could have done it after Senator Schimek left. This is an up-front attempt, this is a clear and vibrant attempt, because I respect Senator Schimek enough to say she can have the voice, and all of you for that matter. Senator Chambers is going to be gone next year too. The backdoor attempt would have been for me to wait, wouldn't it? I can't look at him when I do this. (Laughter) I...because I'm serious about this. If I really had an attitude about it and I wanted it to go away and I wanted the backdoor attempt to be secured, it would have been an easy approach for me. I want to thank the committee again. That's all I have. [LB963]

SENATOR ASHFORD: Thanks, Senator Friend. Do we have any questions of Senator Friend? Thank you. Thank you, sir. [LB963]

SENATOR FRIEND: Thanks for the time. [LB963]

SENATOR ASHFORD: Okay. LB1170. Senator White. [LB1170]

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SENATOR WHITE: Good afternoon, members of the committee, Mr. Chairman. My name is Thomas White, W-h-i-t-e. I am a senator representing Legislative District 8 in Omaha, Nebraska. Today I am pleased to have the opportunity to offer LB1170. LB1170 would give the Attorney General, a public subdivision, or a citizen of Nebraska a cause of action against an employer who knowingly or recklessly recruited or employed illegal immigrants. The cause of action against that employer would be for recovery of costs related to the provision of public services to illegal immigrants, their families, spouse or other dependants. And I believe it is implied in the bill but not expressly stated that it is established were cause to bring into that jurisdiction by the reckless or knowing behavior of the employer. I know you've had a long day and you have more bills ahead of you. I will try to be brief. I would like to tell you a couple of things, however. First of all, we have focused in illegal immigration on often the tragedy that drives these folks to our shores and makes them wish to become part of our community and work and live here, and that is a legitimate and fair story. Some of the things they've endured are beyond speaking and many of them are driven here by oppression or true desperation. There is, however, another side of the story that we are not always aware of. There are those among us who have made enormous amounts of money, enormous amounts of money by preying on the desperation of illegal labor in order to make profits greater than they could if they hired citizens who could regularly and fairly enforce their rights under the laws of this state. I will give you personal examples that I have learned of as an attorney. One of my more bitter experiences was through friends who worked for a large packing company. They sent to me an illegal immigrant who had seriously injured their hand. They worked as an unskilled laborer in a packinghouse. They could not file or would not file for worker's compensation benefits to which they would be entitled because it was made quite clear to them at the time of the injury that if they filed a worker's compensation claim they would be turned over to INS and deported. As a result, the immigrant, we had tried to counsel him to file a claim but recognize the risk they would be deported. Nevertheless, they elected to take a very small cash payment from the employer and got their treatment from a public emergency room. They were then maimed, and their ability to earn money was substantially reduced, and the employer had used that person and others in their situation to drive down fair wages that should have been paid to citizens or others who could have defended their rights, who avoided worker's compensation expenses, and who successfully preyed on that worker. I followed up by talking to a number of different constituents and others I know in the area and I was advised that not only were billboards at times placed in Mexico asking people to come to Nebraska for labor when they crossed the border illegally, but also at different times buses were provided with recruiters to bring people who had crossed into Texas up to Nebraska to fill jobs in many of the packing companies. This is flatly improper. It is also, in my view, illegal. Unfortunately, the bitter history of immigration in this country in my lifetime has been that in the early eighties there was a promise that if we gave amnesty to all those that were here illegally, we would close the border and enforce our laws. Believe it was in

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'82 or '83. And I think approximately 6 million or 7 million people became American citizens under that program. We now have many times more and for over now 20 years industry has exploited cheap labor to depress wages that once supported whole families. When I was a young man in a packing plant, one person could support a family of four, if not in luxury at least at a bare minimum level of decency. That is no longer true. And you look at what has happened to real wages. Illegal labor has played a major portion in their ability to do these things; similarly in the construction industries. Now the federal government has flatly refused to do this. I submit to you, without question, that is because there is an economic incentive for powerful business groups to exploit desperate people. That is the federal government's business and, as I've read of some of the opponents' testimony that will be submitted to you in writing, they certainly have rights in many areas where we cannot interfere. However, I submit to you that when such illegal behavior causes a substantial loss to the citizens and taxpayers of the state of Nebraska, we have every constitutional and legal right to stop it and to recapture the money that illegal behavior has cost us, money such as the cost of treating that unfortunate packinghouse worker that I met with who lost his thumb but was never paid for by worker's compensation, but instead was absorbed by the taxpayers. This bill no longer shows an absolute distrust of the will of established government to enforce our laws. This bill states that any citizen may bring a cause of action against any employer because bitter history has taught us we cannot trust our own government to enforce our own laws to protect our citizens. So the citizens under this bill will have the right to take away not all the profits, but take away back those costs that businesses, that have callously, knowingly exploited desperate people, have shoved off onto the public. And these costs include but are not limited to hospital bills. And I would submit to you I don't want to turn any desperate sick person away from a hospital, but if somebody has brought them here and dumped them on our doorstep and profited by it, I feel very comfortable in taking the money away from them that it costs us to take care of them. Similarly, with education, I want no child denied an education. It is dangerous for us to not educate children wherever they come from. But if people are making money by cutting the wages, by illegally importing labor, by underpaying them to the point where they need public assistance, where they cannot pay reasonable property taxes, cannot pay reasonable taxes to support the burden that they put on our community, why, so they can take profits out of the state and fuel higher profits for multinational corporations, I have absolutely no problem asking this committee and the Legislature to pass a law enabling and empowering our citizens to recover proper amount of damages that they've incurred by illegal behavior. I ask you to please advance this bill and recognize that this bill is not about punishing those who are desperate and come here out of a lack of hope for safety, but rather those who have callously exploited them and, in the process, exploited the decency and compassion of the American people by taking wrongfully the public services that we have paid for. I will be happy to try to answer any questions that the committee may have. [LB1170]

SENATOR ASHFORD: Senator Pirsch. [LB1170]

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SENATOR PIRSCH: Just a question with respect to the language, and I take it...is it...is it clear from the language employed that...because it says "or a citizen of the state," that the underlying spirit of what...and I...tell me if I'm not correct on that, Senator White, but is it, when you talk about costs related to the provision of recovery of costs, that would be on behalf of the respective government, whether that be a political subdivision or the state, as opposed to the individual's pecuniary loss? I paid taxes for that year and... [LB1170]

SENATOR WHITE: Yes, and if it's not clear, certainly an amendment would be more than welcome. But, yes, they're called private Attorney General provisions, generally, Senator, and that is in cases where the Legislature in this or other states believe there may not be the political will to enforce the laws, the salvation of the state is the watchfulness of its citizens but sometimes we have to give them the right to stand up in court and be effective, not just watchful, and that's what that's intended to do. [LB1170]

SENATOR PIRSCH: Yeah. Are there other statutes that exist in law that give the citizens... [LB1170]

SENATOR WHITE: Yes. If you, for example, run a Westlaw search on private Attorney General, private cause of action, yes. I would say another amendment that would be made is that it's on behalf of the public entity and the money shall be paid back. I also would recommend that there be a specific allowance for attorneys' fees so that the citizens can actually obtain attorneys to enforce the laws. So those are all, I think, reasonable amendments. [LB1170]

SENATOR ASHFORD: Thank you, Senator White. Yes, I'm sorry, Senator Schimek. I was backing... [LB1170]

SENATOR SCHIMEK: Thank you, Mr. Chairman. Senator White, the line in here that says that public education costs could be retrieved, are you talking K-12? [LB1170]

SENATOR WHITE: Yes. Federal law only says we must provide it. Federal law, for example, allows us to tax a packing plant to pay for the K-12. I'm aware of nothing in federal law that says if we find that packing plant, for example, was running busses up from the border full of illegal labor, bringing families in, dumping them on the public educational system, that they cannot be held responsible for the additional costs. Certainly, and I submit 100 percent, every child deserves an education. I will oppose anything that doesn't. But if people are making a profit by bringing in illegal labor and their families, dumping them on the tax system, underpaying those folks as well, then, yes, I do believe we can lawfully recapture the additional costs and return it to the public coffers. Because what they are doing, Senator, is illegally shifting the cost of doing business on to the public. [LB1170]

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SENATOR SCHIMEK: Well, you're an attorney and I'm not, and I... [LB1170]

SENATOR WHITE: That may not be a benefit, Senator. [LB1170]

SENATOR SCHIMEK: ...I hate to even raise the question but it was actually, I believe, the U.S. Supreme Court that said, yes, you do have to provide the education. [LB1170]

SENATOR WHITE: No question about it. [LB1170]

SENATOR SCHIMEK: You do not think then that something like this would become a matter of litigation if indeed... [LB1170]

SENATOR WHITE: Oh, I'm certain it will be. That's the point, is to get it into court. And do I think that we have a large packing company that...and we have communities, and we can talk about Lexington, we can talk about Madison, we can talk about Norfolk, we have communities where hundreds of people who have been proven by subsequent INS raids to be hired illegally, in numbers that could not be accidental, were hired and then laid off, and then called on all kinds of public services, including education, that I know of nothing that...I mean, if we sue them to recapture that money for the schools, for the hospitals that provided services to those folks, absolutely I expect them to challenge this law, and I have no problem with that. And if the federal government decides it's unconstitutional, well, so be that. But at least in the matter of the state we are no longer going to be quietly taken advantage of by big companies that know what they're doing. [LB1170]

SENATOR SCHIMEK: Thank you. [LB1170]

SENATOR WHITE: But don't deny children an education. [LB1170]

SENATOR SCHIMEK: Thank you. [LB1170]

SENATOR ASHFORD: Tom, could we get at the same...yeah, and first of all, I agree with you. I think that the evidence is that people are here illegally primarily because they're here working, trying to work or being recruited to work, or knowingly or recklessly being recruited to work here, and I don't believe these people are coming here to break the law, to rob a bank, I think,... [LB1170]

SENATOR WHITE: No. They're desperate. [LB1170]

SENATOR ASHFORD: ...though they have done that and that's...but...but that's why they're coming. [LB1170]

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SENATOR WHITE: Yes, they're desperate and they want to provide better for their families. And I can't...I mean, my family came over on a famine ship from Ireland. [LB1170]

SENATOR ASHFORD: Right. [LB1170]

SENATOR WHITE: So I can't fault them that. But my family was also brutally taken advantage of in the coal mines, with my grandfather...great-grandfather going to work at the age of eight in a coal mine. [LB1170]

SENATOR ASHFORD: Well,... [LB1170]

SENATOR WHITE: So my point is you've got desperate people, but you also have people encouraging and prospering on that desperation. [LB1170]

SENATOR ASHFORD: Right. Well, they're being enticed and they're...and some of these immigrants are in desperate situations in the country, the countries that they're in, not dissimilar from your ancestors and my ancestors who had the same... [LB1170]

SENATOR WHITE: Yes. Absolutely. Yes. We all came. Almost all of us can say that. [LB1170]

SENATOR ASHFORD: ...for somewhat the same, for the same reasons, and they were enticed in different ways. And in those years there were...much larger numbers were allowed into the country than are today, so it's... [LB1170]

SENATOR WHITE: Yes. [LB1170]

SENATOR ASHFORD: I just have one question. Would it be...you've drafted it this way, but it would be your suggestion a private cause of action. Is it... [LB1170]

SENATOR WHITE: But it's not just private. I would... [LB1170]

SENATOR ASHFORD: But also the Attorney General. [LB1170]

SENATOR WHITE: Absolutely. [LB1170]

SENATOR ASHFORD: And you feel this is a more appropriate way to handle this than creating a criminal sanction? [LB1170]

SENATOR WHITE: Yes. [LB1170]

SENATOR ASHFORD: And why is that? Why would a criminal sanction not be...

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[LB1170]

SENATOR WHITE: A number of reasons. First of all, if you can take the profit out of an activity, truly take the profit out of it, you can stop the activity more effectively than if you jail one or two executives. If you can take it so that a big packing company recognizes we now face a lawsuit for several million dollars from the city of Lexington because INS took out 200 of our 300 employees, let's say, illegally, and at that point they will no longer recruit, send busses down or encourage folks to come here out of desperation. I think that stops it a lot better than jailing anyone. [LB1170]

SENATOR ASHFORD: Okay. Any other questions? Thanks. [LB1170]

SENATOR LATHROP: Maybe just briefly. [LB1170]

SENATOR ASHFORD: Yes, Senator Lathrop. [LB1170]

SENATOR LATHROP: The idea of a private cause of action, this would permit the Attorney General or, for example, the Omaha Public Schools could bring the cause of action. [LB1170]

SENATOR WHITE: Absolutely. [LB1170]

SENATOR LATHROP: Is it your thought that if, for example, Omaha Public Schools instituted a cause of action, they could also maintain that for the hospital expenses? In other words, once somebody brings a cause of action for any one of these elements then they can include all of the costs in one cause of action? [LB1170]

SENATOR WHITE: Yes. [LB1170]

SENATOR LATHROP: Okay. [LB1170]

SENATOR WHITE: Yes. [LB1170]

SENATOR LATHROP: That's what I wanted to know. Thank you. [LB1170]

SENATOR ASHFORD: Thank you, Senator White. [LB1170]

SENATOR WHITE: Thank you for your courtesy very much. [LB1170]

SENATOR ASHFORD: Thank you. How many proponents do we have here? Okay, how many opponents? All right, we're going to go to 5:00 with the proponents and then we'll go from there. [LB1170]

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ROBERT HOLLISTER: My name is Robert Hollister. I'm from Omaha. I have a master's degree in labor and human resources from the Ohio State University. I have firsthand experience in an employment situation that has been severely and inexcusably damaged by a greedy employer hiring fraudulently documented illegal aliens. A very high percentage of new hires in the last six years at a certain Omaha manufacturer are illegal aliens. My best friend and coworker there was born in Mexico, but worked hard to become a U.S. citizen after the 1986 amnesty. He has personal knowledge of the rampant fraudulent documentation of the new hires. Most of them do not speak English well enough to have passed a citizenship test, and a call to the U.S. Department of Labor confirmed that unskilled laborers do not get green cards. Nationally, workers suffer \$90 billion of suppressed wages annually and that was partly squeezed from my battered paycheck: \$300 a week in lost incentive pay, an end to semiannual cost-of-living raises, lost time allowances covertly deleted from my daily production reports, an end to the defined benefit pension plan, and the arrival of high-deductible insurance plans and greatly increased employee contributions to the premiums, and all of this from an employer making tens of millions of dollars annually from being a favored vendor to Nebraska Furniture Mart. So in addition to suffering pay and benefit cuts, my tax dollars are subsidizing a greedy employer by providing welfare, subsidized housing, Medicaid, food stamps, etcetera, etcetera, to their illegal new hires in mostly low-paid material handling jobs. If Nebraska employers are not required to verify Social Security numbers and terminate or, better yet, not even hire fraudulently documented workers, illegal aliens will flock to Nebraska as a sanctuary state as other states enforce these requirements. Also, my wife owns a small business and pays unemployment compensation taxes. After eight years in business, she had paid no claims and had the lowest tax rate. Then about two years ago the state of Nebraska raised her rates 400 percent. The explanation was that the best rated businesses were going to cover claims that could not be specifically assigned to other businesses. That did not make sense at the time. No good deed will go unpunished. But now I support LB963 to ensure that this tax money does not go to illegal aliens when Social Security numbers are checked for fraud and nonmatches. Now that unemployment claims have reached four-year highs and an extension of benefits beyond 26 weeks should be added to the economic stimulus, no benefits should go to anyone other than American citizens and legal residents. That is what is fair to Nebraska businesses and unemployed Nebraskans. [LB1170]

SENATOR ASHFORD: Thank you. Any questions? Thank you, sir. Next proponent. [LB1170]

MARGIT PAYNE: Hi. Is it close enough? My name is Margit Payne. I'm an everyday grandma. I don't have any notes. I just want to tell you I'm an immigrant. From my very first paycheck, on, in this country, I spend it in this country. I paid my taxes, my Social Security. I earned my Social Security. It's not very much, but I earned it. I get most of my news through newspaper and through television. About a year ago we saw a show

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on, I think it was, 60 Minutes, in Colorado where a contractor and somebody interviewed all the illegal employees he hired. There was one house, had 16 people living in it. Was one man with his wife and two kids. She kept the house for the other 13 or 12. All the money they made went right back to the states. So you can...who can tell me is profiting more from those illegal workers, the United States or Mexico or the employer? And they admitted they didn't want to be American citizen. They wanted to stay here long enough to make money, send it home. So how can this help the American economy? Also, when you have 16 immigrants, it turns into a slum. They'll park their cars. You can't park 16 cars in front of one house. They'll park their cars all over the lawn, everywhere. It turns into a slum. If they really want to become a citizen, they would; and if they would get proper pay they would have enough pride to buy a house, they would take care of it and they would fit into society a whole lot more than if they're 16 living in one house. That's all I'm have to say. I don't think the American economy is making any profit on the illegal that takes all their money back home instead of spending it right here. If I'm wrong, I'm sorry, but that's how I feel. I pay mine, you know. Okay? [LB1170]

SENATOR ASHFORD: That's fine. No one is saying you're wrong, Mrs. Payne. [LB1170]

MARGIT PAYNE: Okay. [LB1170]

SENATOR ASHFORD: Any questions? Thank you. [LB1170]

MARGIT PAYNE: Okay. [LB1170]

SENATOR ASHFORD: Yes, sir. [LB1170]

DIMITRY KRYNSKY: (Exhibit 16) My name is Dimitry Krynsky, K-r-y-n-s-k-y, and I testify for support of LB1170. My reason is I support LB1170 which allow citizens to sue those who employ illegal aliens, in order to recover cost paid for public services used by those aliens. Under present situation, illegal aliens work for lower than customary wages and, by the virtue of their willingness to work for low wages, they push scale of wages down for everybody. Because of this and because many of them are paid under the table, revenue by which public services are paid are pushed down. At the same time, those aliens and their families are using those services. Average taxpayers are taking the tab. This is highly immoral relationship. Illegal aliens are exploited, reckless employers flourish, and average taxpayer subsidize it. It is time to restore order and those who are guilty shall pay for it. The LB1170 is good tool for this purpose. [LB1170]

SENATOR ASHFORD: Thank you, Mr. Krynsky. Any questions of Mr. Krynsky? Thank you, sir. Next proponent. Come on up. [LB1170]

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BOB GRGURICH: State senators, my name is Bob Grgurich. I'm from south Omaha. [LB1170]

SENATOR ASHFORD: Can you just spell your last name so we get it for the record? [LB1170]

BOB GRGURICH: G-r-g-u-r-i-c-h. I spent 30 years in the packinghouses. My father, brothers and I all worked to get a living wage during those years. I'll tell you how far back I go. The wage in the packinghouses when I went there was \$4,000 a year. And we brought it up. When I retired the wage was \$13 to \$15 an hour. A man could, at that time, that's years ago already, you could support a family on that, but no more. I understand the starting wage today is about \$7. So during those years...by the way, I am the son of an immigrant, and my father was an immigrant. The one gentleman here talked about knowing the veterans. I am a veteran. I was in Korea when a friend of mine from south Omaha, Eddie Gomez, got killed, and I went to see his father when I got home. His father hung his Medal of Honor on the mirror behind his barber chair. So I know where we come from. But the illegals have completely ruined the base wage in the packinghouses now. So any questions? [LB1170]

SENATOR ASHFORD: Any questions? Thank you for coming today. [LB1170]

BOB GRGURICH: Sure. [LB1170]

SENATOR ASHFORD: Next proponent. [LB1170]

ALLEN BLACK: Hi. My name is Allen Black from Bellevue, Nebraska. I'm a prior service Air Force officer. I'll try to make this quick. I have seen three professional studies from the Center for Immigration Studies from Harvard and from the Government Accounting Office that all pointed to a definite net cost that is a drain on the economy of sustaining illegals and alien families, somewhere around \$7,000 a year. Iowa is paying somewhere around \$240 million a year to subsidize illegals. Now my question is, why are they above the law that they can violate the borders, come here and demand American benefits, when our own people right here, there are plenty of poor Americans that will do jobs if you will pay them anything. What happened in Atlanta, Tyson chicken case, okay, there was an ICE raid on the chicken plant. They raised the wages from \$6 to \$7 to \$9 an hour, and there were hundreds of Americans that had been on welfare applying for those jobs. Now Tyson Foods, to their credit, put out a bus system to take people to work so they could start earning money and getting off the system. That's what we need to be doing. I mean, I'm not sure what we don't understand about this. Now I have an interpretation of the Fourteenth Amendment that says that anchor babies are in fact not citizens. It has to do with the language regarding the jurisdiction thereof. The jurisdiction is with respect to the native country, so if the mother is from Mexico or any other nation, then the baby is a citizen of that nation. They are not granted automatic birthright

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citizenship. That is a misinterpretation of the constitution. Finally, the cost I'm not hearing today is that if you spend a few days in Los Angeles County and talk to the people there about the impact of crime, drug trafficking, multilingualism, all these things have a direct cost. It costs to...the police officers are not allowed to inquire as to citizenship because it's politically incorrect. The job of the police is to enforce the law. It's not their job to do what's politically correct. So I would ask that you look at cities that have a large illegal alien population and ask yourself, is that what you want for Lincoln and Omaha? Is that what you want for Nebraska? That's all I ask. [LB1170]

SENATOR ASHFORD: Thank you, sir. Any questions? We need a sign...do we have sign in? Good, there we go. [LB1170]

SUSAN SMITH: My name is Susan Smith, that's S-u-s-a-n S-m-i-t-h, in support of LB1170. I'm sorry, committee Chairman, committee members, thank you for... [LB1170]

SENATOR ASHFORD: No, that's fine. Just go ahead. Did we get your name? I'm sorry. [LB1170]

SENATOR LATHROP: Yes. [LB1170]

SENATOR ASHFORD: Yes, we have it. Okay. Go ahead. Sorry. [LB1170]

SUSAN SMITH: Yes. I appreciate this opportunity to be a part of this process in support of LB1170. We refer to the Federation for American Immigration Reform data that tabulated the annual cost for Nebraska taxpayers for emergency medical care, education, and incarceration for illegal aliens here at \$126 million in 2006. That's up to \$213 million by 2010 and possibly \$367 million by 2020. That is just for here in Nebraska. A Washington Policy Center report in February 2007 corroborated these statistics. FAIR estimates that based on U.S. Department of Education figures of per pupil expenditures in 2004, Nebraska taxpayers spent \$104.1 million per year to funnel illegal alien children through Nebraska public schools. The Nebraska Department of Education last November distributed its figure of \$23-plus million for 2005-2006 statewide expenditures for limited English proficiency programs, many of which include illegal aliens. Employers easily can use the employment verification system to certify that a potential employee is not an illegal alien. Examining federally approved documents to establish both a proper ID and authorization for employment to verify that documents reasonably appear genuine under penalty of perjury. Failing to comply with these regulations supposedly subjects employers to civil penalties and criminal charges and fines. However, as we have seen from the former Operation Vanguard, federal enforcement is not constant. As other states pass immigration enforcement measures, illegals simply move to states like Nebraska that have not passed such measures. Illegal aliens themselves tell of self-deporting to other states following immigration raids and state legislation. Federal statutes are not adequate to protect the taxpayers. The

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Immigration Service released a new I-9 form last December to help companies verify new employee's status, but recertify current ones only if their supporting documents expired. Present employees whose documents have not expired do not have to complete this form, leaving a gaping hole in verification. And so I would ask that the committee please advance LB1170 to the floor so that there can be a debate. And thank you for your time. [LB1170]

SENATOR ASHFORD: Thank you for your comments. [LB1170]

SENATOR LATHROP: Can I ask just one question? [LB1170]

SENATOR ASHFORD: Yes, Senator Lathrop. [LB1170]

SENATOR LATHROP: Are you with a particular group? Are you here on our own? [LB1170]

SUSAN SMITH: No, I work with several groups within Nebraska and I... [LB1170]

SENATOR LATHROP: Do they have a name? [LB1170]

SUSAN SMITH: Well, Nebraska Taxpayers for Freedom is one. Nebraskans Advisory Group is another. [LB1170]

SENATOR LATHROP: Okay. That's all I had. [LB1170]

SENATOR ASHFORD: Thank you. Next proponent. How many other proponents do we have here? Okay, this looks like one more over here. All right. Yes, sir. Good afternoon. [LB1170]

PAUL MEYER: My name is Paul Meyer, M-e-y-e-r, Omaha, Nebraska. I would first like to thank Senators White and Friend for introducing both LB1170 and LB963. I would also like to say that we all recognize that both Congress and the President have been derelict in their duty for not protecting this country and the citizens of this country. That does not give the legislative body the right to be derelict in its duty to protect the citizens of its state. A county without borders is no country, and a state without borders is no state. I realize that this committee, this probably whole legislative body, is under a lot of pressure from poor amnesty groups, like La Raza, LUAC (phonetic), Appleseed, and perhaps even the country of Mexico itself. That does not give it the right to pass or not pass anti-illegal alien measures. We are not against legal immigrants; we are simply against illegal aliens. Oklahoma and Arizona are already passing strict anti-illegal measures. Kansas, Missouri are about to do the same thing. That leaves the state of Nebraska ripe for illegal...for rampant illegal alien expansion unless you pass these and other bills. Now if you want to see a city that has been decimated and desecrated by

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illegal aliens, all you have to do is go over to Iowa, to Storm Lake, Iowa. My neighbor's parents live there and they said this town has so drastically changed you can't believe it. Therefore, if you want this state's...or cities in Nebraska, the state of Nebraska, in the entire country, just keep on going with the illegal aliens. That's all I have to say in regards to that bill. [LB1170]

SENATOR ASHFORD: Thank you, sir. Any questions? Thank you, sir. Good afternoon. [LB1170]

JEROME WARNER: Good afternoon. My name is Jerome Warner, J-e-r-o-m-e W-a-r-n-e-r. Nobody can see the broad picture, I'm afraid. The national North American Union is supposed to be formed in 2010 and nobody seems to know anything about it, and I know why they don't know. It's the vast left-wing conspiracy who's keeping us from reading about it in the paper, because the vast left-wing conspiracy owns the papers, more or less. They control it. Okay. Now if more Mexicans come in, which is made possible because of these employment practices of these people who hire illegal aliens, it's better for the NAU, because the bigger percentage of population of Mexicans and illegal Mexicans makes it much easier for the NAU to come in existence. That's the North American Union. And then when they come into existence, the little questions of illegal immigration or whether they go to school here or not will be moot. This nation will go down in history of being the worst thing since I don't know what, probably crucifixion. So that's why I'm against these employers to hire all these illegal Mexicans, which makes it a bigger magnet for more Mexicans to come in. And when it comes to a vote on whether they want the NAU or not, I think the extra Mexicans here will say yes, whereas the native Americans are more liable to say no. So that's it. [LB1170]

SENATOR ASHFORD: Okay. Thank you. I'm not sure, I don't think we have any questions, but thank you for your... [LB1170]

JEROME WARNER: Do you know about the NAU, sir? [LB1170]

SENATOR ASHFORD: No, but I'm not sure that's the topic of the hearing today, but we can talk about it later outside, if you want. But we're going to move on. [LB1170]

JEROME WARNER: I'd be glad to. [LB1170]

SENATOR ASHFORD: No, we're going to move on. Thank you. [LB1170]

JEROME WARNER: I mean outside, sir. [LB1170]

SENATOR ASHFORD: Well, now...I can't leave now, but later. All right. Any other proponents? Opponents? How many opponents do we have? Okay. Come on over. Good afternoon. [LB1170]

NORMAN PFLANZ: (Exhibit 19) Good afternoon, Chairman Ashford. My name is Norman Pflanz and I'm a staff attorney with Nebraska Appleseed Center for Law in the Public Interest. My last name is spelled P-f-l-a-n-z. We are a nonpartisan, nonprofit, public interest law project dedicated to equal justice for all Nebraskans. I'm here today to testify in opposition to LB1170. While we strongly agree with the desire to hold unscrupulous and exploitive employers accountable, employer sanctions focused on workers' immigration status are not the solution. We are opposed to LB1170 because we believe that sanctions against employers who hire undocumented workers are ineffective, preempted by federal law, that they hurt workers, and that they will have a negative effect on our state's economy. First, employer sanctions have been in place at the federal level since the passage of the Immigration Reform and Control Act, the IRCA, in 1986, but have proven to be ineffective. The act's intent was to make it more difficult for undocumented workers to find employment in the U.S. and, thus, discourage them from immigrating here. But instead, federal employer sanctions have failed to reduce the number of undocumented workers and have resulted in increased exploitation of workers and discrimination. Second, the IRCA also specifically prohibits states and localities from imposing their own employer sanction schemes, stating that federal law preempts state and local law in this area. Thus, not only would this bill exacerbate the failed federal approach that has led to the weakening of all workers' ability to fight for better conditions, it would likely be preempted by federal law as well. In fact, 32 local employer sanctions laws have been defeated in court, rejected or abandoned. It is likely that this...that if this bill should become law, it would be challenged in court, and state funds that would be spent litigating the law would be better invested in guaranteeing fair and safe conditions for all workers in Nebraska. Third, as we have seen, employer sanctions hurt workers because some employers use laws to exploit workers who are afraid to report abuse. Employers intimidate these workers and rely on their fear of being reported to immigration authorities. Oftentimes, these bad-apple employers hire workers who have false documents, yet only take an interest in workers' immigration status when workers file a work-related injury, complain about unlawful working conditions, file a claim for unpaid wages or try to organize the workplace. Fourth, an employer sanctions law will also increase discrimination against work-authorized citizens and immigrants as some employers, who are trying to comply with the law, will discriminate against individuals who they perceive as, quote unquote, foreign. Three consecutive studies by the General Accounting Office after the establishment of federal employer sanctions found that 10 percent of employers admitted that fear of sanctions led them to discriminate against U.S.-born and legal workers because they were, quote unquote, foreign sounding or foreign looking. Also, fifth, sanctions will hurt our state's economy. States that have passed anti-immigration bills, such as Arizona and Oklahoma, are seeing immigrant families abandon their state and their economy. Labor commissioners and economists have expressed concern about the damage that these exoduses might cause to states' economies, because studies show that immigrants represent a sum contribution to states' economies. More

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importantly, strategies such as... [LB1170]

SENATOR ASHFORD: I'm going to ask you to... [LB1170]

NORMAN PFLANZ: Sure. [LB1170]

SENATOR ASHFORD: Okay. [LB1170]

NORMAN PFLANZ: Thank you. [LB1170]

SENATOR ASHFORD: No, just sum up. [LB1170]

NORMAN PFLANZ: If I could just...if I could just add that we feel that real solutions to the immigration issue are stronger wage and safety laws. As we have put in our fact sheet, these are a different kind of employer sanction that applies to all workers, rather than just focusing on a particular subset of workers. Thank you. [LB1170]

SENATOR ASHFORD: Okay. Any questions? Senator Schimek, then Senator Lathrop. [LB1170]

SENATOR SCHIMEK: No, that's okay. Go ahead. [LB1170]

SENATOR LATHROP: I do have a question. You suggested that there is...and I'm familiar with this area, notwithstanding the fact that I'm an attorney, I don't know anything about immigration law so I'm going to ask you this question, and that has to do with federal preemption. [LB1170]

NORMAN PFLANZ: That's right. [LB1170]

SENATOR LATHROP: You've suggested that a bill like this, if it became law, would be preempted by federal statute. [LB1170]

NORMAN PFLANZ: Yes. [LB1170]

SENATOR LATHROP: What federal statute is that, that would be...that would preempt this? [LB1170]

NORMAN PFLANZ: Sure. [LB1170]

SENATOR LATHROP: Do you have that? [LB1170]

NORMAN PFLANZ: The federal statute is 8 U.S.C. Section... [LB1170]

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SENATOR LATHROP: Pardon me? [LB1170]

NORMAN PFLANZ: ...8 U.S.C. Section 1324a, and then (h)(2), and that states, "The provisions of this section preempt any state or local law imposing civil or criminal sanctions, other than through licensing and similar laws, upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens." [LB1170]

SENATOR LATHROP: So there's nothing we can do to create a cause of action against somebody who hires an illegal, because that's preempted by federal law? That would be your judgment... [LB1170]

NORMAN PFLANZ: That is my judgment, yes. [LB1170]

SENATOR LATHROP: ...and your interpretation of this section. [LB1170]

NORMAN PFLANZ: That is correct, sir. [LB1170]

SENATOR LATHROP: All right. We'll take a look at that. [LB1170]

SENATOR ASHFORD: Senator Schimek. [LB1170]

SENATOR SCHIMEK: Yes, thank you, Mr. Chairman. And following up a little bit on that, I've been watching that Oklahoma situation a little bit and am aware of some of the economic problems that they are having, but has no one challenged their law in Oklahoma? [LB1170]

NORMAN PFLANZ: Actually, quite a few organizations have in Oklahoma. The U.S. Chamber of Commerce, the Oklahoma State Chamber of Commerce, the chamber of commerces of the city of Oklahoma City and Tulsa, the Oklahoma Restaurant Association, and the Oklahoma Hotel and Lodging Association have all filed a lawsuit against this...against this Oklahoma law. They're challenging it because, as we have stated today, this law is preempted by federal law and it's also unconstitutional under the Supremacy Clause of the U.S. Constitution. The U.S. Chamber argued, regarding the Oklahoma law, that it said that the law imposed unreasonable burdens on Oklahoma businesses and puts them at a disadvantage, vis-a-vis, competitors in other states. And in fact, the Oklahoma Legislature is revisiting this tough immigration...anti-immigrant law that they passed. One of the state representatives stated that it's been an economic disaster and, in fact, the only Republican state senator in Oklahoma who voted against this anti-immigrant bill has said, quote, you really have to work hard at it to destroy our state's economy, but we found a way--we ran off the work force. [LB1170]

SENATOR SCHIMEK: Is that...is that happening also in Arizona? [LB1170]

NORMAN PFLANZ: That's correct. That's correct. It is also happening in Arizona. There's been...the economic impact there is projected to be quite serious. Actually, in July 2007 there was a study by the University of Arizona's Idyll Center for Studies in Public Policy and it concluded that the economic output in Arizona would drop annually by at least \$29 billion, or 8.2 percent, if all noncitizens, which include undocumented workers, were removed from Arizona's work force. Not surprisingly, the chamber of commerce in Arizona has stated that it's crystal-clear that employer sanctions will harm the state economy; it's simply a question of degree. They're also concerned that this...overall, the law makes Arizona an uncertain place to do business. I think if we apply that here in Nebraska, we're a state that's obviously very heavily dependent on immigrant labor, being an agricultural state, and I think the last thing that we want to do is set up a sign that Nebraska is closed for business and do anything to harm our economy. [LB1170]

SENATOR SCHIMEK: One last question. I know that a number of other kinds of subdivisions, like cities and so forth, have passed these kinds of laws, maybe not this particular kind of law, but do you have, off the top of your head, figures for how many--maybe you said--how many of these court cases have occurred and been tossed out essentially? [LB1170]

NORMAN PFLANZ: Sure. This has occurred in 33 jurisdictions, municipalities and counties in 17 states. I can provide the committee with a list of these jurisdictions, of the 33 places where employer sanctions have been defeated, I might add, at some cost to the municipalities in defending these in court. And I would be happy to provide that to the committee. [LB1170]

SENATOR SCHIMEK: That would be...that would be appreciated. Thank you. [LB1170]

NORMAN PFLANZ: Thank you. [LB1170]

SENATOR ASHFORD: Here's my...let me just follow up. Here's my problem with all...this whole mess is convoluted to start with because it's...and I can fully understand why labor unions and citizens are irate that employers are able to get labor at a reduced cost by using illegal immigrants. That...I mean, that's nuts. I mean and here's my...here's my point, I guess, is that...and I don't know what we can do as a state and I...but I fear that these...that the lobbying groups like the chamber of commerce and others that have opposed some of these things and some of these changes on the state level may be part of the reason why we don't have any federal legislation. Because right now the...right now, if it's left to the states, the states...these various statutes are declared unconstitutional; you're back to zero again. You keep running...you keep...it's a revolving door and so as long...then the federal government just sits back and does nothing. The businesses have the low-cost labor. I find that to be...I guess it's

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un-American, and I don't usually say things like that, but I think it just isn't fair to the immigrant, it isn't fair to the citizens, it isn't fair to the workers. I mean, to me, it's just really a problem. [LB1170]

NORMAN PFLANZ: I completely agree with you, Mr. Chairman. [LB1170]

SENATOR ASHFORD: Yeah. [LB1170]

NORMAN PFLANZ: And what we support is not employer sanctions that focus on the immigration issue; we support employer sanctions based on wage, health and safety. You need to... [LB1170]

SENATOR ASHFORD: I know, but that's...but I support that too. [LB1170]

NORMAN PFLANZ: ...you need to, and that's what the state can do. [LB1170]

SENATOR ASHFORD: I bet everybody in this room supports that. [LB1170]

NORMAN PFLANZ: Well, we actually support strengthening the meat packer workers' bill of rights, add...make the coordinator position a full-time position, add two more inspectors, because right now there's only...there's 20,000 meat packer workers in the state and you only have a part-time coordinator for the meat packer workers' bill of rights. It's those type of things that affect all workers that the state can do. Unfortunately or fortunately, immigration is a federal issue, but states can definitely improve the working conditions of workers. [LB1170]

SENATOR ASHFORD: Well, I agree with all of that, but I think the argument that...let me just and I'll... [LB1170]

NORMAN PFLANZ: Sure. [LB1170]

SENATOR ASHFORD: ...that the argument I'm hearing from some of the...some of the proponents of this bill is that the state is going to have to do...what I'm hearing them argue today is, well, we have an obligation to act because the federal government isn't acting. That's what I'm hearing. But if every time the states act there's federal preemption, this is a silly conversation, isn't it? I mean we're... [LB1170]

NORMAN PFLANZ: Well, what the states can do, for example, the Nebraska State Legislature and other legislatures can pass resolutions encouraging the federal government to act. [LB1170]

SENATOR ASHFORD: Oh, and I... [LB1170]

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NORMAN PFLANZ: ...and different organizations can do that as well. (Audience reaction.) [LB1170]

SENATOR ASHFORD: But I'm not critical of you. I thought about that too. I thought about sending a letter to my Congressman and seeing if they'd pass a law, but I don't know if that's going to do any good. [LB1170]

NORMAN PFLANZ: Uh-huh. Well, we're all U.S. citizens and we can encourage the federal government, and that's exactly what we should do, for them to move on federal immigration reform. [LB1170]

SENATOR ASHFORD: And that's...yeah, and I understand, and I think you've given us valuable information and I'm not critical of what you're saying. I just...I think it's a terrible quandary and...right. [LB1170]

NORMAN PFLANZ: I would just add that if you have states acting on their own, you're going to create a confusing patchwork of immigration laws. [LB1170]

SENATOR ASHFORD: But at some point, at some point you have no choice because the federal government totally leaves the field. But then if you do something that's contra to federal law, you get sued. So... [LB1170]

NORMAN PFLANZ: I completely understand your frustration, Mr. Chairman. [LB1170]

SENATOR ASHFORD: ...all right. That's sort of our job, I guess, to sort that out. Thank you. [LB1170]

NORMAN PFLANZ: Okay. [LB1170]

SENATOR ASHFORD: Thanks very much. [LB1170]

NORMAN PFLANZ: Any questions? Thank you. [LB1170]

SENATOR ASHFORD: Okay, next opponent, I guess. [LB1170]

SUSAN BENNETT: (Exhibit 20) Good afternoon. My name is Susan Bennett, B-e-n-n-e-t-t, and I'm the executive director of the Lexington Area Chamber of Commerce. And since the name of my city has been thrown around in this discussion, I'm very glad I was able to be here today. Illegal immigration is a serious issue in our country and I do believe that it does need to be addressed, but dealing with it on a state-by-state basis would be counterproductive. If these two bills, both LB1170 and LB963, were to pass, Nebraska would effectively be sending the message to business, don't come here. The National Chamber Litigation Center, or the NCLC, is leading a

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legal fight for the U.S. Chamber to overturn state and local immigration laws that impose harsh penalties on employers on the grounds that these laws violate due process rights and are preempted by federal law. In Arizona, NCLC is challenging the state's attempt to rewrite federal work authorization verification rules. Although the Arizona state law only went into effect January 1, businesses in Arizona say they are already beginning to feel the effects as workers are walking off the job or moving to neighboring states. Last July, NCLC was successful in striking down in federal court a similar immigration ordinance adopted by the city of Hazelton, Pennsylvania. That decision should have sent the message that piecemeal immigration laws are unconstitutional. In 2007, 1,600 immigration bills were introduced in legislatures across the nation, with 244 enacted. Lexington only wants to be on a level playing field when recruiting businesses to our community. If LB1170 were to pass, it would severely restrict us from attracting new businesses or even allowing businesses to expand or relocate existing businesses already in our state. We might also have our larger businesses close their plants. LB963 is less punitive to illegal workers in the short term, but its long-term effect will probably make it more difficult for firms to maintain a stable work force in our area. Illegal immigration is difficult to discuss with some feeling that workers here illegally are taking away higher paying jobs. The question is not one of providing higher wages for our legal residents, but whether the products now being raised and processed here will be raised and processed in other states or even other countries, eliminating the jobs here entirely. In Nebraska, that would definitely affect our cattle and hog production and processing. In conclusion, I would just ask that this committee think long term on the effects these bills would have on Nebraska and communities like Lexington. [LB1170]

SENATOR ASHFORD: Thank you for coming. [LB1170]

SUSAN BENNETT: Thank you. [LB1170]

SENATOR ASHFORD: You have a wonderful state senator. [LB1170]

SUSAN BENNETT: I think so. [LB1170]

SENATOR ASHFORD: Yes. Jim. [LB1170]

JIM CUNNINGHAM: Senator Ashford and members of the committee, good afternoon. My name is Jim Cunningham, C-u-n-n-i-n-g-h-a-m. I'm the executive director of the Nebraska Catholic Bishops Conference, testifying in opposition to LB1170. Senator White is very eloquent and very persuasive about the nature of the problems, as you also have alluded to, Mr. Chairman. There is economic desperation. There is in fact a system or a situation that involves unscrupulous employers and exploitative employers, and without question the federal government has failed miserably to handle the area of immigration. I don't think that opposition to this bill is in any way a defense of either the federal government or the unscrupulous employers. Our concern about this bill has to

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do with its repercussions in terms of harassment, hostility, and discrimination against immigrants and citizens, the concern being that focuses in on this notion of providing for a private cause of action by essentially every citizen in the state of Nebraska. When I talked with Senator White about this bill, I used the term "deputize" as referring to what this does in terms of enforcing immigration laws, and that's not...that's not a good term, as he pointed out to me, but it does enable every citizen, regardless of what their motivation might be, to become someone who can sue an employer on the basis of immigration and hiring policies related to immigration. As a general matter of risk management, at what point does fear or concern about being sued by some random or unknown Nebraska citizen, and that is a matter of being really careful and really cautious about a hiring decision, at what point does that motivate or cause an otherwise responsible employer to discriminate against applicants on the basis of appearance or surname or ethnicity? I think that that would be a concern that we would have about this type of legislation. And from what I know about employer sanction legislation, this is very unique and creative, but I think that the concern about how that would operate as a practical matter in the employment area is a concern and that's what causes us to oppose this. You know, just as an interesting thing, I was looking at the fiscal note and it's rather curious, because it says the Attorney General estimates no fiscal impact. Now either that indicates that there really isn't a whole lot out there that's actionable, at least to move the Attorney General to act under this law, or that there is an expectation that it is going to be left to private citizens to do this. I'm not sure that that's good public policy when we're talking about the area of immigration and how confused it all is. Thank you. [LB1170]

SENATOR ASHFORD: Thank you, Jim. Any questions of Jim? Yes, Senator Schimek? [LB1170]

SENATOR SCHIMEK: Yes, Jim, thank you very much. I think you've touched on an area that nobody else has really talked about today, and that is the impact on communities and the relationships in those communities. And you didn't say it exactly that way, but I think that's part of what you may have been getting at. And I think it's just...I mean, I just think irreparable harm can be done in some of these communities with some of this, some of the kinds of messages that would be sent with a bill like this or LB963. [LB1170]

JIM CUNNINGHAM: These are very difficult, intense issues with strong feelings. [LB1170]

SENATOR SCHIMEK: They are. [LB1170]

JIM CUNNINGHAM: And that in no way justifies illegal or unauthorized workers; nor does it justify anything that an unscrupulous employer would do. But this type of situation, using private causes of action, seems to me could fan flames that would be,

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overall, unhealthy to the state. Thank you. [LB1170]

SENATOR SCHIMEK: I think that's an important point to make. Thank you. [LB1170]

SENATOR ASHFORD: Thank you, Jim. Thanks for your comments. [LB1170]

JIM CUNNINGHAM: Thank you, Senator. [LB1170]

SENATOR ASHFORD: Other opponents? Any neutral testifiers? (See also Exhibits 14, 17, 18, 21, and 22.) Senator White. [LB1170]

SENATOR WHITE: Thank you, Mr. Ashford. I'd like to address a couple of points. Senator Schimek, concern about individual private causes of action, they, to my knowledge, have been actively used in the United States for 150 years. There's a kind of lawsuit called a qui tam litigation, which is...was passed, I believe, during the Civil War to get people who steal from the government in war contracting and other areas. They're quite common now. They're very heavily used even today to curb some of the theft that's occurred as a result of the Iraq War. These very types of cause of actions, also known as private Attorney General actions, in fact have a long-accepted and respected history in the law. They're hardly new and they have been extraordinarily effective at taking on industries that have strong political ties and make major contributions, thereby making it much more difficult to pursue them politically. Halliburton, for example, is the defendant in a number of them. So if you are concerned about that concept, all I can tell you is it's been consistent with principles of the republic for over...well, since the 1860s. With regard to 8 U.S.C. 1324a (h)(2) and all the lawsuits that they claim have been made unconstitutional, huge fundamental difference between penalty and sanction, and what this lawsuit allows, which is recovery of damage--enormous difference. For example, our own constitution prohibits punitive damages. They're a penalty, they're a sanction. Removing a business' license to practice a business or to be a business in the state is a sanction, it is a penalty. I do not dispute that those are probably prohibited under the federal rules; however, the state's right to recover its own money that were expended because of an illegal behavior has, to my knowledge, never been challenged and certainly, to my knowledge, no challenge for that has ever been sustained by the federal government. In so doing, if the federal government did that, they literally would start destroying the states' ability to keep their governmental functions in effect and the state has...the federal government has never, to my knowledge, prohibited that. So as far as effect on communities, Senator, please visit some of the communities that have had enormous influx of illegal aliens, especially when there's then been, for some reason, a downturn or a corporate decision to close the reason that they came there. If you go to Madison County and you visit Madison, Nebraska, or Norfolk, you will see real destruction of a community. You will see real intense anger, racism and bitterness, not because the people of Nebraska are innately that way, but because businesses that have been absolutely unscrupulous have

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brought people here with almost no resources and then abandoned them on the people in those communities. So I submit to you just the opposite--this law will protect decent relations by requiring businesses to be reasonable corporate citizens. If the committee is concerned about the constitutionality, please, find a case that says the state cannot recover money that was wrongfully taken from it. [LB1170]

SENATOR SCHIMEK: Appreciate that. Thank you, Senator. [LB1170]

SENATOR WHITE: Thank you. [LB1170]

SENATOR ASHFORD: Very stimulating, Senator White. Thank you. Okay, Senator Fulton, LR224. [LB1170]

SENATOR FULTON: Thank you, Mr. Chairman. The committee should know you've rescued me from an Appropriations deliberation. [LR224]

SENATOR ASHFORD: Are you still over there? [LR224]

SENATOR FULTON: Oh yeah. [LR224]

SENATOR ASHFORD: All right. [LR224]

SENATOR FULTON: For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n. I represent Legislative District 29 and I bring before you a resolution, LR224, which proposes that the Legislature encourage state and local law enforcement agencies to enter into respective memoranda of agreement with the secretary of the U.S. Department of Homeland Security in order to allow state and local law enforcement officers in Nebraska to aid in immigration law enforcement functions. The authority to enter into such agreements is derived from Section 287(g) under the Immigration and Nationality Act created by the Illegal Immigration Reform and Immigrant Responsibility Act signed by President Clinton in 1996. Section 287(g) agreements require four to five weeks of officer training at the direction of ICE, the cost of which is incurred by ICE. Under these agreements, officers in participating agencies receive cross-designation by ICE to enforce immigration laws to the degree desired by the state or local agency. To date, approximately 28 state and local law enforcement agencies, including some of the nation's largest agencies, have entered into 287(g) agreements. Concluding, this resolution seeks to encourage state and local agencies to enter into agreements with the federal government, as authorized by federal law. It is evident that the issues we face as a state with regard to illegal immigration are largely a matter of a lack of resources. The 287(g) program allows for state and local agencies to receive full federal authority and training to enforce some aspects of immigration law to the degree specified under each respective agreement. As evidenced, such agreements seem an effective tool in enforcing our nation's immigration laws to the benefit of our state. And I

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respectfully request the committee's advancement. I'd answer any questions, if there are any. [LR224]

SENATOR ASHFORD: Any questions of Senator Fulton? Senator Lathrop. [LR224]

SENATOR LATHROP: Yes, I do. You've brought us a resolution. Why? And here's my question, I guess. I'm looking at 81-2005 that sets out the powers and duties of the State Patrol and I don't know if we could pass this...why a...let me start with this. Why a resolution and not an amendment to the powers and duties of the State Patrol? [LR224]

SENATOR FULTON: I actually considered whether a resolution or a bill to change statute would be appropriate, and serving on the Appropriations Committee, I recognize that this, you know, this costs money, so I thought that it would be appropriate to leave this to the purview of a local agency, so an element of subsidiarity I guess played into this. A resolution is encouraging but it's not mandating. [LR224]

SENATOR LATHROP: And the difference is that with a resolution you don't have a fiscal note. So what this would cost for the State Patrol to engage in this enterprise of doing the job of the federal government, in its enforcement of immigration laws...normally, as you know, our bills come with a fiscal note; says it's going to cost \$8 million to do something. We don't have that with a resolution so we don't know what it would cost for the State Patrol to engage in this. [LR224]

SENATOR FULTON: That's accurate to say. The cost...the way that I'll explain the costs, and there could be others that testify later, the fact that it's a resolution, again, it's...this is encouragement. We've seen this work in other locales. If we mandated it, then they would be forced to have to do this, and whatever costs would be associated with doing this would be borne out. The costs for the actual training is borne by the federal government, as I understand it. The costs that would come to the state would happen in taking personnel perhaps away from an activity. [LR224]

SENATOR LATHROP: Right, they're going to get paid while they're gone. Somebody may pay for their training, but they're still probably getting State Patrol income or their pay while they're off at an ICE camp, right? [LR224]

SENATOR FULTON: I would think so. Yeah, I would think...I think that's how it would play out, yeah. [LR224]

SENATOR LATHROP: And then when I look at the powers and duties enumerated in statute, you know, the State Patrol can only do what we've given them authority to do, and that's primarily traffic enforcement and arrest and investigate felonies that happen in their presence. And I don't know that we can do this without amending the statute. Have you looked at the statute that enumerates the powers and duties of the State

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Patrol? [LR224]

SENATOR FULTON: Not with...we've looked at it but not with that detail. I guess I'd ask, Senator, are you...would you entertain this by way of statute more persuasively or more readily than you would by resolution? [LR224]

SENATOR LATHROP: Well, if we had a statute...if we had a bill to have the State Patrol engage in this, then we'd probably know what it costs and then I might have a different opinion. I mean, we don't have a fiscal note. But when I'm looking at the powers and duties, I don't know that we can change a specific statute that enumerates the powers of the State Patrol. [LR224]

SENATOR FULTON: Uh-huh. [LR224]

SENATOR LATHROP: And that's by way of limitation. And certainly when this was passed in 1937, with amendments as recently as 1993, we weren't worried about the immigration issues, granted. But I just wondered if you'd... [LR224]

SENATOR FULTON: Yeah. [LR224]

SENATOR LATHROP: ...considered that or thought about that. [LR224]

SENATOR FULTON: It was considered. Maybe I can come back and address it more, and I'm not able to give you the perfect answer right now. Maybe I can do so in my closing. [LR224]

SENATOR LATHROP: Okay. Appreciate it. [LR224]

SENATOR FULTON: Okay. [LR224]

SENATOR ASHFORD: Thanks, Tony. How many proponents do we have on this bill? Okay. You know, what I'm going to ask you to do, it's 5:20, I'm going to ask you, if you could, to try to not be redundant and not repeat on either side, because we've had a lot of testimony here today. So if we could try to limit our testimony to new information, we will go to a quarter of 6:00 on the proponents, and then we'll see who the opponents will be and go from there. [LR224]

SENATOR SCHIMEK: Mr. Chairman, it would also be helpful if they could direct their comments to the actual resolution itself. [LR224]

SENATOR ASHFORD: Right. And this applies to everybody that's going to testify, if we try to limit it to new information about the particular resolution that would be helpful to us in evaluating this resolution, rather than just repeat the same thing. Thank you. Go

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ahead, sir. [LR224]

DENNIS MURPHY: Does that allow any time for questions? [LR224]

SENATOR ASHFORD: No, I'll include the time for questions, but I just...I want it, if we can, just keep it to new information. Go ahead. [LR224]

DENNIS MURPHY: Sure. My name is Dennis Murphy, M-u-r-p-h-y. I live in Omaha, and if I might address Senator Lathrop's question before going to direct testimony, I was involved in bringing this resolution, or requesting that this resolution be brought initially, and it resulted as a result of my discussions with one of our county sheriffs. In fact, it was Sheriff Dunning in Omaha who was essentially looking for the support and encouragement of the State Legislature. Essentially, they're looking for political cover, if you will. The approval of the Legislature to engage in this so that they don't have to do it on their own, even though notwithstanding the fact that they do have the authority to do it on their own, at least according to ICE. Okay. That was the reason it was brought in the form of a resolution. So as noted, the 287(g) is a component of the Illegal Immigration Reform and Responsibility Act of 1996. It had bipartisan support in both houses of Congress and was signed by President Clinton. I've heard it suggested and it's been read in various newspaper articles that in some manner this, and perhaps some of the other legislation discussed today, is in some manner meanspirited or racially motivated or otherwise, but I would think that to suggest that with respect to this piece of legislation would be to...almost be to impugn the same motives to the Congress of the United States and to the President for signing that bill, and I don't think that would be appropriate. They found it prudent and necessary to enact 287(g) to remove any doubt whatsoever that the national government both needs and wants the cooperation and assistance of state and local law enforcement to serve as what they call, quote, and I mentioned it in that abstract that I passed around to you, as a force multiplier in performing immigration law enforcement functions, unquote. Basically, what was stated to me, and I had a conversation this morning with a gentleman by the name of Brian McPherson (phonetic), he's the special agent in charge and assistant to the director of the 287(g) program in Washington, D.C., and he concurred that they are simply looking to utilize the...some 500,000 law enforcement agents that exist at the state, county and municipal levels to assist them in enforcing these immigration laws. But it is generally understood that there is co-enforcement authority and that, in reality, even Congress recognized that such an authorization was not really needed but it was provided by way of political cover-up because this is such a hot political issue. And in fact, it was a Douglas County Sheriff who just yesterday commented to me that...by way of comparison, he said, I would not hesitate in any manner to apprehend an individual I found counterfeiting U.S. currency simply because this is strictly a federal offense under the jurisdiction of the U.S. Secret Service. But he went on...and he went on to note and say that he was sworn to uphold not only the laws of the state but the laws of the United States. Okay. And it's a common mis... [LR224]

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SENATOR LATHROP: Mr. Murphy, we don't have anybody running the lights and so... [LR224]

DENNIS MURPHY: Running the lights? [LR224]

SENATOR LATHROP: Well, we have a light system and usually the red light comes on when you've been to three minutes. [LR224]

DENNIS MURPHY: Okay. [LR224]

SENATOR LATHROP: And so what we're going to do is ask you to wrap it up and then we'll have an opportunity for you to ask questions. [LR224]

DENNIS MURPHY: Okay. That's fine. [LR224]

SENATOR LATHROP: That's the rules that we work under here so we don't spend all night. [LR224]

DENNIS MURPHY: Sure. I just want to comment that, too, it's a common misconception that this is promoted or that's promoted by opponents of this 287(g) program in general that it somehow authorizes random searches and indiscriminate interrogations and other forms of harassment, and this is...this, in my opinion, is intentionally inflammatory and it's not true, and to verify that you need only look at the abstracts that I sent around to each one of you state senators, or you could go to the legislation itself and it specifies that ICE is directed by DHS to train and supervise sworn law enforcement personnel, pursuant to an MOA, memorandum of agreement, which defines the scope and limitations of the authority to be designated, and further states that ICE, quote, ICE will supervise all cross-designated officers when they exercise their immigration authorities, so they are under the full control of the federal authorities. [LR224]

SENATOR ASHFORD: Senator Schimek. [LR224]

DENNIS MURPHY: Yes, ma'am. [LR224]

SENATOR SCHIMEK: Oh, thank you, Mr. Chairman. I'm sorry, I didn't catch your name or who...are you... [LR224]

DENNIS MURPHY: Dennis Murphy. I live in Omaha. [LR224]

SENATOR SCHIMEK: You're a private citizen. [LR224]

DENNIS MURPHY: I am. [LR224]

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SENATOR SCHIMEK: Okay. Thank you. [LR224]

DENNIS MURPHY: Yes. [LR224]

SENATOR LATHROP: Did I understand you to say that this is unnecessary and that people like Tim Dunning, who I've known forever, Pat, can do this even without this resolution. [LR224]

DENNIS MURPHY: According to the ICE personnel and the people who do this course, who train, their indication is that local law enforcement does not need it. Now whether or not such a stipulation exists at the state level that has been imposed upon them at the state level, the ICE folks don't know. [LR224]

SENATOR LATHROP: Well, we don't impose anything. All we do is kind of give them a little nudge and a green light,... [LR224]

DENNIS MURPHY: Sure. [LR224]

SENATOR LATHROP: ...but we don't tell them to do anything. But you're saying the feds are telling you that these guys can do this already and now what we're doing is kind of kick-starting it with this resolution? [LR224]

DENNIS MURPHY: Exactly. And indeed, some 50-some-odd communities have done it. Boston just completed it, they told me today. [LR224]

SENATOR LATHROP: Okay. These people that once they go through the training, what ultimately are they trained to do? Do they essentially, if they make a traffic stop, the person doesn't have a driver's license, you know, whatever the indicia of an undocumented person in this country might be at the time of a stop, do they start a deportation process or do they just call an INS person? What are they going to do now that they're not...that they couldn't do already? [LR224]

DENNIS MURPHY: They have the...they are trained and would have the authority to initiate a detainer process. They would fill out the detainer paperwork. So, for example, right now, if the traffic stop situation that you described, they simply issue a citation and they're off, even though the officer was... [LR224]

SENATOR LATHROP: They just ignore the immigration issue. [LR224]

DENNIS MURPHY: Exactly. Precisely. [LR224]

SENATOR LATHROP: Okay. That's all. I didn't want to keep... [LR224]

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DENNIS MURPHY: Right. [LR224]

SENATOR LATHROP: It's already 5:30, so I didn't want to... [LR224]

DENNIS MURPHY: Sure, I understand. But it would give them the opportunity and the authority to initiate the process and then ICE will pick up on that. ICE does not want to pick up on it now because it's too much paperwork for them, so again, they're looking for a little help from the 500,000 law enforcement nationwide. [LR224]

SENATOR LATHROP: Okay. [LR224]

SENATOR ASHFORD: Yeah, and actually, Dennis, I think that you are right and I notice in the Phoenix paper last weekend or a couple weekends ago they had just passed a...their city council had passed a resolution and adopted a plan for local law enforcement to issue...what they would do in the case of a stop and if they... [LR224]

DENNIS MURPHY: And interestingly, in my discussion with the special agent just this morning, he indicated that there is such a high level of interest in this program that DHS has authorized them to create a 287(g) academy, which they are planning for Charleston, South Carolina. [LR224]

SENATOR ASHFORD: Well, I think you're right. I think what's happened...right, I think your information is very accurate. I think that the...that a year ago there were maybe 15 agencies that were involved in this. Now there are 50, and it's growing expeditiously, really...exponentially, excuse me. And...but I, yeah, and I don't know, has anybody on the county board, city council looked at this? I mean... [LR224]

DENNIS MURPHY: It wasn't deemed necessary that they do so because, again, the underlying presumption is that law enforcement agencies have the authority to do it on their own without such basis. [LR224]

SENATOR ASHFORD: Right, but I mean I think other cities have adopted--and then I'll stop--but other cities have adopted plans on this issue and they've, I think, when they...in fact, I think in Phoenix that there were six months they brought people, from law enforcement people, retired law enforcement people, judges, they came up with a plan that they have implemented as sort of a compromise plan to deal with this issue and it was done locally in Phoenix. [LR224]

DENNIS MURPHY: Right. [LR224]

SENATOR ASHFORD: And you're absolutely right, that's how it's done. [LR224]

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DENNIS MURPHY: And to the issue...I'm sorry? [LR224]

SENATOR ASHFORD: And I...yeah, I was just...I don't know why can't the city of Omaha or Lexington or somebody else do that. [LR224]

DENNIS MURPHY: There's certainly no reason why. [LR224]

SENATOR ASHFORD: And is it the political...is it really political cover? Is that really what... [LR224]

DENNIS MURPHY: Oh, absolutely. It was stated that way in those words. Absolutely. And to the issue of cost, not only is there no cost and ICE covers that cost, but if there...when they do implement this 287(g) academy, the same costs would be covered when they travel to Charleston, South Carolina. But the local community in this state, specifically in Omaha, we have, through discussions with local community, have agreed that we could raise the funds to cover the salaries of those people while they were in that training, and it's a 19-day training program that they provide. And when I went back and told Sheriff Dunning that the community has agreed to do that, he acknowledged to me that, well, that wouldn't be necessary; they had a side fund already in place to do that. [LR224]

SENATOR ASHFORD: Well, and I think Senator Schimek and I were actually at a conference where this was the...I think we were both in the same meeting... [LR224]

SENATOR SCHIMEK: One of the workshops. [LR224]

SENATOR ASHFORD: ...and it was exactly this program they were explaining. They did indicate, though, that the biggest drawback I think was Alabama. Someone from Alabama was talking, or Mississippi was talking about the program. It is quite expensive, even though ICE pays the training. The cost of having your people away from work and then they're also being trained when they get back so they're not, you know, they're not on the line. But those are all issues. But it would seem to me that those would be local issues. But I think your information is absolutely accurate. It's what I understand it to be, so thank you. [LR224]

DENNIS MURPHY: Okay. Thank you. [LR224]

SENATOR ASHFORD: Any other...? Yes, sir. [LR224]

FRANK NOWAK: Should I say good evening? [LR224]

SENATOR ASHFORD: No, no. Yeah, go ahead. I was... [LR224]

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FRANK NOWAK: (Exhibit 24) My name is Frank Nowak. I'm from Omaha, Nebraska, representing myself. I have a case which happened in Virginia Beach last year, and this is a paper from Virginia Beach. I happened to have been down there last summer. There was two young ladies in a car that were ran into while they were stopped at a light and both of them killed. The individual that ran into them was Alfredo Ramouz (phonetic), age 22. He was drunk and he had been in the system before. They had arrested him previously on drunk and disorderly and, I believe, another DUI. But anyway, this set into motion in the city of Virginia Beach to institute a law just like this, verifying or through the 287(g) program. The sheriff's name down there, if you want to talk to him, is Paul Lanteigne, it's L-a-n-t-e-i-g-n-e. Now it has been successful down there. They are making lots of detentions of illegals and a lot of them are choosing not to make home there in Virginia Beach now. And the streets are safer and I feel good about that because I like to vacation down there and I sure don't want my grandkids ran into by an illegal while I'm on vacation. In another case here, if this had been in place, there would be a possibility of having stopped a tragedy up in Minnesota where an illegal alien from Guatemala ran into a school bus and killed four children. Just happened in the last two weeks. The dollar amount of these tragedies goes on all across the United States so the cost basis of this program doesn't even touch the damage that is being done by these illegals that are not stopped and deported. Twenty-five a day of people are dying each day because of the accidents, murders and whatever because of illegal aliens. I have crime statistics. I won't bore you with those, but I just wanted to give you a case and a reference of where this is put into place and where it is working. [LR224]

SENATOR ASHFORD: Thank you, Mr. Nowak. Any questions of Mr. Nowak? Thank you, sir. Next proponent. Proponent. Good afternoon. [LR224]

JAN REAM: Senator Ashford and committee members, my name is Jan Ream, that's spelled R-e-a-m. I've heard a lot of testimony this afternoon in regards to facts and figures, but mine is going to take a more personal note. In fact, I am here today to testify in support of LR224 and on behalf of a young woman who is very close to my heart. We've heard testimony today about how hardworking and family oriented these aliens are, but I can testify that that is not always the case. I feel it's time to speak out for the victims of illegal criminals and for a young woman who cannot speak for herself. Several years ago this young woman, who is mentally impaired, was sexually assaulted by an illegal alien who took advantage of her innocence and her beauty. His punishment was a few days in jail, \$150 fine, and then was released. Had police officers been authorized to perform immigration law enforcement functions, he would not have gone free. But instead, he fled to California where he has most likely committed the same act on another child, causing more grief and pain to families and friends. The anger and the heartbreak that I felt I put to good use to get alien criminals off our streets and out of our country. I feel that not only is it this Legislature's lawful duty to protect Nebraska citizens, mainly our children, but it is also a moral one. It's time to put aside the fear of

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retaliation and intimidation should we enforce our immigration laws, and the concerns over the welfare of illegal aliens and consider the safety and welfare of our own. Senator Chambers asked the question, do we enforce federal law. Well, I ask you, when the federal government refuses to do so, do states turn a blind eye to criminal activity? I urge you to pass LR224 for our children's sake. Thank you. [LR224]

SENATOR ASHFORD: Thank you. Any questions? Thank you, ma'am. Yes, sir. [LR224]

JEFF RUE: Hi. My name is Jeff Rue, R-u-e, and I have been a volunteer at the Omaha Police Department in the Records Division. I've also been a graduate of bible college, actually the night school, but I've got a lot of immigrant alien friends, you know, whatever status they were, there at the bible college and they all seem very law-abiding. But it concerns me that I knew the figure a couple years ago was 600,000 fugitive illegal immigrants and it's my understanding, with deference to Senator Lathrop, that it is the State Patrol's...in their purview to assist with the apprehension of fugitives. Also, in 2002, the Attorney General said that he came to the unequivocal conclusion that arresting aliens who have violated either criminal provisions of the Immigration and National...the INA, or civil provisions of the INA that render an alien deportable is within the inherent authority of the states. And I think that can be done in, you know, conclusion, with their duties. In Omaha, I have a hard time seeing how we keep track of the citizenship of people who are arrested. There's no information. Now I've written the mayor. He's sent it to the police chief, sent it to the new police chief. I've talked to the Attorney General by e-mail. And we don't have data on this. We don't know how many arrests or the status of these people. In some states, they bring the INS to the jails and they screen everybody. A 287(g) officer who's trained can do this legally and, as the Judiciary Committee, I urge you to consider this resolution because it would bring about a protection for those law enforcement agencies who wish to enact this and take this upon themselves to get this data to protect their citizens, whether these arrests are legal citizens or illegal citizens. Because I think we need this data. As the Judiciary Committee, I urge you to think about that. We need that data. If we don't have that data, we don't know what...how big the problem is. And if officers are trained, they also will have protections for those communities for any lawsuits that might come against those officers or those communities because of the action taken. They would be trained to perform this legally and it wouldn't be done in a manner that would open them up to any lawsuits or costs. I don't know if this is a current cost, but the program costs that we had at that time was \$520 per officer. I understand, you know, they put them out in different cities and where they go. And I was also a member of the Nebraska Taxpayers for Freedom and we did...excuse me. I guess I got my red light on. [LR224]

SENATOR ASHFORD: Well, I think we get the gist of your testimony. I appreciate it. [LR224]

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JEFF RUE: Yeah. Well, we were willing to aid in the support for funding the officers. Any questions? [LR224]

SENATOR LATHROP: None from me. [LR224]

JEFF RUE: Thank you. [LR224]

SENATOR ASHFORD: Thank you, sir. [LR224]

SENATOR LATHROP: Thank you. [LR224]

JEFF RUE: Sorry I was so nervous. [LR224]

SENATOR LATHROP: No. You don't need to be. [LR224]

SENATOR ASHFORD: No, you're fine. You did fine. We have about 5 minutes to go here. How many more testifiers do we have? Okay, so we'll do this gentleman and then one more after that. [LR224]

DIMITRY KRYNSKY: (Exhibit 25) My name is Dimitry Krynsky, K-r-y-n-s-k-y, and I support LR224 which encourage all Nebraska city, county and state law enforcement agencies to cooperate with ICE under 287(g) program for following reasons. First, the essence of the civilized society is a respect for the law, and law enforcement agencies shall have all tools and authorization to enforce it. Second, LR224 will discourage criminal elements from among illegal aliens to consider Nebraska as a safe haven. Third, better cooperation between ICE and local law enforcement agencies will close a loophole, which creates a double-standard in law enforcement. Under present system, a regular citizen is punished even for parking violation, but illegal alien is, for all practical purposes, immune from charges of much more serious offenses. [LR224]

SENATOR ASHFORD: Thank you, Mr. Krynsky. Any questions? Thank you, sir. Okay, this will be the final testifier as a proponent, and then we'll go to the opponents. [LR224]

JOHN COPENHAVER: My name is Copenhaver, C-o-p-e-n-h-a-v-e-r, Dr. John H. I'm out of Omaha, Nebraska. I'm a private citizen. One of the advantages of 287(g) is these gentleman have access to the national database. There are over 80,000 illegal alien felons running around the United States. That particular population is very mobile. You don't know what's happened. How many of you know who Mindy Shriver (phonetic) is? anybody here? I don't think so. How about Dawn Rice? Anybody here? No. Mindy Shriver was sliced up 42 times by a couple of Puerto Ricans and then run over about 10 times. She was the managing editor...or not the editor, but the manager for Ruby Tuesdays. If this had been operational, those people wouldn't have been here. Dawn Rice last year was run off the road by a guy that had a rap sheet, was about six pages

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long. Somebody would have done something. It's amazing that this state is so weak-kneed that you shouldn't step down and provide funds to at least get six of these 287(g) people. I'm really ashamed of the state of Nebraska and to be a citizen. Thank you. [LR224]

SENATOR ASHFORD: Okay. Any opponents? [LR224]

SENATOR LATHROP: I don't have any questions. [LR224]

SENATOR ASHFORD: No questions, Senator Lathrop? All right. Okay, moving right along, how many opponents do we have? Okay. She's an opponent. Yes, ma'am. Welcome back. [LR224]

DARCY TROMANHAUSER: (Exhibit 26) Hello again. Again, my name is Darcy, D-a-r-c-y, Tromanhauser, T-r-o-m-a-n-h-a-u-s-e-r, and again, I'm here from Nebraska Appleseed Center for Law in the Public Interest. Many police departments, police chiefs and major law enforcement associations across the country have spoken out against the idea of asking local police to serve as federal immigration agents, and I think it's important to understand that this is a dangerous direction with ramifications...dangerous ramifications for public safety, and it's not the law and order policy that it might seem at first blush. Asking our police to enforce immigration law doesn't just add to their responsibilities. It fundamentally hinders their ability to do their primary role of fighting crime and protecting public safety, and this endangers all of us, all members of the community. If you have one segment of the community that is afraid to go to the police to report crimes or to provide information about crimes, then all of our safety is jeopardized. This is a policy that would also increase the risk of racial profiling, including against citizens and legal immigrants who merely, you know, look or sound foreign. Just ten days ago a U.S.-born Latino youth in Phoenix was detained for 18 hours before they discovered that he was actually a citizen. And I think it's important to remember that immigration law is incredibly technical and complex and constantly changing, and so asking local police to enforce immigration law while they're doing their other duties is like asking them to figure someone's tax return as they're enforcing other laws because keeping up with immigration law is as complicated as keeping up with the tax code. It's also...this resolution would encourage Nebraska law enforcement to sign up for this new responsibility without, as has begun to be discussed, without providing the resources to do it. So when Marshalltown, Iowa, recently signed up for a 287(g), they were told that Department of Homeland Security had only funding for three new agreements that year, and even if you do get that agreement put in place, it's only covering the actual training. It's not covering officer's time during the training and it's not covering their time once they actually begin to serve that immigration role. So it's not covering their time at all once they're serving this role. So these are very serious risks that need to be carefully weighed before offering the Legislature's stamp of approval, and this may, you know, in fact be just a resolution, but I think it's important because it does send a message to the

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public that the Legislature thinks that this is a good idea. And in fact, 68 state and local government entities have actually adopted ordinances and resolutions opposing asking their local police to serve in an immigration role. [LR224]

SENATOR ASHFORD: Can you get us that information, who those... [LR224]

DARCY TROMANHAUSER: Sure. Yeah. And I'm passing around quotes from local law enforcement...or from law enforcement around the country on this issue, the Appleseed guide to the issue of local police and immigration enforcement, which includes a whole legal landscape should you... [LR224]

SENATOR ASHFORD: I think it would be good if we could get a balanced view of those that have and those that haven't, because I know some have done this, as Mr. Murphy suggests, and some haven't. I think it would be very helpful to know that. [LR224]

DARCY TROMANHAUSER: Right. So some of your questions earlier about whether or not this is a legal thing to do, the legal landscape is actually...it's unclear whether or not... [LR224]

SENATOR ASHFORD: Well, everything is unclear in this field. [LR224]

DARCY TROMANHAUSER: Right. [LR224]

SENATOR ASHFORD: Yeah. [LR224]

DARCY TROMANHAUSER: And so it's a policy decision. [LR224]

SENATOR ASHFORD: Yeah. [LR224]

DARCY TROMANHAUSER: But if you're interested in what that history of the legal landscape looks like, it's in the guide that I provided. [LR224]

SENATOR ASHFORD: Okay. [LR224]

DARCY TROMANHAUSER: And...but I think the primary point is, as one police officer said, you know, we can drive around in our cars all day, but if no one will talk with us, we can't get the information that we need to fight crime, fight terrorism. And we need to keep them focused on that primary role instead of... [LR224]

SENATOR ASHFORD: Well, I think what...if I might, I think what the case was in Phoenix, and it was an interesting thing, it was a six-month process of evaluating these various processes, and I think what they did is they started at offenses, not normal...just traffic offenses, but misdemeanor offenses above traffic offenses. I think there was

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some sort of decision like that. They graded the crimes, when they could ask these questions, and they simply asked them, are you...you know, what is your citizenship, I believe, was... [LR224]

DARCY TROMANHAUSER: And the minute that the community thinks that the police are in any way enforcing immigration law, you've just lost a whole chunk of the community that will not come forward to either report crimes or to be able to provide information when a crime is being investigated. [LR224]

SENATOR ASHFORD: And I think that was part of the debate in Phoenix as well, so that's good. [LR224]

DARCY TROMANHAUSER: Yeah. In my mind, that's the crux of the issue. [LR224]

SENATOR ASHFORD: Okay. Thank you. Thanks. [LR224]

DARCY TROMANHAUSER: Thanks. [LR224]

SENATOR ASHFORD: I believe, though I'm not absolutely certain, that you're the last one. (Laugh) [LR224]

CECILIA OLIVAREZ HUERTA: I'm the last one. I'm the last one, yes. [LR224]

SENATOR ASHFORD: Except for Senator Fulton, who's back in the back, but he'll be short, I know. [LR224]

CECILIA OLIVAREZ HUERTA: (Exhibits 27 and 28) I am, since I didn't have the opportunity to testify for LB963, I have some information which might be helpful to you. Yes, here. You can have these also. I'll be brief. My name is Cecilia Olivarez Huerta, my last name is O-l-i-v-a-r-e-z H-u-e-r-t-a, and I'm executive director of the Mexican American Commission. I guess the concern that we have, and Darcy was talking about some things, is that this resolution, I think, would be detrimental to the Latino community. It would erode the relationship between immigrant communities and law enforcement officers. It would mean that fewer people report crimes. It takes resources away from other police functions, leaving entire communities less safe. This type of legislation would also likely result in increased racial profiling. I know that we have a bill and there were several law enforcement organizations that signed on to the bill, but racial profiling still occurs in the state of Nebraska. And there was an incident in Schuyler, Nebraska, not too long ago where a citizen filed a lawsuit against a police officer who mistakenly took him for an illegal immigrant. The person was injured and he is a citizen. So knowing this information and other instances that are reported to us, racial profiling continues to survive in the state of Nebraska. Many Latinos in the U.S. are native born U.S. citizens or have become naturalized U.S. citizens. Resolutions and

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policies such as this has an important impact on civil rights of all Hispanics, many of whom are often mistaken for immigrants. And you know the saying--we all look alike. As a result, Hispanics care deeply about the nation's policies toward immigrants and vigorously support fair and respectful treatment of immigrants under the law. I, at this point, the Mexican American Commission cannot support anti-immigrant policies such as LR224 that would jeopardize the lives of law-abiding Hispanic citizens and I would hope that you would oppose this legislation. Thank you. [LR224]

SENATOR ASHFORD: Thank you, Cecilia. Any questions? Thank you very much and thank you for... [LR224]

CECILIA OLIVAREZ HUERTA: Thank you for staying the course. [LR224]

SENATOR ASHFORD: ...staying. (See also Exhibits 23, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, and 44.) Senator Fulton. [LR224]

SENATOR FULTON: Thank you, Mr. Chairman. I'll close briefly. I went to the library and found the statute that Senator Lathrop was talking about, so I'll just briefly touch on it. This is 81-2004, and this is how the State Patrol comes to exist statutorily in Nebraska. The Nebraska State Patrol, its subordinate officers...I'll skip to the important part, etcetera, and other employees shall be used primarily for the enforcement of the traffic and motor vehicle laws of the state of Nebraska and the handling of traffic within the state. This resolution would allow local law enforcement or the State Patrol to enter into a memorandum of agreement. This doesn't say what they have to do or what they don't have to do, and it seems to me employees shall be used primarily for the enforcement of the traffic and motor vehicles laws. The statute does not disallow activities which could fall under the legitimate purview of that local law enforcement authority. So that would be an argument I could offer. We can debate that, obviously, at another time. There is also a legitimate argument that I hadn't fully considered until I sat through and heard opposition, and that's the argument that this resolution would hamper or harm the relationships between the locale and the local law enforcement agency. If that's the case, again, we've only put forward a resolution. It's up to the purview and prerogative of the local law enforcement authority. If indeed this could harm that relationship then it's not incumbent upon that local authority to enter into the memorandum of agreement. We can leave that, again as a principle of subsidiarity, to the local law enforcement authority who would make that decision. So I'll close with that. Any questions, I'll answer them...try to. [LR224]

SENATOR ASHFORD: No questions. Thank you. [LR224]

SENATOR FULTON: Thank you. [LR224]

SENATOR ASHFORD: That concludes the hearing. Thank you all for coming and we're

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adjourned. [LR224]

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Disposition of Bills:

LB963 - Indefinitely postponed.

LB1170 - Held in committee.

LR224 - Indefinitely postponed.

Chairperson

Committee Clerk