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Judiciary Committee
March 02, 2011

[LB48 LB569 LR28 LR39]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, March 2, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB48, LB569, LR39, and LR28. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Burke Harr; Tyson Larson; and Amanda McGill. Senators absent: Scott Lautenbaugh.

SENATOR ASHFORD: Good afternoon. Welcome to the Judiciary Committee. My name is Brad Ashford. My colleagues are Colby Coash, from Lincoln; Burke Harr, from Omaha; Amanda McGill, from Lincoln; Brenda Council, from Omaha; Steve Lathrop, from Ralston; and Stacey Conroy is legal counsel; and Ollie VanDervoort is the clerk. And Matt...oh no, Matt and Tom aren't here today. Matt is here; Matt is here. There's Matt. Here is what we're going to do. We have four bills...actually two bills and two resolutions today. LB48, LB569; LR28 and LR39, both are resolutions. We are...many of you have been here and many of you have not. The rules in the Judiciary Committee are that we have a light system that provides for three minutes of testimony per testifier. And the yellow light will indicate that there's time to sum up--and Senator Kruse knows all about that; there he is in the front row--that there's a time to sum up and then we'd ask you to close. Senator Janssen is the introducer on LB48. He has and is certainly able to take whatever time he needs to introduce the bill. We will take one hour...this testimony on this bill will end one hour from the conclusion of Senator Janssen's testimony. However, the question period or questioning will not enter into that time, so if there are questions and it goes beyond that hour, we will go beyond the hour. And that will apply also to LB569, Senator Coash's bill. The LR28 and Senator Council's LR39 will be 45 minutes each; same ground rules. If the questioning exceeds that, so be it. And we'll just go on down the line. Now if there are those in the room who do not get to testify, they are certainly able to sign the sheets in the front of the room. And I don't know where else...Matt, where else are the sheets located? In the front only? Okay. There are sheets in the front of the room and you can indicate, if you do not testify, whether you are for or against the bill or neutral, any of the bills, or the resolution. And we will consider those. If anybody does not get to testify but does have written information on any of the bills or resolutions, we will take that information as well and include it in the record. So no one's views will be unheard in this process if you fill out the form or provide us with information. I understand from Ron and Lois that there are individuals in Room 1023. I don't...that's good. I don't know whether or not, Ron, there will be time for testifiers outside of the people here or not, but we'll see how we go. So let's start with Senator Janssen, LB48.

SENATOR JANSSEN: Thank you, Chairman Ashford, members of the Judiciary Committee, and also thank you oftentimes for the very civil debate we've had on this issue. My name is Charlie Janssen, that's spelled C-h-a-r-l-i-e J-a-n-s-s-e-n, and I represent District 15, which is Fremont and all of Dodge County. I appear in front of you

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today to introduce LB48. LB48, titled the Illegal Immigration Enforcement Act, would permit Nebraska to join many other states who have offered to assist our federal government in enforcing our immigration laws within each state's borders. It's a modest proposal to deal with the cost of illegal immigration to the state of Nebraska. There are five main points of this provision...or this act. First, LB48 would prohibit sanctuary city policies. No official or agency of this state or a county, city, or other political subdivision could limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law. Second, peace officers would determine immigration status of a person who has been lawfully stopped, detained, or arrested when a reasonable suspicion exists that this person is unlawfully present in the United States. If reasonable suspicion exists, legal status shall be determined before the person would be released from custody. This provision of LB48 seems to have generated the most interest and, frankly, outright falsehoods from the opponents of this bill. Reasonable suspicion is a well-defined concept. Law enforcement officers are regularly asked to determine if it exists or not in many investigations. More than 800 court opinions over the past four decades have also defined those two words in the context of immigration violations. The United States Supreme Court recently permitted law enforcement to inquire about immigration status during detention in the Mueller v. Mena 2005 decision. Reasonable suspicion cannot be based solely upon a person's race, color, religion, sex, or national origin. Unlike most other laws, this prohibition is spelled out explicitly and directly at the beginning of this act. Nebraskans would continue to be protected against racial profiling through the Crime Commission's data collection process mandated by current Nebraska Statute 20-504. These annual reviews by the Crime Commission are readily available to the public and have been covered extensively by the press when released. If racial profiling were to occur due to LB48, we will know about it, stop it, and sanction law enforcement personnel who do it. Lawful presence can be proved by providing a driver's license, state or tribal identification card, or any federal, state, or tribal issued identification if it requires proof of lawful presence prior to issuance. These provisions have been woefully underreported. If a person provides a peace officer with a driver's license, reasonable suspicion is immediately eliminated. No further investigation would occur. I would hope that anyone driving on our roads would be able to provide a driver's license. It is the law of land, after all, and has been for decades. Most Nebraskans carry identification on their persons at all times. ID is required at banks, grocery stores, and most other places of business where one uses his or her credit or debit cards. This is neither overly burdensome nor unreasonable. Third, immigrants are required to register with the federal government and carry alien registration certificates for alien registration receipt cards issued by the federal government. Immigrants are already required to do each of these things and have been since at least 1952. A legal immigrant who presents those forms of identification would also immediately eliminate any possible reasonable suspicion for investigating unlawful presence. Fourth, it would be illegal for an unlawfully present person to work as an employee or independent contractor in Nebraska. Illegal immigrants are already prohibited from working in the United States. This provision simply makes it a state crime to do so as well. Fifth, it

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would be against the law to harbor, transport, or conceal persons unlawfully present in the United States in order to shield them from detection. It would also be illegal to encourage persons unlawfully present in the United States to come to or reside in the state of Nebraska. These five provisions are entirely reasonable and justified in order to get a handle on the illegal immigration problem in Nebraska and across the United States. Nebraska, according to the Pew Hispanic Center, has approximately 45,000 illegal immigrants within our borders. The United States currently houses approximately 11 million illegal immigrants. These persons, who have broken the law and seemingly don't care, creates a disturbing attitude of picking and choosing which laws should be respected and which laws can be ignored. We are a nation of laws. If we abandon the enforcement and respect for our laws, we lose the social compact that makes this nation truly great and unique among the nations of the world. Some claim that LB48 is an overreaction to our illegal immigration problem, and that it is too difficult to become a legal immigrant and later a U.S. citizen. This I disagree with. We have a bevy of immigration laws in place to welcome new immigrants to join our country through legal avenues. The Department of Homeland Security's Office of Immigration Statistics reports that over a million persons were naturalized in the United States...naturalized as U.S. citizens in 2008. The leading countries of birth of new citizens were, in order: Mexico, India, the Philippines, China, Cuba, Vietnam, and El Salvador. As of 2006, the United States accepts more legal immigrants as permanent residents than all other countries in the world combined. For persons to assert that the United States makes it impossible to become a legal immigrant and later a U.S. citizen, I would invite them to counter these facts. Opponents of the Illegal Immigration Enforcement Act have asked that it be withdrawn, and instead, calls should be made to the U.S. Congress to enact comprehensive immigration reform. I don't disagree that our federal representatives needs to be accountable for ignoring this growing and expensive problem. But I refuse to ignore our obligations to the state taxpayers, as state legislatures, and continue to look the other way as costs of illegal immigration to our states continue to escalate. We have nearly a \$1 billion projected shortfall between revenues and expenses in the next two-year state budget. Education, healthcare, and law enforcement expenses are all increasing at unsustainable rates. Factoring in the additional expenses to all three areas from illegal immigrants makes it obvious that we must address this problem. Waiting for Congress to act is unrealistic. The last effort to address illegal immigration at the federal level was 14 years ago. The last thorough effort to address illegal immigration was 24 years ago. I'm not prepared to surrender our state budget to the whims of a Congress that has shown no fortitude in making tough choices. I hope the majority of state senators join me in addressing this growing problem. Neighboring states report unsustainable cost. Minnesota's department of administration reported that for the 2003-2004 school year state and local governments spent between \$79 million and \$118 million to educate illegal immigrants. An additional \$39 million was spent on children born to illegal immigrants after immigrating to Minnesota. In 2006, the Oklahoma Health Care Authority estimated it would spend approximately \$10 million on emergency Medicaid services for illegal immigrants, and that 80 percent of those costs

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would be for services associated with childbirth. We cannot afford to ignore the implications on the state budgets any longer. The Congressional Budget Office reported, in a 2007 study, that state and local governments bear most of the burden of costs associated with illegal immigration and have limited means in which to recover these costs. I introduced LR520 in the 2010 Session to get a handle on exactly how much illegal immigration costs impact our state budget. The Appropriations Committee deferred the study, and I intend to introduce a similar interim study in the 2011 Session. Granted, this will be a difficult undertaking due to the nature of determining these costs. It is extremely challenging to study a population that has no intention of being discovered. The only estimate of costs to Nebraska was the Federation for American Immigration Reform report issued in July 2010. The group estimated that costs associated with illegal immigration to Nebraska were \$262 million. The cost to the United States were \$113 billion. I think it is time that we assist the federal government in addressing the problems of illegal immigration, and my bill is one opportunity to do so. I look forward to debating this and other illegal immigration proposals before the Unicameral this session. It is our jobs to address the concerns that are brought to us and we need to offer potential solutions. This is a legitimate opportunity to do so. I thank you for your time. I will entertain questions, of course, and I'd also like to point out to you, Chairman Ashford, that a representative from the Attorney General's Office is here, Mr. Freudenberg, and if he could testify after me that would be helpful for some of your... [LB48]

SENATOR ASHFORD: He can do that but he's part of the half hour. Senator McGill. [LB48]

SENATOR MCGILL: Thank you, Senator Janssen, for coming here today. Our police chief here in Lincoln has told us that...oh, I'm sure you've heard that he opposes this bill. [LB48]

SENATOR JANSSEN: I have. Yes. [LB48]

SENATOR MCGILL: And he says that half of the illegal aliens currently booked in Lancaster County in the court system have not been touched by federal ICE workers because the federal government doesn't have enough money to be deporting all of the people that we're currently holding in prison. So even if we were taking in more illegal immigrants, if the federal government is just going to let them sit in our jails--and that ends up costing us a lot of money too--do you have a response to that? [LB48]

SENATOR JANSSEN: Well, first off, thank you. I believe you e-mailed me yesterday and I didn't get back to you on that, so I... [LB48]

SENATOR MCGILL: I sent a story to everybody, but, yeah. [LB48]

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SENATOR JANSSEN: So yeah, so I apologize for that because I meant to get back to you on that this morning on the floor. You know, I can't say why the Lincoln police chief, why he doesn't think that ICE has the money to do this or where he gets his information from... [LB48]

SENATOR MCGILL: Well, they're not doing it. [LB48]

SENATOR JANSSEN: And I think this is a way for us, as a state, and more states to band together and say, look, you're not doing this; you need to do it. I can tell you, in Fremont, people used to say the same thing: They're not doing it; they're not doing it. But now they are. ICE is listening to us and they're starting to detain these people and take them through the proper channels. So maybe that's a squeaky wheel and maybe this is a good start. [LB48]

SENATOR MCGILL: But you realize that...I mean, and he estimates that it will take a full week of an officer's time each month to process this particular issue instead of just focusing on the ones who are committing crimes. [LB48]

SENATOR JANSSEN: Well, first off, I think that's a ludicrous estimate... [LB48]

SENATOR MCGILL: Well, I would disagree with you. [LB48]

SENATOR JANSSEN: ...of his time. So...and I certainly would disagree--I'm asked the question. I guess I think it's ludicrous. [LB48]

SENATOR MCGILL: Yeah. (Laugh) [LB48]

SENATOR ASHFORD: Let me see. Whose turn is it? You go ahead, Charlie, and answer the question. [LB48]

SENATOR JANSSEN: That's fine. I don't think it would take that long. But when you ask that question, you know, I guess what crimes are worth going after then? And I'm not asking you a question. I'm just saying, rhetorically, which crimes does this police chief get to decide that are more important that he wants to enforce or not enforce? And that's where I have an issue with it. If we had a lot of murders and rapes going around, yes, it would cost more. It would take more police officer time. But should he be enforcing the laws? Yes. [LB48]

SENATOR MCGILL: Well, right now, they obviously aren't just trying to track...spend their time tracking down everyday people who may be here illegally or not. And yet our budget is already tight enough in Lincoln. There will be a change. If this is an additional burden, an unfunded mandate on them to spend more time doing this, and if...people are human beings, including police officers. And when you pull someone over...you

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know that my best friend is a Latino woman who was born and raised in Scottsbluff. If she's pulled over for speeding, are they then going to take the time? Do they...she is going to be asked if she has a driver's license with her and if she has papers. Should someone who is born and raised in Nebraska go through that? Should cops be spending their time asking someone born and raised in Nebraska for those things and doing a background check or detaining people if they don't happen to have their driver's license on them? [LB48]

SENATOR JANSSEN: I think police officers, right now, ask for a driver's license when they pull people over--so yes. [LB48]

SENATOR MCGILL: But in terms of...I mean, any sort of suspicion on any sort of issue, if she was walking around at night...in a...you get where I'm going with this I would certainly hope. But there is... [LB48]

SENATOR JANSSEN: I don't, Senator. Walking around at night was not addressed in the bill. [LB48]

SENATOR MCGILL: Well, in terms of who gets pulled over for certain things, there are statistics that show that racial profiling does take place. It does. [LB48]

SENATOR JANSSEN: And I think I covered that in my opening. I hope I did. [LB48]

SENATOR MCGILL: And...(laugh)...and there are legal citizens here in Nebraska who, if something like this passes, will leave here, which will impact our economy for the negative. We've seen it in the one...in the one county in the country who's implemented this, it devastated them, because good businesses that are operated by legal--well, in that case, Prince County (sic--Prince William County) residents left their county. They ended up reneging on the law and pulling it back because it hurt their economy so much, because people, whether here legally or not, were renting from them. They had started businesses here. They've honestly, in some cases, have helped keep some parts of rural Nebraska alive by buying from legitimate business or people who are here, born and raised legally. Have you really thought through the impact this will have on the economy if people are leaving, whether they're here legally or not? [LB48]

SENATOR JANSSEN: The impact on the economy, I think when I...as I laid out, the cost that we're paying right now of education, security, I think when you look at that... [LB48]

SENATOR MCGILL: But they are paying property tax dollars, too, when they're renting from a place or...I mean they are. [LB48]

SENATOR JANSSEN: If you want, I'll finish the answer. Yeah, I don't think I have a

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concern. One, I don't think it'll happen. I don't think the economic impact would be negative. I think it would be positive. And if you're talking about legal citizens leaving a state because we're going to enforce the laws, I guess that's an issue with that legal citizen. I would want to live somewhere where I would think the laws would be upheld. [LB48]

SENATOR MCGILL: And I want to create a community where every...that people who are here in America legally feel comfortable living. [LB48]

SENATOR JANSSEN: We agree on that. [LB48]

SENATOR MCGILL: Well, you don't seem concerned about this particular population. [LB48]

SENATOR JANSSEN: I'm concerned about the legal population, if that's what you're talking about. [LB48]

SENATOR MCGILL: Not if they want to leave, you're not. You're blowing off a concern that they have. [LB48]

SENATOR JANSSEN: Is there a question? [LB48]

SENATOR MCGILL: No. I'm allowed to make comments as well. [LB48]

SENATOR ASHFORD: Thank you, Senator McGill. Senator Coash. [LB48]

SENATOR COASH: Thank you, Chairman Ashford. Senator Janssen, I'm just trying to get my head wrapped around exactly how this bill will be implemented, and specifically with the law enforcement aspect of it, so I just kind of want to go through a scenario here just so I can get some questions answered. Here's the scenario: a person is disobeying the law, maybe a traffic violation, and is lawfully picked up. Just for the sake of the scenario, let's just say that the person who has been picked up admits to the law enforcement officer: I'm not in Nebraska legally. So there's no question about that. Let's just say that the person admits: I'm not in Nebraska...I'm not in the country legally. Then, per LB48, that person can be taken into custody. Correct? Who pays for the costs of incarceration at that point? [LB48]

SENATOR JANSSEN: We would hold them until an ICE official would come and get them in that particular scenario, which is the exact same way it happens right now. [LB48]

SENATOR COASH: Okay. Then in your bill it says the law enforcement official is required to notify ICE, and then it says...and this was interesting. It says the law

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enforcement official may transport that individual to a federal facility. So my first question is, in Nebraska, where is our closest federal facility? [LB48]

SENATOR JANSSEN: You could say Omaha. In this case, if the ICE official has transported him to Omaha, you're in Dodge County, and that's where they would take the individual. [LB48]

SENATOR COASH: Okay. So we have federal facilities in the state? [LB48]

SENATOR JANSSEN: So we have federal facilities where they can be held. I don't...specifically I don't know where. [LB48]

SENATOR COASH: And Omaha is one of them? [LB48]

SENATOR JANSSEN: I would assume. [LB48]

SENATOR COASH: Okay. Okay. So that's...who would pay for the transport? Would that...would ICE reimburse the local for the cost of the transport or even the cost of incarceration, or is that on the local entity that would... [LB48]

SENATOR JANSSEN: Well, if the federal government is truly going to act on illegal immigration reform, the cost falls upon them. [LB48]

SENATOR COASH: So we would... [LB48]

SENATOR JANSSEN: I would be seeking reimbursement for that cost of that commute, and I believe that happens now. [LB48]

SENATOR COASH: Okay. So that does occur? [LB48]

SENATOR JANSSEN: I believe that happens now. Yes. [LB48]

SENATOR COASH: Is there anything...I know that in our...in our bill...the bills in the Legislature, we can't force the federal government to do anything. [LB48]

SENATOR JANSSEN: They can force us to do quite a bit. [LB48]

SENATOR COASH: Yeah, it goes the other way. Is there anything that says...are you aware of any provision that would force, like these federal facilities, to take anybody who was found to be here illegally, or could they say to the local law enforcement officer, no? Can they say, no, I don't want that person? Or are they required by federal law to take somebody that we have found to be here illegally? I'm just trying to figure out how that will work. [LB48]

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SENATOR JANSSEN: Well, can they or should they; I've heard stories right now, from police officers, where they don't. I think Senator McGill even brought it up. That's very disheartening to me. And I think we need a groundswell effort with bills like LB48 to start drawing attention to that and saying, look, citizens, we're being underserved; the federal government is not acting on this. You bring up some legitimate concerns. Who's going to pay for it? Should it be the federal government? No, because I believe even in...and, Chairman Ashford, you can correct me if I'm wrong; I read your report that you put together years ago and...but also I talked...and the CBO's report talked about how the costs come down to us. They get kicked onto us. But we can't do anything about it. So what I'm looking for here, Senator Coash, is the ability to do something to basically force the argument that you're talking about. Tell the federal government, you should be paying for this or you should be acting on this, because right now they essentially have no skin in the game on this. If somebody pays on a false Social Security number, yeah, they're paying in and they're not getting the benefit from it. In that case, the federal government is taking that money and we're stuck with the cost down here. So I think this is our best chance to actually do the opposite of what happens to us a lot of times, where they're kicking stuff down to us that's unfunded, and we could kick it back upstairs in this case and take the fight to them. [LB48]

SENATOR COASH: Thank you. [LB48]

SENATOR ASHFORD: Just a second. Senator Council and then Senator Harr. [LB48]

SENATOR COUNCIL: Thank you, Chairman Ashford. Senator Janssen, I have a number of questions. First of all...and let me make the record clear so there's no doubt in your mind or anyone else's mind, I'm one of those who believes that LB48 promotes racial profiling. And the fact that the statement at the beginning, shall not solely be based on, implicit in that is that it can, in part, be based on and will probably more than likely the majority of the determination will be based upon one's race or ethnicity. And in that regard, your comments about the current state of Nebraska law on racial profiling, we just had legislation last session dealing with racial profiling and the Crime Commission's report on racial profiling. Do you recall what the conclusion of that report was? [LB48]

SENATOR JANSSEN: No, but could you bring it...I'm sure you'll tell me. [LB48]

SENATOR COUNCIL: I will. And the conclusion of that report is that racial profiling is, in fact, occurring today in Nebraska, and it's occurring in increasing numbers in some counties and is going down in other counties. And I provide that information to you because of your statement that we know we have racial profiling laws and we have means to sanction those who the data shows are racially profiling. Can you provide me with one example of a sanction that this body has issued on the basis on the data that

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we've received to date about racial profiling? [LB48]

SENATOR JANSSEN: Not this body. It's interesting, just yesterday we had a representative from the Omaha Police Department here, and I asked them about this and I asked them if racial profiling had happened in Omaha. And he said, yes, that it had happened. And I asked him what happened. And he said, we had a process that we took this officer through, and reprimand had happened through their department, and that's all he was prepared to tell me about that and didn't give me a name or didn't give me the actual reprimand for that. [LB48]

SENATOR COUNCIL: Okay. And I appreciate that and I appreciate the fact that the Omaha Police Department has responded to the efficacy of the members of that community, particularly the minority community who has complained about racial profiling. But I'm asking the question about your statement that the state has the means to sanction those who engage in racial profiling. And I'm asking you to provide me with one example of where the state has sanctioned any law enforcement agency in this state for engaging in racial profiling when we do receive the Crime Commission data that shows that they're engaging in racial profiling. [LB48]

SENATOR JANSSEN: Well, in this case, we're...it's a...the commission, every year we look at it and review it, but I don't know of any sanctions, Senator Council. [LB48]

SENATOR COUNCIL: Okay. And the reason I ask that line of questioning, Senator Janssen, because it seems to be okay for you to make a generalization about what's being done and what's not being done and for that generalization to be accepted, even though there's no factual basis to support it. And that has been the response that has been given. When legitimate concerns about racial profiling have been raised, your response is, well, we have laws in place and we can't issue sanctions swiftly, when there is no evidence that we've ever done it. We haven't enacted any measures to impose sanctions based on the Crime Commission data that we receive on an annual basis. Secondly, I think all of us are frustrated over the fact that the federal government has failed in its obligation to enact appropriate immigration reform. Everyone is frustrated about that. But in terms of how does a state respond to that, I don't believe that under our constitution and our constitutional form of government that we have the authority. The immigration area policy is preempted by federal law, which brings me to the question regarding LB48. You focus on what you consider to be the primary provision of LB48, and that has to do with a peace officer detaining someone, and then if they have reasonable suspicion to believe that they're unlawfully present, to then start this other process. Now while it's not word for word the same as SB1070, and I don't mean to misquote you, but you have been quoted as saying Nebraska needs an Arizona-type immigration enforcement act. Is that a mischaracterization of your statements? [LB48]

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SENATOR JANSSEN: Oh, yeah, I've made several statements, Senator Council. And oftentimes, when asked about Arizona's type of legislation, I've said there are provisions that are similar and some I've taken out that don't relate to Nebraska. It's almost been dubbed through the media, the Arizona-style immigration law. I've always said this is Nebraska style. But any time we're in this, I guess, arena, you're going to find quite a bit of overlap between the two. [LB48]

SENATOR COUNCIL: Okay. And that's my concern, Senator Janssen, and, quite frankly, the reason I introduced LR39 which will be discussed later, because at least three of the provisions of LB48 have already been blocked by a federal court in Arizona on constitutionality grounds. And which caused me concern...and I'm going to direct you to the last page of LB48, the last page and the last sentence, because it was troubling to me. The sentence that precedes the last sentence of this bill I'm accustomed to seeing. It is what is referred to as a common severability clause that says if by chance any provision of this bill is found to be unconstitutional, it shall not affect the effectiveness of the remainder. That's a standard severability clause. But LB48 goes on to say that, "The Legislature hereby declares that it would have passed the Illegal Immigration Enforcement Act, and each provision, section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any one or more provisions, sections, subsections, sentences, clauses, phrases, or words of the Illegal Immigration Enforcement Act, or the application of the Illegal Immigration Enforcement Act, would be declared unconstitutional." My question for you was why did you feel it necessary to add that sentence to this statute? [LB48]

SENATOR JANSSEN: Well, like you said, it's a standard severability clause that I wanted in there, and I just wanted it to be the express intent of this Legislature to have each section of this to be passed in the state of Nebraska. [LB48]

SENATOR COUNCIL: So if I understand what you said, the standard severability clause, Senator Janssen, is the first sentence: If any one or more provisions is found unconstitutional, it doesn't affect the constitutionality of the remainder. That's the standard severability clause. But the second sentence, the last sentence, goes on to expressly declare that irrespective of the fact that any or all of this law would be declared unconstitutional, it's your intent that this law be enacted. [LB48]

SENATOR JANSSEN: In this case? [LB48]

SENATOR COUNCIL: Yes. [LB48]

SENATOR JANSSEN: Yes. [LB48]

SENATOR COUNCIL: And, you know, and that is troubling to me because as members of this legislative body we take an oath of office and we swear to uphold the Constitution

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of the State of Nebraska and the Constitution of the United States. And here in the face of introducing legislation that is virtually identical to legislation that has, at least at this level in the appeals process, been found to be unconstitutional, isn't...aren't you, in fact, declaring that you don't care about the constitutionality? You want this act to be enacted by this body regardless of whether it's constitutional or not. [LB48]

SENATOR JANSSEN: Well, right now, we don't know. Like, as you mentioned, it had a ruling but that's not finalized yet in the Ninth Circuit, one of the most overturned circuits out there. So we don't know yet. [LB48]

SENATOR COUNCIL: Well, so why didn't the first sentence go far enough for you? [LB48]

SENATOR JANSSEN: I'm willing to work with you on the floor on it. [LB48]

SENATOR COUNCIL: And that appears to express an intent that, you know, irrespective of whether or not we know that this is an area that is preempted by federal law and irrespective of the fact that the reason it's preempted is the precise concern that state after state after state enacts some different and varying versions and we have this hodgepodge of immigration laws across the country. And what I also found interesting...was LB48 introduced by you as a part of any package of immigration reform? [LB48]

SENATOR JANSSEN: No, it wasn't. [LB48]

SENATOR COUNCIL: Because I find it interesting that the things that you seek to criminalize in LB48 are acts of the individuals, the people who may be present in the state of Nebraska because their entry into the United States was unlawful, and those are the actions that you seek to criminalize, and particularly criminalization of the fact that they're working in the state, yet there's no corresponding attempt to criminalize the actions of the people who employ them. I mean, last I checked, you couldn't come here and just walk in and get...someone has to employ you, yet there's nothing in the bill. And there's been report after report after report that says one of the ways you stem the tide of illegal entry is to crack down on the employment of those who are not lawfully present. My question is: Why did you choose to punish the person who is working, with criminal sanction, and not the person or persons who employ them? [LB48]

SENATOR JANSSEN: Thank you, Senator Council, for the question. I was looking at doing that, and in our ten days, as you know, we can enter bills, that was one that was on my list to potentially introduce. I talked to Senator Coash about his bill, and although I don't agree entirely with his bill, he is bringing an amendment today that I think I will be agreeing with it entirely after I see the amendment today. So that was handled. So whereas I didn't say I brought a package together of illegal immigration enforcement

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bills, I knew that Senator Coash was going to bring one along those lines. [LB48]

SENATOR COUNCIL: Okay. But I'm just saying this is such a big concern to you that you have taken this on and you have championed it, yet in the bill that you introduce you do nothing to criminalize the actions of employers. I mean, for me, that diminishes the focus and the emphasis, you know, if...are you just wanting to punish those who are here, many of whom we know come here to make a better life for their families? And you go through your bill, you're criminalizing family behavior, because everyone knows that if there's someone here lawfully and they have a brother or a sister or a cousin who's still outside the country, they want to try to keep their family together. If they allow them or encourage them to come here, we're going to criminalize that behavior, but we don't criminalize the behavior of the very people who provide the primary reason why people enter the country unlawfully. I just...that, in my opinion, that causes me to be suspicious of the motives for LB48. And then, finally, you were quick to talk about the costs of those who may be in the state of Nebraska because they've entered the country unlawfully, yet there was no real mention of the economic benefit associated with those individuals. And you refer to a study...are you aware of the study that was conducted by the University of Nebraska at Omaha in 2006? [LB48]

SENATOR JANSSEN: Yes. [LB48]

SENATOR COUNCIL: And do you recall what that study showed us in terms of the significant positive impact on Nebraska's economy of immigrants, whether here lawfully or unlawfully? [LB48]

SENATOR JANSSEN: I recall their findings, yes. I don't agree with them but I recall them. [LB48]

SENATOR COUNCIL: Do you recall what it was? [LB48]

SENATOR JANSSEN: I believe they said it was a positive impact. [LB48]

SENATOR COUNCIL: Okay, \$1.6 billion worth of total production in Nebraska's economy and generated roughly 12,000 jobs for the state. Now you talked about the \$1 billion budget shortfall. Last I checked my mathematics, \$1.6 billion is more than \$1 billion, so, you know, we risk the potential of losing that kind of economic impact. And, in fact, their study went on to say if you're just talking about all unauthorized immigrants leaving Nebraska, the state would lose \$852 million annually in economic activity. And in terms of the costs...and, you know, I'm aware of the education costs. I understand that. I'm aware that in LB403 we enacted legislation to prevent people who aren't lawfully present from accessing most health and human service benefits, with the exception of emergency medical treatment. Corrections, I guess I'm not seeing where there's going to be any impact on Corrections because as I understand how ICE works

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now, ICE focuses and prioritizes their deportation efforts on those immigrants who are unlawfully present who are committing serious felony offenses. Is that your understanding? [LB48]

SENATOR JANSSEN: Well, then there's also the...yes. And also, you know, the incarceration of them committing a crime. They are incarcerated here, so that's a cost that I think...I think we agree on it. [LB48]

SENATOR COUNCIL: Okay. And so under your bill, if ICE continues its priority, and I'll just respectfully...you know, I disagree. If ICE can't handle the number of people they're dealing with now, forcing more people into the queue isn't necessarily going to make them handle more. I mean I think reasonable minds can differ on that. But if that's the case, and at least this is the information that I've been receiving from ICE, is that someone gets stopped for a routine traffic offense, okay, and they're unable to produce a driver's license--and I don't know about you but there have been occasions where I've left my home without my driver's license... [LB48]

SENATOR JANSSEN: We have that in common. [LB48]

SENATOR COUNCIL: Right. But under LB48, if there's some reasonable suspicion to believe that I'm unlawfully present--and I submit to you it would be a greater chance there would be reasonable suspicion found with me, than you (laughter)--that I'd be required to be taken to jail until such time as someone went through the process of determining whether I was lawfully present. And if because it's such a minor traffic offense, if ICE continues to operate under his priority system, which I understand from my research has been their priority for at least a decade, is that my time sitting in the Douglas County jail or the Lancaster County jail is going to be a cost of Lancaster County or a cost of Douglas County. It's not going to be a cost of the federal government. And the fiscal note on LB48 talks about the potential for these costs, but they don't quantify them. So even in the fiscal note there's a recognition...despite what you said in your opening, there is a recognition that there are going to be costs that counties and cities will have to bear. And my final comment, Mr. Chairman, because I know the time...I was troubled by the quote attributed to you that because local law enforcement officials have honestly, courageously, and forthrightly stated their positions in opposition to LB48 and the reasons for that opposition, your characterization of their reasons as, quote, shirking their duties, I would just commit to you, if you have an opportunity, to read this compilation from the Police Foundation--national organization--that echoes everything that Chief Casady and other law enforcement officials have said about the impact. I and other members of the Omaha community advocated for years for the Omaha Police Department to move into the direction of community policing, and we finally got there. They're embracing it. And the Omaha Police Department, the Lincoln Police Department, every police department represented in this document are opposed to LB48 because it runs absolutely counter to a

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community policing strategy--an effective strategy. And if you look at one of the reasons SB1070 was found unconstitutional in Arizona, because you asked about what are police priorities, I mean what should they be prioritizing? And in that situation the Arizona legislature, in their infinite wisdom, said enforcement of SB1070 was their primary law enforcement objective--that that superseded anything. And I applaud you for not including that portion of SB1070 that would give citizens a right to sue if they didn't think that the Immigration Enforcement Act was being strenuously enforced. But I just wanted to note that I take exception to the criticism leveled at law enforcement. They know where their limited resources need to be directed. And it's been my experience that people who are here unlawfully and are committing the felony types of crimes, local law enforcement is doing what they're supposed to do and what they're able to do under current federal immigration laws. And with that, I'll stop my questioning, Senator Ashford. [LB48]

SENATOR ASHFORD: Thank you, Senator Council. Senator Harr. [LB48]

SENATOR HARR: Thank you, Mr. Chairman. And thank you, Senator Janssen, for bringing this issue to the front. I know this is a very serious issue and I think something needs to be done about illegal immigration. I'm not sure if this is the right motor or vehicle to get there, and so I just have a couple questions about LB48. LB48 is a bill you introduced, is that correct? [LB48]

SENATOR JANSSEN: Yes. [LB48]

SENATOR HARR: And you've read it over? You're familiar with it? [LB48]

SENATOR JANSSEN: I've read the bill. Yes. [LB48]

SENATOR HARR: Okay. And you're familiar with it? [LB48]

SENATOR JANSSEN: Yes. [LB48]

SENATOR HARR: Okay. Here are some of my concerns I have that I hope you can address. If there is a woman who is violated, sexual assault, first degree--she's a victim of a crime and she is an illegal immigrant--what would the role of the police be? Would they have to ask her, her immigration status if they have reasonable suspicion to believe that she was in the country unlawfully? [LB48]

SENATOR JANSSEN: In that case you would have to ask the police officer where they would find reasonable suspicion. If the same person was...a crime was committed against that same person, of a different nature perhaps, would we also ask that same question? [LB48]

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SENATOR HARR: Okay. Well, reasonable suspicion exists. This person...this victim of a crime is here illegally. What is the police role in that situation? [LB48]

SENATOR JANSSEN: It would be the same if I suppose a person was crossing the street and was hit by a car or whatnot, or somebody was in a fight that they may or may not have initiated, if the police find that there's reasonable cause, LB48 would take effect in that case. [LB48]

SENATOR HARR: Okay. And by "take effect" you mean...? [LB48]

SENATOR JANSSEN: They would go down the provisions which are set forth for deportation or whatnot. [LB48]

SENATOR HARR: So, hypothetically, if a victim of sexual assault came forward, reasonable suspicion existed they're here illegally, they would then be deported back to their country. [LB48]

SENATOR JANSSEN: I believe there is also...they would...there's certain things you can do with your adjustment for immigration if a crime is committed like that against you. [LB48]

SENATOR HARR: Okay. [LB48]

SENATOR JANSSEN: I'm not...I'm not familiar with all of those. [LB48]

SENATOR HARR: Well, but you said there is something. What is it? [LB48]

SENATOR JANSSEN: I meant there's certain types of adjustment and I don't know which one. I'm not an immigration attorney. [LB48]

SENATOR HARR: Well, then you don't know if there is anything. If there is, just tell me what it is and I'll be glad to listen. But I...is there something? Is it in federal statute? Is it a state statute? Where do you find this? [LB48]

SENATOR JANSSEN: You know, I can't tell right now. Perhaps somebody behind me will be able to tell you that or I can get it to you after the hearing. [LB48]

SENATOR HARR: Okay. Another situation I kind of have a little bit of a concern with, a person...there's a murder. Illegal alien witnesses the murder. Police...this person comes forward to the police; said, hey, I just saw a murder. And the police says, oh okay, well, you know, this is an area where undocumented workers, whatever. Now the police officer has reasonable suspicion again, and finds out this witness is here illegally. What happens there? [LB48]

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SENATOR JANSSEN: Well, again in order for reasonable suspicion, one, the person has to have offended somehow in this case. And this person has not. This person hasn't offended or done anything that would put their legal status in question. By simply going to the police officers and saying, hey, I witnessed a murder, that does not put them... [LB48]

SENATOR HARR: Okay. Well, let's assume, witness of a crime, reasonable suspicion exists that this person is not here legally but they're the witness of a crime. Maybe they say...let's just use a hypothetical. Let's say they say: Gosh, I saw it, you know; we were all here, we were all afraid; I was here illegally but, you know, and I witnessed this crime. They come forward voluntarily; make the statement voluntarily. What happens to that person? [LB48]

SENATOR JANSSEN: I can't answer that. That's pretty extreme. [LB48]

SENATOR HARR: Why is it extreme? [LB48]

SENATOR JANSSEN: Well, one, again...and even in your last scenario, if the person has not committed a crime, they would not be asked to prove their legal status. [LB48]

SENATOR HARR: Right. And I...but if there is reasonable suspicion...in my situation there's reasonable suspicion because the person voluntarily stated: I am here illegally. [LB48]

SENATOR JANSSEN: They would have to... [LB48]

SENATOR HARR: I witnessed this crime; what can you do to help me? What would happen to that individual? [LB48]

SENATOR JANSSEN: I imagine they would go after the crime and they would take the person in. [LB48]

SENATOR HARR: And so what would happen to that witness? Would that witness be taken? [LB48]

SENATOR JANSSEN: I don't believe so. [LB48]

SENATOR HARR: Why is that? [LB48]

SENATOR JANSSEN: They did nothing at first. There was no crime. [LB48]

SENATOR HARR: The police officer...but where does it say there has to be a crime

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committed first? [LB48]

SENATOR JANSSEN: We always talk about it is a secondary violation. You can't get...you can't get pulled over just for driving. [LB48]

SENATOR HARR: But this...we...under my scenario, show me where it says a crime has to...that this is a secondary, or that a crime has to be committed first. [LB48]

SENATOR JANSSEN: Senator Harr, it's tough for me to answer your questions under a scenario like that. [LB48]

SENATOR HARR: Why is it tough? [LB48]

SENATOR JANSSEN: I know of no such scenario existing. [LB48]

SENATOR HARR: You know of no such scenario. Well, I just gave you a scenario (laugh) so now you know of one. Answer the question. [LB48]

SENATOR JANSSEN: I don't have an answer for you, Senator. [LB48]

SENATOR HARR: Okay. But you'd be willing to look into that and get back to me? [LB48]

SENATOR JANSSEN: I'd be happy to. [LB48]

SENATOR HARR: Okay. [LB48]

SENATOR JANSSEN: Always. In fact, for any question. [LB48]

SENATOR MCGILL: (Laugh) [LB48]

SENATOR HARR: Thank you. All right. Again, you're familiar with this bill so I'm going to go right to page 3, lines 6-9. It states, "A police (sic--peace) officer shall determine the immigration status of a person who has been lawfully stopped, detained, or arrested when reasonable suspicion exists that a person is unlawfully present in the United States." Is a person who is stopped or detained, arrested at that point? Are they under arrest? [LB48]

SENATOR JANSSEN: No. [LB48]

SENATOR HARR: Okay. So let's go back to the hypotheticals again. [LB48]

SENATOR JANSSEN: I love your hypothetical. [LB48]

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SENATOR HARR: What's that? [LB48]

SENATOR JANSSEN: Always happy to do your hypotheticals. [LB48]

SENATOR HARR: (Laugh) All right. So we have an individual who is stopped for whatever reason by a law enforcement officer. Hasn't done anything illegally; is just stopped; is not under, as we said, not under arrest. We've agreed that if you're stopped, you're not under arrest. Correct? [LB48]

SENATOR JANSSEN: Yes. [LB48]

SENATOR HARR: Okay. So this person is stopped. They're not under arrest. Reasonable suspicion exists that the person is unlawfully present in the United States. What happens then? [LB48]

SENATOR JANSSEN: Hypothetically, you were speaking here, there's no reason to pull the person over so I guess I'm not following your... [LB48]

SENATOR HARR: Well, no. It says here, "has been lawfully stopped." Okay, so this person has been lawfully stopped. [LB48]

SENATOR JANSSEN: Then they had to do something to get stopped. Lawfully stopped would mean they had to do something. [LB48]

SENATOR HARR: But they're not under arrest, correct? [LB48]

SENATOR JANSSEN: Speeding or otherwise. [LB48]

SENATOR MCGILL: Taillight being out. [LB48]

SENATOR HARR: Yeah. Well, to make it easier, let me...let us do it...what...if they're lawfully stopped, they're not under arrest, right? [LB48]

SENATOR JANSSEN: Yes. [LB48]

SENATOR HARR: Okay. They're not under arrest. There may not even be a crime. Maybe the officer does more investigation, finds out there's no crime, but during that investigation develops reasonable suspicion that the person is in the United States illegally--or unlawfully present in the United States, as it says in the statute. What does the law enforcement officer do at that point? [LB48]

SENATOR JANSSEN: I think it would be somewhat similar, if they rolled up on you and

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you had an open container of alcohol in there and they pulled you over for no other reason, or they pulled you up for that taillight, or maybe they give you a fix-it ticket, or they decide you weren't speeding but they thought you were. They look in, they see an open container. That gives them reasonable cause in that scenario. [LB48]

SENATOR HARR: Um-hum. Fair. I...okay. So I have a broken taillight. The officer gives me a ticket. We go on our way. We smile and we shake hands and we say we'll see each other down the road. In this scenario, this person is here illegally. Does the officer then arrest that person or do they send them on their way? [LB48]

SENATOR JANSSEN: If they...how do you mean? If they've already checked? There had to be reasonable cause. [LB48]

SENATOR HARR: Okay. [LB48]

SENATOR JANSSEN: I know where you're going. [LB48]

SENATOR HARR: Let me...let me...let's walk through this again. (Laugh) I may...I'm not being very clear. A person is stopped, okay? Let's just...here, let me do it this way. And the offense is an infraction: possession of marijuana. Or let's say possession of K2 since that's our committee bill this year. [LB48]

SENATOR JANSSEN: Brand new. [LB48]

SENATOR HARR: First one. So the person has K2 on him. That's not an arrestable offense. It's an infraction. You get a ticket, you go on your way. However, in the investigation of the K2, the officer discovers the person is unlawfully present in the United States. What does that law enforcement officer do at that point? [LB48]

SENATOR JANSSEN: After they determine it, then they can detain that individual. [LB48]

SENATOR HARR: On...how? Under what part of your statute is that? [LB48]

SENATOR JANSSEN: Well, it's under the you can detain a person. You have to detain a person until they can prove, if they have not proven that they're a legal resident. In that case, they would be detained and ICE would be notified. [LB48]

SENATOR HARR: I don't see where it says they should be detained. Where does it say they're detained? You're stopped. You're not...but where does it...I don't. [LB48]

SENATOR JANSSEN: The individual would then be taken in, into custody, as we talked about earlier, and then they would be...they would be having...in this case, if they're

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already illegal, they would be turned over to ICE. [LB48]

SENATOR HARR: Actually, what it says is, "If it is determined," and we're at part (c), lines 14-18, it says, "If it is determined that a person is unlawfully present in the United States"--this is your bill, not mine--"the peace officer or custodial authority shall immediately notify the United States Immigration and Customs Enforcement or the United States Customs and Border Protection of the person's unlawful presence." Where does it say you take the person into detention? [LB48]

SENATOR JANSSEN: Well, it doesn't. But I guess we can put that in there when we get it on the floor and we can work to put it in, or if you want to put in beforehand. [LB48]

SENATOR HARR: Okay. So it's not in there right now. So, right now, under my scenario, K2, the officer would let that person go and then notify ICE. Is that your understanding of how it's currently written? [LB48]

SENATOR JANSSEN: Yes. [LB48]

SENATOR HARR: Okay. And the same with detained? If the person is detained but not arrested, same scenario? They would let him go? [LB48]

SENATOR JANSSEN: I'm sorry. You're going to have to backtrack a little bit here. Go back to your last statement. I'm not certain what I just agreed to when you were throwing that out there. [LB48]

SENATOR HARR: What are you not...I don't know what you're not sure of. [LB48]

SENATOR JANSSEN: I'm not sure what you're asking me right now. [LB48]

SENATOR HARR: Oh, okay. So just this last question. All right. So if a person is detained but not arrested, same scenario. Officer detains an individual, determines there's no arrestable offense, but during the course of the investigation determines that the individual is, in fact, unlawfully present in the United States. The officer would then have to let that individual go but still notify ICE of this individual. [LB48]

SENATOR JANSSEN: If this person is here unlawfully, Senator Harr, they will be detained. They...ICE will be notified. [LB48]

SENATOR HARR: Okay. You've stated they will be detained. Why is that? [LB48]

SENATOR JANSSEN: We can...taken into custody, whatever you say. They're here illegally. That's part of the bill. We've made it a state crime now. We've made the federal law a state crime. [LB48]

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SENATOR HARR: Well,... [LB48]

SENATOR JANSSEN: And we've got a standing now that we can take this person in. [LB48]

SENATOR HARR: Well, again this is your bill, not mine. Show me where it says that they'll be taken into custody. [LB48]

SENATOR JANSSEN: If it's not in there, it will be. [LB48]

SENATOR HARR: Okay. Is it...do you know, yes or no, is it in this bill as it's currently written? [LB48]

SENATOR JANSSEN: I have not...I've read the bill. If you're asking me...if you're trying to catch me on one word here or there,... [LB48]

SENATOR HARR: I'm not trying to catch you. I'm trying to figure out this bill. [LB48]

SENATOR JANSSEN: Have I memorized every word of the bill? No. I mean I'm not quite certain where you're going. The person will be detained. [LB48]

SENATOR HARR: Okay. And this is your bill and you're familiar with it. Tell me where it says they will be detained. That's all I'm asking. I'm not trying to...I'm not trying to play gotcha. I'm just trying to say... [LB48]

SENATOR JANSSEN: Are we going to sit here and read the whole bill for you? [LB48]

SENATOR ASHFORD: Well, let's have a time-out for a second. Let me...could we have quiet, please? Let's have a time-out just for one moment. Is...let me...Burke, let me ask this. If the person is stopped and there is a reasonable suspicion that this person is in the country illegally, they're stopped for something like...that's an infraction. I think that's what you're asking. [LB48]

SENATOR HARR: It's an infraction. Yeah. [LB48]

SENATOR ASHFORD: And I'm not trying to translate...I'm not trying to interpret what you're asking, but so I'm clear. If they're stopped...in a normal circumstance, the law enforcement officer would write a ticket and give that person a ticket. But in this...in this bill, and this is what we were discussing that day at the coffee shop, under your bill if that law enforcement officer has some suspicion that that person is in the country illegally, they would then take another act, they would then do something else which would be...which would be what? What would they do with that person that they would

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not do with the person who they don't suspect is in the country illegally? [LB48]

SENATOR JANSSEN: The person that they don't suspect? [LB48]

SENATOR ASHFORD: You have two people that are stopped. Could we have quiet, please? We have two people that are stopped, all right? The two people that are stopped, one person the officer believes is in the country illegally and another person the officer does not believe is in the country illegally. What does this bill do in regards to those two people? What...how are those two people treated differently in a normal stop for a taillight? How...what happens? [LB48]

SENATOR JANSSEN: In that case I would imagine the person, the offended person...the person that committed the offense, the person that's here breaking the law, here illegally,... [LB48]

SENATOR ASHFORD: Well, how would they know that? I mean they're stopping somebody...they're stopping somebody...and this is a discussion we had this summer. [LB48]

SENATOR JANSSEN: Right. [LB48]

SENATOR ASHFORD: You stop somebody for a taillight, and one...and...and one person you let go because you don't have a reasonable suspicion that this person is in the country illegally. You stop another person with a taillight, but for some reason you believe that person is in the country illegally. I guess I have two questions. What is it that is the basis for the determination that that person is in the country illegally, number one? And then to Senator Harr's question, what do you do with that person that you believe is in the country illegally? So there's two questions. You have two types of cases. One where you have, oh, it's just, you know, Joe down the street; I know this person is here because I see him at the coffee shop; here's your ticket. Other person, here's somebody else, I don't recognize this person; gosh, I don't know what to think, maybe they're in the country illegally. What...? [LB48]

SENATOR JANSSEN: For whatever reason of reasonable suspicion that the officer determines... [LB48]

SENATOR ASHFORD: What would be that reasonable suspicion? That they... [LB48]

SENATOR JANSSEN: And that's...you know, the court case has defined the police officer's deal in that, I don't...on a day-to-day basis of reasonable suspicion. I'm not...that's not my field of expertise. [LB48]

SENATOR ASHFORD: Okay, but I guess that's the concern I raised this summer to

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you, Charlie, was that that is the problem when we don't...we can't define reasonable suspicion. One police officer may think that it's because...just they have some belief that this person is maybe illegally here, or it could be something else. It could be an inability to speak English or some other thing. I mean what I'm trying to get at is, what is it? What is in that laundry list of potential suspicions that would cause that person to say, I'm going to treat Person 2 with the taillight out differently than I'm going to treat Person 1 who is the guy down the street, Joe, who I see all the time in the coffee shop? That's the concern. And, you know, I don't...I'm not blaming you for not having the exact answer. And your answer is police make that determination. But then we hear Senator Council's point which is law enforcement can't really make that determination in any reasonable manner. Plus, they're out trying to find bad guys. These people...I mean a headlight or a taillight out is not a definition of a bad guy, and I...necessarily. So you have this thing going on. So you have police officers who may have a reasonable suspicion. They're not quite sure what a reasonable suspicion means but they have one, so all of sudden, instead of a routine taillight, we've got a police officer, who should be out finding bad guys, running around trying...you know, taking somebody down to the station because he thinks or she thinks that this person is in the country illegally. And that's the problem with passing laws that...or addressing these kinds of issues with language like that, because it is...can be misinterpreted. It can be misinterpreted in various phases of the deal. And I'll end there. But, Senator Harr, I didn't mean to interpret your questioning, but that...your line of questioning created in my mind that issue for me. So if you have any other... [LB48]

SENATOR HARR: You're the Chair and you always... [LB48]

SENATOR ASHFORD: No, no. Go ahead. [LB48]

SENATOR HARR: No. Thank you. I appreciate that. And I think I made my point. I think it's detained or stopped, same scenario, they're not arrested, they're not in custody. You're saying that at that point the police officer can take the person into custody. Is that what you're...correct? [LB48]

SENATOR JANSSEN: That's what I was saying in there. And, you know, and you're right...I talked to Chairman Ashford this summer. And at the time, you weren't elected yet--by the way, congratulations, and would have loved... [LB48]

SENATOR HARR: I know. Thank you. I'm not sure. [LB48]

SENATOR ASHFORD: He's been here for two months, but... [LB48]

SENATOR HARR: (Laugh) [LB48]

SENATOR JANSSEN: Would have loved to have you in these discussions actually,

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Senator Harr, because it's something that, quite frankly, we struggled with, and that was...and I told him I was going to bring this bill and that would be a point of contention. [LB48]

SENATOR ASHFORD: But we were both struggling with that issue, were we not? [LB48]

SENATOR JANSSEN: And we were and we are. And then does that mean we shouldn't debate the issue? And that's what...and you were very forthcoming... [LB48]

SENATOR ASHFORD: No, and I'm not saying that. We are debating the issue and that's fair, Senator Janssen, absolutely fair. Senator Harr and then Senator Lathrop. [LB48]

SENATOR HARR: Thank you. Thank you. All right, now we're back to...again, we're on page 3 and (2)(c), lines 14-18. It says, "If it is determined that a person is unlawfully present in the United States, the peace officer"--and I read this to you earlier--"or custodial authority shall immediately notify the United States Immigration and Customs Enforcement or the United States Customs and Border Protection of the person's unlawful presence." Okay. So they notify them. What if ICE doesn't care? They say, okay, fine. What happens then? [LB48]

SENATOR JANSSEN: We've got a huge issue then. [LB48]

SENATOR HARR: Okay. Yeah. All right, and that's a fair answer and I appreciate that. And I'll...and I'm going to try and speed things up a little bit here. Now we're on page 4 of your bill, LB48. And it's (3) and in line...well, I'll just read it: "Notwithstanding any other law, a law enforcement agency may securely transport a person who is unlawfully present in the United States and who is in the law enforcement agency's custody"--and here's the key--"to a federal facility in this state," and I..."or to any other point of transfer," blah-blah-blah-blah-blah. "Federal facility" is not defined in this statute, and what my concern is that, number one, I don't know if we have a federal facility in Nebraska. Number two, is--I don't know--a state senator or a U.S. Senator's office a federal facility? Can you just drop them off there? I mean...and I'm being completely serious. I don't know the answer to that. What is a facility? [LB48]

SENATOR JANSSEN: No, you bring up a good point and it probably should be defined in here because, as crazy as what you just said sounds, it needs... [LB48]

SENATOR HARR: Yeah. And I'm not trying to be facetious but I am really just trying... [LB48]

SENATOR JANSSEN: No, it should be defined further in that section, and that's my

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fault in putting this in the bill. [LB48]

SENATOR HARR: Okay. All right. And then Senator Council hit on this earlier and this is not...this is more of a comment than anything. On page 6, that last sentence, I'm not sure if it is a sentence. I'm not quite sure...and this is...I think what she was getting at is I'm not quite sure what this says. And if I'm putting words in your mouth, feel free to stop me, but this is how I interpret it and I'm...honestly, I don't know what this says. It says, "The Legislature hereby declares that it would have passed" this act "and each provision," yada-yada-yada, and it goes through, and "sentence, clause, phrase," blah, "irrespective of the fact that any one or more provisions...would be declared unconstitutional." Are you saying if we had known this was unconstitutional, we would have passed this? [LB48]

SENATOR JANSSEN: Well, we just don't know yet if it's going to be and that's why I put that in there. So I'm not saying that... [LB48]

SENATOR HARR: Yeah, but this is saying... [LB48]

SENATOR COUNCIL: Irrespective. [LB48]

SENATOR HARR: ...it would have passed if it hadn't been declared unconstitutional. So I guess...are you...and again, this is what I'm getting at. The way I read this is, it says we would have passed this even if it was unconstitutional, because gosh darn it, we think this is the right thing. Is that what you're trying...that's not what you're trying to say, is it? [LB48]

SENATOR JANSSEN: That's not what I'm trying to say and I would actually...and Senator Council brought up a good point when she talked about that, and that's what I'm here for. You guys and ladies who sit on this committee have great opinions when it comes to this subject of law, and we don't always agree but I always agree that you have the vast knowledge, legal knowledge on this council. [LB48]

SENATOR HARR: And I appreciate you being open to amending this if we can make this a stronger, more solid bill. Because, obviously, this will be, if this is passed I have a strong suspicion it will be litigated. So I... [LB48]

SENATOR JANSSEN: Yes, and that's... [LB48]

SENATOR HARR: I appreciate your openness to listening to us and to standing...sitting up here for over an hour and being cross-examined. So thank you very much. [LB48]

SENATOR JANSSEN: Thank you, Senator Harr. [LB48]

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SENATOR ASHFORD: Thank you, Senator Harr. Senator Lathrop. [LB48]

SENATOR LATHROP: Senator Janssen, I share your concern over the subject matter, and I only have a question about one subject of your bill. In Section 2, you say that reasonable suspicion will "not be based solely upon a person's race, color, religion, sex, or national origin." And I appreciate that we're not just going to stop brown people. That alone won't provide a basis for reasonable suspicion. But other than a person's skin color or their command of the English language, what other considerations should an officer take into account in developing reasonable suspicion? [LB48]

SENATOR JANSSEN: And this is maybe a little bit of a broken record, but I mean, Senator Lathrop, I've just always deferred that to the police to what they use right now. When you pull somebody over in a certain segment of Omaha, for instance, and that person is African-American, what do they use? A lot of times there's profiling that happens. What do they use for reasonable suspicion? I don't have all 800 court opinions of immigration in front of me, but... [LB48]

SENATOR LATHROP: Okay. I appreciate that answer. Here's the difference...or the distinction, and I want to explore it with you. What police have a...what police...or law enforcement does in this state with respect to reasonable suspicion is be suspicious of criminal activity. And we are suspicious of somebody's status, okay? That's a little bit different. And my question is, other than their race or the command of the English language, what other considerations do you think law enforcement ought to take into account in determining or developing reasonable suspicion of somebody's status as not in this country lawfully. [LB48]

SENATOR JANSSEN: You know, again I can't give you what those scenarios would be under reasonable suspicion for the police officers. It won't be skin color, religion, sex, as we said. So I guess I can't answer your question because I leave that up to the police to handle. [LB48]

SENATOR LATHROP: I appreciate your answer, Senator Janssen, and I don't want to quarrel with you, but saying that we're going to leave it up to the police officer is stating the obvious. It will become a law enforcement question out in the field. My question is then can they take into account race in developing reasonable suspicion? [LB48]

SENATOR JANSSEN: Not under the way this bill is laid out. [LB48]

SENATOR LATHROP: Not solely, now, but may they have that as a consideration? [LB48]

SENATOR JANSSEN: I can't answer that. [LB48]

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SENATOR LATHROP: May they have someone's command of the English language as a consideration? [LB48]

SENATOR JANSSEN: Again, I would have to defer to the police officer. [LB48]

SENATOR LATHROP: This is your subject and so I'll ask you: can you think of anything besides skin color and a command of the English language that would provide a reasonable suspicion or a basis for a reasonable suspicion for law enforcement enforcing your bill? [LB48]

SENATOR JANSSEN: If you...you know, one scenario would be perhaps if you pulled somebody over in an unlicensed vehicle. Nobody knew exactly where they were going. There were way too many people in the vehicle as far as...(voices from the audience). There are ten people in a vehicle, that could be... [LB48]

SERGEANT AT ARMS: Could we have order. [LB48]

SENATOR JANSSEN: ...reasonable suspicion. Nobody has an ID at all; there's no ID. That could be reasonable suspicion. But I'm hesitant to go down this line of questioning. I'll answer, of course, any question. [LB48]

SENATOR LATHROP: No, I know. And I'm going to tell you or suggest to you that, as a lawyer, when people examine the constitutionality of this, and I think if we haven't done anything in an hour-plus, we've gotten to an agreement that this will be challenged in all likelihood. So the legislative history is important and your thoughts on what you intended with reasonable suspicion. So I don't...I appreciate that there was some crowd interaction with your answer, so I want to give you an opportunity to finish so that the legislative history reflects your thoughts on reasonable suspicion and where race and command of the English language play into this process. [LB48]

SENATOR JANSSEN: I don't think race or command of the English language should play into it, but I do leave that up to the law enforcement officials to determine reasonable cause. [LB48]

SENATOR LATHROP: And other than that, it would just be the things that you've shared with us a moment ago. [LB48]

SENATOR JANSSEN: I can't even say that; that was an analogy. That it would be still be up to the police to define reasonable cause. [LB48]

SENATOR LATHROP: Okay. Thank you. [LB48]

SENATOR JANSSEN: Thank you, Senator Lathrop. [LB48]

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SENATOR ASHFORD: Senator Council and then... [LB48]

SENATOR COUNCIL: And this is a quick question, Mr. Chairman, and it's kind of following up on Senator Harr's question. And I just need to have an understanding, Senator Janssen. On page 4--and I meant to ask this question earlier--Section 4, "Any person in this state who is required by federal law to register pursuant to 8 U.S.C. 1306(a), as amended, and fails to do so is guilty of a Class II misdemeanor." Okay, what is that offense? [LB48]

SENATOR JANSSEN: Well, I took this directly from federal law, the Class II misdemeanor. [LB48]

SENATOR COUNCIL: Okay. But what is the offense? What...what...who is...who is it that is required by federal law to register? Who does this apply to? [LB48]

SENATOR JANSSEN: Somebody who comes to our country to stay in our country. [LB48]

SENATOR COUNCIL: Okay. So someone who is unlawfully present. Is that what...is that what this... [LB48]

SENATOR JANSSEN: Well, it would be...somebody could be here lawfully present and then overstay. They would have failed to register. And if I'm saying that wrong, I apologize. [LB48]

SENATOR COUNCIL: Okay. Okay. Because that kind of gets to the point that I think Senator Harr was making. When you look through the bill, there is...there's this if I'm lawfully stopped, detained or arrested, and we'll just scratch arrested off, if I'm lawfully stopped and the officer arrives at--how I don't know--arrives at this reasonable suspicion that I'm not here lawfully, by what authority am I taken into custody? Am I then under arrest? Or by what authority are you holding me now against my will? [LB48]

SENATOR JANSSEN: I'm trying to apply the federal law as if a federal agent would have pulled you over. They would have that authority. I'm trying to give that authority to the local levels. But I would have to clarify that for you before I could say that with 100 percent certainty. [LB48]

SENATOR COUNCIL: Okay. Now, and currently that is undertaken on a voluntary basis, isn't that...am I correct in that? If local law enforcement wants to assume the authority that an immigration officer would have to take someone in custody, they have these agreements that they enter into with local law enforcement that authorizes local law enforcement to do that. [LB48]

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SENATOR JANSSEN: There's certain...it's called 287(g) or something...is that...?
[LB48]

SENATOR COUNCIL: Yeah, right. Right. And that's what I'm saying. I mean do...is it your belief that the state has the authority to extend 287(g) authority to local law enforcement? [LB48]

SENATOR JANSSEN: I would like to participate in that program. I don't believe the feds, right now, are allowing us to participate in that program, the 287(g) program.
[LB48]

SENATOR COUNCIL: Okay, but I think...what I think it...and maybe somebody from law enforcement will testify, but I...as I understand 287(g), the local law enforcement agency has to let the federal Immigration and Customs Enforcement know that they're willing to assume that responsibility, and then they enter into an agreement with the ICE authorities, and then they have the authority to carry out that. And I'm just saying there's nothing in LB48 and I don't know how a state believes it can grant a federal authority to an entity, and I don't even think...I don't think Lincoln or Omaha are 287(g)...we'll find out. [LB48]

SENATOR JANSSEN: No, I don't believe so. [LB48]

SENATOR COUNCIL: Okay. Thank you. [LB48]

SENATOR JANSSEN: Thank you, Senator Council. [LB48]

SENATOR ASHFORD: Yeah, and before you leave, I just...I'm going to make a brief comment and not a question, and that's this. You know, we've been here on this issue now for four years. We've taken some action and we believed that this committee has taken some action where we believe there is a clear nexus between benefits and state action, and that was LB403. We have done a study of this issue and we've gone around the state. What is...and I'll say this again; I've said it for four years: What is clearly unfortunate, we had a...we had legislation on the federal level--Senator McCain; and Senator Kennedy, before his death; the President, President Bush. Had it passed, we wouldn't be here today because we would have had a pathway to citizenship. We had a DREAM Act that...where there were...it had passed the House of Representatives, that would have given children who were--and young people--from age zero to 28 the ability to find work in this country and to live here legally if they had not violated the law. We...that DREAM Act had passed the House. It had more than 50 senators to pass the Senate and would have been signed into law by the President. So I think what we're dealing with here...and what I worry about is that, that as a state--and this isn't anything to do with you, Charlie, because we have had meaningful discussions about this bill--but

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is...what I don't like to be thought of as being part of is some sort of national scheme that all we have to do is beat back federal legislation on the federal level, such as the DREAM Act and President Bush's initiative on pathway to citizenship, beat those back, even though a majority of the House and the majority of the Senate support them, and then take the battle to the states. Again, this is a reflect...a broad statement. This is not reflective of your intent. To come to the states with legislation, which is clearly, clearly...has numerous...no matter what we pass, numerous constitutional issues, not only based on the racial profiling issues in this bill, but, certainly as Senator Council has suggested and others, on preemption. So we're caught...we're never going to get there, Charlie. We're never going to get there until we let the House and the Senate vote. And that means...you know, and what is to me is just very, very problematic is that when you have a majority of House members, a majority of Senators, and two Presidents in a row who want to create immigration reform, and we can't get there because of obstructionist actions in the House and the Senate. And it seems to me...and then, therefore, it comes to us, and you are therefore, as a senator who is a thoughtful guy, saying I've got to do something. And the irony of this is we had a federal Senate and we had a federal House and two Presidents in a row that wanted to do something. I mean I...you know, where are we as a country? So I understand your pain, Senator Janssen, and those (inaudible) people. And I think Senator Lathrop made a great point, and as did Senator Council, we get it. You know, something has to be done; we get it. And we tried to do that in LB403. But for...when there's an agenda out there somewhere that is preventing the House and the Senate to pass a bill that the President has, both...two Presidents have pledged to sign, and we can't do it because of something else going on out there, is reminiscent of politics in this country that dates back to the Know Nothing party in 1856. We have had waves and waves of federal efforts to address immigration reform in this country going back 150 years. And every time we pass an immigration bill, whether it's the Johnson bill in 1964, President Reagan's immigration reform in 1986, Harding...well, in the 1920s, the bill that literally...what happened in 1920s is we had open borders. Then in the 1920s...1924, we pass immigration--I hope that my years are right--we passed immigration laws in this country that literally divide families. Half the...we have Italian families, Irish families, Russian Jewish families, even Swedish families, heaven forbid, that were...that came to this country...and they came to this country...part of the family came. The Congress passes a law; the other half can't be here legally. And what happens...and then we get into this deal in Nebraska, in 1919, where we have a law that says you can't teach German in schools. We can't teach German in schools because German...Germans are fighting...had just fought us in World War I. The point I'm making...the point I'm making is this, is that there's not a person in this room that doesn't realize we've got a problem. But what it seems to me is to push this down on us, on the state level, when we can't...we can't reasonably enforce these kinds of things. We can't reasonably enforce these kinds of things. They're either unconstitutional or preemptive, preempted by federal law. And we have a Congress that literally has the votes and can't pass the law. I mean that's pretty amazing. But anyway, Charlie, I did appreciate our conversations we had this summer. You know, you're a thoughtful guy. And let's do this:

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It's 5 of 3:00, we're going to go to 3:30 on the proponents for the bill and then we'll go to 4:05 on the opponents. And with that, thank you. [LB48]

SENATOR JANSSEN: Chairman Ashford, if I...I would...I appreciate your comments. I don't intend to close because I know you guys have a busy schedule today and I'm going to be in and out of the room during this debate and probably in both rooms. I agree with you. The federal government needs to act on this. They're paid much more than we are, there's no doubt about that, so... [LB48]

SENATOR ASHFORD: We know that for sure. [LB48]

SENATOR JANSSEN: And I did enjoy... [LB48]

SENATOR ASHFORD: And they get plane tickets and they get all sorts of stuff. [LB48]

SENATOR JANSSEN: No kidding. And I don't think there's any member of this committee that thinks we shouldn't be... [LB48]

SENATOR ASHFORD: They get healthcare and they get pension...I don't know if they get pensions. I think they do get pensions. [LB48]

SENATOR JANSSEN: They do. [LB48]

SENATOR ASHFORD: Whew. [LB48]

SENATOR JANSSEN: There's not...and there's certainly, not, I don't think, a member of this committee that doesn't think something needs to be done about illegal immigration. That's never been the point. I think several of us disagree on several parts, but...so... [LB48]

SENATOR ASHFORD: Thank you, Charlie, for your comments. Okay, let's go to the proponents. (Applause) What were going to ask...I'll handle it. What we're going to ask here is I appreciate everybody's passion on this issue on both sides. We just aren't going to have any applause or shouting or yelling. Okay, let's go with the proponents, three minutes each. [LB48]

JOHN FREUDENBERG: Good afternoon. My name is John Freudenberg, F-r-e-u-d-e-n-b-e-r-g. I'm the criminal bureau chief for the Nebraska Attorney General's Office. I'm here today to testify in support of LB48. Our office has worked with Senator Janssen to refine the bill to its current state. As we all know, this bill addresses a divisive issue where people on both sides have strong feelings regarding their respective positions. However, there are many people on both sides who still have not yet read the bill. Therefore, I'm going to quickly go through it today. First of all, this bill

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establishes that its implementation is to be consistent with federal law and federal civil rights, and the reasonable suspicion determinations are not to be based solely on race, religion, sex, and national origin. With those restrictions in mind, the bill then enacts a series of provisions to address people who are unlawfully present in the United States. The first such provision prohibits state and local government agencies from forgoing their immigration enforcement duties or inhibiting the free flow of immigration status information. The next provision mandates that law enforcement and Corrections determine a person's immigration status when a reasonable suspicion exists that the person is illegally present in the country. However, stated in Section 2, the reasonable suspicion can't be based solely on race, color, religion, sex, or national origin. Further, this determination can only be made of a person who has been lawfully stopped or detained. This does not provide an independent reason to stop or detain a person, and only becomes operative after a triggering event has led to a stop, detention, or other lawful contact. If a person is found to be unlawfully present, officers are directed by LB48 to immediately contact the proper federal authorities and then inquire regarding transportation of those individuals if necessary. The bill also creates state criminal provisions for individuals who are not properly registered by...as federally required, and individuals who fail to carry federal immigration identification also as required. The punishments assigned to these new provisions are very similar to the federal provisions. The second to the last provision makes it illegal to be employed in Nebraska if one is unlawfully present in the United States, and the final substantive provisions address human smuggling situations. This bill simply empowers state authorities to assist the enforcement of immigration law. The policy question regarding who is lawfully present in the country is a federal issue. The current immigration scheme classifies certain people as being illegal, illegally present, and mandates enforcement action. Existing law should not simply be negated through willful inaction. Unfortunately, due to the volume of people who fall into this federal classification, sufficient enforcement is not occurring. This bill adds state manpower to these enforcement efforts. I'll attempt to answer any questions you may have. [LB48]

SENATOR LATHROP: Senator Harr. [LB48]

SENATOR HARR: Thanks for coming down and testifying, and I missed your introduction. Are you here on behalf...you're president of the County Attorneys Association. Is that correct? [LB48]

JOHN FREUDENBERG: No, I am here as part of the Attorney General's Office. [LB48]

SENATOR HARR: Okay. But you are president of the County Attorneys Association? [LB48]

JOHN FREUDENBERG: I am. [LB48]

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SENATOR HARR: Okay. And do you know if the County Attorneys Association took a stand on this bill? [LB48]

JOHN FREUDENBERG: There is no position by the County Attorneys Association. [LB48]

SENATOR HARR: Okay. And do you know if the County Attorneys Association took a stand on this bill? [LB48]

JOHN FREUDENBERG: There is no position by the County Attorneys Association. [LB48]

SENATOR HARR: Okay, so...all right. And is it...you're here on behalf of the Attorney General, Jon Bruning. Is it Mr. Bruning's belief that this law is constitutional? [LB48]

JOHN FREUDENBERG: Yeah, Mr. Bruning and our office believes this is an open constitutional question. I understand that Arizona, a district court judge of Arizona has made a ruling. As we know from the healthcare law, different states make different rulings. Until we have a definitive ruling from appellate court or higher, I think it is an open question on its constitutional grounds. [LB48]

SENATOR HARR: Okay. Well, I guess my question is, it's an open question: What is the Attorney General's opinion? [LB48]

JOHN FREUDENBERG: The Attorney General's opinion is that the office will defend this bill if passed. [LB48]

SENATOR HARR: Okay. Let me ask (laugh) a third time: Is it the Attorney General's position that this bill is constitutional? [LB48]

JOHN FREUDENBERG: I've answered the question to the degree of my knowledge on that question. I don't have any information beyond that. [LB48]

SENATOR HARR: Okay. You're an attorney, correct? [LB48]

JOHN FREUDENBERG: I am. [LB48]

SENATOR HARR: Okay. Is it your opinion that this bill is constitutional? [LB48]

JOHN FREUDENBERG: This bill I am not going to say is constitutional or unconstitutional. I think it's a bill that has to be judicially weighed at this point. And... [LB48]

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SENATOR HARR: Why won't you say if it's constitutional or not constitutional? [LB48]

JOHN FREUDENBERG: Because I think that's a question that's going to have to be decided by appellate court judges and district court...I mean Supreme Court judges. [LB48]

SENATOR HARR: But you have opinions, don't you? [LB48]

JOHN FREUDENBERG: My opinion here, I'm here as a representative of the Attorney General's Office, Senator, and I think you understand that. [LB48]

SENATOR HARR: Okay. [LB48]

JOHN FREUDENBERG: So... [LB48]

SENATOR HARR: I understand that but I am asking you, in your opinion, as an attorney, is this bill constitutional or unconstitutional? [LB48]

JOHN FREUDENBERG: I believe it could be constitutionally enforced, yes,... [LB48]

SENATOR HARR: You believe it... [LB48]

JOHN FREUDENBERG: ...in my personal opinion, and that's what you're asking for. [LB48]

SENATOR HARR: ...it is constitutional. Okay. [LB48]

JOHN FREUDENBERG: Yes. [LB48]

SENATOR HARR: And your boss is an attorney. [LB48]

JOHN FREUDENBERG: Yes. [LB48]

SENATOR HARR: Has he made a statement as to whether the...on the constitutionality of this or not? [LB48]

JOHN FREUDENBERG: I have not discussed that issue with him, no. [LB48]

SENATOR HARR: Okay. There's a lot of...there's a lot of concern about reasonable suspicion and how...Senator Janssen, who knows this very well, this bill very well, had a little bit of trouble defining what reasonable suspicion is and deferred to the police officers. Yet I think the police officers would, more likely than not, be looking for a little guidance on what is reasonable suspicion. I think it's very important that we as a

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Legislature determine what reasonable suspicion is so that police officers know what they can and cannot do. Based on that, I'd just like to have a little discussion with you about reasonable suspicion. Are you okay with that? [LB48]

JOHN FREUDENBERG: Yeah, I am. I'd just like to point out reasonable suspicion is a traditionally created definition, not a legislative created definition. [LB48]

SENATOR HARR: I would agree with that. [LB48]

JOHN FREUDENBERG: Okay. [LB48]

SENATOR HARR: But I think the judiciary would probably look to us for a little bit of guidance also. You'd agree with that? [LB48]

JOHN FREUDENBERG: I believe they always appreciate legislative intent. [LB48]

SENATOR HARR: (Laugh) I'm not sure about that. (Laughter) So, in a sense, we're going to start with this, is this solely on a person...it cannot be based solely, solely, upon a person's race, color, religion, sex, or national origin. As I read that, since it says "solely," you could take into consideration race, color, religion, sex, or national origin. [LB48]

JOHN FREUDENBERG: I would agree. [LB48]

SENATOR HARR: Okay. And then Senator Janssen gave an example of a carload with too many people in it and nonidentification. My wife is Portuguese and very dark, is often confused for being Panamanian. My concern is she has a carload of kids, taking them to Little League Baseball, they're pulled over. These kids don't have identification. What happens with a 2-year-old, a 3-year-old doesn't...let's go as high as 12 years old, who doesn't carry identification on them? Is it your belief that the officer should then...the people that are with them are all, let's say it, they're brown, let's say they're Catholic, and maybe not all of them speak English. Should all the ones who don't speak English be dragged down, the ones who speak English, are they dragged down until identification is brought for these children? [LB48]

JOHN FREUDENBERG: Is that, in your hypothetical, is that the only information we have, is that they don't speak English and that they are... [LB48]

SENATOR HARR: Brown. [LB48]

JOHN FREUDENBERG: ...of a different...not Caucasian? Is that the entirety of the information? [LB48]

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SENATOR HARR: Yes. Is that enough? [LB48]

JOHN FREUDENBERG: No. [LB48]

SENATOR HARR: Okay. Let's say a 12-year-old...what would be enough for reasonable suspicion, because here's my concern and I'll preface it and then I'll ask you the question again, is because we go through later on and we talk about...and I can't find it right now, but we talk about what is acceptable...here: a valid driver's license, tribal identification, or valid state, tribal government. My concern is if a person's...can be demonstrated by, and it says, (i), (ii), and (iii), my concern, is if...and I'm on...and I apologize, I'm on page 3, lines 19 through 24. This says this is what you can do to determine that you're lawfully present. My concern is a lack of (i), (ii) or (iii) would be used as reasonable suspicion that they aren't lawfully present. [LB48]

JOHN FREUDENBERG: I believe that could be...actually could be an articulable fact that could be used as part of the determination for reasonable suspicion. [LB48]

SENATOR HARR: Okay. [LB48]

JOHN FREUDENBERG: And I have a definition of reasonable suspicion, if you'd like me to read it into the record. [LB48]

SENATOR HARR: No, and I...I was...I understand reasonable suspicion. I used to be a prosecutor. I'm just...my concern is that we're going to be dragging 12-year-olds into police stations because they don't have identification on them. [LB48]

JOHN FREUDENBERG: Well, I would disagree. I believe this will probably be worked more the same as the way with NCIS or that warrants checks occur. There will be something where the system is set up to make the call, they go and check, and it's just part of a further investigation. I don't think there's going to be people drug in unless there's an actual determination of unlawful status. [LB48]

SENATOR HARR: And that's your opinion. [LB48]

JOHN FREUDENBERG: That is my opinion... [LB48]

SENATOR HARR: Okay. [LB48]

JOHN FREUDENBERG: ...in my reading of the statute. [LB48]

SENATOR HARR: But...okay. So under my situation, though, if you have a non-Caucasian, doesn't speak English, no identification, in a car that has too many people in it, which apparently is a situation that is an additional factor, is that... [LB48]

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JOHN FREUDENBERG: I never said that was an additional factor, Senator. [LB48]

SENATOR HARR: Oh, I know you didn't. That was stated earlier another, by Senator Janssen. Is that enough reasonable suspicion to bring that person in, in your opinion as a attorney? [LB48]

JOHN FREUDENBERG: I don't think that's enough. [LB48]

SENATOR HARR: Okay. I have nothing further. [LB48]

SENATOR LATHROP: Senator Council. [LB48]

SENATOR COUNCIL: Yes. And thank you, Mr. Freudenberg. I have a couple of questions and just to follow up on some of Senator Harr's questioning. As I read the bill, it says that if the officer, the peace officer has reasonable suspicion to believe that the person is unlawfully present, then they contact ICE and arrange for ICE to pick up the individual. Now you said something about a database. What database is there that exists that would allow a peace officer in Nebraska to, for example, from their cruiser, determine whether somebody is lawfully present in the United States? [LB48]

JOHN FREUDENBERG: I don't believe there's anything from their cruiser but just like warrants checks. You call it back to your dispatcher. That dispatcher runs the check for you and calls you back and lets you know. [LB48]

SENATOR COUNCIL: And I'm asking what database are they...would they... [LB48]

JOHN FREUDENBERG: Oh, like E-Verify. [LB48]

SENATOR COUNCIL: Okay. Now my understanding of E-Verify verifies that you're lawfully present in the country. There's nothing in E-Verify that will tell you that you're unlawfully present. It will tell you if you tell...if you say I'm lawfully present, E-Verify will verify that you are in fact lawfully present. I'm not aware of any database other than ICE, whatever the process that ICE goes through, I'm not aware of any database where you could just program in and determine whether someone is lawfully present. [LB48]

JOHN FREUDENBERG: Senator, that would be a physical impossibility. That would mean you'd have to log every other person that's not American on the face of the earth to have that database. [LB48]

SENATOR COUNCIL: Oh see, and, well, that's one of the issues. I mean everybody talks about E-Verify, and somebody, again, correct me if I'm wrong, but we went through this discussion on LB403 and I think the record shows that E-Verify is exactly what it

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says. It verifies someone's lawful status. If you say you're lawfully present, then E-Verify will confirm whether you are or are not lawfully present. But if you say you're lawfully...that you're unlawfully present, I don't know what E-Verify tells you or what, if you just send in a name, what E-Verify tells you. But that's one of the flaws, as I understand E-Verify, and this was from Department of Health and Human Services. [LB48]

JOHN FREUDENBERG: I think it would be similar to like a driver's license check. If someone comes in and gives a fake name, you just run that driver's license...or they give their real name, you run their driver's license, it will come back and show they're there. But if they run it and they've given you a fake name, they run it and it shows that they do not have one or they are not giving you an accurate name. [LB48]

SENATOR COUNCIL: Okay, but that's the point I'm making, Mr. Freudenberg, what database? Not every American has a driver's license, okay? [LB48]

JOHN FREUDENBERG: That's absolutely correct. [LB48]

SENATOR COUNCIL: So if I don't have a...if I've never gotten a driver's license, what database do you check for me? [LB48]

JOHN FREUDENBERG: You check to see if you're legally here, and if you're not on that list you would fall into the other category. [LB48]

SENATOR COUNCIL: But...and what database is that? [LB48]

JOHN FREUDENBERG: That would be the E-Verify database, Senator. [LB48]

SENATOR COUNCIL: Well, I think you need to check what E-Verify does, at least based upon the record that was created under LB403. That's not my understanding of how E-Verify operates. You also said that, in your...in response to questions from Senator Harr, that the Attorney General's Office has taken the position that they will defend the constitutionality of LB48 if challenged. Is that correct? [LB48]

JOHN FREUDENBERG: Yes. [LB48]

SENATOR COUNCIL: Okay. And LB48 was introduced at the beginning of this session, correct? [LB48]

JOHN FREUDENBERG: That's my understanding, yes. [LB48]

SENATOR COUNCIL: All right. Have you budgeted in the Attorney General's budget for the cost of defending the constitutionality? [LB48]

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JOHN FREUDENBERG: I do not know that but I could get that answer back to you if you would like to know. [LB48]

SENATOR COUNCIL: And then there's also a provision that speaks to a person's lawful presence can be demonstrated by his production of one of these, and it says, "Any valid federal, state, or tribal government issued identification when such entity requires proof of lawful presence." Is there some database of those? [LB48]

JOHN FREUDENBERG: That would be green cards. [LB48]

SENATOR COUNCIL: Why don't you say green cards? [LB48]

JOHN FREUDENBERG: Because that's a slang term. [LB48]

SENATOR COUNCIL: Tribal government issued identification is a green card? [LB48]

JOHN FREUDENBERG: No, the federal are. [LB48]

SENATOR COUNCIL: No, but it says, "Any valid federal, state, or tribal government issued identification." [LB48]

JOHN FREUDENBERG: And I believe the remainder of that is a catchall provision, so if they can produce anything, a document or evidence, it would be good enough. [LB48]

SENATOR COUNCIL: So if I produce anything. If I produce my Walmart card. [LB48]

JOHN FREUDENBERG: That's not issued by a governmental agency. [LB48]

SENATOR COUNCIL: But this is the point. If I produce something that's issued by some state or tribal government, I bring you a Minnesota SNAP card... [LB48]

JOHN FREUDENBERG: I'm not familiar with that, I apologize. [LB48]

SENATOR COUNCIL: It's what we use now instead of food stamps, an EBT card. Is that sufficient? [LB48]

JOHN FREUDENBERG: Well, I believe, according to the definition here, it has to be issued identification when such entity requires proof of lawful presence in the United States prior to its issuance. So if that fulfills that element, then yes; if it does not, then no. [LB48]

SENATOR COUNCIL: Okay. So that's my question. Where does the guy on...the officer

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on the street find that out? I give you...I give in, I say, look, I don't have a driver's license, I'm not from here but I've got my EBT card that's issued by the state that I live in. [LB48]

JOHN FREUDENBERG: That may take a couple more phone calls for...I mean a couple more radio dispatches for him to determine it before that investigation is done. [LB48]

SENATOR COUNCIL: And who is it that would be authorized to do that? [LB48]

JOHN FREUDENBERG: The officer. [LB48]

SENATOR COUNCIL: Okay. Well, according to the bill, it says...it speaks to someone... [LB48]

JOHN FREUDENBERG: What page are you on, Senator? [LB48]

SENATOR COUNCIL: Page 5, a peace officer who...and beginning on line 16:... [LB48]

JOHN FREUDENBERG: Thank you. [LB48]

SENATOR COUNCIL: ..."A peace officer who is authorized by the federal government to verify or ascertain a person's immigration status." Does every law enforcement agency in Nebraska have such a person? [LB48]

JOHN FREUDENBERG: No, they do not. [LB48]

SENATOR COUNCIL: That's all, Senator Lathrop. [LB48]

SENATOR LATHROP: John, just a couple of questions on reasonable suspicion, and I appreciate that the bill recognizes that reasonable suspicion cannot be based solely on a person's race and etcetera. Is race...may race be a consideration in determining reasonable suspicion? [LB48]

JOHN FREUDENBERG: Yes, it can. [LB48]

SENATOR LATHROP: And may someone's command of the English language be a consideration? [LB48]

JOHN FREUDENBERG: Yes. [LB48]

SENATOR LATHROP: Besides race and someone's command or the lack of command of the English language, can you tell me other considerations that you believe would be appropriate for an officer to consider in determining reasonable suspicion? [LB48]

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JOHN FREUDENBERG: Failure to provide some kind of identification. An example that was asked previously about a speeding ticket and someone that...so you get stopped for a speeding ticket. It's already the law in Nebraska that if the person who is stopped does not have proper identification at that point, you can detain them till you finish their identification, and the reason being with that, and this comes from my prosecution days, is when a lot of people...not a lot, that's an overstatement, some people give other people's names to avoid warrants. Even if they have their identification on them, they give a fake name, so that's why you ask to see the identification. You can match the picture up and then you can see that this is the person I'm dealing with so I'm not giving a citation to this fraudulent name and someday later that poor person gets pulled in because a fake name was given. [LB48]

SENATOR LATHROP: But the absence of driver's license alone would not provide reasonable suspicion? [LB48]

JOHN FREUDENBERG: No, it wouldn't, by itself wouldn't provide reasonable suspicion, but it would allow further inquiry. [LB48]

SENATOR LATHROP: Okay. So the absence of a driver's license along with race or difficulty with the English language would provide reasonable suspicion. [LB48]

JOHN FREUDENBERG: I don't think that provides reasonable suspicion by itself. It would allow for further detention and inquiry to ask a few further questions. [LB48]

SENATOR LATHROP: And what? [LB48]

JOHN FREUDENBERG: Ask questions... [LB48]

SENATOR LATHROP: What are we going to find out with further questions that will provide a reasonable suspicion, in your judgment? [LB48]

JOHN FREUDENBERG: Well, I would say it's like drug interdiction in this situation where you go in, you start asking questions and you find out information. And oftentimes it comes back, okay, everything here is on the up and up, I'm sorry, please be on your way. And other times it's like, okay, this story is not matching up, more information is coming in and now reasonable suspicion has been obtained. And this goes back to the reasonable suspicion determination that's established by State v. , I'm going to say the last word wrong, I'm just going to spell it, Draganescu: Whether an officer has reasonable suspicion supported by sufficient articulable facts is reviewed on a case-by-case basis, looking at the totality of the circumstances. Reasonable suspicion entails some minimal level of objective justification for detention. It is something more than an inchoate and unparticularized hunch but less than the level of suspicion

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required for probable cause. Now when you take that in, the court is the one who makes the determination. [LB48]

SENATOR LATHROP: No question about it. [LB48]

JOHN FREUDENBERG: So... [LB48]

SENATOR LATHROP: The court is going to make that determination. [LB48]

JOHN FREUDENBERG: Correct, absolutely. [LB48]

SENATOR LATHROP: But we're directing law enforcement to do something after they've made the determination. [LB48]

JOHN FREUDENBERG: Right, just like we do in DUI law that they have (inaudible) this now. [LB48]

SENATOR LATHROP: Right. Okay. And your answer to the question is race... [LB48]

JOHN FREUDENBERG: I'm sorry if I didn't answer it. [LB48]

SENATOR LATHROP: ...race may be a consideration... [LB48]

JOHN FREUDENBERG: Yes. [LB48]

SENATOR LATHROP: ...but it may not be the sole consideration. Someone's accent, can that be a consideration? [LB48]

JOHN FREUDENBERG: I believe it probably could. [LB48]

SENATOR LATHROP: And someone's ability to speak English would be a consideration. [LB48]

JOHN FREUDENBERG: Yes. [LB48]

SENATOR LATHROP: And that along with whatever you learn during an inquiry answering questions, if they can, would provide a reasonable suspicion. [LB48]

JOHN FREUDENBERG: And the identification questions that we were talking about, yes. [LB48]

SENATOR LATHROP: Okay. Thank you. [LB48]

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SENATOR ASHFORD: Senator Harr, and then we're going to... [LB48]

SENATOR HARR: All right. I just...I want to follow up on Senator Lathrop's question a little bit. So the situation we gave, race, lack of command of the English language, no identification, now the person, slang, dummies up, takes Miranda rights. [LB48]

JOHN FREUDENBERG: Uh-huh. [LB48]

SENATOR HARR: What else can the officer learn then if the person doesn't say anything else? [LB48]

JOHN FREUDENBERG: Well, the identification is a big question. I mean you can ask for identification because you can detain until identification is established. [LB48]

SENATOR HARR: Yeah. Okay. [LB48]

JOHN FREUDENBERG: Once you have that identification, you can run that information against different database or even to see if there's lawful identification that does somewhere exist within the state system. [LB48]

SENATOR HARR: Thank you. I appreciate that. [LB48]

SENATOR ASHFORD: Thank you, Senator Harr. Senator Council. [LB48]

SENATOR COUNCIL: Quickly, thank you, Mr. Chairman. Mr. Freudenberg, do states have the authority to deport people who are unlawfully present? [LB48]

JOHN FREUDENBERG: No, Senator. [LB48]

SENATOR COUNCIL: Okay. And in this situation where if LB48 was in effect and there was a determination made that someone was unlawfully present and ICE was contacted and ICE would ask for some additional information, based upon what I understand to be their priorities right now for use of their resources, and they'd get back, well, he was issued a traffic citation for no taillight and we had reasonable suspicion to believe he wasn't lawfully present, and whatever database that I don't know what it is or where it exists but by whatever database this officer that may or may not be present in every jurisdiction says they're not lawfully present, and ICE says, well, sorry, you know, we have no space, we have no resources, we choose not to respond to your call, what happens to that person? [LB48]

JOHN FREUDENBERG: I appreciate your question because I think this is something that I didn't touch on my testimony, I think was opened here. After the call is made, the mandate to the officer is over. If ICE says, yes, we will work out a way for you to

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transport, we'll pick them up, that's one thing. If that doesn't happen, LB48 establishes a new crime, the crime of being unlawfully present in the United States. That's a new Nebraska statute. As such, that person would then fall under our criminal justice system. They could be arrested and bonded back out, they can receive a citation, or be treated as if they committed any other crime within the state. It's a Class II misdemeanor, so that falls right in the gray area between the two which would normally happen. It would not be uncommon for that to end up being a citation and an appearance bond be simply posted as a personal recognizance. [LB48]

SENATOR COUNCIL: Okay. [LB48]

JOHN FREUDENBERG: But there wouldn't...continued detention wouldn't be required. [LB48]

SENATOR COUNCIL: Okay. And see, and that's the point. And that was a question I had squarely asked Senator Janssen that he said no, and because that was...is...has a crime been committed at that point under LB48, and your answer is yes. And if ICE chooses not to exercise any jurisdiction over that person, then whatever the punishment is for a Class II misdemeanor,... [LB48]

JOHN FREUDENBERG: Correct. [LB48]

SENATOR COUNCIL: ...once that's done you'd be obligated to release that person, wouldn't you? [LB48]

JOHN FREUDENBERG: Yes. [LB48]

SENATOR COUNCIL: So in terms of increasing or reducing the number of people who may be unlawfully present in the state of Nebraska, LB48, if ICE doesn't exert jurisdiction, and they've indicated that they have their priorities and these simple misdemeanors aren't it, that all we'd be doing is criminalizing that presence, adding costs to our budget because we'd have to pay for that incarceration, and then that person would still be unlawfully present in the state. [LB48]

JOHN FREUDENBERG: There were so many tangential parts to that, I'm going to have trouble answering them all at the same time. However, I can go back and probably say the first premise you said, if the feds...federal authorities refuse to do their job, yes. [LB48]

SENATOR ASHFORD: All right. Thanks. Just...I didn't get it. Your Attorney General supports this bill. Is that...? [LB48]

JOHN FREUDENBERG: Yes, Your Honor. [LB48]

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SENATOR ASHFORD: Okay. And have you made any calculation on the cost of prosecuting these cases, assuming that these constitutional issues will be raised? [LB48]

JOHN FREUDENBERG: I have not, Your...I'm sorry. I keep calling you Your Honor instead of the Chairman, but yeah. [LB48]

SENATOR ASHFORD: It's my brother. It's a much... [LB48]

JOHN FREUDENBERG: Right. The... [LB48]

SENATOR ASHFORD: ...much more worthy than me. [LB48]

JOHN FREUDENBERG: I had not but I'm sure that if that's the type of information you can get, that can be obtained. [LB48]

SENATOR ASHFORD: Okay. All right. That's fine. Thanks very much. Let me...go ahead. Thank you for... [LB48]

JOHN FREUDENBERG: Thank you. [LB48]

SENATOR ASHFORD: Let me see, we've got about 20 minutes left. Let's go to the next proponent. By the way, Senator Larson has joined us. I'm not sure he was...anybody mentioned that, but Senator Larson is here from O'Neill, Nebraska, so...let's try to keep it down so we can move along here. Go ahead, let's try to start and then... [LB48]

SUSAN SMITH: Okay. My name is Susan Smith, S-u-s-a-n S-m-i-t-h. I'm here representing Nebraskans Advisory Group, which is a group of concerned citizens throughout Nebraska who get involved with issues on the local, state, and federal level. I'm really not sure where to start. We've been through this, as you said, so many times in the last five years, I'm tired of hearing myself talk about it, as I'm sure you probably are too. But I think what we need to do is just a couple things briefly: separate illegal aliens from immigrants. There is a big difference. If there weren't, our federal immigration laws would not define a person who is in our country unlawfully as an illegal alien. There's nothing derogatory about that term. It simply gives respect to immigrants who have come here legally and respected our laws. I've heard someone mention that UNO reports differentiate between illegal aliens and immigrants, and not any that I've seen. If a person is here and they're pulled over and they're driving and they don't speak English, I would think that would be a big concern. If they can't speak English, how do they read the signs in English? And how are they getting around? Doesn't that make our, I guess, our roads a little bit more dangerous? Oklahoma, after they enacted HB 1804, which was a pretty strict enforcement law, they had illegal aliens leaving before

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the bill was even signed. What happened is, is the illegal aliens left, they took their children with them from the schools, from the hospitals, from the food stamp rolls and any other "benies" that are given to illegal alien children but it's given through their parents for them, and it opened up jobs. Okay, so you had the costs come down and now you've got Americans taking those jobs, paying the taxes, putting the money back into that community, and the tax coffers are going up but, you know, the costs are going down. So they've had great success and, after that, there were many reports that their economy was thriving. And I think we have to look at the overall picture of what LB48 will do and that is deter illegal immigration to the state of Nebraska, is going to protect Nebraskans' jobs, Nebraskans' benefits and services. And why that is just so difficult to get that basic understanding with our representatives and our senators after five years of being patient and being civil, I don't understand. And they don't understand. [LB48]

SENATOR ASHFORD: Thanks, Susan, for your testimony. Does anybody have any questions of Susan? Thank you, Susan, very much. [LB48]

SUSAN SMITH: Thank you. [LB48]

SENATOR ASHFORD: Doug. [LB48]

DOUG KAGAN: (Exhibit 8) These are copies. Good afternoon. My name is Doug Kagan, K-a-g-a-n, and I represent Nebraska Taxpayers for Freedom. Illegal aliens are a burden on the taxpayers of Nebraska. We believe that passage of LB48 is an imperative remedy for this burden. Nebraska still endures an economic recession. Citizens remain unemployed, sometimes for extended periods. A Pew Hispanic Center study, citing 2009 census numbers, concludes that 3.2 percent of our work force in Nebraska comprises illegals. They are taking jobs that rightfully belong to legal citizens. A January Omaha World-Herald article stated that Iowa has identified five times more misclassified workers than Nebraska, some of them illegal aliens, our state losing from \$9 million to \$18 million annually in tax revenue because of unscrupulous employers misclassifying illegals as independent contractors. Nebraskans seeking jobs in our construction industry suffer as companies hiring illegals undercut job bidding. This process cheats both our state worker compensation and unemployment insurance funds. A related hemorrhage: Nebraska process cheats both our...Nebraska employers must pay worker compensation to injured employees who are illegal aliens, ruled a Nebraska Worker Compensation Court. Existing state law to stop illegals from obtaining state benefits is saving thousands of dollars. LB48 can save millions more. It will only enhance prosecution of Nebraska businesses as the lawn company in Grand Island, its owners sentenced to 30 months in prison for hiring illegals for commercial advantage. Anchor babies born to illegal aliens pull their illegal parents and siblings into permanent residency. These babies instantly qualify as citizens for taxpayer-funded Medicaid and generous stipends under SSI. Illegals suffer from drug resistant strains of TB, malaria, leprosy, plague, and Dengue Fever, diseases that U.S. medicine vanquished decades

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ago but now are reappearing. The largest cost associated with illegal immigration is public school education of their children. Most of this cost is associated with teaching English as a second language, including costs for bilingual teachers, instructional materials, clerical work to meet state and federal mandates. Fiscal year 2007-08, Omaha Public Schools spent \$11.9 million on English language learners. Based on a 2009-10 annual financial report, Nebraska schools spent \$34.7 million from state and local funding for limited English proficiency programs, not including federal funds. You can see the chart below. We believe this committee has an obligation to ascertain that only legal citizens hold Nebraska jobs. I challenge this committee to take the initiative requested by the hundreds of Nebraskans who signed this petition and curtail the tax and other burdens yoked onto us by illegal aliens. Nebraska should not have to suffer any longer while the federal government ignores its legislative obligations. When you consider advancing this bill, think not only of the illegal aliens but also of their victim taxpayers. Thank you. [LB48]

SENATOR ASHFORD: Thanks, Doug. Any questions of Doug? Thank you, Doug. Next proponent. Do you want to grab these, please? [LB48]

MICHAEL BARGES: (Exhibits 9-10) My name is Mike Barges, B-a-r-g-e-s. Senators, I'm going to...the few times in my...what I had to say is something that I think, unintended consequences are something that I think that need to take away from what I have to say today. I'm here today to express my support of LB48. I have read the bill and it mirrors federal law and doesn't go beyond federal law in any way. We need a bill that allows the police to check the legal status of people in our state. It's the right thing for your constituents and Nebraska as a whole. I'm here to tell each and every one of you that we all have a stake in illegal immigration. At face value, many people say what's the harm, illegal immigrants only want a better way of life for themselves and their families. My great-grandfather was an immigrant to this country from Mexico. The answer is simple. I believe it makes us a stronger nation to have a diverse nation, but the reality is we cannot have a whole segment of our society that is not bound by our laws. This is just common sense. If a person such as an illegal immigrant does commit a crime, such as murder or robbery or any other crime, we can't let them just disappear and not have to face the consequences. My brother, Pete Barges, was murdered. This is his ten-year-old son right here. He has no father at this point. The Mexican citizen fled to another country to escape justice and the American authorities know where he is and who he is, but there is no justice in sight for me or my family. The Mexican government makes it very difficult to extradite outside, to extradite and if they do allow extradition, they do not allow you to charge them with first-degree murder because of the death penalty. There are countless numbers of people in our state and as well across the country that suffer the cost of illegal immigration and that's not securing our borders. People living in this country who do not pay taxes, do not have auto insurance, do not have identification, they can harm somebody, whether by an accident or...car accident or by crime, and just disappear because they have no real ties to our community, and

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this is unacceptable. These people are living, in most cases, under false names, using stolen Social Security numbers. Please help our officers enforce our...the laws that they are sworn to uphold. Law enforcement officers should be able to use normal function of their duties to ask a person who has no...and ascertain whether they have no identification, no driver's license, no registration. They want to...everybody on this committee wants to tear apart what Senator Janssen has done and I applaud Senator Janssen for having the guts to try to do something about this. And we can all say that we know this is a problem that we have across the United States, but if we don't force the federal government by making them see that every state starts enacting these kind of things, so we're talking about people who are breaking the law, not legal immigrants but illegal immigrants, who's going to stand up for Nebraskans, Nebraskans who will continue to be harmed by illegal immigration? And I want each and every one of you to consider your role in allowing what happened to my brother to happen to other people in our state. I want to thank Senator Janssen and I want you to think about my nephew, who's growing up without a father. This could have been avoided. [LB48]

SENATOR ASHFORD: Thanks, Michael. Do we have any questions of Michael? [LB48]

MICHAEL BARGES: And one other thing I'd like to say... [LB48]

SENATOR ASHFORD: No, no, no. Do you have any... [LB48]

MICHAEL BARGES: I would like this advanced so that everybody can vote on it. Why do ten people going to kill this bill? [LB48]

SENATOR ASHFORD: Do we have any questions? Do we have any...we're trying to give everybody a shot here, Michael. Does anybody have any... [LB48]

MICHAEL BARGES: Then let's go longer. This is a very important thing. [LB48]

SENATOR ASHFORD: Michael, do you want to sit down for a second or not? [LB48]

MICHAEL BARGES: I'm sitting down. [LB48]

SENATOR ASHFORD: Okay. Next witness. [LB48]

RICHARD MILLER: (Exhibits 11-13) I'm Richard Miller, St. Paul, Nebraska, that's M-i-l-l-e-r, and I want to thank the Legislature for allowing me the opportunity to comment on the bills and resolutions concerning illegal aliens this afternoon. I was able to listen to the forum on the radio last Thursday evening for about 30 minutes and I caught about 20 minutes on Educational TV over the weekend covering LB48. I have also read many comments by senators and others concerning LB48. I am amazed at how little some senators and others know about illegal aliens coming across the U.S.

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borders with criminal convictions. The most mentioned is profiling. I would be willing to bet that if you had a burglar in your house, you would probably call 911 for law enforcement to come and help you. In your next breath, you are concerned that law enforcement is not professional enough to profile...not to profile in LB48. Senator Council's LR39, 1.b. reads, "The Legislature respects the rule of law and supports law enforcement's professional judgment and discretion. Local law enforcement resources should focus on criminal activities, not civil violations of federal code." "The Legislature respects the rule of law and supports law enforcement's professional judgment and discretion." How hypocritical is this, to make a statement in a resolution and then to say you are concerned with profiling? By the time law enforcement stops an illegal alien for driving a car, he/she has probably broken numerous laws. First, crossing the border of the United States, that is against the law. Probably getting a Social Security card they've broken a law somewhere. And probably getting a driver's license, that's another law they've broken. And you guys don't want to call this crimes. In February, The Grand Island Independent editor had an editorial about a Pew report on illegal immigration. The report estimates 45,000 people in Nebraska illegally; 32 percent of those, or 14,400-plus, are criminal aliens in Nebraska. They're illegal aliens. They're criminal illegal aliens, 14,000. I oppose LR39 and I support LB48. Thank you. [LB48 LR39]

SENATOR ASHFORD: Thank you, Richard. Any questions of Richard? Next proponent. [LB48]

CARL SCHAFFNER: (Exhibits 14-18) They're stacked crossways so there should be a copy for each senator, including the ones that aren't here. Would you like me to start or wait till you get your copies? [LB48]

SENATOR LATHROP: No, you can start. [LB48]

CARL SCHAFFNER: My name is Carl Schaffner, the last name is spelled S-c-h-a-f-f-n-e-r. I'm here to support the Illegal Immigration Enforcement Act, and I will get to why I like that word in just a little bit. It occurred to me, when I was doing my research, I've been doing about two and a half years of research. I've got gigs on my computer of the research. Just...this is just a little sniglet of what there is out there. About every question that you asked of Senator Janssen is already established law. There is nothing new. What's changed in the debate is the laws that have long been in place, and that's on page 2 of my testimony, is we're changing the meanings of the words. We're not changing the laws. Everything is already illegal. That's what I...not to be patronizing, that I call the "duh factor," is that up until recently breaking the law was against the law. You didn't have to make a law to say breaking the law was illegal. So anyhow, breaking into that, ironically the state of Nebraska, we have codes that we can make no laws to give special favors to any one group over the other. This is Nebraska statute. The Nebraska statute also says that you the Unicameral can make no laws to infringe on the police powers of any municipality, and this is all you're talking about

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doing is infringing on our rights. I found it really profoundly interesting where you were talking about we couldn't preempt federal law, and the recommendation to prevent us from preempting federal law with LB48 was to preempt the same law. So your logic doesn't quite flow with me. Either it is or it isn't. That's this whole debate: is it or isn't it? So if you haven't read some of these acts, the Johnson Act, Neutrality (sic) Act, Magnuson Act, Hart-Celler Act, you really don't understand the basis and the historical foundations of why illegal immigration was never mentioned. I have a whole series of definitions for you. Anyhow, getting to United States v. Wong, reading the dissenting opinions with the other decisions are very important and in there it clearly states that, golly, you know, how can the federal government or any group know your neighbors? The only people that can know your neighbors are the neighbors. I have tried to call ICE. You know what you get? You get a phone loop. You get to call the Department of Homeland Security and you can write a letter to the Freedom of Information Act and that's how they handle things on a local level. And is that how we deal with law enforcement in this world is we write a letter? [LB48]

SENATOR LATHROP: Did you just say that's what happens when you call ICE? [LB48]

CARL SCHAFFNER: When you try to call ICE as a citizen, you cannot get hold of them. I had to call their boss at Department of Homeland Security. They put me on two phone loops. I ended up with the Freedom of Information Act's Office. They said if I had any questions about illegal immigration I had to put it in writing and they would get back in touch with me. This is not a way to police a city. I'm supposed to write a letter if my home is being broken into, not quite a good idea. I have a lot more. You've got it in here. I will close with the front cover. I gave you a photograph. The two images might be a little shocking. The difference between these two images, just to give you a little kibitz, is about 250 years. There is no difference. Slavery has always been illegal in Nebraska; it should stay illegal. [LB48]

SENATOR ASHFORD: Any questions of Carl? Seeing none, we'll go to the opponents...or proponents, opponents, I'm sorry, now. We'll go to, unless we have questions, I'm sure we'll have some, we'll go to 10 minutes after 4:00, assuming, unless we have questions. Then we'll go a little longer. Could we come back to order here, if possible, please. Why don't we come back to order and then we'll go to the opponents of the bill, but we're not going to start until everybody is quiet, so...we're going to wait till everybody sits down. Even Senator Withem has to sit down. All right, let's go ahead. [LB48]

SHIRLEY MORA JAMES: (Exhibit 19) Good afternoon, Chairman Ashford and distinguished members of the Judiciary Committee. My name is Shirley A. Mora James, S-h-i-r-l-e-y A. M-o-r-a J-a-m-e-s. I'm a civil rights attorney from Lincoln, Nebraska. I'm the current president of the Nebraska Hispanic Bar Association and I'm here speaking in that capacity and also as a concerned Nebraskan today. I want to bring to light why

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LB48 and LR28 is not good public policy for Nebraska because it will ultimately break the sacred trust between law enforcement, crime victims, and crime witnesses who are undocumented. The atmosphere that LB48 and LR28 has created by being just introduced in the Legislature is making it open season on immigrant women and children, putting targets on their heads. In 2004, after 12 years of practicing law, I assisted in a case that involved the murder of an undocumented immigrant woman. On July 13, 2004, the murderer slit Aurora's throat and sexually assaulted her in her Lincoln home after she refused to help him find his estranged, battered wife and their children. That evening, I received a call from the Hispanic Community Center's director, Holly Burns, who was assisting the Lincoln Police Department in interviewing Aurora's family. And because the family was undocumented, they feared the police department's personnel. Thus, I went to Aurora's family and assured them that they had no reason to fear the police but, instead, needed to cooperate with LPD to find their daughter's killer. After three days of reassurances, Aurora's family cooperated, ultimately assisted LPD in identifying Aurora's killer, who was sentenced to life for the murder of Aurora. You may be wondering why am I telling you this story. The reason why I share Aurora's story with you is because within this last month I've had two additional immigrant women come to me for help who are also victims of violent crimes. Moreover, I want to publicly acknowledge the courage of these two women for allowing me to tell their truth today. The first woman is a victim of domestic violence whose husband hit her so hard as to knock her unconscious and she was sent to the hospital for her injuries. In her attempt to get a restraining order against her husband, she was threatened, questioned about her immigration status in an attempt to silence her. Needless to say, I was retained and assisted her and she did receive a restraining order against her abusive husband, who is legal, and is safe at the moment. The second woman is a victim of sexual abuse by...sexual assault by coercion. Her mother's supervisor threatened her, stating that her mother would lose her job, her family's safety would be in jeopardy if she did not have sex with him. In addition, after... [LB48 LR28]

SENATOR ASHFORD: Shirley, I'm going to ask you to sum up. [LB48]

SHIRLEY MORA JAMES: Okay. Ultimately, to put it quite simply, LB48 is bad public policy. A crime victim needs to be protected regardless of their immigration status or their mother's immigration status, if they are minors. If we do not protect them, then we are assisting the perpetrators in silencing their victims. I ask you all to consider the fact that the women and children who have suffered from these horrendous criminal acts are not aliens... [LB48]

SENATOR ASHFORD: Shirley, we're going to have to cut it off. Do we have any questions of Shirley? Seeing none, thank you very much. [LB48]

SHIRLEY MORA JAMES: Okay. Thank you. [LB48]

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SENATOR ASHFORD: (See also Exhibit 20) Next opponent. Mike. [LB48]

MICHAEL NOLAN: (Exhibit 21) Senator Ashford, members of the committee, my name is Michael Nolan, spelled N-o-l-a-n. I'm the executive director of the League Association of Risk Management, which is an adjunct to the League of Nebraska Municipalities, and I'm actually here testifying on the league's behalf rather than my own agency's behalf. The information I'm providing you I'll just summarize so that you can ask me any questions that you want about it. It primarily talks about my role as the executive director of LARM and providing or attempting to provide the city of Fremont a defense after the ordinance was passed and after the ACLU and another plaintiff filed a suit against them. The primary concern that I want to share with the committee and I want you to be aware of is on page 3, which is that matrix that I put together showing you how the various coverage documents in the state deal with these kinds of exposures, and you'll see that injunctive and declaratory relief in all of the coverage documents that we were able to obtain. And they are not easily obtainable. The Department of Insurance does not have a complete set of these coverage documents, but of these we were able to obtain, injunctive relief and declaratory judgments are excluded in all of them. Now I tell you that because I think one thing that hasn't been thought through very clearly here is in a defense situation, if we have litigation, who it is that's going to pay. And my client, my client, the city of Fremont, because they chose to have Mr. Kobach represent them, is defending themselves with their own money and that is not going to be inexpensive. The memo I've given you talks about some of the other venues in the United States that have done this, and these are not inexpensive cases. I've attached one bill that I had in about the two-week interval of time that we were providing the defense. I'm just getting ready for a temporary restraining order when we hired Baylor Evnen to be the defense counsel, and just in that interval of time, with six associates, we ran up a bill of \$44,000 and never went to court. You can go through \$750,000 very quickly in this kind of litigation. Do you have any questions? [LB48]

SENATOR ASHFORD: Any questions of Mike? Seeing none, thanks, Mike. [LB48]

MICHAEL NOLAN: You bet. [LB48]

SENATOR ASHFORD: Next opponent. [LB48]

DAVID PIESTER: (Exhibits 22, 139-141) Mr. Chairman, members of the committee, my name is David Piester. I am testifying as an individual. I have prepared some testimony and I'll give it to you; therefore, I'll cut it very short. I'll call to your attention that I have left earlier today a stack of documents in Senator Ashford's office that I hope you will all have access to. I can give you PDF versions of them if necessary, so contact me if you'd like. Those documents are the briefs and some of the memoranda and orders in the Nebraska case, the Fremont case, as well as the Arizona case. One of the things that you'll note in response to an earlier question, Attorney General Bruning did add

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Nebraska as an amicus curiae to the Arizona case and that brief is in the materials that I've given to you. Basically, in 28 years of being a judge and handling cases involving probable cause and reasonable suspicion, I've had a little bit of experience about that. I won't go through all of that but I think that if you study the materials that I have given to you, you will find that they represent some but only some of the issues that will be raised in either attacking or defending LB48, should it become law. I think that it exposes not only the state but also counties, municipalities, and individual police officers to serious liabilities and expenses in defending themselves. To be anticipated would be an action by the United States to enjoin enforcement of the act, actions seeking injunctive relief from those whom the act might harm, and also defendants raising constitutional claims in defending themselves against the criminal enforcement required by the act. In addition to the preemption claims raised by the United States, defendants might well argue that their detention prior to Immigration responding to inquiries was an unreasonable seizure, in violation of the Fourth Amendment, an arrest without probable cause and/or a deprivation of liberty without due process of law. Equal protection claims and discrimination claims would almost always or certainly follow. Not only would the Nebraska Attorney General be required to defend the act but also county and city attorneys across the state would be required to defend municipalities and individual police officers who are sued under its provisions. The question is, for what? I think it unlikely that any attorney who represents...who is defending LB48, it would be unlikely that any attorney would be able to give a satisfactory answer to that question if it's asked by a judge. And I can certainly discern no legitimate reason to expose the state, counties, cities, and municipalities and individual peace officers to such litigation. Questions? [LB48]

SENATOR ASHFORD: Thank you, David, Judge. Yes, Senator Lathrop. [LB48]

SENATOR LATHROP: Just briefly, there's a lot of people here that are not familiar with you and I would be because I've tried cases in the federal courts, but you are a retired U.S. Magistrate. [LB48]

DAVID PIESTER: I am retired and I retired a year and a half ago. I'm no longer on the bench and will not be. [LB48]

SENATOR LATHROP: And for that reason you can come here as a private citizen today... [LB48]

DAVID PIESTER: That's right. [LB48]

SENATOR LATHROP: ...and your opinions represent your own views. [LB48]

DAVID PIESTER: My own opinions, not the court, not any judge, nobody else. [LB48]

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SENATOR LATHROP: All right. You did, though, in your capacity as a magistrate, review things like probable cause, reasonable suspicion and the like. [LB48]

DAVID PIESTER: Many times. [LB48]

SENATOR LATHROP: Many times. And you, as a judge, have...that was part of your role in the process. [LB48]

DAVID PIESTER: Yes. [LB48]

SENATOR LATHROP: Tell us, can you give us your thoughts, Your Honor, on the subject of reasonable suspicion as found in this bill? [LB48]

DAVID PIESTER: Well, reasonable suspicion is a concept that...I won't call it a slippery slope but it's difficult. It's decided on a case-by-case basis by the court, depending upon the totality of the circumstances. And the Attorney General's representative was correct, it is more than a hunch but less than probable cause, and it depends on articulable facts that an officer may accumulate in the course of discussing whatever the situation might be with the individual that he's interviewing. [LB48]

SENATOR LATHROP: Is there any way to get to reasonable suspicion in this bill without basing it upon race or... [LB48]

DAVID PIESTER: Oh sure. [LB48]

SENATOR LATHROP: ...or someone's ability to speak English? [LB48]

DAVID PIESTER: Oh, I think it could be a number of circumstances and it wouldn't have to include race or English language. [LB48]

SENATOR LATHROP: But would those two, in your judgment, provide sufficient basis? [LB48]

DAVID PIESTER: Not in mine. [LB48]

SENATOR LATHROP: So if I'm a law enforcement officer out in the field, this is law and I'm trying to decide whether I have reasonable suspicion or not, is someone's race or their ability to speak English alone sufficient for reasonable suspicion? [LB48]

DAVID PIESTER: In my view, no. [LB48]

SENATOR LATHROP: Okay. Thank you. [LB48]

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SENATOR ASHFORD: Senator Council. [LB48]

SENATOR COUNCIL: Thank you. And thank you, Judge Piester. I have just a legal question. Are you familiar with ICE 287? [LB48]

DAVID PIESTER: No, I am not. [LB48]

SENATOR COUNCIL: Okay. [LB48]

DAVID PIESTER: That's a law enforcement provision that I have nothing to do with or have had. [LB48]

SENATOR COUNCIL: Okay. Well, because I was going to ask you if 287(g) provides a means by which ICE can delegate its authority for immigration enforcement to local law enforcement, doesn't that suggest that only ICE can delegate that authority, not a state or local subdivision? [LB48]

DAVID PIESTER: Well, as I say, I'm not familiar with the provision so I can't answer that definitively. But my guess would be that if they...that they can't delegate their responsibilities away. They may be able to share their responsibilities but I don't think they can get themselves off the hook. [LB48]

SENATOR COUNCIL: Okay. Thank you. [LB48]

SENATOR ASHFORD: Yes. Yes, Senator Larson. [LB48]

SENATOR LARSON: Thank you, Your Honor. You were a federal judge, correct? [LB48]

DAVID PIESTER: Yes. [LB48]

SENATOR LARSON: And I'm not a lawyer so I ask a little more common-sense questions. Does this law go farther than the current federal law that's in place in terms of enacting immigration law? [LB48]

DAVID PIESTER: I would say it does. [LB48]

SENATOR LARSON: It does. What are the...in your estimation, what are the differences between this and the federal law in the sense that it goes farther? [LB48]

DAVID PIESTER: The federal law may authorize people to be stopped or to be checked for their documents, but it's the policy of the INS not to do so. So this would require examination of those. [LB48]

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SENATOR LARSON: But the federal...well, it does, but just INS doesn't choose? I guess I was lost on that. The federal law does require it? [LB48]

DAVID PIESTER: Okay. It's my understanding that they have chosen not to. [LB48]

SENATOR LARSON: But that's the INS, but federal law. [LB48]

DAVID PIESTER: Okay. Then I don't understand your question. [LB48]

SENATOR LARSON: But, no, but in like federal law, does it go farther than what the law actually sets and not what INS chooses to do or not to do? [LB48]

DAVID PIESTER: I can't say that definitively because the preemption arguments, if you look at the documents that I've submitted to the committee, the preemption arguments are very complex and they point to a system of federal laws and enforcement, together with treaties and the practices of at least two federal departments, so that all of that becomes federal law. And to say that, you know, yes or no is just not possible. [LB48]

SENATOR LARSON: So you can't actually say that LB48 goes farther than federal law. [LB48]

DAVID PIESTER: I said I thought it did in the sense that it requires the officer to... [LB48]

SENATOR LARSON: But you just said you couldn't for sure. [LB48]

DAVID PIESTER: No, I... [LB48]

SENATOR ASHFORD: Well, I think, yeah, I think we understand it. [LB48]

DAVID PIESTER: All right. [LB48]

SENATOR LARSON: (Laugh) All right. And regardless of what INS does or does not choose to do, I mean law...I mean the statute is there and I guess that's all I wanted,... [LB48]

SENATOR ASHFORD: Yeah, because I think... [LB48]

SENATOR LARSON: ...that we don't know for sure, I mean. [LB48]

SENATOR ASHFORD: I get the question and I think Judge Piester has given his answer, so thank you, Judge. [LB48]

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DAVID PIESTER: Anything else? Thank you. [LB48]

SENATOR ASHFORD: (See also Exhibit 23) Next opponent. [LB48]

JEANNETTE EILEEN JONES: (Exhibit 24) Good afternoon, Senators. My name is Dr. Jeannette Eileen Jones, J-o-n-e-s. I am the social action chair for the Lincoln Alumnae Chapter of Delta Sigma Theta Sorority, Incorporated. Thank you for allowing me to testify today. We, the members of the Lincoln Alumnae Chapter of Delta Sigma Theta Sorority, Incorporated, oppose LB48, the Illegal Immigration Enforcement Act, on the grounds that it will sanction racial profiling and, in fact, turn many of Nebraska's communities into sundown towns, all in an effort to "deal with the costs of illegal immigration." We believe that racial profiling of any kind violates the Fourteenth Amendment's equal protection clause that stimulates that "no state shall deny any person within its jurisdiction the equal protection of the laws." Moreover, any laws, practices, or customs whose consequence is the creation of all-white towns where minorities are free to work but not to live or are subject to harassment under the pretext of being undocumented immigrants are throwbacks to the days of Jim Crow segregation. This legislation not only violates the civil rights but the human rights of persons reasonably suspected of being undocumented immigrants by subjecting them to unreasonable search and seizure. Lastly, the very criteria by which law enforcement will determine reasonable suspicion of undocumented status is based on nativist notions of what real Americans and legal immigrants look like. Despite Senator Janssen's assurance that LB48 is a modest proposal and that "reasonable suspicion cannot be based solely on a person's race, color, religion, sex or national origin," it still remains unclear what appearances or behaviors would make a law enforcement officer reasonably suspect anyone of being an immigrant. This is the crux of the issue. In order to suspect that someone is an undocumented immigrant, you must first suspect that he or she is an immigrant. What does an immigrant look like in a nation whose citizens are either naturalized, that is former immigrants, descendants of immigrants, or descendants of involuntary immigrants, that's enslaved Africans? The only American citizens who are not predominantly from immigrant backgrounds, if at all, are Native Americans--the indigenous people of this country. Yet studies have shown that those individuals residing in America who are most likely to be identified as immigrants, illegal or otherwise, are Native Americans as well as Latinos/Latinas, persons of Middle Eastern, Central Asian, and North African descent, and biracial and lighter complexioned persons of African descent--based solely on phenotype. These persons are us--our family members, our coworkers, and members of our communities. We should not place undue burdens on our law officials to simply look at someone and determine their citizenship or legal residency. Are we trying to institute a system akin to that used in the antebellum South, when free African-Americans had to carry freedom papers to prove that they were not slaves, or when slaves hired out needed papers to prove that they were given permission to absent the plantation? We will turn... [LB48]

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SENATOR ASHFORD: Jeannette, Jeannette,... [LB48]

JEANNETTE EILEEN JONES: Yes. [LB48]

SENATOR ASHFORD: (Laugh) [LB48]

JEANNETTE EILEEN JONES: I'm reading fast because I know I have three minutes. I'm sorry. [LB48]

SENATOR ASHFORD: No, and we have your comments and...here, so I'm going to ask if there are any questions of Jeannette. [LB48]

JEANNETTE EILEEN JONES: Okay. Thank you very much. [LB48]

SENATOR ASHFORD: Thank you. Next opponent. [LB48]

LAZARO SPINDOLA: (Exhibit 25) Good afternoon, Senator Ashford, members of the Judiciary Committee. Thank you for receiving me today. For the record, my name is Lazaro Spindola, L-a-z-a-r-o S-p-i-n-d-o-l-a. I am the director of the Latino American Commission. I am here to testify in opposition to LB48. I have concerns about two aspects of the bill. The first one is the possible impact of this bill on people who are legally in the United States. I will not read the next two sections because some of you have already done so. I'll just go to a scenario that Senator Harr mentioned. What happens when a car with several Latino passengers is stopped for, say, a burned taillight and the driver doesn't have a license? Do the passengers need to show proof of legal presence in the United States? And if so, how will the police officer justify reasonable suspicion unless he does so by the way the passengers look or sound? The officer would need to have his eyes closed and his ears shut. Profiling is one tool that the police use and, in this case, it would be based on the way the passengers look and sound, and this is racial profiling. No one has been able to explain to me satisfactorily how racial profiling will be taken out of the equation. We currently have three complaints in the commission of exactly the same situation. This is not a scenario; this is happening. We also have over 30 anecdotal cases of individuals who have been directly or indirectly falsely accused of being illegally in the United States because they look like immigrants. These are typical cases of presumed guilty until proven innocent. Another possible impact of this bill would be on citizens who are here legally and will feel free to prey on those who are not. We have heard of three cases of harassment and abuse of undocumented individuals, specifically women, who have been threatened with loss of job and/or denunciation to Immigration authorities if they complain openly. Our ancestors never had to suffer this kind of denigration and humiliation, except maybe in the case of Senator Council. The scars left by such treatment will never heal. We are creating a group of second-class citizens who, because of their immigration status, will

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have no protection under the law because they are afraid to seek justice. I will conclude by saying that this commission advocates for integration and assimilation. This bill has the potential to widen the rift between the two largest ethnic groups in Nebraska at a time when we need healing and collaboration. Thank you, Senators. [LB48]

SENATOR ASHFORD: Thanks, Lazaro. Any questions of Lazaro? Seeing none, thank you. Next opponent. [LB48]

DAVID BROWN: (Exhibit 26) Apologize for jumping in. Thank you, Mr. Senator and committee, my name is David Brown, Brown as in the color brown. I'm an immigration attorney here locally in town. I'm originally from Canada. I came here on a TN visa, an H-1B, then switched to a green card and became a naturalized citizen in 2008. I apologize to everyone in the back who I may have jumped in front of, but being an immigration attorney who's practiced both in Canada and in the U.S., I think I have some knowledge of these issues. I've had cases where the state of Nebraska has had employees who were undocumented and the state departments did not know that. They did not understand the documentation. I've had cases where ICE has held people, claiming that the documentation was fraudulent or that they did not have proper documentation, and we found out later that they were properly documented. People make mistakes. This legislation is just a profound opportunity for more mistakes. I'm very concerned about it. I'm concerned about the general aspect of what I would call driving while Hispanic. I'm concerned about someone who may come forward and drive their car and not have their driver's license on them. I understand that that is an offense, it's a separate offense, but it shouldn't cause this cascading issue of whether this person is in status, what kind of status they hold. When I look at the actual legislation that's been proposed, I guess sitting in the overflow room and listening to our senator talk about this piece of legislation, I was really embarrassed, quite honestly. I was embarrassed that if I was in his situation and I put forward a piece of law, I would know that piece of law backwards and forwards, and if someone asked me what the difference between probable cause is and reasonable suspicion I would know the answer and I would know why I chose reasonable suspicion over probable cause. Probable cause is the requirement for an arrest. Reasonable suspicion is a much lesser burden, and I'm very concerned about how that would play out in the minds of a particular officer in the county. There's also a section in here about the idea that you must enforce all of our federal laws to the full extent, and that I think really suggests to an enforcement officer that it's their responsibility, whether they've detained someone or not, to determine whether they're properly authorized to be here. And I think this is going to cause a lot of overreaching. I've prepared a statement as well, so I'll submit that, and I'm happy to answer any questions. [LB48]

SENATOR ASHFORD: Any questions? Do we have any? Thank you. [LB48]

DAVID BROWN: Thank you. [LB48]

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SENATOR ASHFORD: Next opponent. [LB48]

TODD SCHMADERER: Good afternoon. It was hard getting up here. My name is Todd Schmaderer. I'm a deputy chief with the Omaha Police Department, here on behalf of the city of Omaha and the Omaha Police Department. As an agency, largest law enforcement agency in the state, we respectfully oppose LB48 because we have a few concerns with how it may impact the Omaha Police Department specifically. The first concern is it appears to be an unfunded mandate. Certainly when we detain somebody, there is a cost associated with it. There's also a manpower cost associated with it. Neither of those are replenished in this bill, as far as I can tell. The second concern we have is one that's been touched upon quite a bit here today and that's the reasonable suspicion standard. Omaha Police Department utilizes probable cause in order to make an arrest. Reasonable suspicion is a much lower standard. And the third area that we are passionate about is the Omaha Police Department's community policing department. We rely on the citizens of our city to come forward and help us resolve crimes. If they're hesitant to do that, it will hamper those efforts. So in conclusion, law enforcement in Omaha will enforce any law that gets passed, but this is our opportunity to weigh in on LB48. Be happy to answer any questions. [LB48]

SENATOR ASHFORD: Thanks, Chief. Any...yeah, let Senator Larson and then Senator McGill. [LB48]

SENATOR LARSON: Thank you. I appreciate your unfunded mandate comment and I can see that side of it. I just have a few just simple questions. In your estimation, what percentage of your crimes are currently committed by illegal immigrants that you pick up? [LB48]

TODD SCHMADERER: That's hard to say. It's not something that we track. [LB48]

SENATOR LARSON: So you don't check the immigration status? Or but like ones that are arrested, you don't check their immigration status once they're arrested? [LB48]

TODD SCHMADERER: Not all the time, no. [LB48]

SENATOR LARSON: Not all the time. So no idea on what percentage of crimes are. [LB48]

TODD SCHMADERER: It would be very hard for me to give you a percentage. [LB48]

SENATOR LARSON: Okay. All right. So do you at times check the immigration status of people that you arrest? [LB48]

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TODD SCHMADERER: There are times when it's brought to our attention and the crime is serious enough and we feel that it's prudent to exercise that, we do. [LB48]

SENATOR LARSON: How serious does that crime have to be before...? [LB48]

TODD SCHMADERER: It's very variable. [LB48]

SENATOR LARSON: Variable. [LB48]

TODD SCHMADERER: Uh-huh. It could be an offender that's committed a string of crimes over and over and over again, or it could be one very serious isolated incident. [LB48]

SENATOR LARSON: So...have you had serious isolated incidents, Class I felonies which you... [LB48]

TODD SCHMADERER: We have. [LB48]

SENATOR LARSON: ...had arrested an illegal immigrant before and let them off and then they committed a more serious crime after? [LB48]

TODD SCHMADERER: I don't have any specific examples. That probably has happened. [LB48]

SENATOR LARSON: It probably has happened? Would LB48 go to help solving or help deterring some of those crimes? [LB48]

TODD SCHMADERER: It may or may not. It depends on if the person actually gets deported. [LB48]

SENATOR LARSON: Okay. But it has the potential to possibly stop some of those crimes, especially second...repeat offenders? [LB48]

TODD SCHMADERER: Well, there's...when you say the term "potential," that could be one out of a hundred, so, yes, potentially one out of a hundred. [LB48]

SENATOR LARSON: All right. Thank you. [LB48]

SENATOR ASHFORD: Thank you, Senator Larson. Senator McGill. [LB48]

SENATOR MCGILL: Actually, I will just follow up on that. (Laugh) Why don't you guys pay more attention to legal status right now? [LB48]

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TODD SCHMADERER: We have a lot of crimes in our city right now and we deploy our resources in the best way possible to address those crimes. And checking immigration status is a function of another law enforcement agency. It doesn't necessarily fall within our direct mission, which is to reduce crime and reduce the fear of crime. When we feel it does, we will intervene on those specific instances. But as a matter of practice, we have other missions and goals that we have to achieve. [LB48]

SENATOR MCGILL: And so if you had to start doing this... [LB48]

TODD SCHMADERER: It would derail our mission. [LB48]

SENATOR MCGILL: And I was...I'm sure somebody else will ask it, if anything else, but Senator Janssen kept asking about reasonable suspicion, or I guess we were asking what that meant, and he kept saying, well, law enforcement will determine that. How do you feel about that statement or what that would be like? [LB48]

TODD SCHMADERER: Well, I will weigh in on that. Since it's not defined here and it's hard to define, it is more than a hunch to less than probable cause. The way I read LB48, it lists, under page 3, section (d), it lists the things you must have in order to prove you are not, to prove that you are here legally. One can make the argument that anything outside of this could rise to the level of reasonable suspicion. [LB48]

SENATOR MCGILL: Okay. [LB48]

SENATOR ASHFORD: Senator Council has a question. [LB48]

SENATOR COUNCIL: Yes, thank you, Deputy T. Schmaderer. Is Omaha Police Department a participant in the ICE 287(g) program? [LB48]

TODD SCHMADERER: I heard you ask that question earlier. I got somebody checking on it. However, I don't believe we do. [LB48]

SENATOR COUNCIL: All right. Well, I asked the question, it's my understanding that you're not and... [LB48]

TODD SCHMADERER: I don't believe we are but I want to be definitive before I say for sure. (Laugh) [LB48]

SENATOR COUNCIL: Okay. And I was hoping that you would be able to be definitive. And it's my understanding that the reason that you're not is that the Omaha Police Department doesn't believe that they have the manpower and resources necessary to assume this additional law enforcement role, although it's in a cooperative arrangement. And that's what...when you're a 287(g) program, you sign a memorandum of

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understanding with ICE that says we will assume ICE's authority to check the status of individuals for purposes of determined violations of the immigration laws. Is that correct? [LB48]

TODD SCHMADERER: Yes, you are correct on that aspect and on our belief. [LB48]

SENATOR COUNCIL: Okay. And I want to read something to you because one of the opponents made a point of trying to suggest some hypocrisy in a statement that's included in my resolution, which will come up later in the discussion, and that statement is that "The Legislature respects the rule of law and supports law enforcement's professional judgment and discretion." The operative sentence is, "Local law enforcement resources should focus on criminal activities, not civil violations of federal code." So is there, in your opinion, is there anything inconsistent about supporting law enforcement's professional judgment and discretion, with regard to the utilization of its resources, to focus on criminal activities and not civil violations of the federal code? Do you see any hypocrisy there? [LB48]

TODD SCHMADERER: I do, yes. [LB48]

SENATOR COUNCIL: And what is that? [LB48]

TODD SCHMADERER: That's kind of a long lead into that question, but can you phrase it just real briefly for me and I'll give you a... [LB48]

SENATOR COUNCIL: Okay. And this...(laughter). And again it's going to be kind of hard to do that. (Laughter) Let me ask the question this way. (Laughter) [LB48]

SENATOR ASHFORD: Just reframe, Senator Council. (Laugh) [LB48]

SENATOR COUNCIL: And I don't think this is a secret. There are issues with regard to racial profiling in the Omaha Police Department, correct? [LB48]

TODD SCHMADERER: We've had issues, yes. [LB48]

SENATOR COUNCIL: And would you say it's fair to say then there have been issues of racial profiling in law enforcement agencies throughout the state? [LB48]

TODD SCHMADERER: I would say there have been cases, yes. [LB48]

SENATOR COUNCIL: Yes. Now would the fact that there have been instances of racial profiling, in your opinion, diminish this body's desire to defer to law enforcement when law enforcement says, in our professional judgment, our resources are better directed to criminal activities rather than the enforcement of civil violations of the federal

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immigration code? [LB48]

TODD SCHMADERER: Yes. [LB48]

SENATOR COUNCIL: Thank you. [LB48]

SENATOR ASHFORD: Thank you, Senator Council. Thanks, Chief. [LB48]

TODD SCHMADERER: Thank you. [LB48]

SENATOR ASHFORD: Chuck is up and then we have one more and that will be it, after Chuck then one more. Then we'll move on to Senator Coash's bill. We're going to...we've got the rules, we're going to stick with them here. [LB48]

CHUCK HASSEBROOK: (Exhibit 28) Thank you. I'm Chuck Hassebrook, C-h-u-c-k H-a-s-s-e-b-r-o-o-k, with the Center for Rural Affairs of Lyons, Nebraska. As I was preparing this testimony, I reread a 1936 essay by the author, John Steinbeck, about the refugees from the Dust Bowl, including rural Nebraskans, perhaps some of our relatives who are so deeply resented by Californians. Steinbeck wrote: The new migrants to California from the Dust Bowl are here to stay. They are of the best American stock, intelligent, resourceful and, if given a chance, socially responsible. They could be citizens of the highest type. Steinbeck was hated for his views but history has proven him correct. I found his words to ring true for my Latino neighbors in Burt County. As coach of my son's Little League team, I went to the homes of his Latino classmates to speak to their parents and invite them to participate. They agreed and I later found them to be good neighbors, good families, and appreciative parents. For many of our rural communities, immigrants have helped reduce the erosion of population. I handed out a map that shows Nebraska counties that lost population in the '80s and '90s but also experienced a doubling of Hispanic residents in the 1990s. You'll see a big list of counties across rural Nebraska that even as they lost population the one area they're rapidly gaining is Hispanic population. And I would simply note that as we work to revitalize our rural communities, we need to think twice before making our new Latino neighbors feel unwelcome. We, of course, recognize the status quo in immigration is not accessible...acceptable. America needs to manage immigration at realistic levels to protect the wages of working people, and we need to enforce those limits. Forcing a mass exodus of immigrants--good employees and good neighbors--is good for no one. United States is a nation of laws, but some of our greatest moral leaders considered objectives beyond meting out strict consequences for legal violations. Abraham Lincoln, for example, rejected punishment of southern secessionists--lawbreakers who prompted a bloody carnage--to enable our nation to bind itself back together because it was good for America. Rejecting LB48 and, instead, pursuing comprehensive federal immigration reform with a path to citizenship would be likewise good for Nebraska. Thank you. [LB48]

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SENATOR ASHFORD: Thanks, Chuck. Any questions of Chuck? I'm... [LB48]

SENATOR COUNCIL: Chuck, I have a question. Which... [LB48]

SENATOR ASHFORD: Yeah, and then we have one more testifier. And I know there are lots who want to testify, but Senator Kruse is here and I'm going to give him the first choice if he'd like to come up next. [LB48]

LOWEN KRUSE: (Inaudible) would like to. [LB48]

SENATOR ASHFORD: Okay. Brenda. [LB48]

SENATOR COUNCIL: Which, the dark or the light? [LB48]

CHUCK HASSEBROOK: The dark counties are those that both lost population over the last couple decades but... [LB48]

SENATOR COUNCIL: But gained... [LB48]

CHUCK HASSEBROOK: ...but also saw a doubling of Hispanic residents. [LB48]

SENATOR COUNCIL: Okay. Now is this just a miscopy? [LB48]

CHUCK HASSEBROOK: Yeah, I ran out of paper so I used (laugh) the... [LB48]

SENATOR COUNCIL: Okay. Okay. [LB48]

CHUCK HASSEBROOK: ...flipped over the misprinted one, yeah. [LB48]

SENATOR COUNCIL: Okay. Thanks, Chuck. [LB48]

CHUCK HASSEBROOK: Yeah. [LB48]

SENATOR LARSON: That's a doubling of the Hispanic population? [LB48]

CHUCK HASSEBROOK: Yes. [LB48]

SENATOR LARSON: Okay. Do you know how, in the dark counties, I guess I represent a few of those counties, doubling means from one to two or...it doesn't show percentage increase. I mean doubling isn't hard to get when you get out to rural Nebraska oftentimes. [LB48]

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CHUCK HASSEBROOK: Of course, it could be from one to two, but rural Nebraska, as you know, is... [LB48]

SENATOR LARSON: But I just don't see any percentages so that's kind of... [LB48]

CHUCK HASSEBROOK: Correct. Well, you don't see any absolute numbers. The percentage is a 100 percent increase. But as you know, rural Nebraska is changing and when I grew up in rural Nebraska it was quite white, but it's not so anymore. [LB48]

SENATOR LARSON: I think my district, I have three, three of my counties are highlighted here and I think...well, I know the 2000 census numbers I think it was 98 percent white, so obviously there's a low population of minorities anyway. So I guess that the whole doubling thing, like I said, it could be one to two and that means they get colored in. So I just...it would have been nice to have the percentages. Maybe you could get that for me. [LB48]

CHUCK HASSEBROOK: I can get you the absolute numbers. [LB48]

SENATOR LARSON: That would be great. [LB48]

CHUCK HASSEBROOK: This is a percentage. It's a 100 percent increase is what it is. [LB48]

SENATOR LARSON: But, like I said, one to two, I mean, but the real numbers,... [LB48]

CHUCK HASSEBROOK: All right. Yeah. [LB48]

SENATOR LARSON: ...I'd appreciate that if you could get that. [LB48]

CHUCK HASSEBROOK: Yes. [LB48]

SENATOR ASHFORD: Thanks, Senator Larson. Thank you, Regent. Thank you. Senator. [LB48]

LOWEN KRUSE: Thank you, Senator, and greetings to all. I'd say nice things about you but I don't have time. (Laugh) [LB48]

SENATOR ASHFORD: It's all right. [LB48]

LOWEN KRUSE: I am pushing ahead too. There are persons who want to testify. But this is a new subject. [LB48]

SENATOR ASHFORD: And we have other bills that others can testify to. [LB48]

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LOWEN KRUSE: Yes, that's right. This is a new subject that I am speaking as the past-president of the Justice for Our Neighbors board. We have 1,200 cases from the last three years, we have a staff of five people that are law degree, and we know what we're talking about when we talk about the variety of issues. This is an issue that has not been touched but it's very real; that is, we have families in Nebraska who have been here for 10 and even 15 years that are being targeted by this bill. And I would submit that they are our families. They are our families as much as anybody's. We recruited them from Mexico by posters. We had buses running up and down the highway on this side of the border to pick these persons up. We paid off the coyotes. We have brought these persons to Omaha. We have married them and baptized them and educated their kids. I have the illustrations that I'm not going to get into here, but these are key persons, quiet, stay-at-home moms who are now being targeted for having...well, they're being targeted for splitting up their family. That's what we're doing and it's an outrage. It's un-Christian, it's un-Jewish, it's un-Muslim. It's uncivilized, by any stretch of the imagination, to come into a community that has been established this long and decide how to take apart those people. I have a lot...well, leave it at that. I appreciate the chance to talk about it but I do want folks to recognize that we are...(laugh) we are toying with two different ball games, three different ball games when we start into some of these persons. Thank you, Mr. Chairman. [LB48]

SENATOR ASHFORD: Well, it's good to see you, Lowen. Any questions of Lowen? Seeing none, thanks. That's the last testifier on the opponent side. (See also Exhibits 27, 29-39.) Let me...we have three, one other bill and two resolutions. What I'm going to do from now on is if someone wants to testify on one of the resolutions as well as a bill, they can most certainly do that in their testimony, because obviously as we get towards 5:00, people have to go pick up kids, do all that stuff, and I want to make sure that when you come up you have an...well, are there any neutral testifiers, first of all, on this last bill? All right, let's go to Senator Coash's bill. So my point is, feel free to testify on...my point is...why don't we get everybody to leave now. (See also exhibits 43-58, 60, 61, 63-67, 69-75.) [LB48]

SENATOR MCGILL: We need everyone to get settled or move out of the room. [LB48]

SENATOR LATHROP: Yeah, take it outside. [LB48]

SENATOR ASHFORD: Ron, if you'd just ask them to leave quickly. Senator Coash, are you ready? Why don't we, if we could please keep it down, and Senator Coash is going to introduce the next bill.

SENATOR COASH: (Exhibits 40-42) Okay. Thank you, Chairman Ashford, members of the Judiciary Committee. For the record, my name is Colby Coash, C-o-l-b-y C-o-a-s-h. I represent Legislative District 27 right here in Lincoln. Thank you for the opportunity to

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introduce LB569 which is a bill that would extend to private employers the requirement of verifying the work eligibility of all new hires in Nebraska. There is an accompanying amendment that I'd like to pass out to the committee because this is an important amendment that must go with this bill, and I'll explain as I introduce the bill. Then there's several handouts there for the committee. But as I introduce the bill, I will make it clear that this is an introduction on both the bill as introduced but also the amendment that is being passed around now. First, I would like to refresh everyone's memories of Nebraska's recent history regarding E-Verify. In 2009, this body passed LB403 which made Nebraska 1 of 13 other states who require E-Verify or some form of verification of work eligibility for persons hired by a company under a public contract or the state also; if you're going to be a state employee, you also have to be verified. In addition to LB403, LB1018 prohibited grants and tax incentives under the Nebraska Advantage Transformation Tourism and Redevelopment Act, the Nebraska Advantage Research and Development Act, and the Nebraska Advantage Microenterprise Tax Credit Act from going to companies who do not verify the work eligibility of their Nebraska employees. LB569 will place us in the company of several other states, including Indiana, Utah, Mississippi, and South Carolina, who have extended the E-Verify requirement to all employers. To be clear, this bill is in no way meant to punish the thousands of job-creating, law-abiding businesses across our state. The entrepreneurship here in Nebraska is a large part of supporting the good life. LB569 ensures that the good life can flourish among Nebraska's work force by ensuring that all those hired in Nebraska are legally authorized to work. This bill accomplishes three things: It promotes fair wages and working conditions; it opens competitive opportunities to law-abiding employers; and provides for an increase in more consistent tax revenue to the state by ensuring that all eligible payrolls are properly documented. I've shared with you also a written summary of the bill and the amendment, AM513. For the benefit of the record and those present today, I'm going to walk you through the practical applications of the bill and the amendment. Effective January 1, 2012, LB569 along with AM513 would require all private employers to verify the work eligibility of their new hires here in Nebraska. This involves enrolling on-line on the U.S. Department of Homeland Security's Web site and agreeing to the terms of a memorandum of understanding with Homeland Security. Once enrolled, the authorized employer would run an E-Verify check on any new hire within three days of his or her start date. And this is an important part of this, that the check may only be done after the new employee is hired and not prior. You cannot use E-Verify as a screening tool. Here's some national statistics because I know there are going to be questions about the accuracy of E-Verify. According to the Department of Homeland Security, 98.3 percent of employees are confirmed as authorized to work immediately or within 24 hours. The remaining 1.7 percent are classified as having what they call a tentative nonconfirmation, and of this 1.7, only 1.3 are found to ultimately be unauthorized to work or have a final nonconfirmation. Since LB403 went into effect, the state of Nebraska in its hiring completed 4,274 E-Verify checks. So these are for state employees. Of those checks, only 77 people received a tentative nonconfirmation, and all 77 of those were eventually

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cleared as work eligible. And I would point out that the reason that those 77 were ultimately found to be authorized to work and never did get the permanent nonconfirmation was because of a data entry error or in a lot of cases it became a name change. Married folks, the E-Verify would give...had one name on file but somebody may have changed their name. These numbers demonstrate the effectiveness and timeliness of E-Verify system across the nation and here in Nebraska. Another important point, if there is a hit, in other words, if there is a...and initially it will be a tentative nonconfirmation, the responsibility of taking care of that becomes the employee's. It is not the employer's responsibility to go and tell E-Verify system that they have a hit. What happens...and the reason I'm bringing this bill is because I've used this system a lot in my private life and I'm very familiar with how it works. If somebody comes back with a tentative nonconfirmation, the E-Verify system automatically prints out a letter and you hand it to that employee and you say, you know what, there's something going on here. Maybe they got it wrong, maybe you changed your name, which is typically what my experience has found out, and then you give that letter to them and it has instructions on who they can call to get that taken care of. And then once they take care of...get that taken care of, you run it again. So the responsibility is on the employee and it's not an employer responsibility should there be a hit. Currently, because we have...there are lots of companies across the state who do this even though it's not mandated. If you are a contractor with the state of Nebraska, you get a contract, you do have to do it. But there are plenty of employers who do it anyway. In fact, last check there were 2,821 employers currently enrolled to use the E-Verify even though they don't have to. I want to talk a little bit about enforcement of this bill. With the amendment, all employers who in good faith verify the immigration status of new employees are presumed to be in compliance. An investigation into an employer's compliance can only be authorized if the Commissioner of Labor finds that there is reasonable grounds that exists that an employer or contractor has allegedly violated this act. In this case, the Commissioner would verify with the federal government the authorization status of the alleged unauthorized worker. If the employee is found to be unauthorized, the Commissioner shall provide the results to the employer, along with the opportunity to present evidence demonstrating compliance. This allows employers, who act in good faith, who unknowingly hire an illegal immigrant, to not be held liable for fraudulent claims made by their employers (sic) with regard to their work eligibility. If the Commissioner determines that there is substantial evidence exists that the employer did act in violation of the law, the Commissioner is to notify ICE, state and local law enforcement agencies, and notify the employer that the employer is in violation and can assess a penalty. The penalties are as follows: For the first time it would be a civil penalty of \$100 to \$1,000; however, if the employer complies within 72 hours, i.e., terminates the employee that is unauthorized, they shall not get a fine. A second strike would be a penalty assessed by the Commissioner and, in determining this penalty, the Commissioner has to consider the number of employees that failed to verify, prior violations of the employer, the size of the employer's work force, and any action the employer has taken to comply with federal immigration laws, and the duration of the

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violation. However, if any violation occurs more than five years following their previous violation, it shall be treated as a first violation. To conclude, I brought this bill because, as I said earlier, I have experience in using this system and I understand how it works. I would not bring a bill that would put an undue burden on employers. Using E-Verify has worked for the state for the last two years, and I believe that this is a logical extension. And before I turn it over to the testifiers, there's some facts about the E-Verify system that I want to reiterate. First of all, if you're an employer who's required to do this, it is free. E-Verify doesn't charge you a fee to sign up. All you have to do is sign up, enter into a memorandum of understanding with Homeland Security, and then they allow you to access the system. Once you access the system, these checks take about 20 seconds to do. Okay. Once you've got that all in place and you want to run a check, it takes about 20 seconds and it's almost instantaneous. I said this earlier, but employers may not, by federal law, use this to screen employees. There is a presumption of compliance and there is no criminal penalty for not using this. The criminal penalty has been removed by the amendment, however, there is a potential civil penalty if the employer does not act in good faith. And all employees who in good faith verify the immigration status of a new employee are presumed to be in compliance unless there is a written, signed complaint is made. And this was important because I didn't want, you know, maybe a disgruntled customer to say, you know, I'm not happy with the service I got there. I'm going to make a report to the Commissioner of Labor to say they have illegal workers working for them. Well, they have to do that by...they have to swear to that, and if they are fraudulent in that claim, that person is then making a fraudulent claim and can be assessed a Class I...can be charged with a Class I misdemeanor. Employers are not held liable if someone fraudulently...someone frauds the employer, for example, steals an ID. Employers are only held responsible if they knowingly and intentionally hire an employee who is not eligible. So with that, I'll close and answer any questions. [LB569]

SENATOR ASHFORD: Thank you, Senator Coash. Senator Lathrop. [LB569]

SENATOR LATHROP: I do have a couple of questions, Senator. And the first one I guess is, this started out as having a criminal sanction for the employer and you went to a civil penalty to be determined by the Commissioner of Labor. Why is that? [LB569]

SENATOR COASH: That's correct. Well, there's a good reason for that. In looking at this, you know, you might...like I work in HR where I work, and it might be my job to check that. Well, I...having a criminal penalty you have to have a person, and so I didn't want us to say...it might be a clerical position who's entering this in and I didn't want that to happen. [LB569]

SENATOR LATHROP: Okay. And it looked like your fiscal note, which was zero,... [LB569]

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SENATOR COASH: Yes. [LB569]

SENATOR LATHROP: ...was based upon having a criminal penalty, and your amendment comes in after you assign to the director or the Commissioner responsibility for doing investigations. Have they weighed in on the fiscal impact of your amendment? [LB569]

SENATOR COASH: They are aware of the amendment but they haven't told me what it would be. [LB569]

SENATOR LATHROP: Here's the reason I ask, and maybe it's not a turf thing. I appreciate what you're trying to get to, I really do, because it's not unlike what we were trying to do with the misclassified worker. The problem I'm having with that bill that we passed last year on misclassification is not having enough people over at the Department of Labor to take care of the tasks that we've already given them and with our budget problems. I think they're about ready to cut two more people loose. And so do we go after the misclassified worker? Do we...we're going to spread them so thin, is my concern, that the enforcement of the misclassified worker is going to be even poorer. [LB569]

SENATOR COASH: I understand that, and I've asked the Fiscal Office for a revised fiscal note based on the amendment. [LB569]

SENATOR LATHROP: Okay. Good, good. I'd be anxious to see it and maybe you and I can work to improve their appropriations for enforcement. [LB569]

SENATOR COASH: That sounds reasonable. [LB569]

SENATOR ASHFORD: Thank you, Senator Lathrop. I know this is an issue Senator Lathrop has also been concerned about. Yeah, Senator McGill. [LB569]

SENATOR MCGILL: Yeah, I have general questions about the penalties and not having them and maybe being concerned there aren't some, because generally I support what you're trying to do here. But what happens if, say, a restaurant chain...and I don't know how E-Verify...I don't have the experience you do, but say they just choose to not input all employees through E-Verify. Is that a possibility? [LB569]

SENATOR COASH: Well, sure. You're presumed to be in... [LB569]

SENATOR MCGILL: So they'll just say, oh, well, we know--wink, wink--that this person is here illegally, so we just won't run them through it. Is that a possibility? [LB569]

SENATOR COASH: Well, and sure it's a possibility, and then that business is going to

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be liable...exposed to a civil penalty because they knowingly... [LB569]

SENATOR MCGILL: Uh-huh. [LB569]

SENATOR COASH: ...employed somebody that they thought to be here illegally, so they're on the hook for that. [LB569]

SENATOR MCGILL: And in the same way, what if they just avoid using it altogether? It's still...it's a criminal...well, not criminal but civil... [LB569]

SENATOR COASH: It could be. It'd be a civil penalty, and... [LB569]

SENATOR MCGILL: But just for them purely not using it or avoiding using it. [LB569]

SENATOR COASH: If they choose not to use it and there's a complaint made...I mean, the only way that enforcement comes into play is if there's a complaint made. [LB569]

SENATOR MCGILL: Um-hum. There needs to be a trigger complaint. [LB569]

SENATOR COASH: So that's the trigger and they are required by this law to use it. It's just...there's not going to be...I didn't want to put in a...because of the budget thing, I didn't want to say we'll go around and police all of these...you know, all of the employers in Nebraska and make sure that they're using it. I will tell you that the state does it for their subcontractors as part of their certifications, but we can't ask the Commissioner of Labor to go around and police all of the employers, so we have to have a trigger and the... [LB569]

SENATOR MCGILL: Yeah. Just particularly...you know, there are a lot of Mexican restaurants, for instance, and I could see people just making calls: Are we sure that everybody here is checked, you know. [LB569]

SENATOR COASH: Sure, but those people making calls have to swear to it. [LB569]

SENATOR MCGILL: Okay. [LB569]

SENATOR COASH: And if it turns out that that was a fraudulent claim that somebody was just... [LB569]

SENATOR MCGILL: That they didn't have a basis for making the call... [LB569]

SENATOR COASH: ...that they didn't have a basis. [LB569]

SENATOR MCGILL: ...just because they heard people speaking Spanish in there.

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[LB569]

SENATOR COASH: That's right. [LB569]

SENATOR MCGILL: Okay. [LB569]

SENATOR COASH: That person who makes that claim, should it turn out to be fraudulent, is exposed to a Class I misdemeanor. [LB569]

SENATOR MCGILL: Okay. This helped me. I'll understand better. Thank you. [LB569]

SENATOR ASHFORD: Yes, Senator Council. [LB569]

SENATOR COUNCIL: Yes, thank you, Chairman Ashford. And thank you, Senator Coash, because they've...your bill gets to one of the questions I posed to Senator Janssen on LB48. And, you know, I believe...and, again, I mean, the state of the law on this is in flux, but it was my understanding that under the 1986 Immigration Reform and Control Act, it specifically preempts state and local governments from imposing civil or criminal sanctions on employers for hiring unauthorized workers. Is that your understanding? [LB569]

SENATOR COASH: Senator Council, it is not and the only reason I think I can say that with some confidence is that Indiana, Utah, Mississippi, and South Carolina, are already doing this. That's... [LB569]

SENATOR COUNCIL: Okay. But I understand that there's a Supreme Court case pending over a similar provision of an earlier Arizona law, and in that case, I mean, the whole preemption...there was a challenge involved by the business and immigrant communities. The plaintiffs alleged that the 1986 Immigration and Control Act (sic) expressly preempts the state, but because the state law was not a licensing or similar law within the meaning of the federal act and it is "impliedly" preempted because it sanctions provisions, and E-Verify requirements conflict with federal law, and the act violated employer's due process rights. The Ninth Circuit upheld the Arizona law and the U.S. Supreme Court accepted the case and heard argument in December. [LB569]

SENATOR COASH: I think the difference is, and we'll double check that for you, but those penalties referred to in there were criminal penalties. And this is a civil penalty. [LB569]

SENATOR COUNCIL: Okay. Okay, so that's the change from...that's one of the reasons you changed from a criminal to a civil penalty. [LB569]

SENATOR COASH: That's one of the reasons, yeah. [LB569]

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SENATOR COUNCIL: Okay. Well, again, I still want to make the point that...and this...you're trying to develop a mechanism to hold those responsible who hire people who are here unlawfully, and I at least hold them to some compliance standard. [LB569]

SENATOR COASH: That's right. It's a right to work here. [LB569]

SENATOR COUNCIL: Okay. And as opposed to LB48 which wants to criminalize the act of working here, that the worker gets criminalized, the employer gets a civil penalty. [LB569]

SENATOR COASH: It was hard for me to figure out a way to put a criminal penalty on a business, you know, to say XYZ company, you're now in violation of a Class III...well, then who, you know, if...I mean, you might have to do jail time. Who does that? The clerical worker who...? [LB569]

SENATOR LATHROP: Who goes to jail? [LB569]

SENATOR MCGILL: Yeah. [LB569]

SENATOR COUNCIL: Yeah, who goes to jail? Right. [LB569]

SENATOR MCGILL: Yeah. [LB569]

SENATOR COUNCIL: Right. [LB569]

SENATOR MCGILL: It's why this issue is so complicated. [LB569]

SENATOR COASH: ...who filed it or the CEO or...I'll tell you a lot of states, what they do that we aren't able to do is most...a lot of states require a business license. [LB569]

SENATOR COUNCIL: Uh-huh. [LB569]

SENATOR COASH: And so many states, in enacting this, will...for noncompliance will revoke your business license. [LB569]

SENATOR COUNCIL: Right. [LB569]

SENATOR COASH: But we don't license every business and so we have to have a different mechanism of enforcement. [LB569]

SENATOR COUNCIL: Right, and I think that's the argument in the Supreme Court case, whether the statute being challenged was a licensing law or a criminal penalty, and

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that's what the Supreme Court is getting ready to decide. But, again, explain to me E-Verify. And what I may be recalling is how DHHS used E-Verify. But my vivid recollection was DHHS said, when we were discussing LB403, if someone self-disclosed that they were not lawfully here, they would then go through E-Verify to determine...to verify that that person wasn't lawfully here, so. [LB569]

SENATOR COASH: Um-hum. Well, the state is using E-Verify in two different ways right now. One, they're using it...all state employees, if you're going to get hired, since the enactment of this, they're going to go through E-Verify. And there was, like I said, a little over 4,000 of those checks that were done. The state is also required if you're going to contract with state government, so all the providers under HHS, and that's where I got my experience, all the providers had to do that. But, see, those all have licenses or something that the state can hold over your head and do compliance checks on. Then the third part that LB403 did is that it is now...E-Verify is also used now for the...prior to the administration of state benefits,... [LB569]

SENATOR COUNCIL: Uh-huh. [LB569]

SENATOR COASH: ...so there's a third part there. And this...my bill doesn't mess with all those, it just says employers. [LB569]

SENATOR COUNCIL: Okay. Now you've spoke during your opening, you gave some statistics about nationwide use of E-Verify. [LB569]

SENATOR COASH: Yes. [LB569]

SENATOR COUNCIL: And how many users are there? [LB569]

SENATOR COASH: I don't know how many users are there. I will tell you that there are 2,800, a little over 2,800 current employers in Nebraska who are enrolled as employers. My nationwide statistics, just what we got from the Department of Homeland Security which stated that there were 98 percent of the employees nationwide are confirmed. [LB569]

SENATOR COUNCIL: Okay. So of the 2,800 employers in Nebraska who use E-Verify,... [LB569]

SENATOR COASH: Right. [LB569]

SENATOR COUNCIL: ...didn't you give a statistic that like some...less than 2 percent were found not to... [LB569]

SENATOR COASH: That less than 2 percent was the national. [LB569]

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SENATOR COUNCIL: Okay. [LB569]

SENATOR COASH: Okay? [LB569]

SENATOR COUNCIL: Do we have any data for Nebraska? [LB569]

SENATOR COASH: The data from Nebraska that I can give you is only the data that the state collected because the state can tell us. The state told us that since LB403 went into effect that there were about 4,200 checks that the state did for employment, and out of those 4,200 checks, 77 of them came back initially tentatively nonconfirmed; and of those 77, all 77... [LB569]

SENATOR COUNCIL: All of them were cleared. [LB569]

SENATOR COASH: All of them were cleared. [LB569]

SENATOR COUNCIL: Okay. [LB569]

SENATOR COASH: So that tells me that it's a system that works and is fairly accurate. [LB569]

SENATOR COUNCIL: Okay. Well, it also kind of gives me an indication of how real the issue of undocumented immigrants taking up all these jobs. I mean, at least from the 2,800. [LB569]

SENATOR COASH: Yeah, I couldn't tell you. I mean, we know how many employers are enrolled,... [LB569]

SENATOR COUNCIL: You don't know... [LB569]

SENATOR COASH: ...but I don't know how many...I mean, you take 2,800 employers times how many employees. [LB569]

SENATOR COUNCIL: Yeah, yeah. [LB569]

SENATOR COASH: I can't tell you. I think the part about this bill that works and part about LB403 that works is the deterrent effect. It sends a message: We're only going to hire folks that...don't bother coming because we're checking. You know, don't bother applying because we're checking. [LB569]

SENATOR COUNCIL: Because now the amendment...and one of the problems I have with the original bill was my question is whether you could criminally... [LB569]

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SENATOR COASH: You can't, so that's out. [LB569]

SENATOR COUNCIL: Well, but even if you could, in everything else around here we enhance: You do it the first time, it's this; you do it a second time, it's this; you do it a third time. On the employer under the original version of your bill, it's like, you do it, it's always going to be a Class II or III misdemeanor. So I was going to ask you, well, why...you know, if you're a repeat offender, you know, why do you get...I mean, if you could have done it. Now it's on...I haven't read...your amendment was just distributed, so I haven't read it. [LB569]

SENATOR COASH: Fair enough. I'll tell... [LB569]

SENATOR COUNCIL: But does it provide for an accelerating... [LB569]

SENATOR COASH: Yes, it does and it's page 2, line 19. It begins at line 19, subsequent violations starts on page 2 and ends on page 3. So there is some enhanced penalties. And I'd be willing to work with the committee. If we want to put more teeth in it, that's fine. [LB569]

SENATOR COUNCIL: Because it's only between \$100 and \$1,000. It never gets to like \$5,000, \$10,000, \$15,000, \$20,000, their business,... [LB569]

SENATOR COASH: We'll beef it up if you want, Senator Council. [LB569]

SENATOR MCGILL: Yeah, I'm all about beefing that up. [LB569]

SENATOR COUNCIL: ...their first born. (Laughter) Okay. Thank you. [LB569]

SENATOR ASHFORD: Right. Just for the record, I mean, when we did LB403, we had the Arizona case, we had the Ninth Circuit Opinion in that case, and obviously we didn't have and don't have yet the Supreme Court's Opinion. But in that case, there was the licensing, licensure, business licensing nexus that existed in that case, and so we felt or the committee felt, the Legislature felt that there was sufficient nexus. The other issue is that there is a responsibility the employers have to get immigration information anyway, it's just not done in a...it's not done with technology; it's done with a form. So I would agree that this is a more direct way to deal with the issue. But thanks, Colby. [LB569]

SENATOR COASH: Um-hum. [LB569]

SENATOR ASHFORD: Let's go to the proponents. We have until 20 after 5:00 not counting questions. So these would be the proponents first. Go ahead. I think we're ready. [LB569]

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TOM DIERKS: Okay. My name is Tom Dierks. I live here in Lincoln, that's T-o-m D-i-e-r-k-s. Just wanted to relate a few personal observations and stories that I've experienced with the immigrant population over the last 15 years, I guess 20 now. But I'm a social worker. I work here in Lincoln. I want to thank Senator Coash for introducing this bill and thank you, Committee, for allowing me to testify. I was a candidate last year for office and I...it was one of my main issues and I kind of immersed myself in the issue in northeast Lincoln, and it was certainly palpable at the time. A lot of frustration out there with...you know, especially with our unemployment situation as it is in this country. I have spoke to a couple of people in the construction industry who told me they didn't get particular jobs because illegal immigrants took those jobs. I asked them how they knew, and they said they were actually told by the illegal immigrant themselves. So there's a couple. But I worked for Catholic Social Services about 20 years ago for 8 years, and I worked with the refugee population. They were bringing in about 450 to 500 immigrants a year from Vietnam, Iraq, Bosnia. And the thing about that is...and there was kind of anti-immigrant...sometimes we experienced a little bit of anti-immigrant sentiment with that. But, by and large, as Mr., I think, Hassebrook was saying earlier, they are excellent citizens and they're good for our country and they love America; they love the freedom that we have. And so, by and large, they impressed their employers, they were hard workers, but the difference was that was a legal population and that's the difference. You know, we welcome people from other countries but, you know, we have to understand the difference between legal and illegal, and we are a nation of laws. And I would just encourage the members to vote for this and to get this on the floor and get a full debate. Any questions or...? [LB569]

SENATOR ASHFORD: I don't see any, but thanks for your comments. [LB569]

TOM DIERKS: Okay. Thank you. [LB569]

SENATOR ASHFORD: Yes. Next proponent. [LB569]

SUSAN SMITH: Chairman, excuse me, did you say that we could go ahead and...if we were up here... [LB569]

SENATOR ASHFORD: Yeah, if you have a comment on the resolutions. [LB569]

SUSAN SMITH: Yeah, and that way, quickly, and I can leave and I need to leave unless you got a Prozac. (Laughter) [LB569]

SENATOR MCGILL: Whenever you're ready. [LB569]

SENATOR LATHROP: You can go ahead. Now I'm Chair. It's powerful. [LB569]

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SUSAN SMITH: Okay. Thank you. You know, I guess I already put that through. It was neutral on Senator Coash's bill because I have concerns that Senator Council mentioned. The Secure Communities program that Senator Fulton has introduced is an excellent program. It's already been in all 52 or 58 counties, I think it's 52 counties in the state of California. They've had great success with that. I included the link in with my letter to the Judiciary Committee. But now as far as Senator Council's LR39, what this resolution will do is make our state an official sanctuary state. And, please, I understand just from the comments today that obviously you are all pro-illegal alien and to heck with the Americans and to heck with Nebraskans and to heck with those taxpayers who pay the bills around this state. I understand that. So saying that up-front, you're going to put a great big sign out there and all I want you to know and understand is that Nebraska citizens understand that that's what they're doing too. And I don't really blame you guys; I blame the citizens because they keep reelecting you back into office. So, you know, take that for what it's worth but you want a big sign, you think we've got an illegal immigration problem now, wait until you advance LR39. And I thank you for your time. [LB569 LR28 LR39]

SENATOR LATHROP: Thank you. Does anybody have any questions? [LB569]

SENATOR COUNCIL: I would ask but I'm not an American, so. [LB569]

SUSAN SMITH: Pardon me? [LB569]

SENATOR MCGILL: Yeah, that's a good point. You said that none of us are Americans if we don't support...you just said none of us are Americans. [LB569]

SUSAN SMITH: Oh, no, no, no, no, no. No, then I misspoke. [LB569]

SENATOR MCGILL: Okay. [LB569]

SUSAN SMITH: I was thinking something else but I misspoke. [LB569]

SENATOR LATHROP: You might have, you might have. [LB569]

SUSAN SMITH: No, I did not say that at all. [LB569]

SENATOR LATHROP: Let me just suggest something to you, Ms. Smith. I appreciate your concern for this subject and you can rest assured that we have concern over this subject. We've legislated in this subject area. We have concern over the very subject matter. The question is the proper approach to it. And if we do or do not agree with a person's testimony, it doesn't make us right or wrong; it is our judgment. Okay? Thank you. [LB569]

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SUSAN SMITH: All right. But may I say that I did not mean to imply that any of you were not American. That was not it, Senator Council, not at all. [LB569]

SENATOR LATHROP: Right. [LB569]

SUSAN SMITH: That's is not what I meant. [LB569]

SENATOR LATHROP: Thank you. [LB569]

SUSAN SMITH: All I'm saying is that you're...you know, protect the illegal aliens and to heck with the Nebraska taxpayers. [LB569]

SENATOR LATHROP: Well, I can assure you that is not the objective of this committee,... [LB569]

SUSAN SMITH: I understand. [LB569]

SENATOR LATHROP: ...it's not our history either, and... [LB569]

SUSAN SMITH: And I want to understand that. [LB569]

SENATOR LATHROP: ...we appreciate your remarks. [LB569]

SUSAN SMITH: But that's not how it comes across, Senator Lathrop. [LB569]

SENATOR LATHROP: Well, okay. [LB569]

SUSAN SMITH: I'm sorry. [LB569]

SENATOR LATHROP: Thank you. [LB569]

SUSAN SMITH: But thank you for your time. [LB569]

SENATOR MCGILL: Thank you. [LB569]

SENATOR LATHROP: We are on LB569. Can I see a show of hands of how many people intend to testify on this bill or would like to? Okay. And we are on proponents still, so if you are in favor of this bill. [LB569]

AUDIENCE: How about neutral, Senator? [LB569]

SENATOR LATHROP: We're not there yet but we'll get to them. [LB569]

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SENATOR MCGILL: Thank you. [LB569]

STEVE SIMPSON: (Exhibit 62) Thanks. My name is Steve Simpson. I am here representing the Omaha and Southwest Iowa Building and Construction Trades Council and... [LB569]

SENATOR LATHROP: Steve, can you speak up just a little bit so we end up with a good record? [LB569]

STEVE SIMPSON: Yes. I'm sorry. And I'm also here representing the Lincoln construction trades as well. I represent the union trades, the majority of the union trades that work in...thank you, that work in construction. That's what...they asked me to come speak. I appreciate them having faith in me, so I'll do the best I can. What we notice with E-Verify is the main thing with construction, I heard on the radio today that Nebraska is suffering from...or currently has 4.8 percent unemployment. I assure you in the construction end of the deal it's a lot higher. I assure you that right now every construction trade that I work with has nearly double-digit unemployment, if not double digit and higher. At least 20...we're sitting...my local, for example, is sitting at about 17 percent unemployment right now. It was brought up earlier about whether or not E-Verify is something that is...there was several members of the state who applied and none of them were...fell into the cracks in E-Verify. My trade is a little different than the state. The people who apply and work in my trades, the trades I'm here representing right now, we are suffering from illegal immigration; it's something that's taken hold. The cement masons have been beating their horn...beating the table and screaming about this for years. The bricklayers, the laborers are here, the painters are here. People that are in the construction trades are losing jobs every single day to illegal immigrants. With unemployment as high as it is in just the union trades alone, not to mention the nonunion trades, we have an opportunity to put people to work if these people were not in those jobs. Plus, it affects wages. Honestly it does. Let's not kid ourselves. It definitely affects wages. It was mentioned earlier something along the lines, and I'm going to look at my time and make sure, but there is a contractor registration in the state of Nebraska. There's not a business license but there is a contractor registration in Nebraska. As this bill directly affects I believe construction, it would definitely affect the contractor registration, maybe that could be part of the penalty, along with if they keep violating this penalty perhaps they cannot be registered to work in the state of Nebraska any longer. But, anyway, the Omaha and Southwest Iowa Construction Trades Council and the Lincoln Building Trades Council supports this bill. They think it's a good bill. They think we should proceed forward with it. [LB569]

SENATOR LATHROP: Very good. Thanks, Steve. Any questions? [LB569]

SENATOR ASHFORD: Thank you, Steve. No, go ahead. [LB569]

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SENATOR LATHROP: Okay. That's it. Thank you. [LB569]

SENATOR ASHFORD: Thanks, Steve. Any other proponents? Proponents? [LB569]

ALLEN BLACK: Hi. My name is Allen Black from Bellevue, and I'm going to just try to quickly hit on a few points. Arizona and California and Texas have...the border states are having a terrible time because they're dealing with the cost of an uncontrolled immigration, so you want to take that into concern. I'm a proponent of E-Verify because we need to know who's in this country. Okay. I work in intelligence for a living. And drug smuggling, weapons trafficking, human trafficking, they are very real issues. You can put a nuclear warhead in a suitcase, which means you can put it in a backpack. And we just don't know who's coming into this country. That doesn't mean they're bad people, but it doesn't mean they're good people. We just don't know who they are. And any measure you can pass to identify who is here and who is working, and there needs to be, you know, a succession. When we've taken care of our homeless population, people that generally when they come out of the shelters they take minimum wage jobs and then they start working up from there. We have homeless veterans coming back from Iraq and Afghanistan and they're homeless and that's a disgrace. They should be the first in line for jobs. They've been shot at in the Middle East and we're not taking care of them. So it's not that...and I put the blame on the big companies that are reaping profits from exploiting people, paying no benefits, passing that cost to the taxpayer. And as Ms. Carlson (sic) mentioned, you know, \$1.6 billion in benefits. Why, I don't know where it went. It didn't come to me. (Laugh) It probably went to stockholders. And so my concern is that we...and there are towns that depend on illegals. If we could somehow localize the support so that the city is taking care of these people or the churches or something, but we...I don't think we can handle unrestricted migration. We need to know who is in the country and there needs to be an orderly process because we're dealing...we're in an age of terrorism, and that wasn't true 50 years ago; it's very true today. And we just need to take it seriously. That's all I have. [LB569]

SENATOR ASHFORD: Okay. Any questions? No, wait just a second, there might be some questions. Do we have any...no, no questions. Okay. Next proponent. [LB569]

ED HERNANDEZ: Hello. My name is Ed Hernandez, E-d H-e-r-n-a-n-d-e-z, and I recently moved to Nebraska from California. Illegal immigration is a huge problem in California because they've just let it get totally out of control. I mean, I'm an individual that needs to work. You know, I have to go out and provide for my family and it got to the point in California where that just wasn't able to be done. There were so many illegals, they were everywhere. In the little town that I came from, they would...the police would give the business owners 24 hours to clean up the tagging that went on at night. And they'd have to go out and buy paint and go out and paint or else pay a fine and the city would come and clean it up for you. Now I was surprised when I came here in Nebraska I didn't see all that stuff around, but it's only been three years and now I'm

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starting to see it. In fact, I'm currently living in West Point and they tagged our garage and, you know, we're not happy with this. This is what we tried to leave. We don't want to see this come here. This is a beautiful place with wonderful, friendly, warm families. You know, if I had known that a place like this existed, I'd have come here 25 years ago because rural Nebraska is just like paradise. People are friendly, they're helpful, whatever you need they'll try to help you. People in West Point are extremely generous. You could just go through the community and see all that they've accomplished without burden to the taxpayers, simply from contributions from people in the community. And I just can't imagine that we're going to allow this state to be overrun with illegals. Now, you know, I hear testimony here, well, what if this happened? What if that happened? Well, when I was working in California, an illegal took a slice out of the side of my head with a tool that we use to clean the tomato harvesters and it knocked me to the ground, the concussion. But when I got back up and I looked him in the face and backed him down, I didn't get aggressive with him. I didn't get violent. You know, if I was a violent, angry person, I would have took him apart because, you know, blood was running down the side of my face and I had to go down and get stitches. I don't even know how many, but it was a five-, six-inch gash. But, you know, these people, they're not all here...a lot of them are criminals, a lot of them are not just here to work. They get in trouble in Mexico and they come across the border looking for work because they can't be there anymore. We need to protect our own citizens, our own taxpayers. [LB569]

SENATOR ASHFORD: Thanks, Ed. [LB569]

ED HERNANDEZ: Thank you. [LB569]

SENATOR ASHFORD: Thanks for your comments. Senator McGill. [LB569]

SENATOR MCGILL: I would just say we certainly want to get the criminals, you know. I mean, we're all on board with that. If people are here committing crimes like that, especially violent crimes or gang crimes, we absolutely want to track them and... [LB569]

ED HERNANDEZ: Yes, and, you know, one way to help with that is to verify people are eligible to be employed, because if you can't find a job, they'll move onto another state. Other states need them. They have higher unemployment rates than... [LB569]

SENATOR MCGILL: Well, thank you. [LB569]

SENATOR ASHFORD: Thanks, Ed. Next proponent. (See also Exhibit 69) Opponents? We'll go to 5:35 plus questions...oh, and a neutral. Okay. All right. That's fine. [LB569]

ALAN PETERSON: Chairman Ashford and members of the Judiciary Committee, I'm Alan Peterson, A-l-a-n P-e-t-e-r-s-o-n, great-grandson of those Swedish immigrants that

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I heard something about a little while ago (laughter). [LB569]

SENATOR ASHFORD: I knew we had that in common, Alan. [LB569]

ALAN PETERSON: (Exhibit 76) Yeah, you did. I'm here to testify against this bill but I would say rather mildly. The problem with LB569 is that it may be preempted. We've talked about that a lot. That is the issue on which the United States Supreme Court granted certiorari to the Ninth Circuit in the Arizona E-Verify case. There should be a decision before June. So with respect to that point, some courts have held that it's preempted. The Ninth Circuit held no...let's wait and see. Secondly, the problems with E-Verify still include inaccuracies. In the testimony, or the two-page letter with a one-page attachment, I enclosed the GAO study published...it's just the summary, one page, but it was done in December of last year so it's pretty current. They found that the system has improved, that the large amount of errors that they used to find under E-Verify have been diminished, but there's still a substantial number, still a bit of a problem. And, of course, as I think some of you know, the reason Congress did not impose this as a mandatory requirement on everybody, including private employers, when it was passed was they wanted to see if they could make it clean and make it really work. GAO seems to suggest it's not quite time yet. I suggest that this bill be held at least until we get some guidance from the U.S. Supreme Court. [LB569]

SENATOR ASHFORD: Yeah. Let me just follow... [LB569]

ALAN PETERSON: Yes. [LB569]

SENATOR ASHFORD: And I know the President has supported E-Verify, and I think there was some funding that did...was redone. There's some issue of additional funding which I think was addressed in this last Congress or maybe it was a continuing resolution, but there... [LB569]

ALAN PETERSON: There is a new bill, Senator Ashford, to do basically this in Congress, but who knows whether that will pass. [LB569]

SENATOR ASHFORD: And just to your point, it's hard to know the right thing to do in this area because we've seen such a failure of the federal government to act on parts of the problem,... [LB569]

ALAN PETERSON: Right. [LB569]

SENATOR ASHFORD: ...the pathway issue. But in as much as employers are required to obtain information about immigration status anyway, it doesn't seem to be a horrible stretch to require them to... [LB569]

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ALAN PETERSON: You know, I'm not so worried about the employers, as you can imagine representing ACLU,... [LB569]

SENATOR ASHFORD: Right. [LB569]

ALAN PETERSON: ...although they occasionally are clients. My problem is, those mistakes that are made... [LB569]

SENATOR ASHFORD: Right. [LB569]

ALAN PETERSON: ...even though it's a small percentage,... [LB569]

SENATOR ASHFORD: Right. [LB569]

ALAN PETERSON: ...maybe 1, those are people kept out of work while that temporary status is confirmed. There's some harm. [LB569]

SENATOR ASHFORD: Right, but didn't Senator Coash address that in his bill? [LB569]

ALAN PETERSON: Yes. [LB569]

SENATOR COASH: I need to address that. That's incorrect. You can't can them. [LB569]

SENATOR ASHFORD: Yeah. [LB569]

SENATOR COASH: You can't do until after they're hired, and until you get a final nonconfirm which means everything has been checked and they are absolutely not legal to work here. You can't can them. And, in fact, if you reduce their pay, reduce their benefits, anything, you're in violation of federal law. [LB569]

SENATOR ASHFORD: Yeah, and that's existing federal law. [LB569]

ALAN PETERSON: So they...okay. Right. [LB569]

SENATOR ASHFORD: Alan, I think that's existing federal law anyway. Yeah. [LB569]

ALAN PETERSON: And I accept that. So the...if I may, I think you kind of invited...my time may be up, but you invited us to finish on the other bill, LB48. I have a very tiny point to make. [LB569 LB48]

SENATOR ASHFORD: Real, real...very tiny point. [LB569 LB48]

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ALAN PETERSON: It will be. It's a rifle shot. Why does it matter reasonable suspicion versus probable cause? Well, the reason Arizona's law was thrown out was because when the peace officer can hold the person, it becomes an arrest... [LB569 LB48]

SENATOR ASHFORD: It's an arrest, I get it. [LB569 LB48]

ALAN PETERSON: ...and that always has required probable cause or a warrant. [LB569 LB48]

SENATOR ASHFORD: And I think that's what Senator Harr and Senator Council and everybody, Senator Lathrop, everyone was trying to get at is... [LB569 LB48]

ALAN PETERSON: Yes. [LB569 LB48]

SENATOR ASHFORD: ...it is no longer simply giving someone a citation and go on your way; it's...they're held. [LB569 LB48]

ALAN PETERSON: Yeah. A temporary stop is okay,... [LB569 LB48]

SENATOR ASHFORD: Right. [LB569 LB48]

ALAN PETERSON: ...but an arrest is not without probable cause. [LB569 LB48]

SENATOR ASHFORD: Right. [LB569 LB48]

ALAN PETERSON: And that's why it was thrown out in Arizona. [LB569 LB48]

SENATOR ASHFORD: Right, exactly. Thanks, Senator...or Alan. [LB569 LB48]

ALAN PETERSON: You bet. Thank you. [LB569]

SENATOR ASHFORD: Might as well be one. (Laughter) All right. Next. Thanks for your comments. Next...I don't even know where we are, I guess opponents. Yeah. [LB569]

SEVERIANO FRANCO: Good afternoon, Chairman, members of the committee. I've been here before and I will say to you that my name is Severiano Franco, and for those of you that don't speak Spanish you can just call me "Sev" or you can call me "Sam," but just don't call me late. And at that risk of injecting a little bit of levity into this discussion, I want to say that this looks like a solution looking for a problem. And let me just tell you that, you know, my father and my mother came to this country. My father came here in 1916. My mother followed up in 1923. Had this type of legislation been around at that time, my brothers and I and my sisters would have not been able to be raised. We gave 18 years of naval and military service to this country. And let me just

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tell you something, and I look at this thing...you know, and I asked a couple of lawyers back there a little bit ago, does federal law prohibit the employment of the undocumented? And they said, absolutely not. The other thing that really concerns me is this, and let me just tell you: Senator McGill brought this business up about the restaurants. Think about the farmers, the ranchers, the contractors, and all of the small businesspeople that are going to be subjected to go ahead and to conduct the E-Verify. We look at economies of scale, where does this come from? How many people are going to say I'm not going to do that, I'm not going to hire you? If you go back then to the response that the lawyer gave me back there that it's not illegal to go ahead and to hire people, then why do we have to go through all of this exercise in the first place? Let me just tell you that...and somebody else brought up this business about that so many of the people that were recruited to come here by the packing houses, they bought off the coyotes and the like, and that are here working. All of these people have contributed and continue to contribute. This old saw about we're using up all of the taxpayer's money and everything else to support illegals is not supported by the facts. So at some point in time I think that maybe what we need to do is to give...and to provide some light and clarity on this thing that says, you know what? Let's take a look and examine the facts. We pay our taxes. Everybody pays their taxes. So to that end, Mr. Chairman, it is always nice to see you, nice to see the rest of you people, all of these young, smiling faces, and you, too, guys over here as well. (Laughter) [LB569]

SENATOR MCGILL: They're young, but. [LB569]

SEVERIANO FRANCO: And I just included you in the young. So if anybody has any question, I might tell you a story, a joke, or whatever it is, but bear in mind that... [LB569]

SENATOR ASHFORD: Sam, what's always good about you...many things are good but one of the best things is late in the day and you're able to come up and give us a little bit of oomph, so that's really a service to all of us. [LB569]

SEVERIANO FRANCO: Well, you know and I always want to... [LB569]

SENATOR ASHFORD: That's not a question! No. (Laughter) [LB569]

SEVERIANO FRANCO: No, no. I just want to contribute a little bit, but thank you, again, so much. [LB569]

SENATOR ASHFORD: Thank you. [LB569]

SEVERIANO FRANCO: And I urge you to go ahead and defeat this noxious piece of whatever. (Laughter) [LB569]

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SENATOR ASHFORD: All right. Thanks, Sam. Can we get the next testifier? [LB569]

KATHLEEN GRANT: (Exhibit 77) Hi. I'm Kathleen Grant and I'm representing Omaha Together One Community, which is a faith-based organization in Douglas and Sarpy Counties of about 30 faith-based churches, synagogues, and other institutions. We've been hearing about immigration from our congregation members for the last year, and we're really grateful for this meaningful and, I think, really thoughtful dialogue on this very difficult issue. We strongly oppose this bill and also LB48 because we have widespread concern about a patchwork of bills across states and communities that really do not get at meaningful immigration reform. In October, we had 70 clergy come together at First United Methodist Church and were trained in the immigration, the various aspects of the immigration issue. And in the last weeks, we've had 300 members of congregations meet in St. Teresa's in north Omaha, St. Agnes in south Omaha, at St. Pius on about 69th and Blondo, and St. Leo's at 102nd and Blondo. This is throughout the Omaha metropolitan area. Many people are concerned about this issue. What we're hearing is that people have a lot of fear about all of these bills and these attempts to get at this issue. We have congregation members who are citizens and lifelong members, lifelong residents in Nebraska who have been stopped and who have been harassed by their neighbors about whether or not they have proper documentation of their immigration status. We've spoken with Chief Hayes. Immigration laws are being enforced in Omaha and they are being enforced in Nebraska. No one is shirking their duty in terms of immigration laws. I think what we have is a dysfunctional immigration system; it's broken and it needs to be fixed, really at the national level. I think putting together a patchwork of ill-defined laws is going to continue to engender fear and distrust. We've got a statement that we've distributed that's our position signed by over 40 of our religious and clergy members. [LB569 LB48 LR39]

SENATOR ASHFORD: Thanks, Kathleen. Yes, Senator Coash. [LB569]

SENATOR COASH: Thank you, Chairman. Kathleen, just for the record, are you opposing LB569? [LB569]

KATHLEEN GRANT: We are opposing LB569. Our concerns there had to do with some of the errors we've been told about in E-Verify and also E-Verify really wasn't established to establish immigration status and we're concerned about overwhelming that system by laws like this across the states. [LB569]

SENATOR COASH: Okay. [LB569]

SENATOR ASHFORD: Thank you, Kathleen. [LB569]

KATHLEEN GRANT: Okay. Thank you. [LB569]

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SENATOR ASHFORD: Next opponent. David. [LB569]

DAVID BROWN: (Exhibits 80-82, 86-88) Good afternoon, committee Chair and other senators. Thank you for allowing me to testify. Again, my name is David Brown. I'm a local immigration attorney originally from Canada and naturalized U.S. citizen. I'm handing over not just my written testimony but I was also asked to hand in some additional information on E-Verify. I'm also handing in written testimony on the two resolutions in front of you for this evening. Yes, sorry, and you can have my testifier sheet. Thank you. Sorry. When I think of something like E-Verify, I spend a lot of my time advising employers on what's right and what's wrong, what they're supposed to be doing with I-9 verification processes and whether or not they want to use E-Verify. And in order to advise my clients, I sign up for E-Verify myself. As a small business owner with eight employees, I've got to tell you that the last thing...you know, I'm the CEO, marketing director, chief counsel, I do everything, I wear every hat. And I got to tell you, it takes a lot of time out of my day just spending time doing all of those different things, and then to have an I-9 requirement in E-Verify. I'm an immigration attorney. It's easy for me. But I know that my clients have this issue. I know that if you've got a client that doesn't have a dedicated HR professional that something like E-Verify is going to quite...you know, quite honestly scare the pants off them. When you sign up for E-Verify, it's not as simple as signing up for it. You take a test. I'm an immigration attorney with 13 years of experience. That test still took me almost an hour to go through all of the tutorials and go through the test. I'm glad to say I got 100 percent correct. But I would be honest in telling you that a lot of my clients have issues with that tutorial. It can take several hours if you don't know what it is you're doing. And I think that that is definitely something we need to consider. E-Verify is not a mandatory program from a federal perspective. It's become a mandatory program if you are a federal contractor. It's also become... [LB569 LR39 LR28]

SENATOR ASHFORD: And that's why we made it a state...we did the state...used the same... [LB569]

DAVID BROWN: On the LB403, correct. But I'm concerned that this kind of goes a little too far. I understand under the Workers' Compensation Act there would be certain employers that would be exempted from this, but it doesn't exempt small businesses. It only exempts agricultural. [LB569]

SENATOR ASHFORD: Do you have any recommendations on that? [LB569]

DAVID BROWN: I guess if you were to actually go forward with this, I think there would be some sort of litmus test in terms of the size of employer. [LB569]

SENATOR ASHFORD: How would you do that? [LB569]

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DAVID BROWN: I think you could prescribe what the size of the employer...sir. [LB569]

SENATOR ASHFORD: No, no, but I mean what would that size be? [LB569]

DAVID BROWN: Maybe it's 50 people; maybe it's 100; maybe it's a point where you're big enough that you have administrative staff who can be dedicated to handle that resource. [LB569]

SENATOR ASHFORD: Okay. [LB569]

DAVID BROWN: So I'm concerned about that. I'm also concerned about the error rate. I know that Senator Coash mentioned some percentages. I'm aware of some percentages in a GAO report that came out in January. They indicated that the error rate is 2.6 percent. In a country of 150 million individuals, roughly speaking, who are employment eligible, that's approximately 3.9 million where we could have errors. In the state of Nebraska alone, if we assume about a million work-eligible employees or citizens, we're talking about 26,000 people. And the testimony we heard earlier today was that there are approximately 44,000, 45,000 undocumented people in this state. To have 26,000 Nebraskans potentially not get their jobs because of E-Verify when we're only dealing with 44,000, 45,000 people, I've got a concern with that. [LB569]

SENATOR ASHFORD: Thank you, David. I don't see any...Senator Coash. [LB569]

SENATOR COASH: You understand they would get their jobs because you can't use this until after they've been hired? [LB569]

DAVID BROWN: They would get their jobs but they would be terminated. They... [LB569]

SENATOR COASH: Sure they would if they're not legal to work here. [LB569]

DAVID BROWN: But the problem is this is an error rate. This is the false negative. This is 2.6 percent of determinations where they say you are not authorized to work, and you are actually authorized to work. [LB569]

SENATOR COASH: Okay. [LB569]

SENATOR ASHFORD: I get the issue. Okay. Thanks. [LB569]

DAVID BROWN: Thank you. [LB569]

SENATOR ASHFORD: We have one more opponent and then...you're neutral. How about neutral testifiers? Three. Okay. [LB569]

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JIM PARTINGTON: Is it possible to have the testimony I would have given on LB48 and...? [LB569]

SENATOR ASHFORD: Were you neutral on that too? [LB569]

JIM PARTINGTON: ...entered into the record? [LB569]

SENATOR ASHFORD: Were you neutral on LB48? [LB569]

JIM PARTINGTON: I'm sorry? [LB569]

SENATOR ASHFORD: Yeah, you can give some comments on LB48. [LB569]

JIM PARTINGTON: (Exhibits 84-85) Yeah, not comments, just the testimony entered into the record. [LB569 LB48 LR39]

SENATOR ASHFORD: Oh, sure. Okay. [LB569]

JIM PARTINGTON: Yeah. That's all I want to do. Chairman Ashford, members of the committee, my name is Jim Partington, J-i-m P-a-r-t-i-n-g-t-o-n, and I appreciate the opportunity to be here and testify neutral on LB569. I'm the executive director of the Nebraska Restaurant Association. E-Verify has made significant improvements in accuracy in the past two years, although it still has a 2.7 percent error rate. Many of our members use the system, and for those with over 50 employees and an active human resource department, it's just one more government regulation to comply with, imposing some marginal increase in overhead. It's a different story for smaller employers who don't have human resources departments and accounting departments but are very likely taking care of these responsibilities themselves after they close the business for the day. These folks stay late managing their business and then lose sleep worrying about whether or not they have satisfied all of the government paperwork requirements. If you implement E-Verify as a requirement, make it mandatory, we recommend that you introduce it in phases. You've already got state contractors introduced in that. And start with large corporations, and then companies with greater than 50 employees, and exempt businesses with fewer than 50 employees until we've got the system refined, it becomes more accurate, and until the constitutional issues are resolved. I would be pleased to answer any questions you may have regarding this testimony. And please include this, of course, as part of the record for the hearing. [LB569]

SENATOR ASHFORD: Thank you, Jim. Thank you for your testimony. Next neutral testifier. Jim or...welcome. [LB569]

CARL SCHAFFNER: (Exhibit 83) My name is Carl Schaffner, last name is spelled,

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S-c-h-a-f-f-n-e-r. Why I'm a little bit neutral on this because, as we heard in earlier testimony on LB48, I don't know if you're aware of this but this statute that you're considering now is I think on the same page as LB48 is on federal law. It's all under 1324(a). So if we've got a preemption issue with LB48, then this sucker is just a few sentences below it which kind of, once again, that gets to the heart of my argument. How can it both be you can and you can't at the same time? Also, what's really driving me crazy, it's nails on a chalkboard. It was my earlier testimony. Calling an illegal alien an immigrant is kind of... [LB569]

SENATOR ASHFORD: Here's what I want you to do, Carl. [LB569]

CARL SCHAFFNER: Okay. [LB569]

SENATOR ASHFORD: And this is just in fairness. [LB569]

CARL SCHAFFNER: Sure. [LB569]

SENATOR ASHFORD: If you'd confine your testimony...you've already testified on LB48, if you'd just confine your testimony to this bill I'd appreciate it. [LB569]

CARL SCHAFFNER: I am. [LB569]

SENATOR ASHFORD: Okay. In a neutral... [LB569]

CARL SCHAFFNER: And I'm stating that it's on the same... [LB569]

SENATOR ASHFORD: Okay. And I just wanted to so everybody gets the same... [LB569]

CARL SCHAFFNER: You're in the same legal framework. [LB569]

SENATOR ASHFORD: The same section of statute. [LB569]

CARL SCHAFFNER: Yeah, I think you're on the same page. I'd have to look it up. [LB569]

SENATOR ASHFORD: I get that argument. I get that. All I'm saying, I'd ask you to confine your testimony to LB569 if you would. [LB569]

CARL SCHAFFNER: Yes, yes, that's what I'm trying to do. The thing that's really driving me crazy with this argument is the word "immigrant" is being interchanged with the word "legal alien." I've long joked with some of my friends is that's like calling Mother Theresa and Timothy McVeigh, you know, kind of the same because they were both on Time

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magazine, had numerous newspaper articles. We're missing bigger, bigger issues that are obvious in the background. One of the craziest things is, you know it's already a state statute that if a 21-year-old working at a gas station, making a couple extra bucks to go to college, gets duped by a really expensive forged ID, she gets fined \$500, not the store, she does. She gets a \$500 fine for the first offense, the store \$1,000 fine for the first offense. Now we've got these HR departments and businesses that get nothing. It's just a little bit confusing to me why we hold a 21-year-old that doesn't really know (laugh) what a fake ID looks like to a higher standard than we're holding businesses in this statute. So I would, you know, really ask that you kind of beef that up. It just kind of drives you crazy. Also in my earlier testimony--I'm going to support you in this--there is a very good quote in there that the constitution is a provision that looks to an indestructible union composed of indestructible states. And it's very clear that through a lot of statutes the state's rights do oftentimes trump federal. And we're kind of getting this we have to listen to the feds. We don't have to listen to the feds; we can do our own thing. As for the several hours to do cleanup, heard that many times. Really? Seriously, a couple of hours to complete. That's not a strong argument about...anybody opening a business or doing your taxes for a business know that a couple of hours is kind of a piece of cake. So on that I kind of support you, but once again either we're going to do all of this or we're not going to do it. We can't...trying to straddle the fence, especially on the same page. Thank you. [LB569]

SENATOR ASHFORD: Thank you, Carl. [LB569]

CARL SCHAFFNER: Any questions? [LB569]

SENATOR ASHFORD: I don't see any. Thank you. Jim. [LB569]

JIM CUNNINGHAM: Senator Ashford and...I'm going to hurt myself here if I'm not careful. Senator Ashford and members of the committee, good afternoon. My name is Jim Cunningham, C-u-n-n-i-n-g-h-a-m, and I'm the executive director of the Nebraska Catholic Bishops Conference. Our conference did not take a position on LB569, and so my purpose is solely to preserve an opportunity on the record, having not seen the amendment that was introduced, because this is an issue that we obviously pay attention to. The U.S. Catholic Bishops Conference has opposed mandatory E-Verify at the federal level. And the only other comment I would make is that mandatory E-Verify here in Nebraska, of course, would encompass all nonprofits, charities, churches, and schools, so we have some concern in that regard. But I just want to protect the record without having had a chance to see the amendment. Thank you. [LB569]

SENATOR ASHFORD: Thanks, Jim. Thanks for your comments. Yep. Any other testifiers? Let's go to the next resolution or the first resolution...Senator McGill has an important meeting at here job, so. [LB569]

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SENATOR MCGILL: It's not because I want to leave, trust me, I want to stay, so.
(Laugh) [LB569]

SENATOR ASHFORD: Senator Coash I think would like to close though, Tony. [LB569]

SENATOR COASH: Just briefly, I want to share with the committee just a few observations after the testimony and observations from my own work in this area as well because I want to be 100 percent honest. It's a pain to sign up for this and you do have to take a test, and it's not...but it shouldn't be easy because you are going through an exercise, you know, that holds someone's work in the balance. And I think that it's reasonable. It is a little bit of a pain, but I will tell you...and it does take a few hours and there is a test, but once you've done that, once you have the MOU signed, the checks themselves are very, very quick--20 seconds, okay, very, very quickly. And I'll just close by saying, you know, it's a right to work here. It's a right. You have to have a right to work in our state. And employers have a responsibility to assure that the folks who they hire have that right. And I don't think it's unreasonable to ask them to do this. I was taking notes. I think there's some reasonable ideas here about employer limits, employee limits. [LB569]

SENATOR ASHFORD: What do you think about the 50 employees idea? [LB569]

SENATOR COASH: It's a place to start. I'm not opposed to it. [LB569]

SENATOR ASHFORD: Yeah. Okay. [LB569]

SENATOR COASH: Thank you. [LB569]

SENATOR ASHFORD: Thank you. (See also Exhibits 68, 78-79, 88-91) Yes, sir, Senator Fulton. Let me make sure I have the right number. What number is this? LR28 for those who are keeping track. [LB569]

SENATOR FULTON: Ready? Good afternoon, Mr. Chairman. Thank you. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n. I represent Legislative District 29. And I will fly through this testimony in the interest of time. I've introduced, in the past to this committee, resolutions to encourage use of the 287(g) program. I still maintain that that's a useful program and would still encourage its use, but I'm not introducing that this year. This is the Secure Communities program and I think this is an even better idea. The Secure Communities program facilitates information sharing between state and local law enforcement and the FBI and Department of Homeland Security to ensure that the most dangerous criminal aliens are effectively removed from our borders. Since its inception in 2008, the Secure Communities program has grown to include a little over 1,000 jurisdictions in 39 states and every jurisdiction in 9 states, and helped to identify and remove over 64,000 aliens who have committed crimes in the United States. It is

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planned by the Obama administration that Secure Communities will be in place in all jurisdictions nationwide by 2013, and that incidentally is one of the reasons why I brought this forward. How it works: In jurisdictions where the Secure Communities program is in place, all persons taken into custody are booked and fingerprinted. Those fingerprints are shared by the arresting agency with the State Patrol who then forwards the fingerprints to Washington where they are run through both the FBI and Homeland Security database. This database check then elicits information regarding criminal record and immigration status. Should the arrestee's fingerprint indicate that he or she is illegally present in the U.S., then the decision on whether and what immigration enforcement action to take is made by Immigration and Customs Enforcement as I maintain it ought to be. At no point is the state or local law enforcement agency charged with the enforcement of federal immigration law, and that's where I think we have a little bit of a difference in this resolution that I bring to you. There are objections which I would be prepared to answer if the committee is interested in pursuing this. I think I've thought through this in all of the ways it could be objected to. I will skip that and conclude by saying that LR28 exists to educate all law enforcement agencies and the public in Nebraska about the benefits of expanding the Secure Communities program. Given that 11 counties have voluntarily done so in the past six months, I believe it behooves us to support this expansion and become the tenth state in the country to implement this program fully. And that's what I hope to accomplish with the resolution. [LR28]

SENATOR ASHFORD: Thanks, Tony. Any questions? Senator Council. [LR28]

SENATOR COUNCIL: Thank you, Chairman Ashford. Let me swallow this ice. Senator Fulton, can you provide us what you understand to be some of the objections to LR28? [LR28]

SENATOR FULTON: I'll go ahead and do that. Let's see, the one is...one objection is that the claim could be made that the program could result in profiling, racial profiling, and that it would therefore erode the trust that exists between police and immigrant communities. And I've heard that argument in the past on 287(g), and I maintain that these claims are not founded because the Secure Communities program is applied universally to all persons taken into custody and does not allow law enforcement to act on reasonable suspicion nor anything of the like. So that's one objection. Another that was brought forward on 287(g) last year and that I could envision being brought forward as an objection to this is that it would place a mandate on local law enforcement agencies which would, therefore, cost more money, and seeing how we just...I'll say it...as we have just cut aid to local municipalities, it would seem contrary to what we're communicating by way of public policy. So my response to that is that, again, as I chose to do last year, this is by way of resolution. It is in cooperation with the stated intention of our President, the head of our federal government, and this I think is the most attractive argument actually in favor of this resolution. Those who are in our jails who

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aren't supposed to be in our country are costing us money that they should not have been costing us. And so if an argument is that this will be an unfunded mandate, I'd respond by saying that if indeed this program works as intended, then I believe that we will reduce census in counties. And I have some stats for Lancaster County which would indicate that but, yeah. [LR28]

SENATOR ASHFORD: Okay. All right. [LR28]

SENATOR COUNCIL: Your understanding, what is the difference between a law enforcement agency that enters into an 287(g) memorandum of understanding and the Secured Communities program? [LR28]

SENATOR FULTON: Okay. With 287(g), there is an understanding that federal immigration law would be enforced by local law enforcement under the jurisdiction of that memorandum of understanding, so that's law enforcement of federal immigration law. This is different in that one who has entered, who has committed a crime and would be housed in our jail is checked to see whether indeed they should be in this country to begin with. So there is...in this proposal, this is not the enforcement of federal immigration law. So there's a difference there. [LR28]

SENATOR COUNCIL: Okay. And so is it your understanding that on major crimes and as I understand what ICE's priority is that major felonies and repeat felony offenders that that's not occurring now at both the local and the state level? [LR28]

SENATOR FULTON: It is in some counties; it isn't in all counties. And I think...I'm not positive about this but as...what I understand is that this program has only become prominent and...I'm looking for the word, it's got its legs here in recent years. Here's one of these areas where I...President Obama, I think he's...he's done right by this program. And I say that because we talk with our local sheriff. We actually talked with him today, and he said that in three, four...he said four or five years ago, I believe were his words, if one were found to be in our prison who was here illegally and ICE was contacted, there wasn't a response or if the response existed, it came...it was a lazy response. But in recent years it's been better. And so I think that we have some momentum, but right now not all counties utilize this. [LR28]

SENATOR COUNCIL: Okay. Because this does not comport with what I experience. And I visit correctional department facilities regularly and I can tell you that there are a number of undocumented immigrants who have been convicted of felony offenses that are housed in our correctional department. They're not deported and, more often than not, they're not deported until they've completed their sentence. So, I mean, I don't know how this improves...for those who argue about the cost to the state, I just don't see that positively impacting or reducing costs if that's going to be the same process. Yeah, you say ICE knows and ICE says: Okay, this is one of the individuals who fall

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within our priority designation for deportation. But really how I've seen it operate is that person serves out his or her term for the crime they've committed in Nebraska and then they're deported. So I just don't know how this results in any savings to us. But I do appreciate the fact that LR28 recognizes that enforcement of immigration laws is a matter of federal jurisdiction and that the removal of unlawfully present individuals is a federal responsibility. The state has no ability to deport, and I think that's important because I find it interesting that there are people who have written to me or called me and support LR28 but don't support LR39, and LR39 is based on the same premise of LR28, and that is enforcement of immigration laws is a matter of federal jurisdiction and that all you're doing in LR28 is urging this cooperation; 287(g) already provides a means of cooperation; yours provides a different...and I appreciate, different means of cooperation, while LR39 says let's force the federal government to get to it and get immigration reform accomplished. And I just find it curious that opponents of LR39 can support LR28 when the underlying premise is the same, that it's a matter of federal immigration policy and that area is fully preempted by federal law, and there's no place for the state to be enforcing federal immigration laws. [LR28]

SENATOR FULTON: Let's...I... [LR28]

SENATOR ASHFORD: Well, I think...maybe that doesn't...that's more of a statement. [LR28]

SENATOR FULTON: Yeah. That's...for the record I don't know what LR39 is, (laughter) so. [LR28]

SENATOR COUNCIL: Okay. Not a problem. Good, well, for my record. Thank you, Senator Fulton. [LR28]

SENATOR ASHFORD: Why don't we go to the proponent. [LR28]

SENATOR FULTON: (Exhibit 92) I have submitted a letter that I'd like to be entered into the record. It's from the Nebraska Sheriffs' Association, Sheriff J.L. Davis, Sarpy County Sheriff, who's writing a letter on behalf of the Nebraska Sheriff's Association in favor of the resolution. [LR28]

SENATOR ASHFORD: Okay. Thanks, Tony. Are you going to stick around or leave? [LR28]

SENATOR FULTON: It depends how long. [LR28]

SENATOR ASHFORD: Well, we're going to try to get through this. How many testifiers do we have on the resolution, just on this first resolution? Okay. Why don't we go to the proponents. Richard. [LR28]

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RICHARD MILLER: Okay. I back this resolution. DHS estimated in 2009 approximately 32 percent of the illegal aliens apprehended by the Department of Homeland Security have criminal convictions. That's a third of all the people that are apprehended at the border and beyond. In Nebraska, that would put about 14,000-plus illegal aliens in Nebraska with criminal backgrounds. So I support this. We put them...the criminal is caught in Nebraska; they're put in jail for five years, whatever, no problem, and then deported. If we didn't know that they got a...that they're illegal aliens through the Secure Communities program, when they got out of jail in five years, they'd be put back into our communities to commit more crimes here. We deport them, at least it's going to take them a couple of months to get back into our communities. So it's going to cost us no matter what, but at least we know they're illegal and maybe we can get them out, and the next time they come back in they'll be federally indicted and put into jail for a long time. So I support that. [LR28]

SENATOR ASHFORD: Thank you, Richard. Next proponent. Carl, did you want to...? [LR28]

CARL SCHAFFNER: I'm going to get my money's worth out of my gas today. Name is Carl Schaffner, S-c-h-a-f-f-n-e-r. I would like to come out strongly in favor of this. I didn't know when I was putting together my package last night how appropriate the material I pulled for you would be. In that packet I gave you (Exhibit 15) the Hamdi ad veritas brief presented by Donald Rumsfeld. There was a huge question since Hamdi is a tourist citizen. His parents flew into the United States with the express purpose of having him born in Louisiana so he could be a citizen, and then go back and come back and wage jihad as a U.S. citizen. If you watch the news, this is coming to fruition. A lot of people have been thinking this through. People that want to do us harm think long term: we think quarters; they think centuries. Besides Hamdi, it was reported in the news just last month that Hezbollah has teamed up with the Zetas drug cartel in Mexico and, lo and behold, we are starting to see Hezbollah-type car bombings along the border with Texas, which is a bit alarming. Of course, we also captured a few al-Qaeda members. Even the Homeland Security Director, Janet Napolitano, works for our current President, admits that we have al-Qaeda that we are capturing within the United States. This is a very dangerous thing and this mechanism would be a great way to start getting some cooperation to screen these people out. As for the preemption thing, I was almost going to pull this with it, frankly I ran out of paper last night, Patterson v. Kentucky. You might want to look that one up. It's a really interesting case. In Patterson v. Kentucky, this was one of the landmark cases, Patterson was trying to sell essentially snake oil, coal oil. And the Constitution, not an amendment, makes weights and standards and measures the sole, you know, domain of Congress. However, in Patterson v. Kentucky, the Supreme Court ruled that just because they have jurisdiction doesn't mean a state has to say, okay, we give up, do whatever you want, because you just can't police an entire country. Calling Washington, D.C., every time you have a problem doesn't work.

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Also in the package I gave you, I gave you a little extra from Keller v. United States. You might want to look that one up, too, because it has a similar flow to it. It actually states that Gibson v. Ogden, the "Holy Grail" to many that are in this room, doesn't quite apply; that you have to look at the whole of a body of law and traditions, and then stick with the rights of states. And so I believe that would be a very interesting one for you all to read--Keller v. United States and also Patterson v. Kentucky, and it might add a lot. I really support this. It's a great idea. Thank you very much. Any questions? [LR28]

SENATOR ASHFORD: I don't see any. Thanks, Carl. [LR28]

CARL SCHAFFNER: Okay. Thank you. [LR28]

SENATOR ASHFORD: Any other proponents? Opponents? Those who are against this resolution. Okay. Oh, you're opponent. Okay. We're onto the opponents now. [LR28]

HOWARD DOTSON: Good afternoon, Chairman and senators. I'm opposed to this LR because... [LR28]

SENATOR ASHFORD: Give us your name and... [LR28]

HOWARD DOTSON: Sorry. Reverend Howard Dotson, Omaha, Nebraska. I'm opposed to this LR because I think this is a back-door strategy to start the privatization of our corrections, that the same people that wrote many of the statutes, SB1070 and 287(g), and I know that you've been offered some of that NPR coverage of who's pushing some of this legislation. I've served in a state that has a lot of privatized prisons in California. I was a chaplain at San Quentin providing the Eucharist for HIV-positive inmates, and I saw how privatization corrupts corrections. Any time there's a financial incentive such as this Secure Communities where someone is going to be held until ICE picks them up, that's a nice pretty penny of almost \$100 a day in some of our corrections. And until the federal government approaches us by 2013, I would urge our Unicameral to hold off, because what happens when you privatize, it's an iron triangle just like the military-industrial complex. That corrections lobby and that money put into our political process can be a great obstruction to...we had the California senate look at a death penalty and make some suggestions to the governor, and the governor refused every recommendation of the California senate because the California corrections lobby was so influential that the governor would not take any of those recommendations. So I would hate to see that same corrosive element encroach into Nebraska. And I know that you have laws prohibiting privatization, but there's a cautionary here on those kind of agreements. [LR28]

SENATOR ASHFORD: Thanks, Howard. Yes, Senator Coash. [LR28]

SENATOR COASH: Thank you, Chairman. Reverend, I just reread Senator Fulton's

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resolution, didn't see anywhere in there about privatizing corrections anywhere in his resolution. Did you see that or are you just...you're assuming that's where it's coming from? [LR28]

HOWARD DOTSON: There's a cautionary in there that that's where this could lead when someone sees that if we start working with Secure Communities, then we got to hold this person until ICE comes and gets them. And you got people that are struggling, and corrections starts to look at, whoa, this agreement could bring us a lot of money if we're holding these folks. [LR28]

SENATOR COASH: I understand your caution. I just didn't see it and I'm sure Senator Fulton will clarify if he closes, so thanks, Reverend. [LR28]

SENATOR ASHFORD: Thanks, Senator Coash. Thanks, Howard. Other opponents. [LR28]

DARCY TROMANHAUSER: (Exhibits 94-95) Good afternoon, evening almost. My name is Darcy Tromanhauser, D-a-r-c-y T-r-o-m-a-n-h-a-u-s-e-r, and I'm the director of the immigrant program at Nebraska Appleseed, and we're here today to submit testimony in opposition to LR28. LR28 recommends that all Nebraska law enforcement agencies participate in Secure Communities program despite growing concerns about the program voiced by law enforcement officials nationwide. The program has been rolled out or imposed upon many law enforcement jurisdictions across the country, including several, so far, in Nebraska, without their consultation or agreement. And despite the stated goal of the program to focus strictly on dangerous criminals, it has been used to deport tens of thousands of people with no criminal records, as was mentioned in The New York Times editorial last week that I've included with your materials. The program leaves communities with the impression that local police are serving as immigration agents, and that undermines law enforcement's ability to fight crime and protect public safety. So when some...as has been discussed today already, when some members of the community fear the police are going to them to report crimes or assist with investigations, then we're all less safe. As The New York Times described, there is a place for local law enforcement in immigration matters, but it must be strictly limited and cautiously drawn and it must prioritize dangerous criminals, as again we've talked about already today, leaving alone those without criminal records, which is the vast majority of the undocumented population. Instead, with Secure Communities, as a year of ICE data shows, individuals identified through Secure Communities, of them roughly 86 percent were arrested for low-level offenses such as traffic violations, and nearly 5 percent identified were U.S. citizens. So on that last point, it's also opening up municipalities to increase claims for damages or litigation. So LR28 runs counter to the protection of public safety and Nebraska should not affirm a deeply flawed program that undermines the discretion and the effectiveness of law enforcement. The one other thing I would just mention is that Senator Fulton mentioned

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that this was based on someone who's been convicted of a crime, and it's for an arrest. It's based on arrest, not conviction. [LR28]

SENATOR ASHFORD: Thank you, Darcy. Thank you. I don't see any questions. Thanks for your comments. [LR28]

DARCY TROMANHAUSER: Okay. Thank you. [LR28]

SENATOR ASHFORD: Other opponents? Neutral? Oh, I'm sorry. You said it earlier and I forgot. [LR28]

JEAN EILEEN DURGIN-CLINCHARD: I just didn't move fast enough. [LR28]

SENATOR ASHFORD: Well, that's my fault. You said you were going to testify and I didn't... [LR28]

JEAN EILEEN DURGIN-CLINCHARD: Well, for this one I'm not prepared, although my longevity, I've been here all day for the next one, so. [LR28]

SENATOR ASHFORD: Yes, and you've been here before too. [LR28]

JEAN EILEEN DURGIN-CLINCHARD: Yes, I have. [LR28]

SENATOR ASHFORD: And it's nice to see you back again. [LR28]

JEAN EILEEN DURGIN-CLINCHARD: Thank you. Good afternoon, Senator Ashford and members of the committee. I didn't have time to do all of the research that I would like to do on this one, but I've certainly heard from the previous people and I will not repeat kinds of those things. I feel like it's important for me to oppose it. There is no fiscal impact for a resolution. On the other hand, when it's ruled out, which this is certainly encouraging people to do, there is a tremendous amount of fiscal impact, and I can see the creepy thing of out-resourcing because if at a smaller, local...a smaller entity, agency, law enforcement agency, they may not have the full equipment, they may not have the full technology to be able to make use of this. So where am I going to have it done? I have to have it sent somewhere or I have to know how to do it and train my people. So there is fiscal impact, whether...not now but coming down the road. I do appreciate the federal supremacy in it. I think that's very important. And as I said, I echo the previous speakers. And did I say my name? [LR28]

SENATOR ASHFORD: Well, you have to say your name if you would. [LR28]

JEAN EILEEN DURGIN-CLINCHARD: Right. My name is Jean Eileen Durgin-Clinchard, D-u-r-g-i-n--who's writing--hyphen-Clinchard. [LR28]

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SENATOR ASHFORD: All of us. [LR28]

JEAN EILEEN DURGIN-CLINCHARD: Okay. [LR28]

SENATOR LATHROP: We don't even know who types it all up (laughter) but it gets typed up. [LR28]

JEAN EILEEN DURGIN-CLINCHARD: The things...I did get this little blurb on Secure Communities, because one other thing that I have is that when you call something "Secure Communities," that's kind of like a "hey, look how good we are" without really looking at it. It, I think, can give you a false sense of security. So I think just the title bothers me. [LR28]

SENATOR ASHFORD: Got it. Thank you. And thank you so much for staying all day. I'm sorry. [LR28]

JEAN EILEEN DURGIN-CLINCHARD: And I'm still here. [LR28]

SENATOR ASHFORD: And you're still here. It just took--it takes a long time, sometimes, to get through these things. Okay. Next opponent. Neutral? Tony. Senator Fulton. [LR28]

SENATOR FULTON: I'm not--for the record, I'm not neutral. (Laughter) Number one, for the record, I'm not--it's not my intention to privatize prisons here in Nebraska. And number two, there was a good point that was raised that should be responded to; I think it was the second opponent. I checked here locally anyway--and I could get this response across the state if the committee would require that--but there's no instance here in recent years--well, there's no instance where a local charge was dropped and a hold by ICE remained long enough for any course of action. We did get that out of the county sheriff here. And, yeah, that's it. Just advocate for this moving forward. [LR28]

SENATOR ASHFORD: Thanks, Senator Fulton. (See also Exhibit 93) [LR28]

SENATOR FULTON: Thank you. [LR28]

SENATOR ASHFORD: Senator Council has... [LR39]

SENATOR COUNCIL: Thank you. [LR39]

SENATOR ASHFORD: ...the next, the last matter of the day, but certainly not the... [LR39]

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SENATOR COUNCIL: Hurrah. [LR39]

SENATOR ASHFORD: ...least. What's the LR number on this? How many testifiers do we have on LR39? Okay. We're going to try to be done here, if we can, by 6:30. That may not be possible, but we'll sure try. [LR39]

SENATOR COUNCIL: Chairman Ashford, I'll do all that I can. Chairman Ashford, fellow members of the Judiciary Committee, for the record, I am Brenda Council, last name spelled C-o-u-n-c-i-l, and I am the senator representing the 11th Legislative District. And so that there is no doubt--that I am a lifelong real Nebraskan. I appear on this side of the table this afternoon for the purpose of presenting LR39. I introduced LR39 for this committee's and, hopefully, the full Legislature's consideration in lieu of LB48. I have listened intently to the testimony on LB48 this afternoon. I've read the volumes of e-mails that I have received on both sides of the LB48 argument. And I remain convinced that LR39 provides the only practical approach that we can take as a state at this time to address a very serious and controversial issue, and that is immigration. I don't think anyone in this room disagrees with the fact that action must be taken to address immigration reform. We are all frustrated with the fact that our federal government has not fulfilled its obligation, its constitutional obligation, to take action to remedy the problems that we've been seeing in the area of immigration. The problem is, is that we are trying to create a remedy at a state level, where it is not within our authority or jurisdiction to do so. It is my firm opinion that LB48 is unconstitutional, it'll be very expensive, and that it is simply a futile gesture. Why do I believe this? Again, it's because federal immigration policy has been--it is just that: federal immigration policy. And the federal government has taken action to enact legislation, laws and rules that govern immigration in this country, and have fully occupied, in my opinion, the area of immigration law enforcement. While opponents of LR39 argue that it does nothing to address immigration reform, I submit that LR39 does more than LB48 does or can do. And that's because LB48, again, in my opinion, is unconstitutional. We can pass LB48, and none of its provisions will ever be implemented. Those who believe that that will send some signal with regard to Nebraska's position on immigration, I submit to you that LR39 sends that--a better signal--in that it directs this body to direct our Congressional delegation, the five members of our Congressional delegation, to pursue immigration reform at the federal level. I think it's interesting--if we look at this being viewed as a problem of such grave concern in Nebraska--I searched, and maybe I overlooked it, but I was unable to find one piece of federal legislation proposed by any member of the Nebraska Congressional delegation to address this issue. That's where this work can and must be done--at the federal level. All of these issues with regard to presence, lawful presence or otherwise, we avoid all of these issues that have become so divisive and have raised the level of discussion on this matter to such vitriolic levels; that to suggest that placing the responsibility for reforming our immigration laws where that responsibility rests by virtue of our Constitution, to suggest that by doing that I somehow designate this state a sanctuary state. I submit to you I would be designating this state

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as a state that understands what has to be done to effectively and on a meaningful basis address immigration reform. If you look at what LR39 requires, it's beyond telling our Congressional delegation that you need to take some action, you need to encourage Congress to move in this area. It says, when you do that, do that in a humane fashion; do that with as little disruption of families as possible. Now, I'm going to tell you, I resent those who are critical of some of us, myself included, who are concerned about the effect of immigration laws on the family structure. Family is important to me; I always believed that family was important to Nebraskans. And to suggest that I'm somehow anti-Nebraskan by saying that when we consider immigration reform we should consider preserving, to the greatest extent possible, the family structure...I think that's being one of the best Nebraskans that you can possibly be. I think that immigration reform should also take into consideration the economy of the state of Nebraska and the labor needs of the state of Nebraska. When we look at what immigrants provide to this economy in terms of taxes paid in the form of sales tax, income tax, property tax, those contributions are significant. Now, that doesn't in any way ignore the fact that there are some costs to the state associated with the presence in the state of Nebraska of those who have not gone through the process of being lawfully present. But I believe that we can provide the means by which we can provide some pathways to citizenship in appropriate situations. And I firmly believe that the issue of enforcement of our immigration laws rests with the federal government. I applaud the law enforcement community, locally and nationally, who are opposed to measures like LB48, because they are concerned about providing for the protection and safety of the citizens, the residents of the state of Nebraska from crime and violence; that that's their primary role as law enforcement. And if you don't believe that enforcement of civil immigration laws will not detract from their enforcement of criminal laws that this committee routinely enacts, you're not being honest with yourselves in terms of what law enforcement is seeking to do. So with that--and I know there have been a lot of people who have stayed a long time; I would much prefer that this committee hear from them than me. So with that, Mr. Chairman, I will return to my seat. [LR39]

SENATOR ASHFORD: Thank you, Senator Council. [LR39]

SENATOR LARSON: I have one question. [LR39]

SENATOR COUNCIL: Question. [LR39]

SENATOR ASHFORD: Senator Larson. [LR39]

SENATOR COUNCIL: Yes, sir. [LR39]

SENATOR LARSON: I'm sorry, Senator Council. [LR39]

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SENATOR COUNCIL: That's quite all right. [LR39]

SENATOR LARSON: First of all, I'd like to say I have the deepest respect for you, and I think you're a great Nebraskan, and you serve your people well. (Laugh) [LR39]

SENATOR COUNCIL: Thank you. I appreciate that. I was starting to get a complex. [LR39]

SENATOR LARSON: Second of all... [LR39]

SENATOR ASHFORD: Is that it, Senator Larson, or...? [LR39]

SENATOR LARSON: Second of all...no, I'm not done; I just wanted to throw that out there to start. [LR39]

SENATOR COUNCIL: (Laugh) I was starting to get a...yeah, that's just smooth--that's to smooth me out. [LR39]

SENATOR LARSON: (Laugh) I mean, but I do have some concerns, especially since the federal level has shown its unwillingness to take a lead in the area of immigration reform. Why shouldn't the state stand up and step into the void, in your estimation? I mean, because, I mean, they have. [LR39]

SENATOR COUNCIL: The simple response, Senator Larson, is we can't. I mean, this law will be successfully challenged for its unconstitutionality. So where would you rather direct our very limited resources financially: in getting Congress to enact reform that there's no question would be enforceable, or our enacting reform? And I was disheartened that the Attorney General can send a representative down to support LB48 but cannot provide--and has apparently already predetermined that they will mount the legal defense to the challenge that will come--and yet make no provision for the cost. And then the...Mike from...I don't...Mike is here from Fremont, who's telling us that even there--and you're only talking about preliminary injunction stage--\$3.2 million in costs to those taxpayers. [LR39]

SENATOR LARSON: I understand that. I'd only say that we don't know for sure if it will be struck down. I mean, that's your...I'm just saying we don't know. I mean, that is up to the courts to decide eventually. And so I... [LR39]

SENATOR COUNCIL: No. But no, no. No. [LR39]

SENATOR LARSON: That's the only thing I'd say--we don't know. [LR39]

SENATOR COUNCIL: Right. [LR39]

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SENATOR LARSON: In your opinion, it will be unconstitutional. [LR39]

SENATOR COUNCIL: No. But my point is it will be challenged. [LR39]

SENATOR LARSON: It will be challenged... [LR39]

SENATOR COUNCIL: And that will... [LR39]

SENATOR LARSON: ...but we don't know that for sure, that it will be struck down. [LR39]

SENATOR COUNCIL: No, but it will be challenged, and taxpayers of this state will have to bear the cost of defending that challenge at a time when we should be focusing our attention on dealing with the budget... [LR39]

SENATOR LARSON: I understand your point. [LR39]

SENATOR COUNCIL: ...the budgetary issues that could result in some meaningful impact on residents. [LR39]

SENATOR ASHFORD: Thank you, Senator Council... [LR39]

SENATOR COUNCIL: Thank you. [LR39]

SENATOR ASHFORD: ...and Senator Larson. Thank you for your comments. [LR39]

SENATOR COUNCIL: Thank you, Senator Larson. [LR39]

SENATOR LARSON: (Laugh) [LR39]

SENATOR ASHFORD: And Howard...you know, and I just...sit down, go ahead, Howard. But I mean, the...why I was struck by this particular resolution of Senator Council's is--and, again--is that just the incredible tragedy of the Senate and House and the President all being on the same page on reform that would at least allow young people to find work in this country and to not be criminals or illegal or however we want to designate them, in my view, is probably the biggest tragedy of the last 25 years in the federal system. And I...the other thing I'll say before you get started, Howard, generally, is--and why I support Senator Council's resolution--is we can be doing...this Legislature has a lot to do, and that doesn't mean that these bills are not important, and they are. It is important to have these public discussions, very important to have this conversation. But in reality we can continue to do this from now till the cows come home and have all these various hearings, and it's not going to make any significant difference until we get

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to a resolution on the federal level, whether or not it's preempted to the point...so I--that's why I support Senator Council. But anyway--Howard. [LR39]

HOWARD DOTSON: (Exhibits 106-107) Good afternoon, or good evening (laugh), Chairman and senators. My name is Howard Dotson; I'm the pastor at Westminster in Field Club, Omaha. Park Avenue is 73 percent Latino, and that's five blocks from the church I serve. I've shared with you a YouTube link to Steve Earle's song "City of Immigrants." And the chorus in that song is: All of us are immigrants, every daughter, every son; all of us are immigrants, every one. And I'm here to affirm Senator Council's LR39 as a answer to several other bills that have been before your committee. Senator Council, you met two of my precious Latinas at the Field Club country club, Lupe and Ali; I'm sorry that Senator McGill is not here. But I ask that you remember their precious faces and their future--that we need to focus on the federal reform, because, as we've heard, the Constitution requires it but also that the people that are behind this are nativists. FAIR is registered by the Southern Poverty Law Center as a hate group. If you look at the paper they wrote on Kobach, \$1.27 million was given by neo-Nazis to FAIR. And I am really saddened to see a senator aligning himself with an agenda of a nativist hate group. And this is playing out throughout the nation. We got 15 states with Arizona copycat, and what we saw in Fremont and the anecdotal and the testimonials of harassment is now spreading throughout the nation. And I've said this before, that this is the Selma of our day. This is a civil rights crisis that's playing out across our nation, and there's nativists that are pushing this culture war, and it's a scorched-earth strategy. And so we have an opportunity here in Nebraska to reframe the dialogue, do it right, focus on federal reform. And I hope that we put more of our energy into talking to our Senators and Congressmen. One of the problems that we saw in Southeast Precinct is the day after that Arizona broke, the number of Latinos that went in to report a crime dropped from a average of 40 to only 2. And the community policing in my community--the only people that benefit when Latinos are afraid of the police are the bad guys. And I don't want to see more homicides in my community. So that's why I'm so passionate about the community policing component, of having all of our citizens and neighbors feel that they're going to be protected and served. [LR39]

SENATOR ASHFORD: Thanks, Howard. I don't see any...Senator Larson has a question. [LR39]

SENATOR LARSON: Are you comparing Senator Janssen to a neo-Nazi? [LR39]

HOWARD DOTSON: I say he's aligning himself with FAIR, which is a registered hate group by Southern Poverty Law Center, because he's asked Kobach to testify for the in-state tuition bill... [LR39]

SENATOR LARSON: How is that allying himself with FAIR? I don't...just because they gave to Kobach? I just... [LR39]

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HOWARD DOTSON: FAIR has financed the--his attorney fees. [LR39]

SENATOR LARSON: So you are comparing Senator Janssen to a neo-Nazi. [LR39]

HOWARD DOTSON: I'm not comparing; I'm saying it's problematic that he's aligning himself with an agenda that coincides with FAIR. Be careful who you associate with. I'm sorry. That's just... [LR39]

SENATOR LARSON: So he associates himself with that group. [LR39]

HOWARD DOTSON: Yeah. [LR39]

SENATOR LARSON: Okay. [LR39]

HOWARD DOTSON: He's submitted written testimony in support of the in-state tuition bill. [LR39]

SENATOR LARSON: Has he--in any way, has Senator Janssen supported FAIR or said that he supports FAIR or said that he has aligned himself with FAIR, or are you just drawing this conclusion yourself? [LR39]

HOWARD DOTSON: FAIR wrote the Fremont ordinance; FAIR helped write SB1070. [LR39]

SENATOR LARSON: They wrote it personally. [LR39]

HOWARD DOTSON: Um-hum. If you see the documentary "9500 Liberty," they take credit for writing this legislation. [LR39]

SENATOR LARSON: So...all right. [LR39]

HOWARD DOTSON: If you see the documentary, you'll see... [LR39]

SENATOR ASHFORD: Okay. I think that's fine. [LR39]

HOWARD DOTSON: Yeah. [LR39]

SENATOR ASHFORD: Thanks, Howard. Any other...? (Laugh) Okay. Why don't we--we're going to take a woman and then a man. And I didn't mean to sound...I don't know where that came...I know that's totally silly, but I--we're going to do it anyway. (Laugh) Okay. [LR39]

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LEXIE LaMERE: (Exhibit 112) Senator Ashford and members of the Judiciary Committee, my name is Lexie LaMere; I'm from the Winnebago Tribe of Nebraska. I come here today to gather support for LR39. We're discussing immigration, and like most native people, I find it a little confusing. My great-great-grandfather came from Wisconsin in 1863 to find a better life at a time when the government was trying to say how and where they could live because of who they were and how they looked. We all have family stories like this, and I'm beginning to hear that some are more important than others. And I'm troubled by this. On January 27, my father, Frank LaMere, spoke at a rally, and he said something I never heard him say before. He asked: Who among us in this great state would seek to determine where a baby could draw its first breath or where a person would deliver their last sigh. I stand here to continue asking questions, and my question is: Why is it we have not learned from our past? I'm an 18-year-old woman before you to ask my elders to remember the past, to learn that inhumanity is wrong and no good can come from it. And today it's your responsibility to answer these questions. Any action on a state immigration bill will do little good for Nebraska. In fact, it will only cause suspicion where there's trust and foster an environment full of racial profiling. If the immigration bills are passed, others will be responsible for determining whether or not I look American enough or if any of us do. I thought we settled the judging of people based on the color of their skin back in 1964 and in 1968. I don't think we'll be looking for the Russians or the Irish or the British or the Jewish; I think they'll be looking for brown people like me. And I have to ask myself: Will they question me, if I have the legality to be here? And I strongly believe that the state of Nebraska will feel humiliated when I respond: I've been here for 25,000 years; where are your papers? (Laughter) Immigration is a federal matter. The Constitution states the Congress shall have the power to establish a uniform rule of naturalization. International relations are under federal jurisdiction. And it affects people well beyond the borders of Nebraska. Is this really a precedent that we Nebraskans want--to be known as the example of racial profiling for the rest of the country? It's easy to pull people apart, and the immigration bills will do just that. But LR39 ensures that we will not judge our neighbors. Finally, I want to bring a simple fact to your attention. The Nebraska state flag, which serves as a visual reminder of our values and collective identity, proudly makes my argument by stating, "Equality before the Law." I urge you to support Senator Council's resolution. Pi-nah-gi-gi and thank you. [LR39]

SENATOR ASHFORD: Lexie, thank you. Now, when your great-great-great-grandfather, 1863... [LR39]

LEXIE LaMERE: Yes? [LR39]

SENATOR ASHFORD: ...came to...where did he come--where into Nebraska...? [LR39]

LEXIE LaMERE: He came down the Missouri River at the age of nine years old... [LR39]

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SENATOR ASHFORD: To... [LR39]

LEXIE LaMERE: ...and they stopped just on the northern part of Nebraska. I mean... [LR39]

SENATOR ASHFORD: North, by Sioux City kind of? [LR39]

LEXIE LaMERE: Yeah. And made an agreement with the Omaha tribes that they would protect the Omaha tribes against the Yankton Sioux who were coming down. [LR39]

SENATOR ASHFORD: My--the only reason I mention that is my great-great-grandfather came to Homer, Nebraska, which is... [LR39]

LEXIE LaMERE: It's about 20 minutes... [LR39]

SENATOR ASHFORD: ...very near... [LR39]

LEXIE LaMERE: Yes. [LR39]

SENATOR ASHFORD: ...in 1858 on the Missouri River... [LR39]

LEXIE LaMERE: Um-hum. [LR39]

SENATOR ASHFORD: ...came up from New Orleans and came up on the Missouri. And they for some reason stopped in Homer. Actually they stopped in Sioux City, where, with four other Irish families...and so, maybe, I wonder if they knew each other. (Laughter) [LR39]

LEXIE LaMERE: Probably. [LR39]

SENATOR ASHFORD: I hope they did. [LR39]

LEXIE LaMERE: (Laugh) [LR39]

SENATOR ASHFORD: Thank you. [LR39]

LEXIE LaMERE: Thank you. [LR39]

SENATOR ASHFORD: Okay. Oh, oops. Okay. Then...(laugh)...sit down, please. I'm sorry, sit down. (Laugh) [LR39]

JEAN EILEEN DURGIN-CLINCHARD: (Exhibit 113) Okay. I'm going to read my very

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short statement in support of LR39--I'm beginning to lose track of numbers now. But I'm also going to toss in a couple of things to do with LB48. So my name is Jean Eileen Durgin-Clinchard, and I think you have the spelling from before. And I've--have it passed out too. So good afternoon, Senator Ashford and members of the Judiciary Committee. I am Jean Eileen Durgin-Clinchard; and I use both because I used to be Jean, and now I'm Eileen. I've been a resident of Nebraska since 1959, and I'm a registered, informed voter who has never missed an election, that I can recall. I'm 80 years old; I didn't acquire those years today, but it sometimes feels like it. And I represent myself and my family, three married children who also live and work in Nebraska. I am here in enthusiastic support of LR39. But I want to go back to...I have it printed out, and you have copies of my testimony for LB48, which I am opposed to and dismayed about. But what I did with that...and I hope that you will...I mean, it's lots of nice white space and big print, and I even put capital headings so that you would do it. And I tried to pick a topic that I wasn't--everybody else wasn't going to be talking on, at least in one bunch. So I limited myself only to the fiscal impact of LB48. So my first thing was "Litigation Costs," which we've already talked about, and I also have a Web site that you can click on and go to. The "Implementation Costs"--and we know that those are high. And just by looking at the impact statement that the state put out, there--I mean, these things are there. The "Immigrant Costs" and "Revenue to the State." And I put costs, slash, revenue, because in the...oops. [LR39 LB48]

SENATOR ASHFORD: No, no, keep going. [LR39 LB48]

JEAN EILEEN DURGIN-CLINCHARD: Anyway, "Immigrant Costs/Revenue to the State"--there is a paragraph and a site that I recommend that you go to, because it does cover...it's the--I've forgotten--it's a legislative...it's a very objective one, and it talks about Arizona. And in Arizona, they did--it was a fiscal and economic impact study by the Udall Center for Studies in Public Policy in 2007. And what they found out in looking at immigrant workers, documented and undocumented, that there was actually a \$940 million-plus because of what was paid in as opposed to what was paid out. So do look at that, please. And it's similar to things that you probably have seen in the UNO study. But importantly, most importantly, I think--it was the big thing for me--the financial priorities for Nebraska. We're in a severe, severe budget crunch. And being in that budget crunch, we need to consider what our priorities are. This is a divisive kind of bill. [LR39 LB48]

SENATOR ASHFORD: Jean, thank you so much. [LR39 LB48]

JEAN EILEEN DURGIN-CLINCHARD: Let me... [LR39]

SENATOR ASHFORD: And I'm going to ask you to... [LR39]

JEAN EILEEN DURGIN-CLINCHARD: Can I do the other one...? [LR39]

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SENATOR ASHFORD: No. [LR39]

JEAN EILEEN DURGIN-CLINCHARD: ...real quick? [LR39]

SENATOR ASHFORD: (Laughter) I'm harsh; I know. [LR39]

JEAN EILEEN DURGIN-CLINCHARD: Well, just... [LR39]

SENATOR ASHFORD: But I... [LR39]

JEAN EILEEN DURGIN-CLINCHARD: ...just...but... [LR39]

SENATOR ASHFORD: No. No, I really can't let you do it, because... [LR39]

JEAN EILEEN DURGIN-CLINCHARD: ...it's only one sentence. [LR39]

SENATOR ASHFORD: One sentence? Okay. [LR39]

JEAN EILEEN DURGIN-CLINCHARD: One sentence. [LR39]

SENATOR ASHFORD: One sentence. [LR39]

JEAN EILEEN DURGIN-CLINCHARD: The resolution, LR39, if passed, costs nothing. And I believe that it speaks to what we can and should do, addressing, most importantly, common ground that we can all get to. [LR39]

SENATOR ASHFORD: Thanks, Jean. Okay. How many other testifiers do we have? Okay. Judge, you're not going to--Gradwohl? You're not going to...? [LR39]

JAN GRADWOHL: (Exhibits 27 and 109) I submitted written... [LR39 LB48]

SENATOR ASHFORD: I saw your written testimony, but--okay, let's go. [LR39 LB48]

BOB QUASIUS: (Exhibit 109) Mr. Chairman, Senators, I'm Bob Quasius, vice president of Somos Republicans, America's largest Hispanic Republican organization. Latinos span the full spectrum of ideological viewpoints, but on this issue we are united in support of LR39 and oppose LB48. The Nebraska Democratic Party Latino Caucus, whose members jointly provide this testimony to you today, agree that a joint, bipartisan statement sends a strong message that reverberates all the way to Washington, D.C. Somos Republicans is based in Arizona, the origin of a tsunami of bills such as LB48. Two-thirds of our 6,000 members live in Arizona. We know all too well the climate of division and fear and the backlash most Latinos experience when these bills are

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considered and the racial profiling that often results when state and local police become involved in immigration enforcement. This climate of division and fear has already found its way to Fremont; let's spare the rest of Nebraska. The solution to this problem lies in sensible immigration reforms in Washington, D.C., not Lincoln, Nebraska. Utah Compact is a guiding set of principles on immigration which rejects extreme legislation while also sending a clear and powerful message to our federal government that it's time to overhaul immigration. A powerful coalition quickly formed around the Utah Compact, which includes the worldwide Mormon Church, the Catholic Church, the Salt Lake City Chamber of Commerce, the United Way, two former governors, the attorney general, and thousands of others. Somos Republicans was extremely impressed with the Utah Compact and was among the early signers. We proposed identical compacts in Nebraska, Texas, Colorado, Arizona, and Florida in December 2010 to extend this success to other states; and others have proposed compacts in Indiana, Maine, Iowa, and Georgia, which we also support. Legislators in Florida and Texas are about to introduce similar resolutions, using LR39 as a template, as an alternative to extreme bills in those states. I would add, Somos Republicans developed the attached 12-point plan to completely reform legal immigration. We already have strong backing to introduce this as legislation in Congress soon. We urge you to reject LB48 and, instead, advance LR39, which will send a powerful message to Congress to address this issue's root causes, not symptoms. Many legislators across the nation that sponsored or voted for LB48-type bills have a sense of frustration, but states cannot enact their own immigration laws. If these bills become law, it will cost taxpayers millions in legal expenses and fuel that climate of division and fear which is now pervasive in Arizona and now in Fremont. LR39 offers a clear alternative, costing Nebraska nothing while also sending Congress a powerful message to solve a federal problem. Nebraska is the first state legislature in the nation to consider embracing Utah Compact, and we are impressed at the bipartisan support. Bipartisan support here in Nebraska from senators and Latinos from both parties sends both political parties in Washington the message to work together and solve this problem. [LR39 LB48]

SENATOR ASHFORD: Bob, I'm going to ask you to--this is good testimony, but I'm going to ask you to sum up. [LR39 LB48]

BOB QUASIUS: Yes--last sentence. Nebraska... [LR39 LB48]

SENATOR ASHFORD: That's what they all say, Bob. (Laughter) [LR39 LB48]

BOB QUASIUS: It is, literally. Nebraska, the eyes of America are upon us; make us proud. [LR39 LB48]

SENATOR ASHFORD: Thank you. [LR39 LB48]

SENATOR COUNCIL: Real quick. [LR39 LB48]

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SENATOR ASHFORD: Senator Council. [LR39 LB48]

BOB QUASIUS: Yes. [LR39 LB48]

SENATOR COUNCIL: Thank you, Mr. Chairman. And thank you, Bob, for traveling to Nebraska to join in this discourse. And I'm... [LR39 LB48]

BOB QUASIUS: I'm from Iowa; actually, I'm from Nebraska originally. [LR39 LB48]

SENATOR COUNCIL: I know you're originally from Nebraska. [LR39 LB48]

BOB QUASIUS: Yes, yes. [LR39 LB48]

SENATOR COUNCIL: But I'm curious, there's been a lot of discussion about the impact of an LB48-type bill--passage of such a bill in Nebraska, in terms of it's impact on immigrants unlawfully present and then immigrants who are lawfully present. Have you seen the negative impact of SB1070 on lawfully present immigrants in Arizona? [LR39 LB48]

BOB QUASIUS: Well, most of the provisions of SB1070 were enjoined. But even prior to that there's a number of 287(g) departments in Arizona, and the racial profiling already is rampant, and it's pervasive. Even though it's already illegal, it happens anyway; and there's numerous studies that shows that to be the case. And as far as lawfully present, the...if I could give a good personal anecdote, my wife came here on a fiancee visa--my wife and my daughter--which is good for three months. We married, so they were not required to leave. We applied for adjustment in status, and ten months later they received their green cards. Now, from three months to ten months all they had to show for their lawful presence was an expired visa and a receipt to show that they applied for something. And one element I think has been missed in all the discussions, is that although the federal government requires immigrants to have documents, they don't necessarily furnish them in a timely manner. So you get people who are in a gray area, where they've followed all the laws and yet they may not be able to...you know, if they were stopped under LB48, for example, you know, my wife and daughter potentially could have been thrown in jail without ever having broken any federal laws. [LR39 LB48]

SENATOR ASHFORD: And I might add that I... [LR39 LB48]

BOB QUASIUS: And it has been a problem in Arizona. [LR39 LB48]

SENATOR ASHFORD: ...we hear that a lot from the Med Center, with people who come in here to teach or to do research at the Med Center. And there they get in that

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three-month or nine-month gray area, and they are--they have no documents. The federal government has no reason to do anything to expel them; they're here legally, according to them. [LR39 LB48]

BOB QUASIUS: Right. [LR39 LB48]

SENATOR ASHFORD: But they don't have the documentation that local law enforcement...well, we can go on ad infinitum. [LR39 LB48]

BOB QUASIUS: Well, think about local law enforcement not having received any training to speak of. [LR39 LB48]

SENATOR ASHFORD: Well, and they just don't...how are we going to train all those people to know all that stuff? [LR39 LB48]

BOB QUASIUS: Exactly. [LR39 LB48]

SENATOR ASHFORD: And the other thing is--and the only other comment is I--when I first read about...two things--one is I wish we'd get some Republicans elected that would have voted for the DREAM Act, because the darn thing would have passed... [LR39 LB48]

BOB QUASIUS: Yeah. [LR39 LB48]

SENATOR ASHFORD: ...and children would have a chance to live here and have a job and be productive. And it's just...I...literally, it is the saddest thing I've ever...I know I've said it four times, but I wish we could get people elected from the Republican side that would stand up for human values and...but anyway, the--in the Congress. But on the...when I first heard--and Senator Council, as usual, had heard about it long before me--the Utah Compact... [LR39 LB48]

BOB QUASIUS: Um-hum. [LR39 LB48]

SENATOR ASHFORD: I mean, that is an incredibly powerful thing. I mean, these are all the leaders in Utah, from politics to the Mormon Church, Catholic Church, not exactly allied on a lot of theological issues,... [LR39 LB48]

BOB QUASIUS: Um-hum. [LR39 LB48]

SENATOR ASHFORD: ...have come together on this thing. And it is one of the most powerful things in the country. And I know there was a lot of press about it, not so much now; but, hopefully, it'll spread. But I don't want to belabor it--this is too late in the evening to do that--but thank you for your comments. [LR39 LB48]

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BOB QUASIUS: Can I say one last (inaudible)? [LR39 LB48]

SENATOR ASHFORD: Yeah. [LR39 LB48]

BOB QUASIUS: If we can pass LR39 in Nebraska, it will pass in other states. It's...they're popping up everywhere--these compacts. It's a good alternative to all this extreme legislation. That will light a fire under Congress, under both parties... [LR39 LB48]

SENATOR ASHFORD: Are you sure? [LR39 LB48]

BOB QUASIUS: ...to work together and fix this issue. [LR39 LB48]

SENATOR ASHFORD: You promise? (Laughter) [LR39 LB48]

BOB QUASIUS: And we are... [LR39 LB48]

SENATOR ASHFORD: I... [LR39 LB48]

BOB QUASIUS: ...we are probably the only all-volunteer group that has ever drafted an immigration plan; it's going to be introduced in the Congress shortly. [LR39 LB48]

SENATOR ASHFORD: Oh, I...thank you, thank you for everything you're doing. [LR39 LB48]

BOB QUASIUS: Okay, thank you. [LR39 LB48]

SENATOR ASHFORD: Okay. Next testifier--proponent. [LR39]

ALAN PETERSON: Mr. Chairman and members, again I'm Alan Peterson, A-l-a-n P-e-t-e-r-s-o-n, testifying in behalf of ACLU, American Civil Liberties Union, Nebraska, in favor of LR39. I have nothing on the substantive language. It's beautiful; it's powerful; and it ought to be passed. But I do have another comment. I've been coming here, now, more than 40 years on constitutional issues, almost as long as your chairman, maybe a little bit longer. And there's been some banter. The tone is usually both intellectual and on point in this committee, more so than perhaps any other committee. I've been proud of the members. But I want to say one thing seriously here without banter. I'm purposely doing ACLU work because I really believe in it. The thing about this discussion we usually have is it stays on a high level. But I've seen in the paper, and I've heard it two or three times today, the fear that: Oh, no, don't pass that LR39, you'll make us into a sanctuary for crime and illegals. And I saw some remarks about real Americans and real Nebraskans, as opposed to those who might do something like LR39. You know, the

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American Constitution has this thing in it called the Bill of Rights. It also has a section that allocates powers between the state and federal governments. This has always been a place, perhaps because of the oaths and because you guys believe in it--and women believe in it--that the Constitution has got to be upheld. Let's not call this state a sanctuary because it does exactly that; let's call this place a preserve for the civil liberties we all care so much about. [LR39]

SENATOR ASHFORD: Well, thank you, Alan. Well said. Okay, thank you. I don't see any...I don't know what I would ask you. Next...I was going to say about Abraham Lincoln and his lawsuit in Illinois involving federal power and the railroads, but that seems a little mundane. Let's... [LR39]

LELA SHANKS: Thank you. Good evening. [LR39]

SENATOR ASHFORD: Good evening. [LR39]

LELA SHANKS: My name is Lela Shanks, L-e-l-a S-h-a-n-k-s, and I passed--gave written testimony against LB48. I had to go pick up my granddaughter, so I wasn't able to actually testify. But I do want to say that, like Senator Council, I, too, am a real Nebraskan, a real American. And I urge you to support LR39, because it looks to the future and to solutions and to a positive step for resolving our nation's immigration problems while LB48 seeks to take us back in time. We're not going back in time. We can't do it. It's impossible, in the first place. The immigration problem is solvable. But to talk about LB48 and say we're not going to racially profile is absurd, is ludicrous. And I don't believe that people of color are going to stand still for increasing racial profiling, which LB48 would do. I don't think it's going to be acceptable. And so the immigration problem is solvable, given the will, the creativity, and the determination to treat all persons as equal human beings. We can solve the problem. [LR39 LB48]

SENATOR ASHFORD: Lela, I just hope people across the state are listening to what you're saying and have said for as long as I've been here and longer than that, I'm sure. Thank you for everything you do. [LR39 LB48]

LELA SHANKS: Thank you. [LR39 LB48]

SENATOR COUNCIL: One of my "she-roes." [LR39 LB48]

LELA SHANKS: Thank you. [LR39 LB48]

SENATOR ASHFORD: Jim. [LR39]

JIM CUNNINGHAM: Thank you. [LR39]

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SENATOR ASHFORD: Now, if you can follow that--even the Catholic Church... [LR39]

JIM CUNNINGHAM: (Exhibit 125) I was sitting there thinking, Mr. Chairman: How in the world can I follow those last two presentations? Mr. Chairman, members of the committee, my name is Jim Cunningham, C-u-n-n-i-n-g-h-a-m. Again, I represent the Nebraska Catholic bishops Conference. Thank you for the opportunity to present testimony for the record in support of LR39. I did submit written testimony in opposition to LB48. For the same and varied reasons why the Nebraska Catholic Conference stands opposed to LB48, the conference stands in support of LR39. Our position, Mr. Chairman, I think coincides with something that you've expressed today. We view LB48 as symptomatic of the absence of federal leadership, both Congressional and administrative, on the issue of immigration policy. It underscores the desperate need for multifaceted immigration policy reforms. Immigration policy indeed is a federal issue, and it should be addressed at the federal level. And we support LR39 for those reasons. And at the risk of being somewhat mundane, I want to disclose to you something that I'd been thinking about during this session. I wished I had a dollar for every time that I've heard the comment: What about "illegal" don't I understand--or doesn't the conference understand? I wish I had a dollar for every time I've heard about the "rule of law." I wish I had a dollar for every time I hear people say: Why don't they come here legally? And I wish I had a dollar for every time I've heard people say: The Catholic Church is pro-illegal immigration and harbors illegal immigrants. I wish I had all that money, because I know how I would use it. I would take that money and I would charter a plane and I would book some hotel rooms and I'd make some restaurant reservations and I would make it possible for all 49 of you state legislators to go back to Washington, D.C., for a few days and walk the halls of Congress and knock on the doors and tell them to get about the business of finding immigration reform. And I realize that's not realistic. And I'm talking figuratively, and I don't want to get in any trouble with Frank Daley. (Laughter) But I wished I could make that happen. Since I can't, I think this is the next-best option--for the Legislature to pass LR39. Thank you. [LR39 LB48]

SENATOR ASHFORD: Thank you, Jim. Well said. Okay. Next person. Darcy is back. [LR39]

DARCY TROMANHAUSER: (Exhibits 126-129) Hello, again. [LR39]

SENATOR ASHFORD: Yeah. [LR39]

DARCY TROMANHAUSER: Sir, again, I'm Darcy Tromanhauser, D-a-r-c-y T-r-o-m-a-n-h-a-u-s-e-r, from Nebraska Appleseed, here to testify in support of LR39. Senator Council's resolution for federal reform is a welcome and critically important step in a positive direction, as we've been hearing. As outlined in the resolution, workable and thorough federal reform creates the best foundation for our families, our communities, and our future. Our current system, as we know, has fallen into disrepair,

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and its devastating effects on Nebraska families are not who we are. We've been struggling with this as a state, and I know you as legislators have as well. As you can see in the attached chart that I'm handing out, our current laws are illogical. So as the chart shows, if a person doesn't already have family in the United States and doesn't qualify for a high-skilled business visa, then there's essentially no way to apply for legal status in the United States except on a seasonal basis. So it's not that folks aren't choosing to get in line, it's that we've created no line for them to get into. And for the many important medium- and lower-skilled jobs, we have no way of assessing our visa needs and how many people we need. And for those in the family-based system, there's long backlogs and waiting periods. This is very different in the past, when we had a reasonable means for individuals to attain legal status. Workable and thorough reform is the only way to achieve real solutions, and it makes good sense on a number of levels. Economically it makes sense--and I've attached an economic study that looked at three different scenarios. One was comprehensive immigration reform, which led to the greatest boost to the U.S. economy and increases wages for all. A temporary-worker program would boost our economy, but--it would boost it but by less, and wages would decline for all. And mass deportations leads to a major hit to our economy and widespread job loss. So that's a study that I've attached. Federal reform also makes good sense for safety and security--and I've attached a recent Op-Ed in the Omaha World-Herald from former New York City Police Commissioner William Bratton. And I'll just close by saying it will take all of us working together to create an immigration system of which we can be proud and that lives up to our values and traditions. That is our responsibility in a democracy to do so. LR39 would be an invaluable contribution by the Legislature to move us toward real solutions and workable solutions. Thank you. [LR39]

SENATOR ASHFORD: Okay, thanks, Darcy. Any comments or questions of Darcy? Seeing none, next proponent. Next we'll go to the opponents. Carl. Opponents. Opponents. Richard and Carl are here, so... [LR39]

CARL SCHAFFNER: Once again, Carl Schaffner, S-c-h-a-f-f-n-e-r. And I'd like to start by saying I'm from Fremont. A matter of fact, if you look at police records, there's only been one report of racial violence in Fremont, and it was against me. So this whole thing about scorched-earth is a manufactured event. A matter of fact, we have such good intelligence we know the day of the manufactured outrage. We get our little word that the buses will be showing up, and they show up with their matching T-shirts and their fliers, and everything is all preprinted. So there's a lot of disingenuousness about the argument. For one time, I agree, this is an immigration issue. And immigration, as we've been arguing all day, is a federal issue. We cannot as a state unilaterally decide we're just going to ignore 222 years of immigration law because, as one of the ladies just said, we don't think we like it. That doesn't quite make sense to me. LB48 is federal statute. What we're talking about doing right now is ignoring all existing laws, which most of them--let's start after the Civil War--which is not a good idea. Also, you guys

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should probably know this, being state senators, but posse comitatus is the rule of the land. You cannot police states with federal troops. A matter of fact--you obviously have to know this--a federal agency cannot even move into a municipality without first getting consent from the municipality. Also, you might want to check out the ICE Web site. In the ICE Web site, they clearly state that they don't have any authority to come into any town, that they have to request permission to do raids, with the municipality. There is no overarching federal authority which they can run in on their little white horses, like knights, and secure (inaudible). It just doesn't make any sense. Once again, to get back to earlier testimony, the best people to know their neighbors are their neighbors. What you're doing is you're (inaudible) it. Quick statistics: If we do what you're suggesting and we consider every immigration status--refugees, everything--you're wiping out 26.5 years of legal immigration. If we use just, you know, the normal quota system, which was adopted in 1953, you're wiping out between--depending on how you do the math--68 to 100 years of legal immigration for 193 nations. Now, exactly how is that fair, to say, you know, you ain't going to make it, your kids aren't going to make it, your grandkids have about a 15 percent chance of being U.S. citizens just because a bunch of people that broke the law think they should have immunity from it? I've been joking in Fremont that we should start issuing judicial mulligan cards. And it's kind of a big joke there, because how many felonies can people commit? Just--this is nuts. [LR39]

SENATOR ASHFORD: Thanks... [LR39]

CARL SCHAFFNER: Thank you for your listening. I appreciate it. [LR39]

SENATOR ASHFORD: Thank you, Carl. [LR39]

SENATOR COUNCIL: Can I ask a question? [LR39]

SENATOR ASHFORD: Sure. [LR39]

CARL SCHAFFNER: Sure. [LR39]

SENATOR COUNCIL: So since ICE can't come into any community, do you agree that no--that the state, city, or county can't deport anyone? [LR39]

CARL SCHAFFNER: Can they deport anyone? [LR39]

SENATOR COUNCIL: Yeah. [LR39]

CARL SCHAFFNER: If you look historically at the laws, breaking the law is against the law. And any constable...matter of fact, it's in the state constitution--the Unicameral can't interfere with police powers. So if you catch someone...and I don't care what you're from, if you're a U.S. citizen or not, if you're breaking the law in Fremont, the Fremont

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police can arrest you. They can then request deportation through ICE. There was just an article about 16 cities across the United States that are deporting people on their own. And where's the outcry from the ACLU about them? So yes, you can legally deport people that don't belong in your city. It's happening right now. [LR39]

SENATOR COUNCIL: And so when you say...your definition of "deport" is move them out of your city someplace else but not necessarily out of the country. [LR39]

CARL SCHAFFNER: Some cases, they are moving them out of the country. They are setting up their own facilities, holding them and demanding...Sheriff Joe Arpaio is a great example of this, in Maricopa County, where he demands that ICE take the people off his hands; he will not release them. He says: I have criminal elements in my community; I've arrested them; it's your job. By the way, according to the laws, historical laws, it's the federal government's job, as in the Homeland Security Act of 2002, to reimburse cities for their costs for housing illegal aliens picked up in, you know, for whatever matter. It's not our costs. This would include terrorists, is what it was really intended for, but it's already statute, federal statute. So you're, again, talking about overthrowing federal statute. And I'm a little confused since we've had the whole swing as we have to listen to the feds; now we're going to say to heck with the feds. So I'm a little confused. Does that answer your question, Senator? [LR39]

SENATOR COUNCIL: No. But I don't want to ask it again. [LR39]

CARL SCHAFFNER: Can you clarify it, or...? [LR39]

SENATOR COUNCIL: No. No. [LR39]

CARL SCHAFFNER: Okay. Well, that's the best I have. [LR39]

SENATOR ASHFORD: Carl, thank you very much. [LR39]

CARL SCHAFFNER: Well, thank you. [LR39]

SENATOR ASHFORD: Let's get on to Richard. And do we have any other testifiers on this bill at all? Okay. Richard, you're the last testifier. And then we'll have our closing, and we will be closed. [LR39]

RICHARD MILLER: Richard Miller, M-i-l-l-e-r. [LR39]

SENATOR ASHFORD: Ferme, as they say. Go ahead. [LR39]

RICHARD MILLER: LR39--I could be in favor of it if it would have had one item in it first, and that's border security. Secure our borders--and I would have...this needs to get to

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Washington so they understand that us people out in no-man's land want this taken care of. If that would have been in there, a lot of us would support this, so Washington would get the point. And as far as immigrants, legal or illegal, first of all, I'm an American; I am not an immigrant, period. You hear: We're all immigrants. I'm not; I'm an American. And second, it talks about families in here. And I'm a family man; I've got two grandkids. And about six, seven months ago, my grandson--he's 16 now--he asked me: Pa, why are these people, who are breaking the law coming into our country illegally, why are they being allowed to stay here? And you've got to tell them: Because our government will not do its job. I could support it if securing the borders was in it, but it's not, so I cannot support it. [LR39]

SENATOR ASHFORD: Thank you, Richard. That concludes the testimony. Senator Council, do you--are you fine? [LR39]

SENATOR COUNCIL: In deference to my colleagues, I waive closing. [LR39]

SENATOR ASHFORD: (See also Exhibits 1-7, 59, 96-105, 108, 110-111, 114-124, and 130-138.) Um-hum. Thank you all for remaining here all day, and it was a meaningful conversation. Thank you. [LB48 LR39]