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Transcriber's Office

Education Committee
March 08, 2011

[LB63 LB575 LB582 LR20]

The Committee on Education met at 1:30 p.m. on Tuesday, March 8, 2011, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB63, LB575, LR20, and LB582. Senators present: Greg Adams, Chairperson; Gwen Howard, Vice Chairperson; Bill Avery; Abbie Cornett; Brenda Council; Ken Haar; Ken Schilz; and Kate Sullivan. Senators absent: None. [LB63]

SENATOR ADAMS: It is 1:30, and we're going to begin this hearing of the Education Committee today. The committee will hear LB63, being introduced by Senator Cornett; LB575, by Senator Price; LR20, by Senator Dubas; and then we will end the day with LB582, being introduced by Senator Haar. I want to welcome everyone who's here. And let me introduce the members of the committee and our help. First of all, Becki Collins is over here to my far right; she's the committee clerk. And I would ask any of you who choose to testify, before you testify, at each door there are testifier's registration sheets, if you would fill one out, and when you come up to testify, if you would hand that over to Becki. And I'd ask that you do that before you begin your testimony. And then be sure that you state your name and spell it for the record, so that it's clear to our transcribers, and we'll hear your testimony. We will run on our typical three-minute light system. And so when you see the yellow light, that means you've got a minute left; try to get it wound up. And I might stretch you on a little bit beyond the red light but not very much--kind of depends on the day. The...next to Becki is Senator Schilz from Ogallala; next to him, Senator Council from Omaha. Senator Cornett is in the testifier's chair right now. Next to me is Kris Valentin, the committee research analyst. I'm Greg Adams, representing the 24th Legislative District. Next to me is the Vice Chair of the committee, Senator Howard; Senator Sullivan from Cedar Rapids, Nebraska. Senator Avery has joined us. And Senator Haar is here. And I'm sure that before our day ends, the committee legal counsel, Tammy Barry, will also be joining us. The rules of the road are pretty simple. This is a hearing, and I want to be able to hear, and I want everyone to be able to hear. And I would ask that, unless you are credentialed press, you turn off your laptops and also those cell phones and that text messaging that bothers me a lot. So with that, Senator Cornett, you are recognized to open on LB63. []

SENATOR CORNETT: Thank you, Senator Adams and members of the Education Committee. My name is Abbie Cornett, C-o-r-n-e-t-t, and I represent the 45th Legislative District. LB63 would ratify the Interstate Compact on Educational Opportunities for Military Children on behalf of the state of Nebraska. The Interstate military Compact on Educational Opportunities for Military Children has been enacted by 35 states--or 86 percent of the military children in the U.S. as of July 2010. The purpose of the compact is to put in place common-sense solutions and remove educational barriers that military children and their families face when they move from one base to another. Quite frankly, many of the proposals in this legislation are best practices from school districts in Nebraska. So you may ask why we need this legislation. It puts into law what we believe

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and says to our military families in all other states that we believe in doing what is right for our military families and all children. Some of the provisions in the legislation include: allow military families to enroll in school when they arrive and accept their hand-carried records until the official school records have arrived; provide military families the opportunity to be eligible and participate in athletics and extracurricular programs even if they arrive in the middle of the school year; allow children 30 days from the date of enrollment to obtain records of immunization; allow children who have already started kindergarten or first grade in another school district to continue their schooling, regardless of their age; provide for an additional excused absence for a student whose parent is preparing or returning from deployment; allow for power of attorney to be acceptable relative to the guardianship of the military child; allow a student who has transferred in the middle of his senior year and unable to complete the graduation requirements here to complete the graduation requirements to finish his--and complete his schooling here and receive his high school diploma from his previous school. Military families, on the average, move every three years; and they don't get to choose when or where they move. So a lot of the time children have to go to a new school in the middle of a school year. The interstate compact would help everyone who knows the rules--what the rules are from state to state. I would like to let the new members of the committee and the Legislature know this bill was passed out of committee three years ago now and was on the floor two years ago. We...because of the budget crunch at the time, I knew I was unable to get the votes--regarding the fiscal note. If you look at the fiscal note...so I had the Speaker remove it from the agenda. And that was right after the Legislature had killed a bill--another education bill for about half that fiscal note. I knew that I did not have an opportunity that year to pass that. If you look at the fiscal note in your book--there is a note, but it says that most of it can be absorbed by the department; and then the only cost would be the \$1 per student for entering in the compact: each student has to pay--it's \$1 per student. There's approximately 8,000 students that this would affect in the state. The Bellevue school district already does all of the things mentioned in the compact. But why it is important to the school district--and not just the school district but the state, is it is one of the things that the federal government looks at in regard to BRAC--Base Realignment and Closure. And we are one of the few states left that do not provide this for our children, and the committee felt it was important enough in the past to do that. I've waited to the beginning of this biennium to reintroduce the bill, as Senator Price has reintroduced a bill similar to that. During the time period, I have been able to bring the fiscal note down. With that, I would appreciate consideration of this bill. [LB63]

SENATOR ADAMS: Thank you, Senator. Are there questions for Senator Cornett?
[LB63]

SENATOR COUNCIL: I just have one. [LB63]

SENATOR ADAMS: Yes, Senator Council. [LB63]

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SENATOR COUNCIL: Yes, thank you, Senator Cornett. I was just reading through the summary... [LB63]

SENATOR CORNETT: Um-hum. [LB63]

SENATOR COUNCIL: ...and where it speaks about the powers and duties of the Interstate Commission on Educational Opportunity for Military Children. I know you spoke to the fiscal note associated with costs associated with the transitioning of students. I'm just wondering if there are any other costs that are incurred by a state that joins the commission, because it makes reference to... [LB63]

SENATOR CORNETT: There is the... [LB63]

SENATOR COUNCIL: ...maintaining offices and those types of things. [LB63]

SENATOR CORNETT: Well, that was if...two, three years ago now, I guess, when I first introduced the bill, the department of military and veterans' affairs--former Senator Hilgert came in with a huge fiscal note, and it was because he interpreted that...all of that can be covered under what we already have in place. And so that note was reduced tremendously then, and then we've gotten that down since then. The primary expense that you cannot avoid with this is the \$1 per student. [LB63]

SENATOR COUNCIL: Okay. [LB63]

SENATOR CORNETT: And that fluctuates but averages about \$8,000. [LB63]

SENATOR COUNCIL: Okay. Thank you. [LB63]

SENATOR ADAMS: And that's an expense to the state or to the school district? [LB63]

SENATOR CORNETT: That is an expense to the--for the state, I believe. [LB63]

SENATOR ADAMS: Okay. [LB63]

SENATOR CORNETT: But we have had people...this is where I ran into a problem last year and why we weren't able to get to it, is we have a number of groups that would be happy to donate that money for the state. And I got an AG's Opinion last year that said if you set up a program that is privately funded, it has to be privately funded in perpetuity. Because we looked at the possibility of can we get donations to cover this for the next two years, four years, until 2013 when they--the projected turnaround in the fiscal crisis was. But they said that you have to write it one way or the other, that either the state pays for it or it's privately funded, that they did not know a way that we could transition

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from one to the other, without...we could always sunset it, I suppose, and then have the Education Committee redo it with public funds in two years or four years. But I don't know how that would affect the BRAC committee--commission. [LB63]

SENATOR ADAMS: Okay. Senator Avery. [LB63]

SENATOR AVERY: Thank you, Mr. Chair. I think this is still in the bill, that the student achievement coordinator at the Department of Education would be the commissioner? [LB63]

SENATOR CORNETT: I believe so. I would have to reread the bill; I've read it a number of times, but... [LB63]

SENATOR AVERY: And if that position doesn't exist anymore, what would (laugh)...? [LB63]

SENATOR CORNETT: Good question. [LB63]

SENATOR AVERY: ...should that happen. [LB63]

SENATOR CORNETT: You know, the fiscal note, like I said, says that they think they can absorb this. So I know the Department of Education knows what we're doing in here, so I'm assuming that--I'm assuming that they have taken that into consideration. [LB63]

SENATOR AVERY: Well, you pointed out this is important in the Base Realignment and Closure process, and it is; this was one of the recommendations, you recall, that came out of our BRAC task force. [LB63]

SENATOR CORNETT: Yeah, very much so. For the people that don't know what BRAC is: they go through every so many years and they look at bases and go down, basically, a waterfall on what services do they provide, what condition is the housing in, what's the environment like for the families. And Offutt has done well in the past, but this is one of the areas that we're in jeopardy. And Offutt is probably our second-largest employer other than the state of Nebraska, in the state, and generates literally billions in revenue for the state--\$3 billion? I know it was, like, \$2.8 billion, \$2.9 billion. [LB63]

SENATOR ADAMS: Senator Sullivan, do you have a question? [LB63]

SENATOR SULLIVAN: Thank you, Senator Adams. And thank you, Senator Cornett. As I understand your explanation, with the passage of this legislation, the exceptions identified would preempt whatever kinds of rules we have in place with respect to kindergarten enrollment? [LB63]

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SENATOR CORNETT: Yes. [LB63]

SENATOR SULLIVAN: What about learning community? [LB63]

SENATOR CORNETT: In regard to...? [LB63]

SENATOR SULLIVAN: Enrollment. [LB63]

SENATOR CORNETT: If they are coming from another school district, from another state, if they are...I think, for Bellevue Public Schools it's--you have to be 5 to enter kindergarten. [LB63]

SENATOR SULLIVAN: Um-hum. [LB63]

SENATOR CORNETT: If they're...but there are states that allow you to enter kindergarten at 4. If you're a 4-year-old, you would be able to go to kindergarten. [LB63]

SENATOR SULLIVAN: Okay. All right. [LB63]

SENATOR CORNETT: If you are in--if you have different graduation requirements in the way of credit hours from a former school district and you're a senior in high school, you come into our district, if you don't meet the requirements, we allow you to graduate from your former school district. [LB63]

SENATOR SULLIVAN: Okay. And then with the open enrollment provisions of the learning community, would there also be an exception to military students? [LB63]

SENATOR CORNETT: This would be for all--regardless of the school district--it would be all school districts in the state. So they would still fall under the... [LB63]

SENATOR SULLIVAN: Okay. [LB63]

SENATOR CORNETT: ...they'd be able to enroll... [LB63]

SENATOR SULLIVAN: Okay. [LB63]

SENATOR CORNETT: ...wherever they would choose. [LB63]

SENATOR SULLIVAN: Okay. All right. [LB63]

SENATOR ADAMS: Senator Howard, you had a question? [LB63]

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SENATOR HOWARD: Thank you. Thank you, Mr. Chairperson. I'm sure you've already considered this, but does the AG's decision preclude the parent from paying the dollar cost? [LB63]

SENATOR CORNETT: I believe it has to be paid by the--I believe it has to come through a state organization to be...because the state is the one that has to join the compact. So I... [LB63]

SENATOR HOWARD: But parents pay other fees and... [LB63]

SENATOR CORNETT: No, I understand, but... [LB63]

SENATOR HOWARD: Yeah. [LB63]

SENATOR CORNETT: ...those parents transition so often that I think this has to be a stable funding source. [LB63]

SENATOR HOWARD: Hmm. [LB63]

SENATOR CORNETT: I think they look at it needing to come through the state. [LB63]

SENATOR HOWARD: Okay. [LB63]

SENATOR CORNETT: It's like any other compact we join. [LB63]

SENATOR HOWARD: It'd take the fiscal note out if you were able to... [LB63]

SENATOR CORNETT: Oh, I know. [LB63]

SENATOR HOWARD: ...do that. [LB63]

SENATOR CORNETT: And, trust me, we've looked at that a thousand different ways. Because we had a number of military organizations that were willing to step up and say: Hey, we'll pay this... [LB63]

SENATOR HOWARD: Sure. Sure. [LB63]

SENATOR CORNETT: ...we can't pay it forever, but we'll pay it, because it's so important to the district. But it's also very important to the state. [LB63]

SENATOR ADAMS: Senator, let me ask you this. It looks to me like, in my mind, there's three issues. One is the fiscal note, and that--we've all been around the horn with those deals. [LB63]

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SENATOR CORNETT: We've all...I was just--we've been around there a few times. [LB63]

SENATOR ADAMS: The second one is, taking the BRAC notion out of it, and that is, do our current education statutes for transferability of credit and those kinds of things--how closely, do you know--align already with what you're saying here? And then the third, of course, is the BRAC issue. So, taking the fiscal note out, how would you respond to the other two? [LB63]

SENATOR CORNETT: We aligned fairly closely on a number of these issues. And most school districts already do this for their students. The big issue comes down to simply the \$1 per student, basically, to be part of the compact. [LB63]

SENATOR ADAMS: And from the... [LB63]

SENATOR CORNETT: The only one I'm not sure on is the graduation requirements... [LB63]

SENATOR ADAMS: You and Senator... [LB63]

SENATOR CORNETT: ...if you transfer in the middle of a school year. [LB63]

SENATOR ADAMS: And you and Senator Avery better understand the BRAC business, but am I correct in saying that if Nebraska is part of this compact, that becomes a listed asset on this BRAC inventory or...? [LB63]

SENATOR CORNETT: Yes. [LB63]

SENATOR ADAMS: ...I'm making up words here, but... [LB63]

SENATOR CORNETT: Well, I was going to say, it becomes part of the good side of the checklist, basically. [LB63]

SENATOR ADAMS: Okay. [LB63]

SENATOR CORNETT: Like, a few years ago they came through and looked at Offutt. Enlisted housing was so bad that we were downgraded because of that. And that's when we stepped up. And if you come down to Offutt now, we have a privatization of base housing. So the military have nice homes to live in. Before, they lived in something very similar to--they actually looked like the... [LB63]

SENATOR HOWARD: Projects. [LB63]

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SENATOR CORNETT: Well, I wasn't going to--I was trying to find a different word, Gwen. [LB63]

SENATOR HOWARD: (Laughter) I've been there and seen them. [LB63]

SENATOR CORNETT: I was going to say, I was trying to find a different word--the police officer in me could only think of one word--and (laugh) it wasn't happening. [LB63]

SENATOR ADAMS: Am I right in thinking, then, that... [LB63]

SENATOR CORNETT: Government housing. How's that? [LB63]

SENATOR ADAMS: ...if we don't have--if we're not in the military compact, that those who make this checklist that you're talking about won't take the time to review our statutes to see how we would statutorily... [LB63]

SENATOR CORNETT: They will look at whether we're part of the compact or not. It's one of--it is that...that's why so many states have went to it. They're recognizing the special needs of military children because of the amount of times they transfer. And it's like a lot of things. We need to codify it in law, because the federal government isn't going to look at us and say: Oh, well, you've gotten 90 percent of the way. They want us there. [LB63]

SENATOR ADAMS: Okay. Thank you. Are there any other questions at this point for the senator? All right, if not, we will take proponents. [LB63]

RACHEL WHEELER: Good afternoon. My name is Rachel Wheeler, R-a-c-h-e-l W-h-e-e-l-e-r. I'm a military spouse at Offutt Air Force Base; I'm also a Desert Storm veteran; I also was raised as a military brat. But right now I just want to talk to you as a mom about military children. And I can't thank you enough, Senator Cornett, for taking on this bill; it's very important for Air Force families. I speak for my own family and other Air Force families that I know that have fallen under my husband's command on our last three assignments. We're new to Omaha; we're new to Nebraska. It's a great state, great schools. Bellevue couldn't be more accommodating, and we really appreciate those schools. But, you know, this legislation is not about good economics, because we all know that having a military base in your state is great economics, a great feather in your cap. And it's not about BRAC. But I'm here to talk about the child, the military child. The Air Force knows that our children have to adjust to new schools, new friends, new neighborhoods. In addition to that, we ask them to cope with parents deploying very often, even more often than you can think, which means children stepping up their responsibilities at home, growing up a little faster than they probably should have. Our children play a large role in the military mission, and it's their resilience in meeting these

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challenges that bring hope for our future. And that's why our military serves to uphold these freedoms for this country. This fact is recognized at the very highest level of the Air Force leadership. That's why General Norton Schwartz, our chief of staff of the Air Force, stated that this is probably the single most important piece of legislation for military families Air Force-wide. I would argue that our military children are the unsung heroes of this global war on terror. In my own personal situation, I have a daughter who's in the seventh grade; she's at Lewis and Clark in the Bellevue district. She's in seventh grade, and she's been to six schools. I know we were talking earlier about whether the Nebraska schools meet all the requirements of this legislation. And I'd have to say, after been through several states, several schools, they do a pretty darn good job but not perfect. My daughter was in advanced math at her last school. She was not placed in advanced math here. But three months into the school system, they realized she needed to be with a different group in math. My son, who is special-needs, because he tested and required intervention in the state of Missouri does not mean he automatically gets intervention here in Nebraska. He'd have to retest and be reevaluated at either "continue" or "adjust" intervention. I talk for other families. I know several families at Offutt Air Force Base--there were several families at our other bases where my husband held wing command position that are staying behind; the families are splitting up to protect their high-schoolers' education opportunities. It is very--well, I'll not say very common, but it's becoming common that a family--a parent will stay behind with their high-schooler just to ensure that they graduate on time, that they can remain the startup football player in that team and possibly be allowed scholarships and getting ready for college. So now we have families splitting up, in addition to deployments, but we have them splitting up to protect their high-schoolers' graduation and opportunities for education. And that, frankly, breaks my heart. I just feel like this is such an important piece of legislation. I had the opportunity to testify for this legislation in the state of Louisiana, and I'm happy to say it was passed. Missouri--I was happy to report it's passed. And I'm hoping that this is a continued trend: I testified in the state of Nebraska, and it passed. So I can, hopefully, go home and brag about that. But not only that, I just feel like it sends the right message to our troops that are putting their life on the line every day for our freedom. It just sends the right message that Nebraska cares; they're a state that cares about their families. And that goes a long, long way, and I can also tell you--and I will close with that a military family will breathe a sigh of relief when they find out they have orders to a state that has signed and committed to the interstate compact. Because it just makes your transition with your children so much more easier. Thank you for your time. [LB63]

SENATOR ADAMS: Okay. Now we'll open it up for questions. Senator Sullivan. [LB63]

SENATOR SULLIVAN: Thank you, Senator Adams. And thank you for your testimony and helpful information. I wanted to clarify something, because when Senator Cornett was talking about the exceptions, the special education wasn't identified, but you mentioned it. So is that one of the exceptions that--in your case, would your son need to

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be tested again when you move to a new school system? Or would you be able to bypass that as an exception under this compact? [LB63]

RACHEL WHEELER: I don't know specifically if the current--the way it's currently written, if it would automatically institute his IEP, his special-needs requirement, for each school. [LB63]

SENATOR SULLIVAN: What's been your experience as you have moved? [LB63]

RACHEL WHEELER: Our last three assignments--well, we were in Louisiana, and then we went to Missouri--Whiteman Air Force Base, Missouri--and then we came here. My son has had to be tested every single time. We came here, they downgraded his intervention for some speech issues, and they just thought--their requirements here were not quite as extensive as Missouri, and...but they've done a outstanding job. They...I have no complaints; they've been very progressive. Yes, they downgraded him, but he's still getting some super-quality intervention. [LB63]

SENATOR SULLIVAN: Okay. Thank you. [LB63]

SENATOR ADAMS: Are there other questions for this testifier? Seeing none, thank you for time today. [LB63]

RACHEL WHEELER: Thank you, sir. [LB63]

SENATOR ADAMS: Next proponent. Good afternoon. [LB63]

JOHN HANSEN: (Exhibit 1) Hello. Good afternoon, Senator Adams and members of the Education Committee. I'm here to support the LB63. My name is John Hansen, and I'm president of Bellevue Board of Education and also work with many military leaders around the area: I'm president of the Offutt Advisory Council and also chairman of the commanders group for Air Combat Command, which represents 21 bases throughout the United States. The Interstate Compact on Educational Opportunity of Military Children was put together to address the barriers that military children face as their parents move from base to base and employ. The compact is a high priority with the military leaders and the military families, as I think Ms. Wheeler said. I can testify to that. I've had direct calls from General Schwartz, chief of staff of the Air Force, and also General Fraser, the commander of Air Combat Command, specifically asking why Nebraska hasn't signed on to this compact. Now, I realize that the fiscal situation in the state of Nebraska and many of the other states has really, you know, been a very trying time for all of you here and all of our--in local school districts and county governments. But I can tell you that as you look at the situation as far as BRACs...and I can tell you that I've been involved with four of those since 1992, trying to defend Offutt, as far as the community, on four different BRACs, working with all kinds of organizations and our

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legislators as it relates to that. And I can tell you, that's a very high priority; education is probably one of the top issues. And this is a big issue across the country, as people--and Senator Cornett has stated, that as they move from place to place it's very difficult. In the Bellevue schools, of course, we have a high percentage of military families. And I can tell you that in some districts...so if you have a child, for instance, that's moving from England to here and from England to this area or from Mississippi to different areas where they have different age requirements before they go into kindergarten, and they come here, and in some cases--or if they go there, they might have to repeat a grade, simply because the age requirements might be different in different states. You can also look at...I think it was mentioned, too, that if you happen to have a senior that's, say, coming from Texas and they come here and they've got half the year--they're coming in the middle of the year, which many times happens with a military family, we, if we're a member of this compact and we adhere to this, we work with Texas. And when they cross the stage in Bellevue to get their diploma, we'll give them a Texas diploma. So it kind of works--it works really well with a lot of these folks. As Ms. Wheeler said, and the families--I can tell you many of these folks have been to, you know, their kids have been to 12 years of high school and 10 different schools over that period of time. So becoming part of this compact, I think, is really important, to send a message to our military leaders. And it isn't just the Air Force, too, by the way, it's the Guard and Reserve and all the military children in the state of Nebraska. The compact fiscal note is \$1 per child. We have...part of the groups that I think Ms. Cornett, or Senator Cornett, has talked about I've worked with about helping with this. And as far as, like, financing or going to a meeting, myself and/or perhaps the superintendent of schools in Bellevue would be happy to go at no cost to the state but at least represent the state. So it isn't necessarily a large fiscal note for the Department of Education, whatever. And be happy to report back here to you on the results of that compact. So I urge your support of this. And as we go forward into the next year, hopefully, Nebraska will be the next state--the 36th state to sign up, so... [LB63]

SENATOR ADAMS: Thank you, John. [LB63]

JOHN HANSEN: You're welcome. [LB63]

SENATOR ADAMS: Are there questions for this testifier? I guess not. [LB63]

JOHN HANSEN: Okay. [LB63]

SENATOR ADAMS: Thank you. [LB63]

JOHN HANSEN: Thank you. [LB63]

SENATOR ADAMS: Next proponent. [LB63]

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PAUL COHEN: Thank you. Good afternoon, Chairman Avery, thank you very much. Members of the committee, my name is Paul Cohen, P-a-u-l C-o-h-e-n. I'm here today as the second vice chairman of the board of directors of the 370,000-member Military Officers Association of America and over 2,700 of whom claim Nebraska as their home state; I'm also a past president and current board member of MOAA's chapter in Bellevue. But I'm also here today as the father of an Air Force officer currently serving and as the grandfather of his two children, ages 12 and 10, one of whom is a special-needs student. They're currently in their fourth school district in three different states at the ages of 12 and 10. The first move that they made under--when they were ready for school, from one state to another, was less than pleasant and added additional stress to the family--coupled with the deployment for my son and moving from place to place--that this bill would alleviate. My granddaughter was in kindergarten at age 4. When she went to the new state, she was barred from kindergarten because starting age was 5. Having been four months into the program, it was a little hard to explain to the 4-year-old why she couldn't go to school anymore. When they made subsequent transfers, they went to states that had then adopted the compact bill. And it was practically seamless, both for her and for my special-needs grandson. All worked out well. As you've heard, 35 other states have ratified this bill and joined the compact. We believe that it's important that Nebraska be part of the compact, for the very issues that you raise, Senator Adams, about--if we're not in the compact, do we get credit for compliance? Probably not. The...when you go down the list of states that are involved and you're making considerations about quality of family life, family quality in those states, certainly being a member of the compact is vital to getting that check mark in the right side of the ledger. But beyond all that, we believe very strongly that this is the right thing to do. We're very much aware--very much aware--of the fiscal difficulties and challenges that you all face in trying to get anything done this year. But we believe that the right thing to do is to find the very minimal amounts of money that it would take to fund this program and pass this legislation and send the kind of message that Nebraskans have always sent to military families. Since 1948, when--it was 1940s, rather, when we were providing coffee and doughnuts in North Platte, to all the other times that we have supported our troops, the passage of this legislation would speak volumes about this state's support not only for those who come here but also for our National Guard and Reserve people who leave the state on active duty and then come back with their kids. I urge your support and would be happy to take any questions at this time. [LB63]

SENATOR ADAMS: All right. Are there questions? Sir, I have to ask you, your grandchildren that you refer to--are they in public school in Nebraska? [LB63]

PAUL COHEN: No, sir, they're not. [LB63]

SENATOR ADAMS: Okay. [LB63]

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PAUL COHEN: They're currently in public school in Texas. [LB63]

SENATOR ADAMS: All right. Very good. Are there any last questions? If not, thank you, sir. [LB63]

PAUL COHEN: Thank you, Senator. [LB63]

SENATOR ADAMS: Next proponent. Good afternoon. [LB63]

MARTIN DEMPSEY: Mr. Chair, committee members, my name is Martin Dempsey; that's D-e-m-p-s-e-y. I'm from the Department of Defense state liaison office. Thank you for allowing me to speak here this morning--this afternoon. We've talked about what the compact does, what it costs, so I won't bore you with that again. Let me just cut right to the chase here. This is a great compact; 35 states have seemed to think so. In fact, in the 200-year history of compacts, this compact was ratified faster than any compact in the history since they've been in effect. That speaks a lot for not only this legislation but the states realizing what it needs. Three years ago Nebraska realized what they needed. It was a great thing then; it's still a great thing now. As mentioned earlier by Mrs. Wheeler, the state is doing a good job--I'd say an excellent job of educating these kids. They do a wonderful job of making sure they're integrated, they get what they need. That's even a more reason why we need to pass this compact, simply because we need to protect that investment that many of you have put into your children for 12 years. When they leave the state and they're not completed with their high school education, if they're not a member of the compact, there's no guarantee they're going to graduate on time; there's no guarantee they're going to get the advanced classes or the exceptional family member classes that they had at their losing installation. And again to piggyback on what Ms. Wheeler said as well, we're in a lose-lose situation if that family separates from the military. Seventy-three percent of our career military are married. And I think we all can realize where we'd be at today if 75 percent of our senior work force walked out the door. And that's what we're facing with many of the obstacles since we're in our tenth year of active combat operations. The economic impact--we talked about that a little bit, but almost \$3 billion a year goes back into this economy from the military installations here in Nebraska. So it's hard for those parents that are working so hard to conceive why their child is not worth \$1 per person. With me here today also is a representative that might be able to speak intelligently or answer some questions on the principles of the compact itself. He's a compact expert from the under secretary's office in D.C. And I hope you'll ask him any questions you may have on the money issues. Bottom line: our children need this, and they deserve it; and I hope you think so too. Thank you. [LB63]

SENATOR ADAMS: Thank you. Senator Sullivan. [LB63]

SENATOR SULLIVAN: Thank you, Senator Adams. I'm just curious, sir--thank you for

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your testimony, by the way--where are we with the other 15 states--or 14 states, I should say? [LB63]

MARTIN DEMPSEY: I'm not certain. I believe, at one time early this year there was 9 more that were considering legislation. As the sessions are ongoing I don't know where that is to this date. [LB63]

SENATOR SULLIVAN: Okay. Thank you. [LB63]

MARTIN DEMPSEY: Yes, ma'am. [LB63]

SENATOR ADAMS: Other questions? Thank you, sir. [LB63]

MARTIN DEMPSEY: Thank you, Mr. Chair. [LB63]

SENATOR ADAMS: Next proponent. [LB63]

TOM HINTON: Mr. Chairman, members of the committee, my name is Tom Hinton, H-i-n-t-o-n. I am senior state liaison in the office of the under secretary of defense in Washington, D.C. My colleague said that I'd be able to speak intelligently, and I would just have to leave that question open until I've finished speaking; you may not agree with that possibility. I had the privilege of working as the department of defense principal staff on the development of this compact, have been sort of living with it for a number of years now. We began the process really discussing it back in 2006 and 2007 and actually introduced the first legislation in a number of states in 2008. So it's been something that I've become somewhat familiar with, by default if not by design, and have spent a lot of time running around the country and having the privilege of talking about it and answering questions to the extent that I'm able. This was a project, a joint effort really, of the Council of State Governments and the Department of Defense. The Department of Defense had looked at these kinds of issues and wondered what we could do about them for many years now. Obviously, this kind of huge problem wouldn't exist without notice, and so there was an attempt to address it on a school district-by-school district basis, often with memorandums of understanding or whatever. And what we discovered was no matter how well a student was treated or whatever policies were put in place to make sure they were done right, as soon as they move, it could still be good over here but not the same. And so the transition became the linchpin in the whole process. And we realized through some other work with the Council of State Governments that they were quite the experts on interstate compacts generally and some of the finest experts in the country. And that's why we went to them, realizing that it really is the linkage between the states that makes it work. It's not just the policy itself but the linkage to make the policies cohesive and the same, one state to the next. And that's why the states, in an interstate compact fashion, sit around the same table and discuss the very same procedures as they would progress. The

stakeholders involved in developing this compact were a number of experts from around the country and public school education. Let me just mention a couple of them. They included the National School Boards Association, the National Association of State Boards of Education, the National Education Association, the National Association of Elementary School Principals, the National PTA, the Military Impacted Schools Association, the Education Commission of the States, the National Military Family Association--quite a group. I don't think I will probably, the rest of the day, say "association" so many times. But certainly a number of people sitting around the table. And it was under their direction that the compact was drafted. It was--as was mentioned, it was adopted in 2008 by 11 states. Ten states was necessary to make it activated, and so when Mr. Dempsey mentioned that it was activated faster than any other compact in American history, it was those first 10 states that actually made the compact active. Then the following year there were 15 states that joined the compact, and then 9 last year, and a number of states, as has been mentioned, are looking at it this year. Compacts allow the states to act collectively over matters which are traditionally regulated by the states, without surrendering state control to federal entities. There was an effort in Congress...it is still rumored now and again that this can just be fixed by the federal government. And I would tell you this, the Department of Defense has steadfastly spoken against it and worked against that kind of solution, believing education happens in the states, and states is where this needs to take place. So that is ongoing, but we've been able to fend it off, if you will, by the tremendous success of this compact so far. The compact does not, I should mention--I heard some of the questions earlier--does not impact curriculum; it does not impact general education policy. Many states have done extensive study about the potential conflicts between statute and this compact. And California did that; Maryland did that; Washington state did that--over a period of some time, a year, two years actually in one case. And what they discovered: there was no significant conflict--primarily, I think, because this occupies an area of transition, not really education policy, not curriculum, but the transition process, which education policy frequently either is the same or doesn't even occupy. There are basically four areas that the compact impacts. Enrollment has been mentioned--the transfer of one child to the next state, and this involves, as an example, transcripts. Right now...we heard stories of transcripts taking--official transcripts taking months before they would come and--so a student could be properly placed. That is really not good, and the compact solves that issue. It basically says to a parent: if you bring a copy of a transcript, we'll initially place that student--if they're in a compact state, we'll place the student. And then the sending state is required to send that official transcript within ten days after request. Problem solved. Eligibility--it talks about opportunities for extracurricular activities in the event of a missed tryout or an induction process if the student is otherwise qualified. Placement...and this question came up here, I noticed. Under the compact there is a presumption that the sending state's placement was correct and will be continued in the placement if the receiving state offers the equivalent coursework. However, the receiving state may subsequently test a student and reevaluate and change such placement on the basis that--after the student has

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transferred to the new school district. The compact also recognizes that special education services already are required under federal law through I.D.E.A., I.C.P., and A.D.A. The compact allows some flexibility for deployment-related absences as well. Now, graduation has been pretty well summarized. It basically says: We're going to try to work with that student and waive--if they've already taken an exit exam or taken a norm-referenced achievement test, nationally norm-referenced, that may be accepted as an alternative to offering graduation right at the end there; but if that's not possible, we'll just work with the sending state. So, basically, the compact finds a common denominator and allows states to work together to solve this transition issue between the states. I should mention the funding issue just briefly. [LB63]

SENATOR ADAMS: Are you really close to summing up? [LB63]

TOM HINTON: Yes, sir. [LB63]

SENATOR ADAMS: I've let the light go for quite a while. [LB63]

TOM HINTON: I appreciate your indulgence, I certainly do. And thank you for that. [LB63]

SENATOR ADAMS: If you can sum up, I'd appreciate it. [LB63]

TOM HINTON: I'll just mention the funding since it was brought up as a question. The number of active duty students is where the funding rests: \$1 per active duty military student, even though it benefits Reserve and Guard members as well, certainly when they're deployed. But that number in this state is right around 4,800 students. So the dollar per child--you would get a bill from the Interstate Compact Commission for \$4,800. And so that would happen. Now, having said that, the Interstate Compact Commission is equipped to receive charitable contributions in behalf of a state. And so someone...and we have had this in other states--California had an example of this; Tennessee is being funded like this for a few years. A charitable organization would actually make the contribution to the commission in the behalf of a state like Nebraska for the first few years; it'll be able to cover that kind of cost if the state did not feel like it could do it. Now, it couldn't be in the bill; the state would still be obligated, because it's a contract between states. But I just wanted to mention that as a possibility. And certainly I'm open for questions, and thank you for your indulgence. [LB63]

SENATOR ADAMS: All right. Thank you, sir. What questions do you have? One that I had, as I look at the compact language, it is--and correct me if I'm wrong--predominantly designed to protect student transfer from state to state. What about student transfer within a state, if there's more than one military base. Now, if we're here in Nebraska, I look at our Nebraska statutes about the transferability of students, and I feel pretty comfortable they'd be okay. How would the compact address that? [LB63]

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TOM HINTON: Well, that's a very interesting question that we've actually discussed at length. The commission has the power to develop rules within the boundaries of the compact itself, and that's one of the things that is being discussed, as to whether or not inside of a state's borders--California would be a pretty good example--that the compact would apply. They're really not moving from state to state, but they're clearly transitioning. So that's being discussed now, and rules are being developed as to that specific case. [LB63]

SENATOR ADAMS: Okay. [LB63]

TOM HINTON: Um-hum. [LB63]

SENATOR ADAMS: Any other questions? Thank you, sir. [LB63]

TOM HINTON: I thank the committee. [LB63]

SENATOR ADAMS: Next proponent. Are there any other proponents? If not, we'll transition to opposition testimony then. Is there any opposition testimony? Is there any neutral testimony? [LB63]

BRIAN HALSTEAD: Good afternoon, Senator Adams, members of the Education Committee. For the record, my name is Brian, B-r-i-a-n, Halstead, H-a-l-s-t-e-a-d. I'm here on behalf of the Nebraska Department of Education in a neutral capacity. Two things that I would like to clarify, and I think Senator Avery hit it right out of the chute. The bill as drafted designates the student achievement coordinator that is created under 79-11,150 to be the compact representative for the state of Nebraska. And I can tell you, when the fiscal note--when the department prepared that--presumed that position would continue to exist and be funded; and I know that that bill is sitting on Final Reading. So in the sense of when we did the fiscal note, we were looking at his time and we were estimating that that would be about \$12,000 worth of his salary and benefits for his time as the compact commissioner. So that is not included in the \$26,000 fiscal note that is there. And we're well aware that this committee has chosen to eliminate that position. We're not here to question that. I just want you to understand the fiscal note is presumed and based upon the current law as it exists. I think a number of the people who have testified have pointed out Nebraska law pretty much matches what the compact calls for, in the sense of you don't need the transcripts when you enroll your child in school: 79-215 requires the school district to enroll them. You do not need a guardianship, power of attorney, or whatever. The person in actual legal charge or control of the child can do so without that; we covered that in our Rule 19 at the Department of Education. 79-222 provides that if you're in the military, immunizations are not required immediately; there is a time period for that...and a number of the aspects of the bill. So in that regard, we're here in a neutral capacity. We recognize the

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mobility issue. It is not just military children in Nebraska who are mobile; we know that--with regard to our achievement and everything else. So with that, I'll answer any questions you might have. [LB63]

SENATOR ADAMS: Thank you, Brian. Are there questions for Brian? Well, Brian, then it would seem to me, based on your testimony, that though there may be specific language in the compact that we could talk about off the mike, Nebraska state law pretty well covers it, as far as the transferability of students. But the real issue, I sense, is if we've crossed that river and we're doing what we should there, then the next thing is the whole BRAC statement... [LB63]

BRIAN HALSTEAD: Right. [LB63]

SENATOR ADAMS: ...and the clarity of that to those that are going to be running the checklist. And now you're telling us, and properly so, we need to be aware of it; but because of our action we've just added up to \$12,000 to this fiscal note. [LB63]

BRIAN HALSTEAD: Well, in the sense of that's what we've estimated; and it was based on a current person who's currently being funded that, according to LB333, will not be funded in the future and the position won't exist. So, obviously, if the bill is going forward, you need to amend that last section of the bill to designate somebody else as the representative and determine how you're going to pay for that. And again, you know, the dollar amount...we in our budget modification identified the education compact that costs \$62,000 as one of the budget issues that could be taken up. And we're telling you for this we can probably do it for around \$30,000, which is half of the cost of that compact. So I'd like to sit here and tell you this isn't going to cost the state anything, the department has the resources and the people sitting around with nothing to do. The reality is that's just not the case. There are costs for us to have the committee that's required by this. They are required to meet; they are required by this law to be reimbursed for their actual and necessary expenses. And we're certainly willing to look at any other funding sources. If you've got other ideas of how to fund this, we're certainly open to that, too, because we recognize mobility is a key factor in student achievement, and families that move face significant hurdles not only related to the education but all of the issues that go along with their families, so... [LB63]

SENATOR ADAMS: Are there any last questions for Brian? If not, thank you, Brian. [LB63]

BRIAN HALSTEAD: Sure. [LB63]

SENATOR ADAMS: Is there any other neutral testimony? Senator, to close? [LB63]

SENATOR CORNETT: I think that everyone that testified really did a very good job in

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pointing out what the issue is. Nebraska is really doing the right thing by our military students in 90 percent of the cases. And when they're not, it's not that they're doing badly by them, it's just that they're maybe outside the compliance in regard to the compact. It is critically important, though, for the issue of BRAC and being a member of the compact, to the point that two years ago or a year ago I was able to come up with the financing for this. And I'm sure that we could do that again. The problem is I do not know how to get the money to the state, if that makes sense. It's not that the school district isn't willing--or the military community isn't willing to step up and help. We're just not quite sure how to do it, and it's something that we explored extensively two years ago. I've even thought about maybe doing a delayed implementation until 2013 rather than 2012 or later this year. And I think the Department of Education is right; they definitely--we've cut their budget. I know the Bellevue school district has offered to step up in most of the responsibilities for this. But, again, I think it has to go through the state; I don't think it can go through the school district. But we can find a good chunk of this money; it's just finding a way to get it to you to do this. [LB63]

SENATOR ADAMS: Okay. Thank you, Senator. Are there any last questions for Senator Cornett? Thank you, then. We will end the hearing on LB63. And Senator Price is here; we will begin the hearing on LB575. Senator Price, you are recognized to open. [LB63]

SENATOR PRICE: Thank you very much. Chairman Adams, members of the Education Committee, I am Senator Scott Price; I represent the 3rd Legislative District, Sarpy County. That is S-c-o-t-t P-r-i-c-e. And you have before you today a bill that you've heard a lot about today, pretty much: LB575, the Military Children Educational Opportunity Act. Instead of having a lot of prepared testimony, I listened to what was said before and will try to add to that and then answer questions and tell you what I was thinking when I came up with this. All the testifiers that you heard earlier today have told you the reasons or the why and wherefores. For myself, I was a military dependent; I did move around the country and around the world with my father; I did attend seven different schools, K through 12--foreign countries. I had a brother who moved in between his junior and senior year high school; he went from being a big fish in a little pond in West Germany to being a little, tiny guppy in a great, big Texas school. And, then, I'll tell you what, that does play havoc. But I don't want to belabor that point. I have dependents who have been through it. My wife was active duty; my wife was reserve. She deployed; I deployed. We've had all different permutations you can possibly think of, pretty much, other than coming home in a pine box. Now, what we see here in what I've done is we had the compact bill before us, and it can't go forward because of--pretty much, I'm not going to say the only thing--but the A bill. So in coming to work one day, I had what I thought was an epiphany. Why don't we take what the compact delivers, what it's saying, and put it into our statutes? So the little bit that might fall out of what we already don't have in our statutes would be covered. And it would be covered in Bellevue and Ogallala; it would be covered anywhere you would go in the state. It would

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cover our Guard and our Reserve and somebody who retires. Let's say they retire out of Scott Air Force Base in Illinois, where Illinois has a requirement that you take the Illinois Constitution and history course for graduation. We don't have that here. Somebody took it as a freshman, and now they come here or...and, you know, maybe they would have a problem in meeting the requirements. But you've heard about what they would do to help a student become enrolled, how they would graduate. So I thought about it, and I said, well, we'll put as part of our statutes: enable those children to have one less hurdle, just one less. I mean, there are still a lot of things that we can't take care of. Now, we also heard testimony about this, about the BRAC; you know, we talked about we had the BRAC. Now, I've lived through the BRAC as an active duty member, and I've been there also as a retiree. My understanding...and Chairman Avery will be able to talk about this a lot more than I--from the Military Committee. But if you have a deficiency when a BRAC shows up, you're a little bit late. You can't come up after the BRAC, if it identifies a deficiency, and say: Oh, no, no, no, we meant to take care of that, and we're going to do that. Well, sorry. But if you're already in the process of taking care of that, that can be a mitigating factor there, when you're trying to do that cross-leveling. Now, visualize this--since we used Texas before from other testifiers: if we're having to worry about Offutt Air Force Base versus a Texas base, and they're going down through a litany of issues and they come down to this one, it would be my hope that we would cross-level there because we had already started out with the passage of LB575. LB575 delivers to Nebraska what the compact can give us, and it does have some shortfalls perhaps. And then perhaps in these later years, when fiscal times are better, and we want to join the compact so we get the other reciprocity issues...see, right now we're going to be able to take them in and help the child. When a child left Nebraska and went to a compact state, there may be a challenge, because we're not a part of the compact. But there are, you know, 15 other states that aren't part of the compact now also. We can address that in an iterative manner. What I'm saying here is, if we all agree that's an important aspect to take care of, let's try this measure right here and then we'll move forward incrementally as we can, if it's so warranted, as we get to it. I thought enough of this to make it my priority bill; whether that was wise or not, we'll see, all right? But I would just let you know that as you look through the bill...and, Senator Sullivan, you had said something about--and others had mentioned about if you're enrolled in a program versus coursework. And section 6 of the bill talks about that; you know, there's coursework you could be enrolled in, and there could be programs. So you'd...most of what you see with this compact is we're going to hold the child harmless. It's what we're basically doing. We're holding you harmless that you couldn't make a deadline. But we're not saying, because you didn't make a deadline you automatically qualify. You still have to go through, you know, some of the things that are mandatory and required. We'll place you, but you maybe still need a test. We're not going to--this doesn't in any way usurp what Nebraska has statutorily outlined. It just offers an opportunity and a gateway to help with that transition. And what I'd like to do is open it up for any questions you have and see what we have to deal with. [LB575]

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SENATOR ADAMS: All right. Thank you, Senator Price. Are there questions? Senator Avery. [LB575]

SENATOR AVERY: I was reading the technical notes here in the committee statement. And I did not realize that the U.S. Department of Education now has made supporting military families one of its supplemental priorities for discretionary grant programs, which--Senator Cornett is not here, but that might be good news to her. And I was just wondering whether or not--if that is a possible way to fund her version of this bill. Which do you think would be the better of the two? [LB575]

SENATOR PRICE: Oh, obviously, if we go to the compact and get funded and it would be good to go, that's the way I'd go. I'll be the first...I was very honest and forthright with Senator Cornett from my beginning--the inception of the idea; it's...no way try to subvert or anything what she was doing. Bottom line is, I want to get it done--I want to get something done sooner rather than saying: Great idea, lack of money; see you next biennium. [LB575]

SENATOR AVERY: Well, you know where I am on this, because I chaired that task force that had it--the first recommendation on this. So that's an interesting observation there about the discretionary grants. So we'll keep that in mind. [LB575]

SENATOR PRICE: Thank you. [LB575]

SENATOR ADAMS: Senator Council. [LB575]

SENATOR COUNCIL: Yes. Two points. And, Senator Adams, I wanted to point out to Senator Avery that same statement is set out in the Cornett version of the bill in the technical notes, as well as noted that it's a priority. So I...whatever, whichever way you go at it, it would enable the state of Nebraska to have greater consideration for these discretionary grants, that the reference to the priority being accorded is there. And, Senator Price, the question I have is, from listening to Mr. Halstead, I guess my question is do we really gain anything by adopting your version, LB575, if what I heard--and maybe Mr. Halstead will come back up and comment on this one as well--is that most of the Nebraska school districts try to accommodate the children of military families in a manner that's pretty much consistent with what's in the compact. Or did I understand...? [LB575]

SENATOR PRICE: Yeah, I think that's absolutely correct. [LB575]

SENATOR COUNCIL: So, I mean, it...is...what is the gain that you see from having something codified as opposed to what may be guidance that's provided by the Department of Education now? [LB575]

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SENATOR PRICE: If...and I'm going to try to understand the question. I apologize if I miss the mark there. I think there are some things that are on the fringes that the department doesn't have called out specifically in legislation or in their rules, okay? And part of it has to deal with deadlines, you know, meeting deadlines and things like...and, to me, it just seems also to make it easier for across the state, not just Bellevue. So I think there are some things on the edges--and I, too, would be very interested in hearing exactly where it is, because we--I tried to find some glaring ones. And obviously they aren't there, because we do have a military base--we take good care. But, again, the idea of being is that it's just not something we left up to the community that deals with it the most. But if I have someone retiring, they go out to Ogallala, you know, and their school systems out there haven't been used to it, then they would be--they would know exactly where to go, they could look at something, and it would tell them and give them a blueprint. [LB575]

SENATOR COUNCIL: And, Senator Avery, I was hoping maybe you'd ask some questions about the extracurriculars and how, under Senator Price's version of the bill, you could have any exercise of jurisdiction over NSAA and who they determine to be eligible or otherwise. With that, I have no further questions. [LB575]

SENATOR AVERY: Thank you, Senator. (Laugh) [LB575]

SENATOR ADAMS: All right. Thank you, Senator Council. Senator Price, let me follow up on that same line of questioning. Does your bill have anything in it that grants a greater protection than our current law or even than the compact language, do you think? [LB575]

SENATOR PRICE: Well, I would say for sure I wouldn't think it has anything more than the compact, because I just took it directly from that language, and I divorced out references to compact and just made it to the state. So--but to say that it grants more I'm not able to say directly right now. I didn't look at it from that perspective but would be more than happy to try to put that on it. [LB575]

SENATOR ADAMS: Are there other questions for Senator Price? All right. Thank you, sir. [LB575]

SENATOR PRICE: Thank you. [LB575]

SENATOR ADAMS: First proponent. [LB575]

SENATOR PRICE: That would be a pretty quick one. [LB575]

SENATOR ADAMS: Are there proponents to the bill? Are there opponents? Neutral testimony? [LB575]

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BRIAN HALSTEAD: Senator Adams, members of the Education Committee, for the record, my name is Brian, B-r-i-a-n, Halstead, H-a-l-s-t-e-a-d. I'm with the Nebraska Department of Education. I'm here in a neutral capacity. And I'm sitting here in this chair because Senator Council mentioned my name and hoped someone would come back. So I'm here to answer any questions you might have. (Laugh) [LB575]

SENATOR ADAMS: All right. Thank you, Brian. Senator. [LB575]

SENATOR COUNCIL: Thank...and thank you, Mr. Chairman. And thank you, Brian, because I didn't...and you heard my question. I mean, in terms of what's set out in LB575, I mean, what is in there that we currently don't cover in some way or another under current NDE rules, regulations, guidelines, procedures? [LB575]

BRIAN HALSTEAD: Well, Senator, as we look through the bill, first of all, the intent statement and the definitions are all new, and some of those definitions that the compact uses don't match the terminology in Nebraska. But that's just the technical part of trying to understand it. In the sense of...when you get to section 5, which is really where we start with the specifics: the education records of a student. Well, 79-2104 already provides parents in Nebraska are entitled access to the student files school districts have on those kids and are entitled to a copy of those records free of charge; 79-2105 requires a Nebraska school district or a private school to send the transcripts to where the child is enrolling, free of charge--you can't charge for that. So in that first subparagraph, you, the Legislature, have already covered it by those two statutes. And subparagraph (2) is incorporated in 79-2105. Subparagraph (3) in section 5 is already covered under 79-222, the exemption for immunization if the child's family is in the military; so I think you've covered that one. Subparagraph (4): grade level. There isn't anything specific in Nebraska law that directs that. I mean, school districts have the authority under statute to determine building placement, grade placement, and classroom assignment. What we can tell you from the Department of Education: the general practice in almost every school in Nebraska, whether it be public or private, if the child comes and says they're a third-grader, that's where the child is going to be initially placed. The school probably, after that, will do some type of assessment or determination to make sure that where the child is matches the curriculum for that school. So in the sense--is there anything in statute in Nebraska or our regs that deals with subparagraph (4)? No. But I will tell you, from our perspective at the department, that's the general practice. So if the Legislature feels that needs to be done, that's clearly something that you can do. Same thing over in section 6, about coursework; again, that's the general practice. And we read this as dealing with the courses that school districts have, so it kind of matches up with the general practice in Nebraska. So you certainly could do that into statute. Not all of our school districts have all of the specifics that are listed here, so we don't read this as mandating. If a child comes and was in a baccalaureate program at a high school where they came from, you as the

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school district have to create one for the child--it's only if you have one, you place them there. We already give our school districts the authority to waive their own course requirements and everything else. So over on page 8, subparagraph (4) there--is already part of Nebraska law. When you get over to section 7 on page 9, 79-215 already addresses enrollment of the child. And our Rule 19, which is about enrollment of children, says you cannot require them to produce records; you cannot require they have a specific power of attorney, guardianship, or whatever; it's the person who's in actual, legal charge and control who can already enroll the child. You clearly cannot in our public school districts charge tuition for the child to enter; it's free instruction in the state of Nebraska. So in that regard, what section 7--is already recognized by this Legislature in 79-215. We--again, I think that's what you heard under the compact. Most of what this Legislature has done for educating kids in Nebraska has already addressed the issues. And over on page 10, when they talk about exit exams or end-of-course exams, the state of Nebraska does not have that. Now, there may be some school districts in Nebraska who have developed exit exams for the courses, so that may be something you need to deal with in those school districts. I know there are a couple in the metro area, I think, who do have students--you have to pass our test in order to get the course and to graduate. So that would be an issue that might have to be addressed. So that's quickly, off the top of my head, that's the best I can do. [LB575]

SENATOR COUNCIL: Okay, and the other question--and it relates to a question my colleague Senator Avery asked. And that is about the priority that the U.S. Department of Education has decided to accord to programs supporting military families. As you understand that priority statement, in order to qualify for consideration, do you believe it's necessary to either be a member of the compact or have specific military-family-oriented statutory provisions? [LB575]

BRIAN HALSTEAD: I--I am not aware of that grant program at the U.S. Department of Education. So for me to answer that, I'm going to tell you, I don't know. The only concern I have is--as what's going on in D.C. these days--discretionary spending is being cut. And I'm happy to hear the U.S. Department of Education is giving a priority to that. But I'm also recognizing that the current continuing resolution that's funding the federal government is already zeroed out: Even Start is already zeroed out; Striving Readers...and where the federal government is going to be in funding in the future--education is discretionary. I'd love it not to be discretionary at the federal, but that's not going to occur either. So we certainly would look into that if that's a possibility, Senator. You know, that's always a possibility. And if this committee has more information, we'd certainly look at it to see if that can assist or somehow be used. If that can pay for the compact expenses under LB63, let's go down that road and explore it and see if it will work. We're not opposed to dealing with the mobility issue of children. It is a major issue in this state, not only for the military families but for all the other families who find themselves in those situations. [LB575]

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SENATOR COUNCIL: Thank--and thank you, Mr. Halstead. I appreciate it. [LB575]

SENATOR ADAMS: Are there any other questions for Brian? Thank you, sir. Is there any other neutral testimony? Senator Price. [LB575]

SENATOR PRICE: Thank you very much, Chairman Adams and members of the committee. Well, we've heard from the Department of Education there are some areas that lack some specificity or called out in our statutory language regarding education. I would just offer to the committee that I'd be very happy to work with you in any way to get this done--and Senator Cornett--whichever way we have to do something to meet the commission. Senator Adams, you articulated the exact problems: we have the what the compact or my bill deliver, how we address BRAC, and the financial aspect of that or the funding part of it. And I just see this, this particular bill, LB575, as a way of taking care of primarily the cost factor, that it can be worked to take care of what I believe a great portion of the BRAC issue is, that we'll have an open action to attend to something and that it would call out some things that we don't have statutorily right now in all of our districts, so that we can do that. That's if it's the committee's desire--and, of course, with Senator Cornett's--if we can move forward and become part of the compact and that we can find the funding and it actually exists and we can make it happen this year. There's a lot of traps to run there. And then we go with the compact, and I would have you amend it in and use the priority bill designation. My goal is to make--let's make the commission happen. Thank you. [LB575]

SENATOR ADAMS: Are there final questions for Senator Price? Thank you, sir. [LB575]

SENATOR PRICE: Thank you. [LB575]

SENATOR ADAMS: That will end the hearing on LB575. And we'll move on to LR20. Senator Dubas. [LB575]

SENATOR DUBAS: Good afternoon. Better catch up here. Good afternoon, Senator Adams, and members of the Education Committee. My name is Annette Dubas. It's D-u-b-a-s, and I represent Legislative District 34. Last spring I had the opportunity to visit with some of my constituents, and they were telling me about the success that the young people of their community were realizing through competitive trapshooting. I have several very active and successful trapshooting clubs in my district and also through 4-H--they participate in this event. My district is also home to the Cornhusker State Trapshooting Tournament at Doniphan, Nebraska. I believe there should be someone in attendance today who's going to be able to give you some more information about that particular event, but I know it's one that has grown exponentially since it was first started. The event last year brought over 1,800 young people, grades 6 through 12 together as well as all of their family members and other interested spectators to the area. Nebraska Game and Parks Commission sponsors the annual Cornhusker

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Trapshoot, and it is the largest youth trapshoot in the United States. As indicated by the numbers I mentioned before, this event does promote tourism in the local area, and the businesses from Grand Island to Hastings, and all points in between recognize and reap the benefits of that...the people in attendance at this event. It is definitely not my intention with this resolution to dictate to schools that they should offer trapshooting as a sanctioned sport. I know that is something that is available to them if they want to go through the NSAA process, but I really do firmly believe this is a decision that should be made at the local level between the patrons of that particular school district and the school administration and the school board. So, again, it's not my intention to dictate to them that they should do this. I introduce this resolution and requested a hearing to give those who participate and support this event a stage and the opportunity to spotlight the successes of their programs. The young people who participate in these activities are trained in gun safety and are very respectful of the firearm. I do recognize and understand the current environment we live in, and when you mention guns and schools, people become very nervous. I do want to be sympathetic to those feelings, and all too often when we talk about guns, it is with a very negative connotation. The students that participate in these particular events of trapshooting are responsible and are participating in a sport that gives them a healthy respect for firearms. They are also engaging in a sporting activity that they will be able to continue participating in for the rest of their lives--young, old, male, female as well as those with some physical handicaps can participate in this very enjoyable form of recreation and sport. This resolution is a platform to promote and speak about a sport that doesn't receive a lot of recognition in our state. I don't believe people, in general, have an understanding of what this sport truly is, and, for that reason, I thank the committee for their attention to this resolution. Be happy to entertain any questions. [LR20]

SENATOR ADAMS: Thank you, Senator Dubas. Yes, Senator Avery. [LR20]

SENATOR AVERY: Thank you, Mr. Chairman. Would you mind reading what it is we're resolving here, because page 2 is missing from my file? [LR20]

SENATOR DUBAS: Okay. I only have my white copy, so I'm hoping it's going to be the same as the green copy. But page 2, whereas a great deal of coordination and discipline is needed for trapshooting, trapshooting tests a player's skills and marksmanship and strategy, and it improves confidence of youths who may not possess the physical attributes to compete in other competitive sports offered at their schools whereas the goal of any program of youth trapshooting should be to provide instruction and promote gun safety, personal responsibility, and sportsmanship whereas many state organizations award scholarships to college-bound trapshooters based on citizenship, scholarship, and need. Many youth trapshooters are now attending college with the help of these scholarships whereas our youth should have the opportunity and be encouraged to participate in trapshooting in the same manner as other youth. Extracurricular activities, including football, baseball, softball, basketball, track, scouting,

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or band and whereas the school boards of every Nebraska school district are encouraged to promote and include trapshooting as a high school sport. [LR20]

SENATOR AVERY: Be it therefore resolved? [LR20]

SENATOR DUBAS: Be it therefore resolved. [LR20]

SENATOR HOWARD: (Laugh) (inaudible). [LR20]

SENATOR AVERY: What is that? That's what I wanted you to read. [LR20]

SENATOR DUBAS: That the Legislature hereby encourages the school boards of every school district in the state of Nebraska in conjunction with the Game and Parks Commission to voluntarily promote and include trapshooting as a high school sport for the youth of our state. [LR20]

SENATOR AVERY: Thank you. [LR20]

SENATOR DUBAS: Sorry (laugh), should have (inaudible) me down. [LR20]

SENATOR AVERY: I don't know if it's missing in all the files or not. [LR20]

SENATOR ADAMS: Questions? Senator Council. [LR20]

SENATOR COUNCIL: Thank you. Thank you, Senator Dubas. If you were present, you may have heard the question I asked on the military compact, but has the trapshooting organization approached NSAA about sanctioning trapshooting as a recognized competitive sport in Nebraska? [LR20]

SENATOR DUBAS: I can't say for sure if they have. Now, I have encouraged them, and I've also encouraged some individual school districts to follow the process and approach NSAA to see if that's something that they'd be interested in doing, but I can't say for certain if that has happened. [LR20]

SENATOR COUNCIL: Thank you. [LR20]

SENATOR ADAMS: Other questions? Yes, Senator Howard. [LR20]

SENATOR HOWARD: Thank you, Chairman. You know, I grew up in Omaha and I know the term, trapshooting, but at the risk of looking really (laugh) uneducated regarding shooting, these are like round items that are thrown up into the air and then...there's nothing living. [LR20]

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SENATOR DUBAS: No, there's nothing living. These are round. They're a clay disc, and they're launched from a thrower of some type--mechanical or by hand, and then the shooters shoot at them and try to hit them. [LR20]

SENATOR HOWARD: So the exercise is really a matter of marksmanship. [LR20]

SENATOR DUBAS: Very much. [LR20]

SENATOR HOWARD: Okay. Gotcha. Thank you. [LR20]

SENATOR ADAMS: I'm sorry. [LR20]

SENATOR HOWARD: I'm sorry. That is cruel; that is mean. That is uncalled for, Mister (laugh). [LR20]

SENATOR ADAMS: I had a picture in my mind. That's all right. Are there other questions? All right. Thank you, Senator. [LR20]

SENATOR DUBAS: I don't know if I'll be able to stay and close. We are having an exec session, but if I'm able to come back, I certainly will. Thank you very much. [LR20]

SENATOR ADAMS: First proponent? [LR20]

RICK STUEVEN: I'm Rick Stueven, R-i-c-k S-t-u-e-v-e-n. Senator Adams, board, I'm a hunter education instructor. I reside in Central City, and I'm also a member of the trap team as far as the instructors go. I have been instructing kids hunter education for...well, since 1998, about 15 years. I love teaching kids; I love working with them. What we're trying to do or what we had talked about is, my stepson goes to Central City High School or the middle school. He competes with the rest of the kids at the state trapshoot team, and he prides himself with school. He has not had any days that he missed for being sick or whatever last year, but he was counted two days unexcused absence, because he went to the state trapshoot. As parents, prior to him going to the state trapshoot, we wrote the school a letter, you know, the principal, the teachers, that he would be absent for those two days going to the state trapshoot, that he would be competing in that. We did that a week in advance before he needed to take off, asking for his homework, and he did his homework. We got a note from the school, saying that he would be an unexcused absence. I don't really see the fairness of that. I have kind of an issue with that, because he did do his homework, and they let us know this in advance to him going to the state trapshoot. I think that trapshooting should be just like any other sport and be able to take off and do that and compete that way. So, I'm looking forward to the kids being able to do that. Hopefully, they'll be able to be...letter just like any other sport. We teach gun safety. There's instructors on the deal. These kids are...like Annette said, there's 1,800 kids that shoot this thing. No accidents in 20

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years. It's phenomenal. I think it teaches the kids responsibility, and it doesn't take in consideration, you know, if you can't run the 440 or you can't throw the football like the quarterback, that's not an issue here. These kids, one on one, boys, girls, doesn't make a difference. They can compete. They can hold their head up high, because they're, you know, they're able to accomplish something that they should be able to letter in. It's a neat sport. All I got. Questions? [LR20]

SENATOR ADAMS: All right. Are there questions? Sir, have you...was it the decision of Central City Public Schools that your stepson was considered those two days unexcused? [LR20]

RICK STUEVEN: Yes. [LR20]

SENATOR ADAMS: May I ask, what was the rationale? [LR20]

RICK STUEVEN: I don't know. [LR20]

SENATOR ADAMS: Because it wasn't NSAA sanctioned event? [LR20]

RICK STUEVEN: It's gun related, and we talked to them about it, and they said that it's not a recognized sport. [LR20]

SENATOR ADAMS: Had you taken your stepson to Wyoming elk hunting, would that have been excused? [LR20]

RICK STUEVEN: I would think so. [LR20]

SENATOR ADAMS: Curious. [LR20]

RICK STUEVEN: Yeah, I would think so. [LR20]

SENATOR ADAMS: All right. Are there other questions? Thank you, sir. [LR20]

RICK STUEVEN: Thank you. [LR20]

SENATOR ADAMS: Other proponents? Good afternoon. [LR20]

CRAIG NELSON: My name is Craig Nelson, C-r-a-i-g N-e-l-s-o-n. This is our program's sixth year, so I've been coaching for six years. I also work for a school district in the transportation department. I'm a certified 4-H shooting instructor. Our program is growing every year. We've got 35 kids enrolled this year. We started six years ago with 25. We have a very successful program. Our main goal is to promote and demonstrate gun safety. We're not asking for any funding. We'd just like to be recognized for the

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schools, and then for them to excuse...give them an excused absence when we have the world's largest shoot just 40 miles away. We've got kids involved in other things like track, music, and we invite those kids to compete. We try not to interfere with the other activities they have. You know, if you're on our team, you don't sit the bench. Everybody gets to compete individually or for team awards. It's an Olympic sport as well as it's in colleges, too. It's something you can do the rest of your lives. Thank you. [LR20]

SENATOR ADAMS: Thank you, sir. Other questions? Senator Sullivan. [LR20]

SENATOR SULLIVAN: Thank you, Senator Adams and thank you. I didn't hear where you were from. [LR20]

CRAIG NELSON: I'm from Central City. [LR20]

SENATOR SULLIVAN: Oh, so you ran into the same situation. [LR20]

CRAIG NELSON: Yeah. [LR20]

SENATOR SULLIVAN: Do you know if some of the other attendees at the Cornhusker Games ran into the same situation of having unexcused absences? [LR20]

CRAIG NELSON: I can't remember which schools it were, but the private schools don't have any problems, just the public schools. [LR20]

SENATOR ADAMS: Did you approach the school board about their policy regarding unexcused absence? [LR20]

CRAIG NELSON: You know, that we were in a school and we started. And then they changed the athletic directors and our new athletic director didn't want anything to do with us, because he said that we are interfering with track and the other stuff, and that's...we worked around the kids' schedule. [LR20]

SENATOR ADAMS: But have you ever approached the school board formally... [LR20]

CRAIG NELSON: Yes,... [LR20]

SENATOR ADAMS: ...been on the agenda, and... [LR20]

CRAIG NELSON: Yeah. [LR20]

SENATOR ADAMS: Okay. Are there any other questions? Thank you for your time today, sir. [LR20]

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CRAIG NELSON: Thank you. [LR20]

SENATOR ADAMS: Next proponent? [LR20]

TODD WALTER: Good afternoon, Senators. My name is Todd Walter, W-a-l-t-e-r. I'm here on behalf of the shooting industry, Lincoln Southwest High School Trap Club, and a father. I have a certain circumstance with my son. He earned an All American designation through shooting sports. The award was sent to Lincoln Southwest. They denied to accept the award and called me to tell me to come pick it up. They would not display it. As a coach, that really...getting that All American status at that high level of shooting and even being the coach for the school and not being able to have representation of the sport really cut to the quick. As a father, what you do to tell your son he earned this award, and now the school is not going to even accept it. They actually told me that I had to come (inaudible) or they were going to throw it away. So, I think it is a good bill. I know as being a manufacturer's rep for the firearms industry, there's other states around Nebraska that have brought a bill into this...like this into their states. Minnesota and Missouri are the two that I'm referring. That's all I have really at this point, but. [LR20]

SENATOR ADAMS: Thank you for your testimony. Are there questions for this testifier? Guess not. Thank you, sir. Any other proponents? Good afternoon. [LR20]

TERRY BRENTZEL: Good afternoon, committee. My name is Terry Brentzel. That's T-e-r-r-y B-r-e-n-t-z-e-l. And I've been a state game warden, state conservation officer for 29 years, and probably 25 of the 29 years, I've worked at the Cornhusker shoot. And last year and this year, I'm the director of the shoot, putting it on and everything. So, anyhow, we've had the shoot now for 42 years. This will be our 42nd year. You're all invited to come if you'd like to see this. It's the last three days of April. Last year, we had 1,800 kids shoot in this event. They're from sixth grade to twelfth grade. Most of them are Nebraska kids, but it's open to anybody in the United States, so we have kids coming from Illinois, Kansas, Colorado, South Dakota. Off the top of my head, that would be a few of the states. We've never had any problems at all, any accidents. Everybody that shoots has to have a hunter education graduate certificate from Nebraska or the state that they come from, and it's all very positive. I live in Doniphan where the trapshoot is held. We have...on the billboard out there this morning, it was like 750 people live in Doniphan. We had these 1,800 kids shoot. We have their moms, dads, grandpas, all these relatives, and I would presume our population those three days in Doniphan goes to 10,000 people. Got people parked all over to get into the event. It's really something to see. So if you get a chance, I highly recommend you to see this. I live in Hall County. I called the coaches in Hall County, and Grand Island Senior High this year has 50 kids shooting. Grand Island Central Catholic has 40. Grand Island Northwest, who my son who's in the Marine Corps right now, he shot for Grand Island Northwest, and they have 75 kids shooting this year. Centura, which is by Cairo,

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they have 35 kids. Doniphan has 37 kids, so in Hall County alone, we have approximately 237 kids shooting in this event. And we have kids that are home-schooled; we have kids that go to public school, private school. We have 4-H teams that shoot at this. We have women's teams that shoot at this. Over the years, we've had individuals who have shot that have no hands. They make a special weapon. They blow through a straw where you can shoot with no hands. We have children shooting in wheelchairs over the years, so as I said before, this is a sport that everybody, no matter how you are physically built, you can participate in this. And it's a big thing for the Game Commission. I think it's probably the best thing the Game Commission puts on for the public at this time, and it just goes hand in hand with all of our youth skill camps we put on for 4-H. We do this out at Halsey Forest 4-H camps, shooting parks, Pheasants Forever, Ducks Unlimited, Turkey Federation. We have all these youth programs to get kids in the outdoors. And it's very popular, and it's growing, and I would imagine this year, it's going to be between 1,900 and 2,000 kids the way it sounds, will be there the last three days in April. Also, there before our shoot, there is six weeks of conference shoots across the state of Nebraska, and they start this Saturday. If you live here in Lincoln, there's a shoot, will have at least 400 kids north of town here. I believe it's on 48th Street. Omaha starts this week. Doniphan starts this week. Doniphan will have 300 kids shooting, so if you want to see how any of this works, give me a call, or run by and see how this is. It's a tremendous sport, Olympic sport, international sport. So I hope you look into this, and it would be a great thing to have. [LR20]

SENATOR ADAMS: Thank you, sir. Are there questions for this testifier? Senator Sullivan. [LR20]

SENATOR SULLIVAN: Thank you, Senator Adams and thank you for your testimony. You mentioned Grand Island Public and Grand Island Northwest. Did they actually have trapshooting clubs? [LR20]

TERRY BRENTZEL: They're clubs, yes. [LR20]

SENATOR SULLIVAN: So, in other words, the students that then went to the Cornhusker trapshoot from there, they didn't have unexcused absences, I presume. Is that correct? [LR20]

TERRY BRENTZEL: I don't know what they do there. [LR20]

SENATOR SULLIVAN: Okay, okay. [LR20]

SENATOR ADAMS: Senator Council. [LR20]

SENATOR COUNCIL: Thank you. And thank you, warden. But this level of participation

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that you have described, and with your statement, and my recollection is, is it's an Olympic sport... [LR20]

TERRY BRENTZEL: Correct. [LR20]

SENATOR COUNCIL: Have you ever approached NSAA (inaudible)... [LR20]

TERRY BRENTZEL: I have not. [LR20]

SENATOR COUNCIL: ...I mean, because I remember in when I started playing girls' basketball, it was not a sanctioned sport in Nebraska many, many moons ago (laughter). And it didn't become a sanctioned sport...I think it was important to the Title IX, but also, when NSAA recognized it, and I was just wondering had, you know, with the level of participation and the...I guess, do you pay? Do the teams pay to participate in the...? [LR20]

TERRY BRENTZEL: Um-hum. They do, and they have fund-raisers and stuff, so it doesn't cost the school anything in these situations. [LR20]

SENATOR COUNCIL: Okay. But I'm going to say, with the kind of revenue that could be generated by the level of participation that you just outlined, I would think that NSAA would be chomping at the bit to add that many young people to participate at. [LR20]

TERRY BRENTZEL: That many kids. [LR20]

SENATOR COUNCIL: And who provides the equipment? [LR20]

TERRY BRENTZEL: Okay. The equipment at Doniphan, that's the home of the Nebraska Trapshooters Association, and they have 24 traps which is like almost three-quarters of a mile long. And that all belongs to the Nebraska Trapshooters Association. And the Game Commission pays them to use their facility, and then we have a fee for all the shooters to pay. So it's a break even deal. [LR20]

SENATOR COUNCIL: If I want to participate in the sport, do I have to buy my own rifle? [LR20]

TERRY BRENTZEL: Not necessarily. These teams and different shooting clubs and stuff, they have shotguns that they will borrow these kids. A lot of the coaches have extra guns, and they'll borrow them to the kids, so there's a lot of help. [LR20]

SENATOR COUNCIL: Now, the last time I saw a trapshooting range, when you talk about the trap, they look like little bunkers. [LR20]

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TERRY BRENTZEL: Correct. [LR20]

SENATOR COUNCIL: Okay. So, you know, and then, I guess that's why you have this centralized location in Doniphan where kids will participate kind of. [LR20]

TERRY BRENTZEL: Yeah. There's so many kids, they have to go to Doniphan because it's the biggest shooting park in the state of Nebraska. Very nice. [LR20]

SENATOR COUNCIL: Okay. Thank you. [LR20]

SENATOR ADAMS: Any other questions? Yes, Senator Schilz. [LR20]

SENATOR SCHILZ: Thank you, Senator Adams. Good afternoon, sir, thanks for coming in. And I just want to commend you because when I was younger, all my four years of high school, I shot at the Cornhusker... [LR20]

TERRY BRENTZEL: Excellent. There you go. Yeah. [LR20]

SENATOR SCHILZ: ...Cornhusker shoot, and it's one of the most memorable experiences I had. It's amazing when you see that many students... [LR20]

TERRY BRENTZEL: Yes. [LR20]

SENATOR SCHILZ: ...kind of coming out, and you're right. It's a very positive thing and... [LR20]

TERRY BRENTZEL: Yes. [LR20]

SENATOR SCHILZ: ...we just had a blast. I mean, you meet people from all over the country. You'd get introduced to all the latest gadgets and almost everybody had an opportunity to win something... [LR20]

TERRY BRENTZEL: Correct. Um-hum. [LR20]

SENATOR SCHILZ: ...so it was a great experience for me, and I think this is a great idea. And, hopefully, you can find some purchase here and find some way to make this happen. So not so much a question. Just a comment. [LR20]

TERRY BRENTZEL: All right. Thank you, sir. Yeah. I'm glad you shot. [LR20]

SENATOR SCHILZ: Yeah (laugh). [LR20]

SENATOR ADAMS: Thank you. Are there any other questions? Well, when there's

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10,000 people in Doniphan, I know you don't have room for them. So you need to send them to York...the spillover. Right? (Laughter) [LR20]

SENATOR SCHILZ: (inaudible) 25 traps (inaudible). [LR20]

TERRY BRENTZEL: For the funny side of this, there's so many people there as far as parking and stuff, and there's parking grounds a mile long, and it's just packed. The city has to open up the dump across the road, and then a farmer's field. And they park in the field and in the dump, because there's that many people there. [LR20]

SENATOR ADAMS: A lot of holes in the sky, too, by the end of that... [LR20]

TERRY BRENTZEL: A lot of lead on the ground, a lot of lead. [LR20]

SENATOR ADAMS: Are there any other questions? Thank you, sir. [LR20]

TERRY BRENTZEL: Thank you. [LR20]

SENATOR ADAMS: Yeah. Are there any other proponents to the bill? Any opponents? Is there neutral testimony? And I don't believe Senator Dubas is available to close, so she will waive closing. And we will end the hearing on LR20 and proceed on with the final bill of the day, LB582. Senator Haar, you are recognized to open. Whenever you're ready, Senator Haar. [LR20]

SENATOR HAAR: Thank you. Senator Adams, members of the committee, I'd like to see Senator Council doing trapshooting with a rifle. I'm...(laugh)... [LB582]

SENATOR COUNCIL: I don't know what you shoot with. I know it's a long gun. Don't you shoot with a long gun or do you shoot with a handgun? [LB582]

SENATOR HAAR: A shotgun (laugh). [LB582]

SENATOR SCHILZ: We'll talk later. We'll get you and Howard together. (Laughter) [LB582]

SENATOR ADAMS: Go ahead, Senator Haar. [LB582]

SENATOR HAAR: (Exhibits 2, 3) Okay. Thank you very much. I want to start this session, again this year, by reading the First Amendment to the Constitution. "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof or bridging the freedom of speech or of the press or the right of the people peaceably to assemble and to petition the government for a redress of grievances." So we get to that pesky First Amendment there. The time line I've handed

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out, I think is very informative. So, I would like to start with that. The First Amendment, of course, was 1791. And then in 1969 in Tinker v. Des Moines, you can see there, "Neither students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. It permits school officials to censor student expression only when it would cause him material and substantial disruption of school activities or collide with the rights of others." So this was sort of a ruling on individuals and what they can do within a school setting. Okay, then Supreme Court, Bethel v. Fraser, 1986, said some of the things, "Student-initiated speech which is lewd, offensive or indecent is not protected by the First Amendment." And then in 1988 came the Supreme Court ruling of Hazelwood v. Kuhlmeier, and this amounted to almost a blanket censorship by the schools. "School officials may censor any student-initiated speech that's reasonably related to educational concerns." Relating to school activities, such as newspapers, plays, and so on. What the Student Free Expression Act would do is to restore the level of protection of student-initiated speech for Nebraska public school students back to that of the Fraser decision of 1986. In other words, you need a good reason to limit the freedom of speech of students. So, first and foremost, I want to tell you that this bill really has two parts to it. Really, it defines, again, what schools can limit back to the level where you need a good reason. The second part of it actually encourages schools to have a policy. Last year, the bill I introduced or two years ago, required...mandated a policy. This one just says that...it suggests a policy, and I think it's very obvious that if you have a policy, it makes less hassle in case of lawsuits and so on. It also changes, because the previous bill had a protection for teachers. Teachers feel that that's covered by collective bargaining, so we took that out. Some people have argued that just like, you know, there are many places where you don't really have freedom of speech like at your place of business. But schools are...public schools are a political subdivision. That is, they're the government. And so, I feel that the First Amendment does apply unlike a business where you can't just say whatever you'd like. Again, going back to a former definition, it reinstates some freedoms for students, but it, again, says that, you know, these activities can't be...it enumerates them. It does not allow obscenity, defamatory language, clear and present danger of unlawful acts, something that causes a material and substantial disruption of orderly operation of school or invades the privacy of others. So, that's the Student Free Expression Act. I strongly believe and saw that, too, in my Green Schools Bill that the school itself is a curriculum, and if we want our young people to learn about freedom, then the schools also need to respect that. They need to learn that in schools. So, that's it. [LB582]

SENATOR ADAMS: All right. Thank you, Senator Haar. Yes, Senator Cornett. [LB582]

SENATOR CORNETT: Senator Haar, could you repeat the exclusions again? [LB582]

SENATOR HAAR: Yes. The exclusions... [LB582]

SENATOR CORNETT: Do we have a copy of that? [LB582]

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SENATOR HAAR: It's in the bill itself. But, yeah, it... [LB582]

SENATOR CORNETT: Yeah. Just. I mean... [LB582]

SENATOR HAAR: ...it does not allow for obscenity, defamatory language, cause clear and present danger of unlawful acts, causes a maternal and substantial disruption of orderly operation of the school, or invades the privacy of others. Again,... [LB582]

SENATOR CORNETT: I'm just going to ask, because... [LB582]

SENATOR HAAR: Yeah. Sure. [LB582]

SENATOR CORNETT: ...under the...the way it's worded, and you know the problems that I had with the bill last year. [LB582]

SENATOR HAAR: Um-hum. [LB582]

SENATOR CORNETT: T-shirts with gang symbols. [LB582]

SENATOR HAAR: Excuse me? [LB582]

SENATOR CORNETT: T-shirts with gang symbols. [LB582]

SENATOR HAAR: Um-hum. [LB582]

SENATOR CORNETT: Where does that fall under your exclusions? A teenager showing up with a swastika on his shirt. [LB582]

SENATOR HAAR: Well, first of all, I would suggest that...first of all, if a school had a policy in place, I think it could make those... [LB582]

SENATOR CORNETT: Wouldn't this law supersede that, though, if we're allowing them expression? [LB582]

SENATOR HAAR: I guess I can't answer that one. You know, obviously, there is still a lot of discretion involved here. The law doesn't say you can wear this or that T-shirt. But if it causes a material and substantial disruption of orderly operation of the school, it could be prohibited. [LB582]

SENATOR CORNETT: I was thinking more when you said that, actual, maybe rallies involving a topic, something that would actually cause a disruption of the school process. But would an item of clothing be considered that? [LB582]

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SENATOR HAAR: I think that could be defined again in school policy. I think this law...this bill itself, this law, would not specifically address that. [LB582]

SENATOR CORNETT: Thank you. [LB582]

SENATOR HAAR: And some of the other people who are coming to testify could maybe answer that question better than I could. [LB582]

SENATOR CORNETT: Because I remember the one testifier from last year, when their child was sent home with a shirt... [LB582]

SENATOR HAAR: With that T-shirt. You bet. [LB582]

SENATOR CORNETT: But the T-shirt was involved with somebody that had been killed in a shooting, correct? [LB582]

SENATOR HAAR: Drive-by shooting, that's correct. And then the T-shirt was... [LB582]

SENATOR CORNETT: Drive-by shooting. And the school felt that that was defamatory. [LB582]

SENATOR HAAR: Yes. The T-shirt was created to honor that dead comrade and... [LB582]

SENATOR CORNETT: Comrade? [LB582]

SENATOR HAAR: (Laugh) What would you call it? Yeah, I would say...(laugh)...their friend, their classmate. [LB582]

SENATOR ADAMS: Senator Avery. [LB582]

SENATOR AVERY: Thank you, Mr. Chair. You're trying to take us back to 1986... [LB582]

SENATOR HAAR: Yes. [LB582]

SENATOR AVERY: ...to reestablish the Bethel v. Fraser rights. [LB582]

SENATOR HAAR: Yes, yes. [LB582]

SENATOR AVERY: I think one could make the case going back to Senator Cornett's question, that a swastika on a T-shirt is a form of speech, and because of his

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connection to very offensive atrocities in the history of humankind. [LB582]

SENATOR HAAR: Um-hum, you bet. [LB582]

SENATOR AVERY: That could be classified as offensive and, therefore, would not be permitted under Bethel v. Fraser. [LB582]

SENATOR HAAR: I guess I would agree on that, yes. [LB582]

SENATOR AVERY: If I were a principal, that's what I would rule. [LB582]

SENATOR HAAR: Yeah, yeah. [LB582]

SENATOR ADAMS: Other...did you have any more questions? Other questions? [LB582]

SENATOR AVERY: No, I...it was not a question, I guess. [LB582]

SENATOR HAAR: Well, I would just comment on that, that, again, going back to Bethel v. Fraser does not answer all the questions as the First Amendment itself does not. And in my opinion, Hazelwood, which basically is blanket sponsorship, goes way too far. And so this goes back to that point where there are some reasonable questions by reasonable people, and what freedom of speech is, and a really important part of this, I think, would be for schools to have a policy in their handbooks, so that students and teachers and administrators know what's expected. [LB582]

SENATOR ADAMS: Other questions? Senator Haar, and maybe someone will follow that can address this. [LB582]

SENATOR HAAR: Yes, yes. [LB582]

SENATOR ADAMS: One of the things that I struggled with last year, and I'm going to bring up two things. You can respond to them or somebody else can with this, is given that we have decades of Supreme Court rulings from Tinker right on up to the present, dealing with speech in schools, I guess what I'm struggling with here is, and maybe it's because of my ignorance of the laws, is what are we doing in Nebraska, trying to intervene statutorily in that Supreme Court case law process? Now, aside from that, my second issue is, and now the school teacher is going to come out of me (laughter)...I was always paramount in wanting to protect in my classroom...I couldn't do much on the outside, but I tried in my classroom, to protect the free speech of students, because as you pointed out, I wanted...the way that I ran my classroom in a government class to be an experience in the First Amendment. But I also felt that...and maybe this isn't an appropriate thought pattern, I also felt like when a student stepped into my classroom or

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into the school building, if you will, and off the street, you want to give them as much expression latitude as possible, but that school...and I'm struggling to define exactly how...feels to me like a different place. The parents have given to us these students, in effect. It is a little different world than it is on the courthouse square, and I'm not sure how, but I sense that to some degree, speech is in some way slightly more limited inside of that school during a school day than it might be if that kid is out in their car or at the city auditorium or on the courthouse square. If you want to respond to that, fine. If you don't, and somebody else wants to, that's okay. [LB582]

SENATOR HAAR: Um-hum. Well, yeah, I'll respond briefly, and then we'll let some other people...some of the testifiers will respond to that as well. In the first case, when the Supreme Court said, in the Hazelwood case, sort of a blanket censorship, they didn't say that, hey, you know, it said "may"... "may censor". Okay? And so, the school, you know, our state statutes can then define that further. Okay. And so that's what I would say in the first case. Different than the courthouse square, I think probably in the courthouse square indecent language would be very hard to prosecute for students, whereas, this would allow for the various things that I mentioned. Indecent...again, this...obscenity, defamatory language, clear and present danger of an unlawful act. So, that, indeed, is different than the square. [LB582]

SENATOR ADAMS: So, if I wanted to...if I use the school newspaper, if I'm on the courthouse square, and I want to pick up a piece of paper and write something, and what I have written is not libelous or slanderous, it doesn't incite; it doesn't present a clear and present danger; it's not obscene by reasonable standards, and the list goes on, I can express myself in this way, but if I bring this into school or it's part of an assignment in school, does it take on a different tone than it would if I were just writing this at home and distributing it on the courthouse square? [LB582]

SENATOR HAAR: Yeah, yeah. [LB582]

SENATOR ADAMS: Maybe that's not a very good example, but. [LB582]

SENATOR HAAR: Again, the First Amendment presents us with all kinds of challenges... [LB582]

SENATOR ADAMS: Okay. [LB582]

SENATOR HAAR: I think almost a simpler case is when schools try to define down to the letter, dress code, and what kids can and can't do. When I was teaching, for example, smoking in (laugh)...smoking in the school wasn't allowed. But then kids were chewing tobacco and spitting into, you know, Styrofoam cups, and so (laugh) you can never put absolute parameters around some of these things. I think that's now been eliminated, by the way, in Lincoln Public Schools, but (laugh). [LB582]

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SENATOR ADAMS: I hope so (laugh). Senator Howard. [LB582]

SENATOR HOWARD: Thank you, Chairman Adams. I have to agree with Chairman Adams, at least how I interpret what he's saying here. You know, there are places where you have to observe respect. It just is the way it is, and I think it's important that you realize that as early in the game, as possible,...I mean, people can go into a courthouse, but they would hesitate to say...often say what they exactly feel about their ticket or their charge or whatever. The same with being pulled over by the police, you know, maybe your freedom of expression is certainly available, but you would not...usually, you'd be careful about what you say. And, along with that, I have a concern about my issue, a few years ago, the antibullying. And I read this, and I think, now how would that...if someone is just taunting, it doesn't really invade your privacy. I mean, you could spread rumors; you could say things about people; you could exclude them, but it doesn't...technically, it's not their privacy. And that just concerns me if we give a free rein to students or a pretty free rein, basically. [LB582]

SENATOR HAAR: Well, I don't see that this is incompatible with the Bullying Act. I think the same kind of issues that were brought up, though, when we talked about, you know, what happens if somebody starts to bully on the Internet and so on? You run across these same difficult questions that, as a society, we have to...yeah, there's some lines that aren't real clear. [LB582]

SENATOR HOWARD: And we certainly know that from Senator Heidemann's bill that, you know, we've tried to look at from different perspectives--bullying on the Internet. I think it's all interrelated in terms of conduct and respect. [LB582]

SENATOR HAAR: I agree. [LB582]

SENATOR ADAMS: Are there other questions for Senator Haar? Thank you, sir. First proponent. [LB582]

PEGGY ADAIR: (Exhibit 4) Is it snowing yet? (Laughter) Good afternoon, Senator Adams and members of the Education Committee. For the record, my name is Peggy Adair, A-d-a-i-r. I represent the League of Women Voters of Nebraska, and we support LB582, because it clearly outlines intellectual freedom rights for young people in Nebraska. Some people will say this bill is unnecessary, because they claim our public school students are offered First Amendment protection under the United States and Nebraska Constitutions. What they fail to acknowledge is the fact that the United States Supreme Court's Hazelwood decision of 1988 essentially stripped public school students of many of their First Amendment rights in educational settings. Under Hazelwood, everything a public school student says or writes or performs is part of curricular activity must be grammatically perfect, well written, adequately researched,

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unbiased, objective, suitable for immature audiences, consistent with the shared values of a civilized social order, and neutral on matters of political controversy. Otherwise, the school authorities have the right to censor the student's work. Going beyond the educational objectives of grading the student's work or correcting it or teaching a better way to articulate it, under Hazelwood, the schools can and do outright censor the students' work--erase it, disallow it, forbid it. What students learn in a culture of censorship is that staying quiet is rewarded; speaking out is punished, and a quiet school seems peaceful, but it's not necessarily safe. A number of studies by the CDC and others have concluded that authoritarian schools that rely heavily on suspensions and expulsions to control students tend to marginalize minority students while also incurring higher incidents of violence. One way of reducing violence in schools is to assure students are knowledgeable about their rights and responsibilities as active citizens who need to feel safe while assuring others feel safe as well. But it's not just students who lose when their rights are not protected. Nebraska teachers have been reprimanded, reassigned, suspended, and even fired for attempting to instill in their students the values and ideals of open and honest intellectual inquiry. The loss of intellectual freedom can have real human cost affecting real human lives. Nobody carries the flag for students. Their words and art and theater productions are their flags. We need to clearly demonstrate to our young people that their voices matter, and their constitutional protections and fundamental rights do not end at the schoolhouse gate. [LB582]

SENATOR ADAMS: Thank you, ma'am. Are there questions for this testifier? What I'm wondering about, you concluded, rights don't end at the schoolhouse gate is Tinker. [LB582]

PEGGY ADAIR: Yes. [LB582]

SENATOR ADAMS: Doesn't that in and of itself say that students do have a flag, the First Amendment protection of free speech without us taking an action? [LB582]

PEGGY ADAIR: I'm...I'm...can you rephrase the question? I'm not sure what you're trying to ask me. [LB582]

SENATOR ADAMS: Well, your testimony, if I interpret it correctly, implies that we have denied students inside of the school gate First Amendment rights. Have we really? [LB582]

PEGGY ADAIR: After Hazelwood, yes. I have two pages of incidents in Nebraska that have suppressed student expression, so they're attached to my testimony. And, again, it's not just the students, and we're not just coming here for the students. There have been teachers who have lost their positions, who have been reprimanded, who have been reassigned, because they have tried to protect their students' rights. Most of the

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time, when these things occur, the students and the teachers are on the same side. They're really trying to...the teachers are trying to develop the understanding and knowledge of the students. They're on the same side. It's when administrators--those who come outside of the classroom come in and say, you cannot do this. That's when the issues tend to occur in Nebraska. We've had some wonderful teachers who just, you know, who quit. [LB582]

SENATOR ADAMS: So is the administrative action challengeable? Is the act of the administrator, who said, I'm not going to let you print that in the school newspaper. Is that a challengeable action? [LB582]

PEGGY ADAIR: It is, but they've challenged and lost. I mean, there will be speakers behind me. They've gone to the school board, and the school board says, no, you can't do this. They've gone to the superintendent. Superintendent has said, no, you can't do it, so where do they go beyond that? They're coming to the Legislature now and saying, help us. [LB582]

SENATOR ADAMS: Other questions? Thank you, ma'am. [LB582]

PEGGY ADAIR: You're welcome. [LB582]

SENATOR ADAMS: Next proponent? [LB582]

ROBERT HALLER: Good afternoon... [LB582]

SENATOR ADAMS: Good afternoon. [LB582]

ROBERT HALLER: (Exhibit 5)...Senator Adams and other senators. My name is Bob Haller. That's R-o-b-e-r-t H-a-l-l-e-r. I am like Professor Avery, a retired professor from the University of Nebraska-Lincoln, and enjoying my retirement the way that Senator Avery is (laughter). As an educator and as a citizen, I have always assumed that the primary reason for free and compulsory public education system is the development of a democratic society. The Nebraska Legislature and the State Board of Education share this assumption, as is manifest in the creation of the Civics Nebraska Partnership Advisory Committee. At the urging of the CNPAC, or it shouldn't be phrased that way, CNPAC, you, the Education Committee, have placed on General File LB544 which would add language to the current mandate for civics education in this state a specific charge to schools that they foster and I quote, "active participation in the improvement of a citizen's community, state, country, and world, and the value and practice of civil discourse between opposing interests." The provisions of LB582, the bill in front of you, are clearly essential to the effective implementation of LB544. That bill calls for active participation, not simply study and testing. It requires students to formulate principles, upon which they can act, with the intention of affecting the welfare of the community,

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state, country, and world. And this activity cannot be restricted to safe, noncontroversial, nonpartisan issues nor can it take place if the school boards or administrators are allowed to set limits to this active participation. Learning the value and practice of civil discourse between opposing interests requires that all those interests be open to discussion and debate. And the active participation in improving the community, state, nation, and world cannot be restricted to the classroom. It must involve all the outlets for such efforts fostered within the schools--newspapers, dramatic performances, extracurricular groups, public meetings. In many school districts in this state, the optimum conditions for the implementation of LB544 are already in place. What LB582 does is to present to all school districts and to the public-at-large a recognition that students, teachers, administrators, and school boards have a responsibility for the fostering of democratic participation and deserve to be encouraged to act in pursuit of this responsibility. Thank you. [LB582]

SENATOR ADAMS: Thank you, sir. Are there questions? Not even from Senator Avery. [LB582]

SENATOR AVERY: Very good job. [LB582]

SENATOR ADAMS: Thank you, sir. Next proponent. [LB582]

AMY MILLER: (Exhibit 6) Good afternoon. My name is Amy Miller. It's A-m-y M-i-l-l-e-r. I'm legal director for ACLU Nebraska. It's always somewhat difficult when there's a slight tension between testifiers. I would suggest that the First Amendment is already in great position to protect the rights of students' free speech and expression in Nebraska schools. But we're still in favor of LB582 for several reasons. One, we think that school administrators need their awareness raised as to the rights of students, and we think that this statutory concrete guidance for them and encouragement that they pass policies will ensure that we have less of a problem. Second, we think that it will provide a clear guideline that will, as the fiscal note suggests, possibly result in savings, because it will discourage potential future litigation. As a note, I would say that it would make everyone's lives easier as well. I assume that when a school administrator gets a phone call from the ACLU suggesting that they have overstepped the bounds of the First Amendment, that they have a bad day as did the student who had their free speech rights squelched by an over eager school administrator. And my office is fielding these, at least once a month during the school year, and most of the time are able to take care of it and resolve it without litigation. But I wanted to take the rest of the time for my testimony to tell you a couple of the stories that seem like no-brainers, but school administrators in real-world situations need some additional help and guidance, and this bill would provide it, we think, especially because of the encouragement that there be clear school policies. My most recent example comes out of Grand Island High, where in 2009, a student actually got in trouble, because he wanted to stay quiet (laugh). The day of silence is a national holiday where students are encouraged to stay silent as a

way to acknowledge that gay and lesbian people have been silenced throughout history. They still participate in class and answer questions, but they don't say anything in the hallways; they don't talk during lunch. And the student had to bring a little flyer with him that he printed off the Internet to explain why he was being quiet. The Grand Island High School administrators told him that he couldn't hand out flyers with a little piece of paper at school. You can pass notes in school; you can hand out your birthday invitations, but he couldn't hand out that stack of flyers. And when scrambling for a quick response after I called, they suggested it could be a safety issue, because he could hide a gun in the stack of papers (laughter). I had a similar problem with a student who wanted to stay quiet in Raymond Central, and we had one in Omaha Central--students whose religious beliefs say they can't participate in the Pledge of Allegiance, so they sit quietly in their seat and don't participate. In both of those schools, I had students that were harassed by the teacher. In Raymond Central, the student was taken down to the principal's office and asked why he wasn't participating. This is an elementary school student, who simply wanted to stay quiet. I've given you other examples in my testimony, but we're getting these complaints from small schools, from large schools, urban and rural. There doesn't seem to be any commonality other than school administrators do need additional guidance rather than a "nastygram" from the ACLU. So I'll keep doing my job regardless of whether LB582 passes, but we think that it's a good message to students, and we think that it's good guidance for school administrators to resolve these problems ahead of time. Thank you. [LB582]

SENATOR ADAMS: Senator Council. [LB582]

SENATOR COUNCIL: Yes. And thank you, Amy, and I appreciate the information you provide. I guess my question and concern is just with the examples you've given, that somebody's interpretation of what is obscene, what is defamatory, what presents a clear and present danger of...and I guess that's a concern I have with what's in LB582. The following forms of student expression are prohibited, and somebody is making a determination as to what's obscene, what's defamatory, and what creates a clear and present danger of unlawful acts. And I'll give you my example, and within the last ten years, but African American students who were wearing T-shirts that had Malcolm the X. And they were being told that that was...it could lead to disruptive...so it presented a clear and present danger of disruption. I guess that's my concern. How do we manage this? I don't disagree that there ought to be some definitive statements of what is permissible and what's not permissible, but do we actually resolve the issue? Do we prevent the cause from coming to the ACLU and one person's definition of obscenity is another person's acceptable conduct or behavior? I mean, how do we get around that? [LB582]

AMY MILLER: I think that no matter how many policies or statutes, there's always going to still be questions. So I think all you do is you continue to shrink the pool of uncertain categories. I was speaking with some of my fellow testifiers who are yet to come about

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whether I should enter the battle of the swastika question. But I'd like to address both the swastika problem and the Malcolm X examples. [LB582]

SENATOR COUNCIL: Right. [LB582]

AMY MILLER: First of all, you would hope that school policies that are developed as a result of LB582 would provide some additional clear guidance, so that students have a clearer sense of what is and isn't allowed, and that they aren't sort of blind-sided with somebody suddenly telling them, this is not permitted. But second...you're right. There's going to continue to be some wiggle room, and that's probably going to depend on the individual's school circumstance. For example, a school that has a long history of racial tensions or white on black problems, that school may be able to say to a student who wants to wear a swastika, oh, no, you don't, not here, because we have a history of problems, and we can demonstrate that this is a clear and present danger, material, substantial disruption sort of problem. The student who wants to wear the swastika to a school without that history or the student who wants to wear a celebration of Malcolm X's contributions to society...both of those students, under my view, have the right to do that. Now, this continues to be a problem whether you're talking about the swastika, the Confederate flag. There are some messages that certainly create hurt feelings. Students, who, because of their sincerely held religious beliefs, want to wear an antihomosexuality message on their T-shirt--these are permitted under the First Amendment, but it creates problems for school administrators if they don't have a clear guidance as to...if it's going to cause material and substantial disruption, I can go ahead and prevent this, shirt. Otherwise, you're sending them a message hands off. The T-shirt is going to be okay. So you're not going to resolve all your problems, but I think that you are shrinking the pool of potential problems one way or the other if you pass LB582. [LB582]

SENATOR ADAMS: Yes, Senator Howard. [LB582]

SENATOR HOWARD: Thank you, Chairman Adams. Amy, as an attorney, do you go into court and practice? [LB582]

AMY MILLER: I do. [LB582]

SENATOR HOWARD: Do you take clients into court? [LB582]

AMY MILLER: I do. [LB582]

SENATOR HOWARD: Do you counsel those clients before you get in there about how the court operates and what's appropriate to say in the court and maybe even what's not appropriate to say? [LB582]

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AMY MILLER: I do. [LB582]

SENATOR HOWARD: How do you see this different from a teacher taking a student aside and saying, listen, this behavior is really not appropriate. It's not going to get you where you want to go which is quite similar to what you do. [LB582]

AMY MILLER: The difference, I would say, is, depending on what the message is that's being conveyed. To be fair, I get calls as well from students all the time that I'm turning away, saying, you don't have a claim here. The school is in the right. And if I may be crass, just briefly, and give an example, we had, from a rural school district, a girl who was very upset that she had been sent home for wearing a T-shirt that said, "Cowgirls ride 'em all night long," and she had been sent home, because that was considered to be a lewd or vulgar message even though it did not contain any explicit sexual words. And my answer to her was, that is not a political message. That is well within the school's venue or purview to say no to. Interestingly, after probing further, it turned out that the boys were wearing T-shirts and, again, forgive me for being crass, things advertising Coed Naked whatever or Bear Whiz beer, that sort of thing. And when she had asked her teacher, why am I being sent home for a lewd T-shirt, the teacher said, well, it's just so much more offensive on a young lady (laughter). So the... [LB582]

SENATOR HOWARD: Which really means you're dealing with two different issues in that case. [LB582]

AMY MILLER: This became a gender problem rather than a First Amendment problem. If those boys were being sent home, I would have said to them, there is nothing I can do, because the school is a place where you have some expectations about your code of conduct. But the difficulties arise when a student is not just being flippant or crass or trying to push the envelope. These are students who are trying to express themselves about the war in Iraq, or about the state of gay rights in America, or their religious beliefs. These are students who are actually well within the serious conversation that the First Amendment and usually educational curricula is trying to protect. So, I am constantly saying to students who come to me, saying that they were sent home for their "Hello, Kitty" bandana, you have no case. The "Hello, Kitty" bandana communicates nothing, and Senator Cornett raised the problem of gang issues. Schools have, in many situations, just passed a uniform rule, no bandanas, no head gear, because there may be gang affiliation intended; clearly not so with the "Hello, Kitty" bandana, but I still don't touch those cases, because that falls within the school's discretion. [LB582]

SENATOR HOWARD: Thank you. [LB582]

SENATOR ADAMS: Senator Cornett. [LB582]

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SENATOR CORNETT: Yes. Back to what you were talking, and this is just more of an interpretation. When you were saying that it is within the First Amendment rights in a school that you believe to where the X for Malcolm X for a swastika or a Confederate flag, you don't see that that can cause problems inside the school, and that the school would be able to regulate that based on the problems. And, I mean, everybody has an argument. Senator Council's constituents can say that, you know, they believe in what Malcolm X taught, and, obviously, Malcolm X changed his philosophies from the beginning of his political career until the end of his political career. Swastika--oldest symbol in our written history. We used to even have it on our own uniforms in the military in World War I, you know. I think the translation is to be good in the ancient language. How do you determine, and how is the school district supposed to decide the arguments of the students? [LB582]

AMY MILLER: If the school district can say, there could be a material substantial disruption and, essentially, with a straight face. So a school that's had problems is probably going to be safe if they were sued by the student who was ordered to take off the racially controversial T-shirt. But a school that has not had any problems, and is just worried about there maybe some, is probably jumping the gun if they silence the expression that the student wants to convey on their T-shirt or on their button. Does this end up with a very difficult still weighing situation? It does. I can point you to another example in the Jena Six example. White students were displaying nooses outside of the school on school grounds, and this was a school district that had a serious rift between minority students and white students. And so, that was not going to play well, and the school was appropriate in saying that displaying a piece of rope is a protected First Amendment contact. Even the ACLU probably would say they are...no, those students' rights were not trampled when the school said, no, you may not display the noose. We do end up in the strange position that despite the fact we're an organization that spends a lot of time talking about racial equality and the rights of GLBT people, we also protect the rights of people whose speech is in direct contrary (sic) to our own principles, because the First Amendment even in schools does protect these controversial statements, but not every school district. So if the school has a history or a demonstrated problem, school is going to win on saying no to those sort of problems. It's just the school can't willy-nilly make up these rules without that demonstrated past problem. [LB582]

SENATOR CORNETT: Well, I tend to follow a little bit what Senator Adams was saying earlier, and I fully support everyone's right to wear what they want to wear, say what they want to say. That's what this country was founded on. But at the same time, I think that the schools have a higher standard in a way for protecting our students from making an environment where everyone feels comfortable to live. And I think that's what...or learn. I think that's what Senator Howard was talking about when she was talking about the bullying bill. Someone shows up with a swastika on their shirt, and a Jewish student may interpret that as harassment, but where does one's rights begin and

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another one's end inside of a school which should be a protected environment, so our children can learn? [LB582]

AMY MILLER: Because these lines are so hard to draw, that's why the antibullying bill that was passed, met the perfect balance that a stray comment, a random epithet in a fight is not enough to rise to the level under our current antibullying laws. But it is pervasive harassment, I think was the key word, out of the bullying bill that was established in Nebraska law. And then when you take it away from the bullying context and just move into the more general suggestion you made about controversial ideas, school administrators--the ones that I have to call, are often moving too quickly out of concern about conflict--that they want to quell conflict, and so, for example, right after the Iraq war broke out, we had to tussle with Millard North where, again, we had students that were handing out flyers, encouraging students to read nonmajor news media about the Iraq war. There were no bad words. It was not overtly antiwar flyer, but even if it had been, we're talking about square protected political speech, and the Millard school district's response was, well, there might be a lot of students here who have parents in the military, who have a family member in the military, and this will lead to conflict. That's almost the exact same arguments that were used in the Tinker v. Des Moines decision back in the sixties, so clearly, getting additional guidance or a reminder that the decisions of yesteryear are still good law, and that what may seem like conflict, and can't we all just be quiet and learn, you know, math, is not the only thing that's happening? That we want students to engage on these political issues and current events, and sometimes that does result in a little bit of grinding along with all of us having to do some bumping and grinding on our sharp points. [LB582]

SENATOR ADAMS: Amy, I always find your testimony on these kinds of issues valuable, if thought provoking, most certainly. But, you know, I still am struggling with, and I know you've probably tried to answer it, and I just don't get it about ten times in the testimony that you've given. The line is hard to draw. Personally, I think one of the values of the First Amendment is that the line is hard to draw. And we will...as long as we have a First Amendment, we will always have difficulty drawing the line, and maybe we should. I'm not sure that we can draw it here, and then I look...quite frankly, I look at some of these examples, and I've never taken any school of law, and I think I could have made a better decision than a couple of these (laughter). But that doesn't mean that there aren't others that are way grayer and difficult, but they're always going to be there, aren't they? [LB582]

AMY MILLER: They are, and I think that Ms. Adair's testimony included a list of the states that have passed a similar Student Free Expression Act or at least some additional statutory protections for students. And so, the one suggestion I would have is, it, again, does not solve the problem. It doesn't mean that from here on out, everything will be crystal clear. I'll probably still get calls as will school administrators, but it moves us towards a better place than I think we are right now where school administrators

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perhaps don't have enough guidance and, therefore, err in exactly the wrong direction as you observe from the examples in our testimony. LB582 is so clear in Section 3 where it talks about the right to express thoughts or beliefs through speech or symbols, create, write, publish, perform. And, certainly, all of those things on their own, I think, we should be thinking more about the student high school reporter. We should be thinking more about the student with the T-shirt that says, End the war now, or regulate gay marriage, or whatever. These are the students whose rights are actually at stake. The other students, the ones who may be engaging in disruptive or immature behavior, those students are not the ones who follow through, who attempt to challenge it through the school board, or attempt to get a new policy made. It's our best and brightest and most likely to succeed future citizens that are currently being squelched without enough guidance, that we think will be protected by LB582. [LB582]

SENATOR ADAMS: Okay. Fair enough. Thank you. Are there any other questions? Thank you, Amy. [LB582]

AMY MILLER: Thank you. [LB582]

SENATOR ADAMS: Next proponent. [LB582]

ADAM MORFELD: Good afternoon, members of the Education Committee. My name is Adam Morfeld. That's A-d-a-m M-o-r-f-e-l-d. And I am here on behalf of Nebraskans for Civic Reform. We're an organization that's usually in the Government Committee, because we do a lot of election reform issues. But this is something that's right up our alley as well. Nebraskans for Civic Reform is an organization comprised mostly of law students that advocate for election and civic education reform, and that's why we stand in support of LB582 today. We believe that it reinforces democratic principles taught in the classroom, and that there's often kind of a disconnect between what's taught in the classroom and then what's actually practiced in the school, particularly with civic education. I think that a lot of times we've been talking about or more recently we've been talking about a breakdown in civil discourse in our country, and the fact that people can't have calm conversations about intense issues and try to find some kind of middle ground. Well, if we're not teaching that in our high schools, then how do we expect our future leaders and citizens go out and have that type of discourse in the real world? And I think that when you squelch students' discourse in the school, you kind of take away from that experience that they have and being able to have that kind of reasonable discourse. One of the reasons why I really wanted to testify today was not only on behalf of my organization, but because of my own experience in high school. I had never been in trouble. I was (laugh) a pretty low-key student, and my senior year I decided to start an alternative newspaper. It was actually a newspaper that was started the year before, but was only allowed to distribute off-campus. I decided that I would distribute on-campus, and that, obviously, met with some contention with the principal. The principal called me into the office the day that I...I'm trying to remember back,

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actually. It's been about seven years. The principal actually called me in the office the day that I distributed in the school and told me that if I did not cease and stop distributing newspaper within the school that I would be expelled and removed from campus. So, I naturally then went and talked to an attorney, and we came up with some case law saying that since we printed it on our own and that we didn't use school resources, and that it didn't incite any violence or have any obscenity in it, that we'd be fine. Well, the principal then, I think, probably checked with the school district and looked into it, and then called me back in and said that I would not be expelled (laugh), and that I would not be removed from campus. And I think it's also important to note that my newspaper was not espousing any radical ideas. In fact, it was more conservative than the actual campus newspaper, ironically enough. And I believe it actually supported the war in Iraq initially. So I think the point that Amy Miller brought up that this is really protecting, and I know I'm out of time here, but this is really protecting a lot of the students that are the bright students, that are the ones that are trying to do good, trying to make a legitimate political statement and not trying to cause trouble. And I think LB582 provides the framework for school districts and school administrators to accomplish that. I'd be happy to answer any questions. [LB582]

SENATOR ADAMS: All right. Are there questions for this testifier? Thank you, Adam. [LB582]

ADAM MORFELD: Thank you. [LB582]

SENATOR ADAMS: Next proponent. May I see hands, how many more proponents we have? Oh. And how many opponents? Okay, thank you. [LB582]

KAITLYN KLEIN: (Exhibit 7) Hi. My name is Kaitlyn Klein, K-a-i-t-l-y-n K-l-e-i-n, and I'm an aspiring journalist, and I currently hold the position of editor-in-chief of Bellevue West's West Wind newspaper. I wanted to speak today, because I'm passionate about student rights. I want it to be known that students support this bill. My staff was happy to let me be a spokesperson for them. I brought with me an excerpt from December's edition of The West Wind. We have a focus section which allows our staff to do in-depth reporting on a particular subject. That edition's focus section was on drugs and alcohol, a controversial topic to some. However, the reason I brought it with today was to show members of this committee that controversial subjects can be covered with the principles of journalism that we are taught. When my staff decided they wanted to write about this controversial issue, I sat down with them and reminded them of the importance of fair and balanced news as well as making sure that they were not writing for shock value. As editor-in-chief, it's my job to ensure that the subjects we print are relevant and written fairly and accurately. My advisor's job is to oversee myself and my staff in this job. Protecting students' rights will not give us free rein to write and say whatever we want, but rather protect us from unfair censorship and from administrators who take advantage of the Hazelwood case, and use it to enforce prior review and take

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charge of student newspapers. Luckily for me, West has an understanding principal who will work with us on sensitive issues. But some school districts aren't so lucky and need the protection this bill would give them. Additionally, students should be protected, in general, not just in regards to student publications. This bill would give us the freedom students need to voice their opinions and learn to exercise their rights properly. My senior research paper argues the importance of bills like this one, and I strongly support the passage of LB582. I also would love to enter my research paper in as additional testimony when it's completed March 15. And to address some of the issues that were brought up, I think the key here is that we need to be teaching students when, how, and where to express themselves, and that there is a level of respect with schools and with administrators, and with teachers that you need to have. But if students don't know how they can express themselves and that they can express themselves and should not be censored, then this will develop apathy and conflict, I think. I think dialogue about controversial subjects has been shown to be needed to be protected by this country, especially with the recent Snyder v. Phelps decision. Though that is unpopular speech, we still need to learn that though it's unpopular, we shouldn't be able to censor it, and that we should allow others to express their beliefs though we don't agree with them and work with them to agree to disagree when we come to those conflicts. And I'd be happy to take any questions. [LB582]

SENATOR ADAMS: All right. Thank you. Nice job. Are there questions for Kaitlyn? All right, thank you. [LB582]

KAITLYN KLEIN: Thank you. [LB582]

SENATOR ADAMS: Next proponent. [LB582]

FRANK EDLER: (Exhibit 8) My name is Frank Edler. That's F-r-a-n-k E-d-l-e-r. I have a doctorate in philosophy from the University of Toronto, and have been a full-time instructor at Metropolitan Community College, Omaha, since 1993. However, I'm going to set aside my five good reasons (laugh) for supporting this bill and talk about Millard School with the T-shirts that the students wore. And I think this bill will be able to eliminate that kind of, I think, decision that perhaps shouldn't have been made. That is, the students who wore the Julius RIP T-shirt, I think could well have been eliminated or not made had this bill been there, because I think that bill...this bill would have, indeed, established a foundation for why that was the wrong decision, because it is...in other words, what this bill, I think, eliminates is arbitrary decisions, and I think that decision was arbitrary in the sense that Julius RIP, it seems to me, did not...the school board could not give a good reason why this was, indeed, gang language. And I think that would have given this bill the determination not to censor that T-shirt, would have been made on the basis of it. [LB582]

SENATOR ADAMS: Anything else, sir? [LB582]

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FRANK EDLER: No. [LB582]

SENATOR ADAMS: All right. Are there questions for this testifier? Seeing none, thank you. [LB582]

FRANK EDLER: Thank you. [LB582]

SENATOR ADAMS: Next proponent. [LB582]

ROBERT BROOKE: (Exhibit 9) Thank you, Senator Adams and the committee. My name is Robert Brooke. I'm the director of the Nebraska Writing Project. It's an organization of teachers, about 10,000 teachers since 1978, who are networked to teach writing in all subject areas--kindergarten through college across the state. Our programs generate about 30,000 contact hours per year with teachers across the state who are interested in the teaching of writing. Obviously, writing in all its forms is the bread and butter of this proposal the student for expression issue in some ways. And I just wanted to point out that most of our goals in teaching writing bang up head against whether or not the young person in our classes and in our schools and in our communities is in a position to do the exploratory work of crafting in words what his or her position is. I've got listed on the sheet there four particular kinds of issues that I think student expression rubs up against. Writing to understand, especially in a new curricular area, when you're trying to wrap your heads around a new concept, a science course or a civics or a history course. Sometimes you don't exactly say things that are well formed yet, but you need to work through that. You need a context where that representation of your work is recognized. I think when you're writing to explore and examine and question your own experience as in personal essays and in creative writing classes, often you're also pushing at the boundaries of free expression, of student expression. When you are writing to persuade and influence others, as in argumentation, which is in our state standards now and some forms of journalism. That's a crucial issue and, increasingly, as you're writing, to be present on the Internet which is increasingly in our school district's guidelines for what gets taught, there are some issues of experimentation and free expression that go on there. In my 27 years teaching with the Nebraska Writing Project, at all grade levels, preservice and inservice teachers, I haven't had a summer institute where issues about what the boundaries are on expression issues, don't come up. Constantly, the issue of what student choice is allowable, and what positions you get especially when people in the classroom hold different positions of the bullying sort that you're talking about. These are issues that are fundamental and difficult. They're there all the time. I think the elegance of LB582 is that it helps provide us some language and some direction, so that we can, as educators and as administrators, talk back to students and community members about why we're doing what we're doing. I think Section 5 in this bill is just beautiful for our purposes, because it helps all of us at all levels there, be able to distinguish between the individual

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expression and what's going on in the school...what the school is for versus what the individual is for. And that message filtered back to the parent that's concerned about other student expression or the administrator or teacher themselves, that's very useful information. I think having present those Sections 3, 4, 5 here are just wonderful for the guidance they can give us. I can come up with a lot of examples that I could share with you about what kinds of school events are the ones that are talked about here, and I'd be able to address those in questions, but I'm out of time. [LB582]

SENATOR ADAMS: All right. Are there questions for this testifier? I guess not. Thank you. [LB582]

ROBERT BROOKE: Thank you. [LB582]

SENATOR ADAMS: Next proponent. [LB582]

PHILIP ROSS: (Exhibits 10, 11) Good afternoon. My name is Philip Ross, P-h-i-l-i-p M. R-o-s-s. I'm here as a teacher of 15 years, half of them at Waverly High School as a journalism and English instructor, and the other as an English teacher at Southeast Community College. I'm a Fulbright Scholar, '07, and a Kiewit Teacher Achievement Award winner recipient for my students' multidisciplinary writing and publishing...also, a Nebraska writing project consultant which Robert just referred. I'm here on behalf of my own experience as a student of Nebraska public schools, a high school student journalist in Kearney, a Kearney State College journalism student, English Master's graduate UNL, a current doctoral student in education at UNL. The point I'd like to perfectly follow Robert's is that I'd like to emphasize the literacy value of this freedom of expression bill. In terms of learning, students need pathways. We need to be creating pathways to grow their language and ideas. In a community of peers, supervised by an educator, young adults can create an authentic experience for this to happen, there has to be a certain degree of autonomy which LB582 promises. As a journalism adviser, some years ago, I've had one student pulled into an office with three administrators and verbally harassed for an editorial respectfully requesting a change in high school library policy. I've seen an idea for a story about class size halted before it was even written as a story. Such events, while uncommon in my experience, have been enough to send chills into what can be a vibrant reading and writing culture that stretches across learning community to reach many. It's in this realm of education where young citizens can explore and refine their voices in what they write and in what they say, so when they leave our schools they're more prepared for the next step and participate in the ongoing dialogue that we ask of them when they become citizens, when they are citizens. Right now, I currently teach basic literacy skills--reading and writing at SCC. One of the handouts I gave you shows from one study that about one in four of our students entering the community college are not ready for college--one in four, so around 25 to 30 percent of our students. LPS shows similar testing results that their reading and writing is not college material, but yet we're sending more and more

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students into college. And I'm suggesting...you may think this is a stretch. As a journalism teacher, as a writer, as a former journalism student, that there's a strong influence when we don't invite students to write with their teachers, and it's a strong developmental issue, in my opinion, that we've got to create pathways for our students, because it's not happening. Thank you. [LB582]

SENATOR ADAMS: All right. Are there questions? Anyone? Thank you. [LB582]

PHILIP ROSS: Thank you. [LB582]

SENATOR ADAMS: Next proponent. [LB582]

DAVID MOSHMAN: (Exhibit 12) Good afternoon. My name is David Moshman. That's D-a-v-i-d M-o-s-h-m-a-n. I'm a developmental cognitive educational psychologist. I specialize in adolescent development, particularly in the role of intellectual freedom in education. I've written extensively on this including several books. I've been an expert witness on student competence and rights in various legal cases, and I have a [Huffington Post](#) blog on intellectual freedom in education. I have eight points I'm going to make, and I'll elaborate just a bit to respond to some of the issues that have come up. First, student expression and discussion are crucial to learning and development at all ages. Schools that respect student freedom of expression provide better education. I did want to note that a school is not a forum for expression where anyone says anything they want about anything. In classrooms, there's a topic; there's a teacher in control, and this bill would not change any of that. Those students have a right to say what they want about topics in the course. Second, given the importance of identity formation in adolescence, freedoms of belief, expression, and self-definition are at least as important in secondary education as at any other level. Third, Legislatures should generally respect the autonomy of local schools, but must require the basic conditions of education. Freedom of speech is a basic condition of education. Fourth, Nebraska schools must educate their students, and not indoctrinate them. Respect for the right of students to think for themselves, say what they think, and discuss their ideas with each other marks the distinction between an educational institution and a center for indoctrination. Fifth, the issue of bullying which has come up, I'm very aware of. I'm in the Department of Ed. Psych. at UNL. My colleague, Susan Swearer, is a well-known, national expert on bullying, and I've thought about these issues extensively. It's actually, I think, pretty clear that acts of bullying, harassment that repeatedly target individuals with harmful intent are not protected by the First Amendment even by an expansive version of the First Amendment, and would not be protected by this law even when they consist of speech. Sixth, there are many actual cases in Nebraska and elsewhere such that this bill is very much needed, as you have heard. Seventh, First Amendment protection of student expression has been severely limited since [Hazelwood v. Kuhlmeier](#). There's an older standard of [Tinker v. Des Moines](#), actually still does apply to underground papers and incidental expression in hallways, but within the curriculum,

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Hazelwood is the standard and sets a very, very low minimum. What this bill would do was to raise the protection up to previous standards that have been applied. And, finally, to conclude, students readily detect hypocrisy. For schools to promote civic and democratic values, they must practice those values. If we're serious about intellectual freedom, we must demonstrate this in our schools. Thank you. [LB582]

SENATOR ADAMS: Thank you, sir. Questions for this testifier? Senator Avery. [LB582]

SENATOR AVERY: Thank you for coming, Dr. Moshman. He's a constituent of mine, by the way. (Laughter) I believe the last time you appeared, you brought copies of your book with you. [LB582]

DAVID MOSHMAN: I did. [LB582]

SENATOR AVERY: And you didn't do that this time. [LB582]

DAVID MOSHMAN: I didn't do that this time. I have run out of copies. [LB582]

SENATOR AVERY: That's too bad. (Laughter) [LB582]

DAVID MOSHMAN: If you go to the Huffington Post for free, you can read everything I've written (laugh). [LB582]

SENATOR AVERY: Okay. [LB582]

SENATOR ADAMS: Are there other questions? Thank you, sir. [LB582]

DAVID MOSHMAN: Thank you. [LB582]

SENATOR ADAMS: Are there any other proponents? [LB582]

LINDA PARKER: (Exhibit 13) My name is Linda Parker, L-i-n-d-a P-a-r-k-e-r. I am the representative of the Nebraska Library Association to the Academic Freedom Coalition of Nebraska. Librarians believe passionately in the First Amendment. When I was a senior in college enrolled in an education class, and that was a long time ago, I stated that African-American students on campus had the right to free speech and freedom of assembly. My professor tried to flunk me. This experience was a factor in my decision to become a librarian. I believed then and now in the power of knowledge to transform individuals into informed and involved citizens. Librarians are dedicated to providing access to knowledge for citizens of all ages. In September 2009 and February 2011, the Executive Board of the Nebraska Library Association voted unanimously to endorse the Student Expression Act. The Universal Declaration of Human Rights states in its Article 19: "Everyone has the right to freedom of opinion and expression; this right includes

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freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media regardless of frontiers." The principles expressed in this Declaration are embodied in the Library Bill of Rights, an official policy of the American Library Association. The library profession believes that the right to free expression is an inalienable right of every person, regardless of origin, age, background, or views. Forty years after my classroom experience of intimidation by a professor, I still see incidents in Nebraska where student voices are suppressed. You've received a list in Peggy Adair's testimony, and my written information has a link to those same instances. The past president of the Nebraska Library Association wrote, "Obviously, the protection of free speech for all citizens, including those still enrolled in school, is an important issue for librarians and the Student Expression Bill is another way that those rights can be protected." The Nebraska Library Association supports LB582 and requests that the committee advance this bill. [LB582]

SENATOR ADAMS: Thank you, ma'am. Are there questions for this testifier? Anyone? Senator Avery. [LB582]

SENATOR AVERY: I'm curious. What was the outcome of that personal experience? [LB582]

LINDA PARKER: Pardon? [LB582]

SENATOR AVERY: You had a personal experience. [LB582]

LINDA PARKER: Yes. [LB582]

SENATOR AVERY: And what was the final outcome? [LB582]

LINDA PARKER: I made a B in the class. At the midterm grade report, I had an A, and I made the comment after those grade reports came out. I never made anything above a C after that so. [LB582]

SENATOR AVERY: You should have studied harder or...(laugh)? [LB582]

LINDA PARKER: I was a really good student (laugh), so...but she basically called me a Communist in class when I made that statement. It did not happen in the state of Nebraska. [LB582]

SENATOR AVERY: It was not here. [LB582]

LINDA PARKER: It was not. It took place at Texas Tech in electrical college (laughter). Yeah. I did grow up in the South, I will admit, and, you know, it took some courage. Students, after class, came up and said, I'm glad you said that, Linda, because I would

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not have had the courage to say that. And I'm a university reference librarian now, and so I see students who were graduating from Nebraska high schools, and one of my concerns is that they're afraid to say anything controversial. And my professional ethics say that we need to present multiple viewpoints on the papers that they're writing or whatever, but sometimes they're afraid to see a viewpoint opposite to their own. And I just can't help but think that it may come from concerns about the experiences in high school. [LB582]

SENATOR AVERY: Thank you. [LB582]

SENATOR ADAMS: Any other questions? Thank you, ma'am. Are there any other proponents? All right, if not, we'll move to opposition testimony. Besides John and...how much opposition testimony? One, two, three, four. Okay. [LB582]

JOHN RECKNOR: (Exhibit 14) Senator Adams, members of the Education Committee, thank you for this time to express opposition to LB582. I have sat here and intently listened to very astute questions raised by Senator Council, Senator Cornett, and Senator Adams, and Senator Howard. And I think maybe some of the things I had to say will perhaps focus on those questions. I guess what I can tell you by way of credentials is I spent six years in the classroom and 34 years in the courtroom, mostly representing school districts, and except for some occasional (inaudible) testimony, I don't think the burden has been borne to this committee to suggest that there's even a real problem here. But if one would accept for the moment that there is a real problem here, LB582 is not a real solution to it. I would like to address LB582 perhaps in terms of maybe four phrases or four words. The word "precatory," the word "weasel words," the words "separation of power," and the word "liability." And I want to tell you what the word "precatory" means in the law, because where this is going to end up is in a court. And so whether you're drawing a will or a trust document, and you say, I wished that, the court looks at that as precatory language. It's not necessarily being binding, so just simply as a matter of building the mechanics of a bill, the very first thing that's wrong with this bill is it says the Legislature encourages school districts to adopt. Our Supreme Court has said time and time again, that when we look at your work product, we look at every jot and tittle; we look at every phrase; we look at every comma; we look at everything you put there, and we try our darnedest to make it mean something. And so we've got this precatory language. We encourage you...problem. Problem number two is what I call in the law, "weasel words." We love weasel words. That's why lawyers can argue seemingly simple sentences endlessly to one court after another on appeal. You find it curious that the Supreme Court couldn't figure out what was obscene...they only knew it when they saw it. Do you think that most high school teachers have studied the case of New York Times v. Sullivan and know where privacy lines end and begin? What is defamatory and when? Do you think they understand the quirks of Nebraska law about what constitutes defamation? What constitutes a clear and present danger...crying fire in a crowded cafeteria? But putting something on a T-shirt that may

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be offensive to some...is that clear? Is that even arguably an unlawful act? What is material? What is substantial? These are all things that lawyers are going to fight about endlessly. Those are the weasel words that ought not to be in a fix. And I suggest to you, it's a huge mistake to adopt a bill where, instead of solving the problem, you create a whole new flight of things for people like us to litigate. And if you think that trial lawyers are ingenious, you ought to meet seventh graders. Now, the final point that I want to make...that's why I left teaching, in large part (laughter)...seventh graders. Now, how is it that you blithely decide that the Nebraska Legislature somehow can just reverse a U.S. Supreme Court decision, and somehow take a decision we don't like and say, let's roll back to one we did. Well, I don't know where your legal authority is to do that. And then, finally, I want to raise the question, where is your legal authority to put in a bill that we're going to put people that stand in a position of in loco parentis. I send my kids off to you, Professor Adams, to do the educational functions that I don't do, and I expect you to do certain things as a matter of common law, and as a matter of Nebraska statute. But now, suddenly, I'm going to say, now if those kids go in there, and they violate somebody's right to privacy, or if they do something that's obscene, well, you know what? As a journalism teacher, don't worry about it. You have no liability. Do you think that kind of absolution of liability would work in any other school setting? I would wish you good luck if you think it will. And what I'm telling you, is I don't think you have a real problem, but if you do, this not only is not a real solution, it's a bigger problem than whatever problem you have now if the U.S. Constitution is not a good enough authority to determine where constitutional rights of free speech lie in the classroom. [LB582]

SENATOR ADAMS: All right. Thank you, John. Are there questions? John, you brought up the term of in loco parentis, and I'm trying to remember back. Doesn't that, in effect, mean that when that kid steps in that school building, the parents have an expectation on the part of the school that may be a little bit different than if the kid is standing on the courthouse square? [LB582]

JOHN RECKNOR: Absolutely. You are standing in place of a parent. It, in Latin, means "in place of the parent," and I guess, I think it's all nice in an academic exercise to say, well, we want these kids to learn to be thinkers and blah, blah, blah. Well, why don't we want them to learn to be good drivers" Let's give them a car when they're in the fourth grade. Let's teach them how to shoot when they're in the second grade. I mean, there's all kinds of constitutional rights that we moderate until we find these people mature enough to exercise them properly. And I'll bet you, as a parent, and I, as a parent, didn't much care about our kids' First Amendment rights when they were eight years old. And so when I send them to your school, I really don't think you should give all that much concern to them either within the confines of the U.S. Supreme Court's decisions on what the First Amendment means. [LB582]

SENATOR ADAMS: Other questions? Thank you, John. [LB582]

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JOHN RECKNOR: Thank you, sir. [LB582]

SENATOR ADAMS: Next opposition testifier? [LB582]

BRIAN HALE: (Exhibit 15) Senator Adams, members of the committee, my name is Brian Hale. I represent the Nebraska...H-a-l-e. I represent the Nebraska Association of School Boards. It seems to me that this freedom of expression has reduced itself into three different areas now, and the individual dress code, student publications, and electronic communications. Amy Miller was talking about reducing the pool. I contend that this area really is a fast-moving stream that evolves and changes and freedom of speech today is different than it was when I was a student journalist back in the seventies. But, I will tell you that schools have a difficult task of protecting both the sender of the message and those who receive the message. And so, being able to be responsive and be sensitive to each of those sides is a difficult task. We agree with the notion that schools should have a policy relating to the students' expression and their rights of expression. Some of the places we vary as they go down is talking about just what those should include. In terms of the student publication avenue, it would sure be interesting if it would include the sorts of context that a student might contain within a professional journalism newsroom, because in those contexts, as these students move on, we're training them to be journalists; we're training them to be news gatherers. If they get a job at the World-Herald or any other news publication throughout the country, and they come forth with a story that the editor doesn't like or the publisher doesn't like, it's not going in. So, to give them the expectation that anything I write should be able to go in without reservations seems disingenuous and doesn't do them any favors in terms of educating them and preparing them for the workplace. Schools are laboratories--laboratories for many things including the First Amendment. Just as we wouldn't turn chemistry students loose and say, mix up whatever you want, we shouldn't do the same for people in just as volatile an area, and that is, the public communication and discourse and participating in expressing themselves in a public forum in whatever that forum may be. So, in total, I think it's all connected...a lot of people were here talking about student publications; a lot of people were here talking about dress codes, and I think you have another bill talking about electronic communication. That is probably the fastest growing of that group, very difficult to get a hand on. When you have human beings in an area that moves very quickly, I don't know where you draw the line and effectively coral all of these issues. People are very creative, and I certainly...I have 21 years of experience writing a newsletter weekly about the reactions of the Legislature. Yes, I have the ability, by the First Amendment, to write whatever I want to. But my boss has the right to let me go if I don't write to things that are appropriate. And so, that's something, again, in my job, and before that, when I worked in the newspaper business for a decade prior to that, you always work for somebody, and that's an important thing to learn as well in addition to learning how to express yourself. That's part of the First Amendment as well and a very important part. So, at the first red light of

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the year, I'll quit. [LB582]

SENATOR ADAMS: All right (laugh). You did press beyond it a bit, didn't you? (Laughter) Are there questions for Mr. Hale? All right. Chemistry and free speech. I'm stretching on that analogy a little bit, but thank you for your testimony. [LB582]

BRIAN HALE: They both can explode (laughter). [LB582]

SENATOR ADAMS: Next testifier? [LB582]

MIKE DULANEY: Senator Adams, members of the committee, my name is Mike Dulaney, D-u-l-a-n-e-y, and I am the executive director for the Nebraska Council of School Administrators. It's been an interesting discussion, and I want to commend Senator Haar, because to his credit, he did listen to us. He brought us in several times and asked us, you know, what our concerns were and so on. And we certainly see a difference in this version of the bill compared to last year, and we appreciate that. And I suppose, if this bill were to go in its present form, it wouldn't be the end of the world. I guess our thought would be that this can be done through policy at the local level, and, of course, the Supreme Court cases are dictating. Even if you did advance this, the Supreme Court cases are still dictating and still control. My organization is responsible for providing professional growth to school administrators. This is an essential part of what we do, and I'm going to tell you something. In recent years, Mr. Hale alluded to this...we have provided more and more professional growth learning experiences for our school administrators dealing with technology and expression, and "sexting," for example. Every single year we offer at least one seminar to our members, and usually more, on the current law relevant to "sexting" that one issue alone. Most principals would tell you that their jobs are becoming increasingly complicated because of the technology, not just what the technology devices brought into the school building, but also when the student is at home, typing away on the Internet, whether it be Facebook or whatever. It is becoming more and more complicated, and I think we would all agree, there's no easy answer. Would there be mistakes along the way? Of course. If you and I were wearing the principal shirt that day, we could easily make a mistake along the way, so it is possible. All we can do as an organization is try to inform the administrators on what the current law is, and hope that things go well. We do, as...from my organization perspective, I invited Amy Miller to an event...I can't remember what time that was last year...dealing with expression and religious expression in the First Amendment. I'm not at all afraid to bring Amy Miller and ACLU into the picture, because I want our membership to understand those perspectives, and to be able to call on the ACLU to get their perspective, so that they make good decisions. I think that's important. So, that concludes my remarks. We appreciate Senator Haar's attempt. We don't feel that it would be necessary to pass or to advance this bill. [LB582]

SENATOR ADAMS: All right. Thank you, Mike. Are there questions for Mr. Dulaney?

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Thank you. [LB582]

MIKE DULANEY: Thank you. [LB582]

SENATOR ADAMS: Next opponent. [LB582]

BRIAN HALSTEAD: (Exhibit 16) Senator Adams, members of the Education Committee, for the record, my name is Brian, B-r-i-a-n, last name is Halstead, H-a-l-s-t-e-a-d. I'm here with the Nebraska Department of Education in opposition to the bill. I have had distributed to you a letter from the State Board of Education which I'll read into the record. It says, "Dear Senator Adams and members of the Education Committee: On February 8, 2011, the State Board of Education met to review various legislative bills before the Education Committee. The board is opposed to LB582. It is the board's position that the judicial branch of our government is the appropriate entity for interpretation and definition of the rights of free speech under the First Amendment of the United States Constitution. Attempts to codify these judicial determinations will only lead to greater confusion and litigation. Sincerely, Jim Scheer, President of the State Board of Education." And with that, I would end my comments and certainly take any questions you may have. [LB582]

SENATOR ADAMS: All right. Thank you, Brian. Are there questions for Brian? Thank you for your testimony. Any other opposition testimony? How about neutral testimony? Seeing none, Senator Haar to close. [LB582]

SENATOR HAAR: No neutral (laugh). Well, obviously, you know, this...the lines are very hard to draw. And, in my mind, the purpose of this bill is to take a step backward in state statute, and I believe we have that ability to do that from the blanket censorship of Hazelwood. What we're attempting to say is, there has to be a good reason, because schools, indeed, are...the curriculum is the school itself. A statement was made which I really disagree with that the purpose of schools is to prepare students for the workplace. I mean, if that's it, we're going to make very little progress. I think that the purpose of schools is much broader than that...to teach kids how to think, to explore ideas, to learn to question, to learn to debate, to learn to listen to other viewpoints. And if all we're doing is teaching students for the workplace, I think we've badly failed. I want to thank everybody who's come to talk today. This is a very interesting discussion, and it will be one that will continue to bug us so long as we're a free nation. Thank you very much. [LB582]

SENATOR ADAMS: Thank you, Senator Haar. Are there any concluding questions for Senator Haar? If not, that will end the hearings for today on LB582. (See also Exhibit 17) [LB582]