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Education Committee
January 17, 2017

[LB62 LB119]

The Committee on Education met at 1:30 p.m. on Tuesday, January 17, 2017, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB62 and LB119. Senators present: Mike Groene, Chairperson; Rick Kolowski, Vice Chairperson; Laura Ebke; Steve Erdman; Lou Ann Linehan; Adam Morfeld; Patty Pansing Brooks; and Lynne Walz. Senators absent: None.

SENATOR GROENE: Welcome to the first Education Committee hearing of the 105th Legislature. I'm Senator Mike Groene, the Chairman of the Committee; District 42, Lincoln County. We'll start by having the rest of the committee members introduce themselves and their district. And we'll start on the right.

SENATOR LINEHAN: I'm Lou Ann Linehan, District 39, which is Elkhorn and Waterloo.

SENATOR KOLOWSKI: Senator Rick Kolowski, Vice Chair of the committee, and District 31: southwest Omaha.

SENATOR EBKE: I'm Laura Ebke. I'm District 32, which is just southwest of here.

SENATOR MORFELD: I'm Adam Morfeld, District 46: downtown Lincoln, University of Nebraska-Lincoln, and northeast Lincoln.

SENATOR ERDMAN: Steve Erdman, District 47, which is western Nebraska, including Chimney Rock.

SENATOR WALZ: And I'm Lynne Walz, District 15, all of Dodge County.

SENATOR GROENE: And Senator Pansing Brooks is testifying at the Appropriations Committee. She will be joining us later. Also we have our committee staff, Mandy Mizerski is sitting in today for Kristina McGovern because she's sick. And Mandy is with the Natural Resources now, but she did the last four years I believe Education clerk. So she fits that chair

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well and we appreciate her helping us out. To my left is Charles Garman, he's one of the committee counsels. And later, LaMont Rainey will be joining us and depending on which bill they've been assigned who sits in that chair and which one we're being heard. But we'll start with Charles. We have two bills today, LB62 and LB119. If you are planning to testify on either of these bills please pick up and fill out a green sheet. It's on both sides, I believe, as you walk in. Give it to the clerk, to Mandy, when you come up to testify. If you have handouts, please give them to the clerk too and she'll hand them out. I also did not introduce the pages, and I don't know their names, so if they would stand up and introduce themselves.

ALEXI RICHMOND: Hi, I'm Alexi Richmond and Sam Baird will also be with me in this committee this session.

SENATOR GROENE: They are college students at where?

ALEXI RICHMOND: University of Nebraska-Lincoln.

SENATOR GROENE: So they will be helping. And if you do bring up handouts, make sure you have 12 copies for all the members and the counsels and the clerk. Please speak clearly into the microphone, tell us your name, please spell it out to ensure we get an accurate record, present your testimony. We're going to go five minutes today, but I'm assuming...how many people are here to testify? So it's not a lot, so we'll, just for your courtesy, we'll hit the red light at five minutes so that you know you've talked to five minutes. We'll probably let you continue unless you get boring. I'm just kidding. But please stay in your seat until the...my sense of humor is a little different, so you'll find that out. But anyway, please stay at the testimony chair, some of the senators might have questions for you. And then I think I got it all covered, we'll get this down better as we go on. Oh, electronic devices of course, that's old hat. Shut them off. If you see any of the senators with their electronic devices, it's probably because they're looking up information to ask questions or they might be texting or something their staff to bring them information. Hopefully that's the only reasons we use it. But we'll start with Senator Jim Scheer on LB62, his introduction.

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SENATOR SCHEER: Good afternoon, Chairman Groene and members of the Education Committee. My name is Jim Scheer, J-i-m S-c-h-e-e-r, and I'm here to introduce LB62. And I do appreciate the...this is my first, the first of any committee to open your hearing schedule. So I'm sort of tickled about that. Not sure if that's a good or bad omen, but I'm here and it's now, so we'll get started. LB62 is a very simple bill, it repeals a nearly 100-year-old statute that prohibits teachers from wearing religious garb in the classroom. I bring this bill at the request of Sister Madeleine Miller of the Missionary Benedictine Sisters in Norfolk. Sister Miller was unfortunately unable to come to testify today due to weather, however, I will be passing around a letter that she submitted to the committee. Sister Miller received her teaching certificate in 2015 from Wayne State College. While at Wayne State she taught two courses as part of her curriculum. Upon graduation she sought a teaching position around at many of the Catholic schools in the area. None of them had openings, so she applied to the Norfolk Public Schools, seeking a substitute teacher status. Sister Miller was told that due to 79-898 she could not wear her habit while teaching if hired. It is important to note that as written the statute also would prohibit any teachers from wearing any jewelry with small insignias as well. I'm going to delete a little bit from my remarks here to the extent that I've been around education for a long, long, long time. I was on a local school board for probably 20 years and I was on the State Board of Education, and I have to tell you, I have never heard of this. When they called my office a year ago I had never heard of this particular statute. And I will tell you that for the most part, if we are going to respect the law verbatim, it's been broken everyday that we've all be alive because I would venture to say we could go into any building anywhere in the state--elementary, middle school, or high school--and you will find some teacher that probably has some type of either a bracelet or a necklace that probably has some type of cross or other religious signification on it. So garb is not just related to your dressing. And I made the comment to somebody, you know, I'm not Jewish, but I am balding. So if I happened to wear a yarmulke on the top of my head for warmth purposes at what point is it religious? Because it's not religious to me, I'm using it for personal heat transportation. And some garb that we assume is religious is not necessarily religious, it's more cultural, not religious. But anyway, a little history, it was originally passed in 1919, 35 other states passed similar prohibitions at the same time as Nebraska. These bills were passed at the urging, oddly enough, of the Ku Klux Klan and other groups that had different various alternatives in an effort to keep Catholic nuns and priests out of the public school systems as part of public education. In the century since that bill was passed, we've come a long

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way obviously in our society. And again, not trying to break virgin soil here, 34 of the 36 states that passed the discriminatory law like this one had since repealed their ban. So Oregon most recently repealed theirs in 2010 and today Nebraska and Pennsylvania are the only two states where the ban remains intact. I think it's needless to say that Nebraska should join the other 48 states that do not have a statutory prohibition on teachers wearing religious garb in our schools. The prohibition is a blatant violation of the teachers' First Amendment freedom of religion and speech. In practicality the statute recreates religious test whereby adherence of certain religious beliefs are prohibited from employment because of those religious beliefs. I understand that the establishment clause is a significant concern with this repeal. There are several experts here I assume today that may testify on this establishment clause concerns, as well as other First Amendment issues. However, I would point out that this repeal is religiously neutral. It does not favor one religion or another; Catholics, Muslims, Jewish, Islamics all are treated the same under this repeal. Further, 34 other states have repealed similar prohibitions and have had not one establishment clause problem to the best of our knowledge. In fact, two states--Tennessee and Arkansas--have laws that expressly allow teachers to wear religious garb, rather than exclude it. At this point I'd be happy to answer any questions you might have. I believe there are others behind me that will be testifying with perhaps more legal information, if that's what you're looking for as far as doctrine. Mine is just a pretty logical point. I would also mention to you that the sister who then contacted me and because of her habit was unable to teach in the state of Nebraska, and I want to point out I'm from Norfolk, and Norfolk did exactly what they were supposed to do. It was against the law and so they told her that she couldn't teach wearing that. This is nothing against Norfolk, they did exactly what they were supposed to do. But I would also tell you Norfolk is like a lot of other school districts, they are very hard-pressed to find substitute teachers. And in fact, I believe the Department of Ed several years ago changed a little bit of their requirements so that students in the higher level college courses in teaching could actually substitute before receiving their degree and their certification. It was limited, you could only do it, I don't know if it was 5 times or 15 times, there's a limitation. But obviously they were not certificated and they were not truly qualified, but we've allowed them to do substitute teaching in our school systems. But yet, we had somebody that was fully certified and capable of teaching but was barred simply because of the dress she simply wore. Unfortunately, Sister Madeleine now resides in Sioux City, Iowa, where it is perfectly legal for her to teach. If we're trying to attract people to the state of Nebraska I think we have to start tearing down those fences

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and the barriers that prohibit people from coming into our state. And with that, I would close.
Thank you. [LB62]

SENATOR GROENE: Any questions? I have one. I looked around and I didn't plan this, but I got a tie tack that has two hands in the form of a prayer. Now if I wore that in public school as a teacher, would they call the police and they would arrest me? That's the way it reads. And then I would be fined in a court of law? [LB62]

SENATOR SCHEER: Well, they I suppose technically could. I'm not sure exactly if they consider clasped hands as prayer or just clasped hands. I mean, that's part of the problem, what is religious and what is not. So unfortunately, the easiest and most productive solution is just to repeal the statute. [LB62]

SENATOR GROENE: By law the administrator had an employee, if I'm wrong here, that broke this rule. By law it would be their duty to call the police, right? [LB62]

SENATOR SCHEER: If that...per the statute, correct. [LB62]

SENATOR GROENE: Yes. Not just tell them to take it off. By law, to follow the law, they should call the police and have them arrested. [LB62]

SENATOR SCHEER: Yeah, it was an infraction. Correct. [LB62]

SENATOR GROENE: Thank you. [LB62]

SENATOR SCHEER: Any others? Thank you. [LB62]

SENATOR GROENE: Proponents first. Anybody want to come forward and testify for legislation? [LB62]

TOM VENZOR: (Exhibit 4) Chairman Groene and members of the Education Committee, my name is Tom Venzor. I'm the executive director of the Nebraska Catholic Conference and I

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express my support for LB62 on behalf of the Conference. The Nebraska Catholic Conference represents the mutual public policy interests of the three Catholic bishops serving in Nebraska. It is said that the social nature of man itself requires that he should give external expression for his internal acts of religion. Injury, therefore, is done to the human person and to the very order established by God for human life if the free exercise of religion is denied in society, provided just public order is observed. LB62 does injury to the human person insofar as it denies the free exercise of religion through a violation of the establishment clause of the United States Constitution, which has been applied to states since the United States Supreme Court case Everson v. Board of Education, decided in 1947. While earlier case law has reached flawed conclusions that upheld state statutes as the ones that LB62 seeks to repeal, the Nebraska statute at issue runs afoul of our current establishment clause jurisprudence. Two United States Supreme Court cases in particular, Lemmon v. Kurtzman and Agostini v. Felton, provide the test for determining whether a law violates the establishment clause. These two cases stand for a two-pronged test for determining violations of the establishment clause. First, it must be determined whether the law has a secular purpose; second, it must be determined whether the law has the effect of advancing or inhibiting religion. To help determine whether the law has an impermissible effect of advancing or inhibiting religion, it can be asked whether the law creates an excessive entanglement between state and religion and whether the action in question results in religious indoctrination attributable to the state. Applying this very test in Pennsylvania, the only remaining state other than Nebraska with such a law on the books, a federal district court reached a conclusion that a nearly identical religious garb statute violates the U.S. Constitution. In that case, a woman was suspended from her position in a public school for visibly wearing a cross necklace. Upon review of the religious garb prohibition statute, the district court recognized that the law did not have a secular purpose and that it had an impermissible effect of inhibiting religion. The law was ruled not to have a secular purpose because of its poisoned intention, namely the anti-Catholic animus behind its enactment. The law was also ruled to have an impermissible effect of inhibiting religion, since it was targeted at prohibiting religious messages that had no bearing on secular messages. While it was argued that the Pennsylvania law was an attempt at religious neutrality and avoided giving the impression that the state was endorsing the religious views of the teacher, these claims were rightfully dismissed. The idea that the state was endorsing religion or a particular religion simply because a public employee was exercising their faith, was easily surmountable by the fact that the reasonable observer

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would not interpret a public employee's religious garb as the state's endorsement of that religious view. In fact, it was stated that the reasonable observer could easily come to the opposite conclusion that religion was being inhibited by prohibiting religious garb. As leading constitutional law scholar, Eugene Volokh, stated in an article about the recent repeal of Oregon's religious garb prohibition, the Pennsylvania statute "isn't necessary to serve the government interest in preventing endorsement or coercion." With the Supreme Court's case law and principles in mind and its cogent application in the Pennsylvania federal district court case, it is easy to see how our Nebraska statute is similarly situated as a violation of the establishment clause of the United States Constitution, not to mention the free exercise and the free speech clause that others will analyze. If our state wants to promote a more robust religious liberty through religious neutrality, it is imperative that we repeal laws like the ones that LB62 seeks to strike. By doing so, we protect the human person in the search for truth and God in a diverse, pluralistic society. The Nebraska Catholic Conference urges your support of this important legislation and asks you to advance it to General File. Thank you. [LB62]

SENATOR GROENE: Tom...any questions? Thank you for your testimony. [LB62]

TOM VENZOR: Thank you. [LB62]

SENATOR GROENE: Any more proponents? [LB62]

MARTIN CANNON: Good afternoon. My name is Martin Cannon, I'm an attorney with the Thomas More Society. I've got really only three very brief comments to make in support of the bill. The First Amendment to the constitution prohibits the government from either establishing religion or prohibiting the free exercise thereof, or of course the freedom of speech. Properly viewed, that amendment literally clears the public space of predictable impediments for religious expression within it. The statutes involved here, I'm afraid, are based on a flawed idea that in order for the government to avoid establishing religion it must prohibit religious expression by its teachers. Not only does that not follow from the amendment or from an jurisprudence surrounding it, it collides directly with two other prohibitions in the very same amendment-- those being obviously the free exercise of religion and the freedom of speech. There is an idea well-established in the law that a statute otherwise neutral is not constitutionally suspect just

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because it incidentally impairs somebody's expressions or acts of a religious nature. And at first blush the statutes in question here may pass muster under that because they appear to be applicable equally to all religions and any religion. The problem is that they are applicable only to religion. So a person could come to school as a teacher wearing maybe a flower power shirt or a Scooby-Doo button or a vote for Charley pin, but he can't wear a cross. For that reason, the statutes direct themselves only to religious expression and there's no real reading of the law that can support that. They are blatantly unconstitutional. It can't be fixed, only can be cured by repeal. So I urge you to support the bill and I'd take any questions. [LB62]

SENATOR GROENE: Questions from the committee? Senator Kolowski. [LB62]

SENATOR KOLOWSKI: Thank you, sir. Thank you for your testimony, I just had a side question I wanted to ask you. If a student in a school came to class, or a teacher would wear the same thing, something with a Satanic...in favor of Satan, something of that nature, and that's disturbing to others around them. How does that come into a reaction, either a student or a teacher, if they wore something of that garb? [LB62]

MARTIN CANNON: Well, there's a well-established rule that the government can impose restraints on speech for the purpose of regulating its time, place, and manner. You know, you don't get to say anything offensive or provocative just because it's speech. There are limitations that go toward basic decorum and propriety. Merely a Satanic message, just because it may be offensive to somebody, probably doesn't cross that threshold. And of course, one of our mantras is that the solution to offensive speech is more speech, not less of it. Now, if a person's t-shirt were, and there's always a subjective component to this. If a person's t-shirt were just beyond the norm, you know, somehow clearly provocative to the majority of society or something, or if it induced violence or created panic or something like that, obviously it can be prohibited. But if this guy says I want to worship Satan and this guy says I worship Jesus Christ, or Yahweh, or Buddha, or whatever, I think you have to lump the Satanist in with the rest of them and it needs to be allowed. The important thing here is that if we allow students or teachers to wear religious garb in school what we wind up with I think is an atmosphere in which the importance of religion in our society is recognized. It becomes part of the conversation. Moral values become part of the conversation and it pushes back against a current idea that we really have infecting

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our schools that the government simply can't teach values at all. And I think we've gotten into a lot of trouble because we send our kids into a kind of a value-free space where the feeling is that we can teach all kinds of nuts and bolts, but we can't teach you values. And obviously that's a bit of a rabbit trail, but the long and the short of it is these statutes are blatantly unconstitutional because they target religion only. And the only solution for that has to be repeal. [LB62]

SENATOR KOLOWSKI: The social connections to the timing of the law that was passed in 1919 was a very explosive growth of KKK and other organizations and I think that it's easy to see within the context of what that time was where they were coming from. But my example that I gave you, and you answered, I think is maybe ruled by the school district's rules and regulations. And then the subjective judgment of the administrator in charge would come into play and that would be played out by live, somebody would protest that. [LB62]

MARTIN CANNON: Right. If somebody is wearing offensive or inappropriate things, repealing this statute does not keep the school administrators from prohibiting it. [LB62]

SENATOR KOLOWSKI: Correct. Thank you. [LB62]

SENATOR GROENE: I think you answered it but dress codes, my grandkids can't wear anything on their shirt that says anything. So that's uniform and addresses that. [LB62]

MARTIN CANNON: Right. And that's appropriate, a school can have a uniform. [LB62]

SENATOR GROENE: My concern is that...yes. [LB62]

MARTIN CANNON: And a school can say you don't wear any messages on your shirts. [LB62]

SENATOR GROENE: Yeah. [LB62]

MARTIN CANNON: This one singles out only religious messages. Scooby-Doo gets in the door, the cross doesn't. [LB62]

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SENATOR GROENE: And you have no concerns that somebody from a Muslim faith wears a burqa to school and teaches. I don't, do you? [LB62]

MARTIN CANNON: Not really, no. Again, I would welcome, the Thomas More Society would welcome, the expression of religious faiths of all kind in the public square. In fact, just a few weeks ago we had the Nativity in the Rotunda and the atheists had their thing right across the Rotunda and that's beautiful. What it shows is it's a public space, the government isn't selecting or choosing winners and losers, it's the public space. [LB62]

SENATOR GROENE: Thank you. [LB62]

MARTIN CANNON: Thank you. [LB62]

SENATOR GROENE: Any other questions? [LB62]

MARTIN CANNON: Thank you. [LB62]

NATE GRASZ: Good afternoon, Chairman Groene and members of the Education Committee. My name is Nate Grasz, N-a-t-e G-r-a-s-z, I'm the policy director for the Nebraska Family Alliance and am here to express our support for LB62. Today so far we've heard expert testimony on the First Amendment and the freedoms codified therein. The right to live and work according to your beliefs is a critical component to any free society. Whether one is religious or not, religious freedom protects every citizen by assuring them that the government is not the gatekeeper of their conscience. Good Nebraskans should not have their jobs nor their livelihood jeopardized because of peacefully-expressed religious beliefs. Protecting this basic right is important and Americans have recognized it as such. In fact, a new Marist College poll published just last week showed that an overwhelming 89 percent of Americans believe protecting religious freedom is an important undertaking. Religious freedom guarantees that no one, regardless of their beliefs, is coerced or bullied by the government, and this critical freedom gives everyone the right to live by the dictates of their own conscience. Nebraska was not alone in adopting the type of statutes that LB62 would repeal, which were initially enacted to prevent Catholic nuns from wearing the habit in classrooms, but we are one of the last states to have

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never repealed them. At one point, 36 states had such a law. Today, however, they remain in only Pennsylvania and Nebraska. These statutes are a violation of Nebraskan's First Amendment freedoms and should be repealed. Teachers do not forfeit their constitutionally protected freedoms when they arrive for work and no one should have to abandon their faith when they walk out their front door because of their profession. First Lady Michelle Obama expressed a similar sentiment when she spoke to an African Methodist Episcopal church in 2012. She said, "Our faith journey isn't just about showing up on Sunday for a good sermon and good music and a good meal. It's about what we do Monday through Saturday as well, especially in those quiet moments when we're making those daily choices about how to live our lives." What makes America unique is that we have the freedom to live and work according to our beliefs. Not just on holy days or inside a house of worship, but everyday, and this freedom is for everyone. For example, in Oregon they successfully repealed their anti-religious garb statute in 2010, led by a coalition of Sikhs, Hindus, Muslims, Jews, and Seventh-day Adventists. Upon settling in Nebraska, after suffering severe persecution in the Middle East, Kawaal Hasan, a leader in our local Yazidi community, wrote: "As a Yazidi leader I help my community by getting our voices out to the people who don't have much knowledge about the Yazidi religion and the Yazidi people. We appreciate the principle of religious freedom that is embedded in the Constitution of the United States and we relish the ability to freely practice our religion after many years of persecution." Religious freedom is a fundamental right that all are entitled to exercise, and in a society of great diversity and tolerance, should not be abandoned at the schoolhouse gate. That is why we fully encourage this committee to advance LB62, so that Catholics, Muslims, Sikhs, Hindus, Christians, Jews, Yazidis, and every teacher can live out their constitutionally protected freedoms. Thank you. [LB62]

SENATOR GROENE: Thank you, sir. Any questions from the committee? Thank you for your testimony. [LB62]

JEFF DOWNING: (Exhibit 5) Senator Groene, my name is Jeff Downing, 530 South 13th Street here in Lincoln. Private practice attorney who for 27 years of my practice have been involved in constitutional issues, and mostly involving the First Amendment and the free exercise of religion in establishment clause cases. In fact, the first case that I had in federal court was one in which I was appointed by the federal court to represent a minority religion, that was the Native American

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inmates of the Nebraska State Penitentiary, who merely sought to engage in the free exercise of their faith within a governmental institution and wanted to use the sweat lodge facility. And so we won an important victory in that case for the protection of a minority religion. So while the bulk of my time has been representing Christians within the public sphere here in Nebraska, this particular repeal would be one that protects all types of religious faith. In fact, it is view point neutral by repealing this ban. I was shocked to learn of these two particular statutes, having done this for 27 years I would have thought I would have run into this particular problem, given that this is a set of statutes on the book, which, as one of the senators pointed out earlier, carries a criminal penalty and then a harsh suspension for teachers that dare to violate it. So I was a bit bemused that after doing this for a long time I had not had a teacher call me or run across this as a particular problem. So I think that is some evidence that it's time for these statutes to go the way of the dinosaur as they did in sounds like 34 of 36 other jurisdictions. So I have some lengthy testimony that I will just submit on the record, but I only want to highlight a few things that I think other testifiers have not touched on yet, and that is our state Constitution. A lot of talk about the federal Constitution, but our state Constitution, which we, as Nebraskans, ought to be the first thing that we look at to see if we're passing laws that are squaring with the protections and the guarantees of our own state Constitution. So I point out on page 1 of my testimony that Article I, Section 4, which is captioned religious freedom, kind of down in the middle of the first page of my testimony. It really carries some important language that I think is often overlooked by not just policy makers, but by those in governmental position of all types, who are charged with protecting Nebraskans and all of their rights. Article I, Section 4 says "All persons have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences." And as a previous testifier noted, the conscience is something that goes to the very core of who we are as a human person. It's one thing to have a law that protects people in their physical person. We all know that it's an assault for me to strike my neighbor. But it's a different type of assault, and one perhaps even goes deeper to the core of who we are as people, that assaults our conscience. And so for a teacher to be told that you cannot wear the religious garb that your faith requires when you seek to teach in the public school classroom, that really goes to something that's even deeper than a physical assault on the person as it assaults the conscience. And it's conscience rights which are protected by Article I, Section 4. Of course Article I, Section 4, similar to our federal Constitution, also seeks to prohibit the establishment problem, that is the church dictating to the state that which is allowable. So the next provision

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says that "No person shall be compelled to attend, erect, or support any place of worship against his consent, and no preference shall be given to any religious society." But then in bold it notes, my bold, sorry, "nor shall any interference with the rights of conscience be permitted." So once again, our state Constitution recognized this issue of consciences. What's most fascinating to me about Article I, Section 4 however is that it actually links the rights of conscience and the right of free exercise of religious faith with education. Normally we would say, well, that's terrible because now there's some sort of entanglement between government and education and the church or religious faith. But please note that after the Constitution says "No religious test shall be required as a qualification for office." It goes on to say that "Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the Legislature to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and..." and here's the linkage, "...to encourage schools and the means of instruction." So I would say that your best basis for passing LB62 and for repealing these old statutes is embedded right there in the very verbiage of our Nebraska state Constitution. I'll submit the balance of my testimony for your consideration. I'd be happy to take any questions. [LB62]

SENATOR GROENE: Questions from the committee? I have one, did you do any research, since 1919 how many cases? Has there ever been a case? [LB62]

JEFF DOWNING: None that I could find, Senator, and in doing this for about the last 30 years. I'm involved in a number of Christian legal organizations, I would have thought that I would have heard at least of some. And I am consulted on a regular basis, a regular part of my practice, by those organizations who have teachers, coaches who are involved in public school teaching. [LB62]

SENATOR GROENE: Do you believe if this was repealed that an individual school district could put into their dress code that you could not wear dress or garb indicating religious preferences? [LB62]

JEFF DOWNING: Yeah, I don't think that they could if they allowed other clothing that allowed expressive messages. Sort of a prior testifier pointed out, if they're going to allow any type of

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clothing with any sort of expression they can't then pick winners and losers. Yes, on Scooby-Doo; no, on Mother Mary. [LB62]

SENATOR GROENE: Cure cancer, any type of... [LB62]

JEFF DOWNING: Correct, any message. Correct. If they just eliminated all messages, and I think your question earlier to a prior testifier was, some kids' schools just allow no messages. Well, now you're into a different area, where that is viewpoint neutral. But here the statutes actually are favoring nonreligion over religion. And the government can't do that under the Constitution, state or federal. [LB62]

SENATOR GROENE: Second part of this, 79-899, have you ever seen a statute where an elected official can be fined if they don't take a certain action against an employee? [LB62]

JEFF DOWNING: I have not. I was shocked by that particular part of the statutory scheme. [LB62]

SENATOR GROENE: Thank you. [LB62]

JEFF DOWNING: Thank you to the committee. [LB62]

SENATOR GROENE: Any more proponents? [LB62]

JACKSON MOFFETT: Ladies, gentlemen, Senators, thank you for your time today. My name is Jackson Moffett, I'm a man from the state of Florida who came to this beautiful state to study political science and pre-law at the University of Nebraska-Lincoln. [LB62]

SENATOR GROENE: Could you spell your name? [LB62]

JACKSON MOFFETT: Oh, I apologize. My name, Jackson Moffett, J-a-c-k-s-o-n M-o-f-f-e-t-t. My apologies. [LB62]

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SENATOR GROENE: That's fine. [LB62]

JACKSON MOFFETT: However, I came here to this hearing today because my roommate, Jessie Ferguson (phonetic), told me about the bill being discussed today, LB62, a bill that I personally believe should be passed and I intend to speak in favor of today. When I came to Nebraska, roughly six months ago, I didn't know anybody. For all intents and purposes I was an outsider. I was different from everyone else around me, I didn't know anyone, and the experiences that I've had and that my now-friends have were very different--such as winter or certain words. You guys say pop, I say soda. However, the people of this state were overwhelmingly welcoming. They accepted me with open arms and open minds and they were ready to accept me no matter who I was or what I believed in. Quite simply, the law that LB62 seeks to repeal does not accurately reflect the Nebraskan values I have come to know and love. As I'm sure many of you know, the law that LB62 seeks to repeal bans the wearing of religious garbs in the classroom of a publicly funded school. This goes against the open and welcoming beliefs that I've seen Nebraskans hold and this promotes really nothing except conformity over individuality. And I've seen that in today's world it really only restricts...the restricting of wearing religious garb only restricts what makes a person a person. What makes what they believe in different from everyone else. Many of your constituents prefer individuality over strict conformity and many of your constituents seek to hear and discuss new ideas and concepts and never shy anyone away from contributing to a discussion. Second, the framers of this piece of legislation that LB62 seeks to repeal are simply invalid in today's world. The law was passed, as you've heard previously, in 1919, in the height of anti-Catholic hysteria that papists were going to come into the United States, corrupt the young minds of America and specifically Nebraskans into believing and anti-government propaganda and pro-Catholic rhetoric. The target of this law were the collars that priests wear and the habits that nuns wear on their heads. Clearly, the threat of a papist takeover of the United States never came true. In today's world we have laws preventing people from teaching their own personal faiths or religious beliefs as absolute truth in the classroom, so any vestige of righteousness or valiantry (sic) that this law intended to possess simply does not exist. Laws are passed with the goal...with either accomplishing a goal or protecting or benefiting a population at hand. We've already shown that the threat that the laws seek to prevent never came true and that we already have other laws in this state that accomplish the same goal without being so harsh as to restrict other people's First Amendment rights.

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Finally, there is only benefit in passing LB62. First, we're showing these religious communities that they are welcome to teach in Nebraska's public schools. No longer are we going to force Muslim women from removing their headdresses or the Jewish men to removing his kipa. We're also telling children of these faiths that they are not alone in their journey of religious faith. While again, as I've said before, and other people have, that a teacher cannot teach their faith as absolute truth or cannot discuss their faith in the classroom. It's important for a child developing into a growing man or woman to see other people in the world as different than their own or not exactly the same as what they see at home. And so it's important for them to get other views and see people that are different than themselves. And finally, people who want to get a job as a teacher do not need to seek places outside of Nebraska and can stay here, thus preventing the youth drain that I've heard plenty about, that many people are trying to do something about. This would be a show of diversity and acceptance that 48 other states have already stepped into. Ladies, gentlemen, Senators, I beg of your support in LB62. In doing so, you'd be making a law reflect Nebraskan values, you'd be rejecting the fears and anger of people almost 100 years ago, and you'd be moving the state forward into a world of diversity and acceptance. You'd be living up to your reputation as Nebraska nice. Thank you for your time. [LB62]

SENATOR GROENE: Any questions? Thank you for your testimony. [LB62]

JACKSON MOFFETT: Thank you. [LB62]

SPIKE EICKHOLT: (Exhibit 6) Good afternoon, Chairperson Groene and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing here on behalf of the ACLU of Nebraska in support of LB62. You've heard a number of other testifiers testify earlier and talk about some of the law regarding First Amendment law. I'm not going to restate all of those. You do have a handout that I think outlines our position that you're getting right now. But I would just generally summarize that as some of the other people who testified before have said the First Amendment sort of has two issues with respect to...or two rules or two principles with respect to government and religion. First, government cannot establish a formal religion or side with a type of religion or a type of religious belief. On the other hand, government can also not prohibit the free exercise of citizens and people's ability to believe in certain things and to worship certain religions. This is sort of a tension, if you will, between government establishing

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religion and at the same time, government restricting religion. And I think that tension is a little more acute perhaps in the schools. Teachers are representative, at least public school teachers are representative, of the government. When they are teaching and they are speaking on behalf of the schools, they are speaking on behalf of the government. But at the same time, teachers are private citizens, and like anyone else they're entitled to religious belief and religious worship. We support this bill because it repeals two statutes that as Chairperson Groene and others have pointed out aren't constitutional. The statute, the first one that's to be repealed, the 79-898, that criminalizes the mere wearing of religious garb. Chairperson Groene is right, that's not even defined. Who knows what garb means, it's really subject to conjecture and speculation. The law as it currently exists does not even require that a student even see that garb or even understand what that symbol means. It simply makes it a crime for a teacher merely to have it when they're teaching or on behalf of the school. It really goes too far. And then the companion statute that provides and requires a board to expel teachers for subsequent offenses is also too far. And that's why we support the removal. Now, removing the statute, is that going to somehow open up, is that going to make an establishment problem? The First Amendment still prevents and prohibits government from advancing a certain type of religious belief, teachers are not going to be able to go in and advocate for Catholicism or for Kabbalism or anything like that. That's still prohibited by the Constitution, whether the statute's on the books or not. But what it does happen apparently, as Speaker Scheer explained, is that it has a chilling effect possibly for some people who want to go into the business of teaching. They see this statute, they're concerned about it. Whether there's any actual prosecutions or not, as Chairperson Groene pointed out, that's really just up to somebody report it and for someone to prosecute it. So for the reasons that have been stated earlier and the reason that I highlight in our testimony, we do support the bill and the repeal of these statutes. [LB62]

SENATOR GROENE: Any questions from the committee? Thank you, sir, for your testimony. Is there any more proponents? [LB62]

JESTIN CASAS: Hello, my name is Jestin Casas, J-e-s-t-i-n C-a-s-a-s. I'm just a student and an active citizen. Being here I'd like you to know I have an unwavering respect for my state, as I've spent most of my life working for its betterment and representing it. However, I know there are improvements to be made. With passing this bill, the state of Nebraska shows its commitment to

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diversity and the discourse of acceptance. We will be taking a large step in the right direction, a large step forward. But I want to make clear that it's not on solely this issue alone. It's no surprise that Nebraska is facing an ever-present and pervasive youth drain or loss or youth, and in fact, you have some senators right now trying to work on this issue, such as Senator Morfeld. And Nebraska is a state founded from various heritages and somehow we can come together and accept everyone. And this is something that the youth find very attractive. Like so many others, I'm a young person attending the University of Nebraska-Lincoln and I am currently wondering where I would like to go to law school or where I would like to spend my future. And like so many other youth, I am thinking about these things all the time and what attracts people or my friends, as many of them have told me when I've been asking them about it, and what I want in a community, is this acceptance and this diversity. But I am fully confident that my state representatives know a law of this restricting upon freedom of speech or expression and religion is certainly unnecessary. [LB62]

SENATOR GROENE: Are you finished? [LB62]

JESTIN CASAS: Yeah. [LB62]

SENATOR GROENE: Is there any questions from the committee? Thank you, young man, for your testimony. [LB62]

JESTIN CASAS: Thank you. [LB62]

SENATOR GROENE: (Exhibit 7) Any more proponents? I will end the testimony of the proponents. I have one letter of record as a proponent from Jason Hayes, the Nebraska State Education Association, director of public policy. They support LB62 in the interest of the teachers in the public schools of our state. We'll go to the opponents. Are there any opponent testifiers today? Any neutral testifiers today? That ends the public hearing I guess on LB62. The closing. Excuse me? Senator Scheer needs to close. [LB62]

SENATOR SCHEER: I don't need to, but I have to tell you. [LB62]

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SENATOR GROENE: You want to go first, don't you? [LB62]

SENATOR SCHEER: Well, not only that, but those that have been around the Education Committee for the last several years, I've never had this happen in my life down here. I'm usually greeted with less than enthusiastic results when I've brought things to this committee, so I appreciate the support that I've received from the community. Very shortly just in closing, you have one of the letters that I submitted to you is from a young lady that's a Mennonite going to Peru State for a teaching degree. She meets with her counselor and the counselor says, but by the way, you can graduate, you can get your certificate, but you won't be able to teach simply because of the clothing you wear that is culturally permissive in their religious sect. Stuff like that shouldn't happen, not in Nebraska. Look at the intent, you know, it's probably long past due. Like I said, everyone, including Mr. Downing, who has dealt with religious law for a number of years, had never heard of it, never seen it. And I ought to tell it was something that when we're not using something, we haven't used it for 100 years, and no one's going to use it, it's probably best to let it die. And so I would just respectfully request that you exec someday and move that to the general floor. As my Speaker's role, the sooner the better, because we would actually have something to talk about on the floor then. So with having said that, I do appreciate your time. And thank you so much. [LB62]

SENATOR GROENE: (Exhibits 8, 9) Thank you, Senator Scheer. I have...we'll get this down as we hear more bills. But I forgot to mention two letters of opposition that we received from Kathy Wilmot of Beaver City, Nebraska, is opposed to LB62; and Susan Gumm of Omaha, Nebraska, is opposed of LB62. And they will be in the record if anybody wishes to read them. We have one neutral letter from John Spatz of Nebraska Association of School Boards and that I am stunned to that this continues that we have the ACLU, the Thomas More Society, and the Nebraska State Education Association agreeing with most bills in the committee. We'll break now and start with LB119, which I will be testifying. Clear the room. [LB62]

BREAK

SENATOR GROENE: (Recorder malfunction)...the hearing on LB119. It was introduced by myself, so I will be introducing it. One of the things about our committee, I've decided that we're

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going to allow introducers to come back and sit in their chair if they wish to, but not ask questions. But on this one I think I'll just, there's a lot of open seats, so I'll turn it over to Chairman Kolowski. And I'll introduce the bill. One correction already, I mistakenly read a letter of neutral for...or we, as a Education Chair office mistake, I mistakenly read a letter of neutral from John Spatz in as LB62. I will introduce it later as neutral on LB119. I just said the wrong bill. [LB119]

SENATOR KOLOWSKI: We will now turn our attention to LB119. Senator Groene, thank you for coming. [LB119]

SENATOR GROENE: Thank you, Vice Chair Kolowski and the committee. Fellow committee members, my name is Mike Groene, M-i-k-e G-r-o-e-n-e. I'm introducing LB119 at the bequest of the Appropriations Committee. It is a bill that would simply delay the statutory required state aid certification dates, the budget authority, and the allowable reserve percentages date respectively under the Tax Equity and Educational Opportunity Support Act, TEEOSA, from March 1, 2017, until June 1, 2017. This procedure is required so that we do not reach that required deadline before we have adopted our strategy for addressing the current fiscal crisis and identifying what role state aid will play in helping us to resolve that crisis. It's all due to the budget crisis and what comes out of the Appropriations Committee. The action taken under LB119 is not new and in fact has been used to provide the Education Committee and the Legislature the necessary time to discuss potential changes to TEEOSA, whether that has been to add additional revenues to the formula, as was the case in 2011, when LB18--Adams was introduced; or when we had to make cuts, as was the case in 2013, when LB408--Senator Sullivan was introduced. It should be noted that this change in certification day is only being made for 2017 and will change back to the regular certification date of March 1 for 2018 and beyond. I realize that whenever the certification dates are pushed back it creates a degree of uncertainty for school administrators, as they negotiate employment contracts for the following year, but we need to ensure that we have the time necessary to complete the process of identifying how much revenue is available for state aid and TEEOSA, as such items will go a long way in helping us address our current fiscal deficit. I should note that schools are statutorily required to notify teachers of any reduction-enforced measures that will take place by April 15 of each year, and this legislation does not change that date. This legislation does not change the

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April 15 reduction-enforced notification date, as historically we have not taken that step. I thank you for your time on LB119 and ask for your support in advancement from this committee. I will answer any questions that you may have. [LB119]

SENATOR KOLOWSKI: Any questions for Senator Groene, please? [LB119]

SENATOR ERDMAN: Senator Groene, thank you for your testimony. How many times has this been used before, do you know? [LB119]

SENATOR GROENE: The two examples that I mentioned were the two latest ones, in 2009 and 2011. I believe it was also done in 2009 when we had the crisis. [LB119]

SENATOR ERDMAN: They didn't do it back in 2003 when we had that crisis? Do you know if they did? [LB119]

SENATOR GROENE: I...do you remember, LaMont? [LB119]

LAMONT RAINEY: We did. [LB119]

SENATOR GROENE: We did. It's commonly used. We just push it back to match the dates that usually the body addresses it and comes out with their budget. [LB119]

SENATOR ERDMAN: Okay, thank you. [LB119]

SENATOR KOLOWSKI: Any other questions, please? Senator Groene, basically it's a very handy cleanup bill to get us through this spring and the dates that we have before us, with the challenges we have before us. [LB119]

SENATOR GROENE: Yes, and if I would have been on my toes and been used to this, I would have probably tried to have it as a committee bill because it's common and the body needs to know the committee behind the actions. Because we are part of the body and this committee is

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also part of the whole appropriations process, so we must work with the Appropriations Committee. [LB119]

SENATOR KOLOWSKI: Thank you. Any other questions? Thank you very much. We'll now have proponents to this bill. Please come forward to speak. Any opponents to the bill, please? Welcome, Larry. [LB119]

LARRY SCHERER: (Exhibit 1) Good afternoon. For the record, my name is Larry Scherer, L-a-r-r-y S-c-h-e-r-e-r, and I'm here representing the Nebraska State Education Association in opposition to this bill. It's really not opposition so much in that we recognize that the committee and the Legislature does have to make some changes to state aid to address the budget shortfall. But it's a question really of process. You know, I've attached this, and Senator Erdman asked how many times this has been used. On the second sheet you'll see the number of times this section has been amended. So it was changed in 2003 and it has been periodically over that time frame. Not all of these changed the time, but most of them do. And that indicates to us that there's something amiss with the way we fund schools because, you know, you shouldn't have to change it every year, each session, for the aid year coming up. One of the suggestions is to make the changes for the second year, the biennium, which would give schools time to address it. The uncertainty that this causes schools, and I'm sure Mr. Spatz's testimony will address this as well is, not knowing how much state aid there is, they're forced to put more money into their cash reserves, which is smart budgeting. Certainly can't, you know, and I think two years ago Lincoln put \$10 million in because they knew in this year the increase was going to be slight. They were attacked by LIBA and other organizations that think the money should go back to the taxpayers, but if you're a school district trying to fund programs year after year, you're well-advised to create that kind of a fund when the Legislature's history has been sort of an up and down trend line, not a steady state. So additional reasons, I think Senator Groene ably mentioned those. The April 15 date, which you know, schools don't know how much aid they're going to get. And then see as to issue more RIF letters. And the other...it has to do with collective marketing, which you referenced as well. This pushes back the last date for resolving contract disputes until 25 days after the state aid is certified. If that would be June 1, that makes June 25, and then the parties have another 14 days to appeal. So you can see you're looking at a July appeal date, goes to the CIR. And most likely the contract would not be resolved, the dispute would not be resolved by

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then. So one of the suggestions at the end is maybe, you know, realizing you have to do something, is to conduct an interim study, is there some way we can better coordinate the state aid funding system and the dates there with the school's budgeting process, with those RIF date, and with the bargaining timeline. You know, just from a philosophical perspective I think most schools and most people would be more comfortable with a lower increase that was steady, as opposed to a large increase one year and then nothing the next year. Again, we, you know, recognize that schools and school funding will have to participate in the deficit issue. And, you know, it does make a certain amount of sense to wait until later to decide that. But the, you know, the alternative perhaps would be to get to April or May, which would give time for the Legislature to assess the issue. The preliminary Appropriations Committee recommendations come out before then, so that there could be a plan set to do that. So it's not so much opposition to this bill or Senator Groene's bill. I hate to do this on his first bill as Chairman of the Education Committee, usually not a good move. But it would be to look at the systemic problems there and that might take more time than this session. So thank you for your attention and if you have any questions I would try to answer them. [LB119]

SENATOR KOLOWSKI: Thank you. Any questions, please? Yes, sir. [LB119]

SENATOR ERDMAN: Mr. Scherer, in your comments, and I'm a newbie here, it's my first day. Senator Groene introduced the bill just detains the filing deadline and I don't believe he was talking about cutting spending or adding spending or anything like that, I think it was basically the date. So you have a problem with going from March 1 to June 1, is that what you're telling me? [LB119]

LARRY SCHERER: Yeah, exactly. And realistically speaking, it's being delayed so that the formula can be amended to reduce the amount of appropriations. The model from the Department of Education came out last Friday, under current law, as I read it, it would be \$1,046,000,000. The Governor is proposing much less than that, but still an increase and so there needs to be some substantive law change to go from that, you know, \$1,046,000,000 down to whatever it amounts to be. So that's... [LB119]

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SENATOR ERDMAN: So you're making an assumption that there's going to be a reduction, that's why you don't want the date to be pushed back? [LB119]

LARRY SCHERER: No. No, I think that is secondary. The problem is the problems it causes with school budgeting, with collective bargaining, and with the RIF notices. You can, as Senator Groene mentioned, this could be used to actually increase aid, and I believe has in the past, during Senator Sullivan's and Senator Adam's time frame. The idea is though is more of a predictability for schools and teachers and everybody involved in K-12. Yeah, it's a recognition that there will be cuts, but we're not opposing it because of that. We're opposing it because of the timeline. [LB119]

SENATOR ERDMAN: So what date would you prefer? [LB119]

LARRY SCHERER: April 1. If you look at the bills, and I didn't present them all, it's been February 1, when it was first introduced; March 1; April 1; May 1; June 1; and a bunch of dates in between. So it can work in any number of ways and it gets into legislative process and how you want to structure your session. [LB119]

SENATOR ERDMAN: Yeah, I guess I just find it a bit peculiar that we're talking about what the funding may be when all we're talking about is changing the date. That's all we talked about. That's all this bill does. [LB119]

LARRY SCHERER: Right, right. Yeah, and changing the date is the problem. [LB119]

SENATOR ERDMAN: Yeah, no further questions. [LB119]

SENATOR KOLOWSKI: Yes, Senator. [LB119]

SENATOR LINEHAN: I just have a question about process. [LB119]

LARRY SCHERER: Sure. [LB119]

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SENATOR LINEHAN: And maybe you're not...and if you can't answer it, that's fine. When do most school budgets, or is it by statute, that they have to have...when do most school boards prepare their budget for the following year? So is that the right way to ask the question? [LB119]

LARRY SCHERER: Right, right. Well, I believe it starts now for a lot of districts. You know, well before April 15 they need to have an idea of how much money they have, how many staff they can employ, and what the cost of salaries and benefits and all that will be. So it starts unofficially now. I think their budget document is August 25 or something like that, it has to be done. But you, you know, you have to start a good six months ahead of time. There are some school people here today that might be able to answer that better than I. [LB119]

SENATOR LINEHAN: Okay. Okay, thank you very much. [LB119]

SENATOR KOLOWSKI: Any other questions, please? [LB119]

LARRY SCHERER: Thank you for your time. [LB119]

SENATOR KOLOWSKI: Sure, thank you. Any other opposition? And any neutral? I have one neutral letter I've been asked to read into the record. I'll do that very quickly. This is from John Spatz, executive director of Nebraska Association of School Boards. "Chairman Groene and members of the committee, the Nebraska Association of School Boards, NASB, understands the need in this season (sic) for the proposed change in dates related to certification and distribution of state aid to schools. However, changes of this nature have ramifications because of other laws school boards must follow. The neutral position of LB119 is based on the standing position approved by the NASB delegate assemble. The delegate assembly is made up of elected public school board representatives from across the state. The standing position is as follows: Legislative review of statutory deadlines--NASB urges the legislative review of the conflicting mandatory deadlines that affect school revenues and expenditures. Although moving the date back to June 1 for the 2017 calculations will allow the Legislature to complete its work prior to certification of the numbers, it does create challenges for school boards on staffing decisions. School boards must send reduction-in-force, RIF, notices to teachers by April 15. As you know, staff expenses represent the largest part of any school budget. So these difficult decisions will

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need to be made prior to school boards knowing what their local or state revenues will amount to in their 2017-18 budget. NASB is not asking that you do anything about this at this time, but the association does recommend that an interim study of statutory dates and deadlines be considered involving all political subdivisions. Alignment of dates requiring action by elected officials is critical. We wish you the best throughout this session." That's John Spatz, executive director Nebraska Association of School Boards. Any other neutral statements, please? Seeing none, closing, Senator Groene, please. [LB119]

SENATOR GROENE: Thank you, Vice Chair Kolowski. I think the date of June 1 has been established because of the forecasting board. We have another forecast in February and then we have one in April and it can change drastically as to what happens in the Appropriations Committee. I think it's well-known throughout the education establishment that there will be cuts and we have a lot of faith that those administrators and business managers know how to handle that. They've done it in the past and they will address it. But it's what we have to do because of the conflict of the timelines between the Legislature's 90-day session and the school's statutes on funding. So thank you. [LB119]

SENATOR KOLOWSKI: My one last comment would simply be, having lived with this and worked with this, when the reduction...or excuse me, when the RIF letters go out, as they do, it's very difficult one year in a holding pattern and you don't have your statutory money for that particular year, the number of good candidates you might lose in a state because they sign elsewhere. Because they have a contract from X, Y, or Z state around us makes for a loss for Nebraska. And I just point that out as having lived through that. So thank you very much. Thank you, Mr. Groene. Now back to the Chair. Yes, sir. [LB119]

SENATOR GROENE: Thank you. Whoops. This closes, I believe, the hearings for the day. I don't think we'll have an exec. We'll probably exec on both of these bills next Monday. [LB119]