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Education Committee
March 02, 2009

[LB440]

The Committee on Education met at 1:30 p.m. on Monday, March 2, 2009, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB440, LB21, LB399, and LB397. Senators present: Greg Adams, Chairperson; Gwen Howard, Vice Chairperson; Brad Ashford; Bill Avery; Abbie Cornett; Robert Giese; Ken Haar; and Kate Sullivan. Senators absent: None. [LB440]

SENATOR HOWARD: We should probably get started. Chairman Adams is presenting a bill this afternoon, and so for the meantime, I will be acting committee chairperson. Just a few reminders. If you can turn off your cell phones because when those ring, they're really distracting. We're going to use a light system so everyone will have a fair amount of time to present. Tammy, can you think of anything else we need to... we'll have some more senators in here soon. Just to begin with: Senator Ashford, Senator Giese, Senator Cornett, Tammy Barry, our legal consultant--our very capable legal consultant--our Chairman. I'm Senator Howard from District 9 in Omaha. Over on this end, our research analyst, and here is our Senator Haar. Very good. Bill Avery. And this is Kate Sullivan when she gets here. Let's see. Three minutes? Three minutes, that sounds good. All right, the light system will be activated here pretty soon. Everybody will get three minutes to discuss and if Senator Council is ready to begin, that would be wonderful. Senator Council has LB440. Any time you're ready. [LB440]

SENATOR COUNCIL: Thank you, Senator Howard, members of the Education Committee. My name is Brenda Council, C-o-u-n-c-i-l. I am the senator representing the 11th Legislative District out of Omaha, and I appear before you this afternoon to introduce LB440. LB440 is intended to amend the Student Diversity Scholarship Program Act. As many of you may know, the Student Diversity Scholarship Program Act is commonly referred to as the Davis-Chambers Scholarship, was created by the Legislature back in the mid-1980s. Under the law, the Legislature annually appropriates a sum to be used in coordination with private donations for the purposes of achieving

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the Legislature's stated intent to attain greater diversity in the student bodies of the university system, the state colleges, and the community colleges in the state of Nebraska. As the act is currently written, it makes reference to racial, ethnic, and cultural diversity. In view of the recent passage of Amendment 424 to the Nebraska State Constitution barring any preferences on the basis of race or sex or ethnicity, the intent of LB440 is to amend the Student Diversity Scholarship Program Act to bring it into conformance with current federal and state law. And if you review LB440, that's exactly what it does. It removes any references to racial, ethnic, or culture, and it also states that the criteria for awarding the scholarship will be in conformance with federal and state law. The intent, again, of this legislation is to enable this scholarship program to continue to operate with regard to the way it is established. The state's funds are used in coordination with private donations. Those funds are deposited into a fund, and it's basically the interest from the state's contribution that is used in connection and in coordination with the private donations to provide the scholarships. There are others who are scheduled to testify this afternoon in support of a bill representing both the university system, the state college system, and the community college system who can speak specifically to the number of students who have benefitted from this scholarship program. I firmly believe that with the amendments that are being proposed to LB440, it brings this act into conformance with and in compliance with the Constitution as amended by 424. And with that, I would close and urge the committee's favorable consideration of LB440 and answer any questions you may have. [LB440]

SENATOR HOWARD: Thank you, Senator Council. Do we have any questions? Yes.
[LB440]

SENATOR HAAR: Thank you. And this is just a question of absolute opinion here. How are we going to maintain diversity in terms of the scholarship in light of Initiative 424.
[LB440]

SENATOR COUNCIL: Well, I think probably a better person to respond to that may be

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one of the representatives from the university because in terms of the criteria that would be established that would be in conformance with federal and state law, you would be basically, I would imagine, looking at underrepresentation in terms of providing the level of diversity that I suspect that, Senator Haar, that you and I both believe needs to exist with regard to our postsecondary education system. [LB440]

SENATOR HAAR: Okay. Thank you. [LB440]

SENATOR HOWARD: Do we have any other questions? Thank you, Senator. And I want to mention that we've been joined by Kate Sullivan and Bill Avery. Thank you, Senators. Proponents. [LB440]

RON WHITHEM: Senator Howard, members of the Education Committee, I am Ron Withem, representing the University of Nebraska. That's R-o-n W-i-t-h-e-m. I'm pleased to support Senator Council's LB440. As Senator Council indicated, this was passed--originally passed when Dick Davis, an Omaha businessman, came to this committee when it was under far less able leadership than it is today, I might add, back when I was chairing the committee, in other words--where he proposed contributing some private money to be matched by state money to provide scholarships for underrepresented minorities. Sometime down the road after that was passed, the Supreme Court of the United States ruled that you cannot use race as a sole determining factor for award of scholarships. So the law was changed, I believe it was back in 2000, to make this a diversity scholarship to promote various types of diversity. Most recently, the citizens of Nebraska enacted Initiative 424 which bars using race or ethnicity as factors in giving out preferences to individuals. The current language of the scholarship indicates that the scholarship will be awarded to promote diversity--to promote racial, cultural, and ethnic diversity. So in order to keep the bill as close to its original intention as we can and still make it comply with the Constitution of the State, we are proposing that the words racial, cultural, and ethnic be stricken from the bill so that we're just promoting diversity. And that the diversity that is promoted will have to be

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that that is consistent with state and federal law. The committee that gives the awards then will operate under those guidelines. And if I could anticipate Senator Haar's question or the one that he addressed to Senator Council anyway, we could look at other types of diversity that are not barred by the Constitution--economic diversity, for instance. Geographic diversity is a possibility. A first time college attendee in a family would be another possibility. Knowledge of and experience with other cultures would be another type of diversity we could use. The law will no longer, if this passes in its current form, the law will no longer state what diversity the committee will use, but the committee that makes this determination will be charged with the responsibility of making sure that their standards are consistent with state and federal law, specifically the Constitutional Amendment 424. So with that, and we also, I'll be followed by another University of Nebraska individual who administers the diversity scholarship at this point so she'll be able to talk about some of the experiences with the scholarship itself. With that, I would respond to any questions. [LB440]

SENATOR HOWARD: Thank you, do we have questions? It looks like you did a good job. [LB440]

RON WITHEM: Thank you. Either that or I didn't. One or the other. Thank you. [LB440]

SENATOR HOWARD: Welcome. [LB440]

AMBER HUNTER: Hello. Good afternoon, my name is Amber Hunter, and I'm representing the University of Nebraska-Lincoln as well as the University of Nebraska system. And I work in the office of admissions, I'm the associate director of admissions there as well as in the vice chancellor's student affairs office as the director of the Nebraska College Preparatory Academy. But as it pertains to this situation, I work with Dr. Davis and the rest of the committee to award the Student Diversity Scholarship, and so I wanted to be able to share with you all how we plan on awarding this scholarship with the new changes. As Ron mentioned, we'll really be kind of broadening the

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terminology or what we're looking at when it comes to diversity. In addition to looking at academics and looking at need which were the two most important factors when we were considering this scholarship, we're also going to be looking at if a student is first from their family to go to college. We'll be looking at economically disadvantaged, if they're coming from a high-need area or a high-need neighborhood too. If the neighborhoods, there's lots of research out there about different neighborhoods and the college going rates based on neighborhoods. We'll also be looking at if they're coming from an educationally disadvantaged school. The Nebraska Coordinating Commission offers lots of information about schools and how, how much they're producing high school graduates. So we'll be looking at information like that, as well as, you know, there are lots of students out there who give us information about instances that they've overcome in their lifetime. So if there's different obstacles and things that they've overcome in their lifetimes. So if there's different obstacles and things that they've overcome. What we'll be doing is asking essay questions that will hopefully allow us to get the answers from these questions that can help us to expand on the academics and the need that we get from the FAFSA to be able to get a broader sense of the diversity. And then what our committees will be looking at is just what type of diversity they'll bring to our campus. I mean, we really value the idea of having different knowledges and experiences on our campus. We think it's great to have, you know, students in the classroom that are from rural Nebraska, urban Nebraska, and from all across, you know, the country and from the world and we think that really just provides a balance and it provides our students the education they need to move forward when they leave the university. So those are some of the things that we're going to be looking at. We're kind of following this as we worked with our Board of Regents, the University of Nebraska Board of Regents kind of let a statement out in January of 2008 that really reaffirmed diversity on our campus. And so we hope that with the language that hopefully you guys will approve, that it will help us to continue that diversity as we move forward. So at this point, I want to just again, hopefully, you know that we are in...we really would like for this to pass through for LB440 and answer any questions you might have. [LB440]

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SENATOR HOWARD: Thank you. Thank you. It sounds like you are going to take this and make it into an opportunity rather than a disadvantage. [LB440]

AMBER HUNTER: That's what we hope to do. [LB440]

SENATOR HOWARD: Good. Our Chairman Adams has returned, and so if you want to take this over again, that will be great. [LB440]

SENATOR ADAMS: Thank you, Senator Howard. Are there questions for this testifier? Senator Haar. [LB440]

SENATOR HAAR: Thank you. I'm on record as being against 424 so. What, what has been the experience of other states in, that have passed this similar initiative to continue the, you know, getting more diversity in the schools and so on. [LB440]

AMBER HUNTER: Yeah, that's a really great question. In other states, they've seen a pretty much immediate drop in...when you're specifically talking about ethnic diversity, they're seeing pretty much an immediate drop. However, we hope that by focusing on some of these other types of issues, we hope to be able to maintain both our ethnic diversity and you know, just be able to, um, award to scholars who need support to go on to school through this. So you know, we're not exactly sure, and Nebraska is not as diverse especially as California or some of those other states that it's passed in. So really this is just kind of a, um, this is something that we're working through, and we'll have to see how it goes over the next couple of years. [LB440]

SENATOR HAAR: Well, I wish you the best of luck. Thank you. [LB440]

SENATOR ADAMS: Senator Sullivan. [LB440]

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SENATOR SULLIVAN: Thank you, Senator Adams. Could you give me a little background as far as how the program has operated up til now. Have you had more applicants than you've had scholarships? And what sort of diversity you've had in the people or the students who have been funded for scholarships? [LB440]

AMBER HUNTER: Yeah, that's a great question. Um, yes, we always have more applicants than we do the number of awards that we give out. It's pretty selective. It's always been pretty selective. Typically, students have really, really high need as well as their academics are pretty stand out. For the University of Nebraska-Lincoln directly, like last year we had about 100 applications and we awarded about four students at Lincoln directly. So that goes to show you how competitive the program is to begin with. When we changed the criteria back in, I think it was 2006, 2007, to meet the Supreme Court decision, we did receive a little bit more applications because it broadened up who could apply for the program. So we did see more applications. However, when you really kind of get down into the student's life experiences and their knowledge of a diverse community, it still...it made it even more competitive. We think that opening up even more, it will make the process more...more competitive for our students, but, you know, we'll try to do our best to maintain the diversity. And we will maintain and comply with federal and state law. [LB440]

SENATOR ADAMS: Senator Haar. [LB440]

SENATOR HAAR: Thank you. Do you know about how much money goes into this each year? [LB440]

AMBER HUNTER: It's...the awarding or how many scholars or how much principle there is? [LB440]

SENATOR HAAR: How much in terms of the scholarships, in terms of awarding?
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AMBER HUNTER: It's about \$150,000 that we award in the University of Nebraska system. So that includes new awards as well as students who are already in the program, too. So that kind of gives you a variety of all of the awards. [LB440]

SENATOR HAAR: And then about how many students are? [LB440]

AMBER HUNTER: I think that right now we have...I'm not, let me, can I get back with you on that? And I can give you some exact numbers on that, on exactly how many. [LB440]

SENATOR HAAR: Good, sure. [LB440]

SENATOR ADAMS: Are there other questions for this testifier? Seeing none, thank you ma'am. [LB440]

AMBER HUNTER: Okay, thank you. [LB440]

SENATOR ADAMS: Next proponent. [LB440]

RANDY SCHMAILZL: Good afternoon. Randy Schmailzl, S-c-h-m-a-i-l-z-l, interim president, Metro Community College. I'm here to support Senator Council's LB440. In terms of how this affects Metro and its students, a number of years ago when the Davis-Chambers Scholarship first started, it started out as a bachelor's degree program. And then it...consideration was given to the community colleges to donate money into the University of Nebraska Foundation that would assist in establishing money directed towards this program. And Metro has participated in this program over the years. Most recently, last year, five Metro students received scholarships from Metro Community College that would go to UNL, UNO, or UNK. We represent the most diverse higher ed institution in the state of Nebraska, and I won't cover the ground that Mr. Withem and

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Ms. Hunter covered, because it all brings you up to speed on the need for this program. And the question on applicants versus money, if you desire to place more money in this program, it would be well received. Metro always has an abundance of students that apply for this program, and we're limited to about five students per year. Now the rest of the community colleges in Nebraska also participate in this program by placing money in the UNL Foundation. So it also allows us, if the students are not able to receive a scholarship through this program, we're able to work with a student and hopefully receive, you know, they can receive scholarship monies through our other programs. So we're in full support of this program through the Metro Community College administration. Thank you. [LB440]

SENATOR ADAMS: Thank you, Randy. Senator Haar. [LB440]

SENATOR HAAR: Thank you. Since you brought up, we could put more money into it, where does the money come from in the first place, do you know? [LB440]

RANDY SCHMAILZL: I'm going to have to defer that question. I can tell you that I think it was from the State Legislature and private support and then the University of Nebraska also put money in it, and so it was a leverage situation to leverage state higher ed money and private money. I know for Metro, we placed money from our foundation which is privately raised money, into the University of Nebraska Foundation and then that's matched with state money that establishes the scholarship trust for our program. So I'm going to assume it's the same, Senator Haar. [LB440]

SENATOR HAAR: Thank you very much. [LB440]

SENATOR ADAMS: Other questions? Senator Sullivan. [LB440]

SENATOR SULLIVAN: Thank you. So in other words, the link between Metro and the University of Nebraska is that the student goes to Metro for two years and then goes on

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to the University, is that correct? [LB440]

RANDY SCHMAILZL: Yes. Any of the three university campuses. Or they can go on to the state college also. [LB440]

SENATOR SULLIVAN: Okay. [LB440]

SENATOR ADAMS: Other questions? So Randy, I think maybe Senator Sullivan's question answered mine. I was just going to ask you statistically what direction in terms of major fields do you see your recipients there at Metro. Apparently, it is four-year transition? [LB440]

RANDY SCHMAILZL: A number of our students start off just in the academic transfer program where they're getting all their gen ed requirements taken, making sure they're college ready and then they'll transfer into the general programs at the university system and then have to reapply for education. We've had a number of students that have entered into the field of education. Started with some basic education courses at Metro and then transferred to UNO in the College of Education. And I know the other area has been business. That a number of our students transferred to the business side. [LB440]

SENATOR ADAMS: Are They allowed into the scholarship to go into a vocational program? [LB440]

RANDY SCHMAILZL: Yes. [LB440]

SENATOR ADAMS They could. [LB440]

RANDY SCHMAILZL: Any program at Metro, they can take. [LB440]

SENATOR ADAMS: Not likely, it doesn't sound like, based on the academic standards

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that are required for the applicants and those kinds of things, but it is possible. [LB440]

RANDY SCHMAILZL: It is possible. [LB440]

SENATOR ADAMS: Okay. Are there other questions for Randy? Thank you, Randy.
Next proponent. []

NANCY INTERMILL: (Exhibit 1) Senator Adams and members of the committee, I am Nancy Intermill, I-n-t-e-r-m-i-l-l, and I'm here today representing the board of directors of the Nebraska League of Women Voters. I'm here to speak in favor of LB440. The League of Women Voters has historically advocated for equality of opportunity for all persons. The League believes government shares the responsibility to provide equality of opportunity for education, and the League supports the efforts of government to increase educational opportunities of disadvantaged groups through compensatory programs like the Student Diversity Scholarship fund. Employment opportunities in modern, technological societies are closely related to education. Equal access to education leads to equal opportunities in the workforce, and a strong workforce strengthens Nebraska's economic future. LB440 will redefine the parameters of the Student Diversity Scholarship Program to allow this important educational scholarship program to continue, so we urge the committee to send this bill to the floor for full debate. May I answer any questions for you? [LB440]

SENATOR ADAMS: Thank you, Nancy. Are there questions for this testifier? I guess not. Thank you, Nancy. [LB440]

NANCY INTERMILL: Thank you very much. [LB440]

SENATOR ADAMS: Next proponent. Any other proponents to the bill? Is there any opponent testimony? [LB440]

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MARC SCHNIEDERJANS: My name is Marc Schniederjans. I have the pleasure to serve as the treasurer and proponent of the Nebraska Civil Rights Initiative, Initiative 424. For everybody's information, Initiative 424 ended the use of preferences based on race, gender... [LB440]

SENATOR ADAMS: Excuse me, Marc, could I interrupt you for just a minute? Could you spell your last name for the record please. [LB440]

MARC SCHNIEDERJANS: Sure. Oh, I'm sorry. It is S-c-h-n-i-e-d-e-r-j-a-n-s. The Initiative 424 ended the use of preferences based on race, gender, national origin, ethnicity, or color in public education, public contracting, and public employment. The proposed Constitutional Amendment was widely popular with the public and received nearly 58 percent of the vote during the 2008 general election. LB440 seeks to undermine the State Constitution and Initiative 424. While proponents of LB440 claim the bill's intent is to harmonize and clarify the Student Diversity Scholarship Program with the state and federal Constitution, this amendment does anything but clarify the law. By striking the adverb words: racially, ethnically, and culturally, and leaving only the adjective diverse, the amendment leaves the definition of diversity to the whim of admissions officials and scholarship administrators. LB440 leaves administrators wondering, does diversity include marital status, veteran status, geographic, parental status, past employment, if a student grew up in a home with two parents, or if a student was adopted. If clarity is the desired outcome of LB440, the bill would specifically outline and define what exactly constitutes diversity in the mind of the Unicameral. After all, diversity is a nebulous term that means different things to different people. For many of us, the term diversity is a code word for showing preferences based on race and ethnicity. Throughout the campaign, opponents used Initiative...opponents of Initiative 424 frequently used the term diversity to define programs that gave preferential treatment to people based on skin color. In my view, LB440 would only serve to undercut the intent of Initiative 424. I don't want what LB440 suggests, a commitment to an amorphous term like diversity. I don't think the Nebraskans who voted for

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Initiative 424 want it either. If the Legislature is serious about harmonizing Nebraska laws to bring them into compliance with Section 30, Article I of the Nebraska Constitution, which was enacted by the citizens in the 2008 election as Initiative 424, the Unicameral should end. I repeat, the Unicameral should end the Student Diversity Scholarship Program, and send the related funds to the general scholarship fund for distribution to deserving students of all backgrounds. I think from the prior testimony, you can see that different people are going to define diversity in different ways. I don't want an administrator who may just be a college student him or herself, to make a decision that somebody should get a scholarship or not based on what they do in a simple essay. It should be based on ability and on merit. That's the kind of educational system I grew up in, and I'm willing to bet it's the one that most of you grew up in. That's my testimony. Thank you. [LB440]

SENATOR ADAMS: Thank you, sir. Are there questions for this testifier? I'm curious about something. So the word diversity is too broad? [LB440]

MARC SCHNIEDERJANS: It is not defined. [LB440]

SENATOR ADAMS: Is not defined. So we start to define it, and in so doing, don't we get right back in a position of being even more categorical? [LB440]

MARC SCHNIEDERJANS: When you, when you asked the senator about representation or about how are we going to, you know, allocate the scholarship funds, the statement was basically, well, we'll look at underrepresentation. Well, what is that but race? You have to come up with a definition of diversity. You can't leave it up to the minds of the people who are doing the evaluations. I can tell you that the University of Nebraska does that, Lincoln. [LB440]

SENATOR ADAMS: Could it be something other than race? Underrepresentation? Could it be poverty? [LB440]

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MARC SCHNIEDERJANS: That's not covered in the Legislative Bill. If you want to make, financial need has long been, yes. [LB440]

SENATOR ADAMS: But wouldn't the word, excuse me, sir. Excuse me, sir. Wouldn't the word diversity be more all-inclusive then? Which is what you're suggesting. [LB440]

MARC SCHNIEDERJANS: The bill 424 is suggesting clarity. That's its intent and purpose. When you use a word, an amorphous term like diversity, it broadens it to individual interpretation. And what I'm suggesting is that the Unicameral should make a very clear definition of what it feels the term diversity should include. If they did that, and if it complied with the law, there would be no problem. Everybody would know. Even the administrators in schools would know how to apply. [LB440]

SENATOR ADAMS: However we administer any kind of scholarship, somebody wins, somebody loses. Would you agree? [LB440]

MARC SCHNIEDERJANS: Oh, totally. [LB440]

SENATOR ADAMS: A decision had to be made. [LB440]

MARC SCHNIEDERJANS: Absolutely. [LB440]

SENATOR ADAMS: On some kind of criteria. [LB440]

MARC SCHNIEDERJANS: On some kind of criteria. But why not make it ability, rather than a person's skin color? [LB440]

SENATOR ADAMS: But you keep coming back to race. Diversity doesn't have to be race. [LB440]

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MARC SCHNIEDERJANS: Then let that be stated in the body of the Unicameral.
[LB440]

SENATOR ADAMS: Any other questions for this testifier? Senator Avery. [LB440]

SENATOR AVERY: When you hear the word diversity, do you automatically think race?
[LB440]

MARC SCHNIEDERJANS: Yes. [LB440]

SENATOR AVERY: You do? [LB440]

MARC SCHNIEDERJANS: I do. It has been applied too many times over the course of
my life in that context. [LB440]

SENATOR AVERY: When you hear the word demagoguery, what do you think? [LB440]

MARC SCHNIEDERJANS: Well, I don't, I'm not in, I'm not a political science person. I
really wouldn't care to even define the term. [LB440]

SENATOR AVERY: How about appealing to people's prejudices and passions and fears
to gain political advantage? [LB440]

MARC SCHNIEDERJANS: I think the current administration at the federal level is doing
a good job of that. [LB440]

SENATOR ADAMS: Are there other questions? Seeing none, thank you. [LB440]

MARC SCHNIEDERJANS: Thank you. [LB440]

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SENATOR ADAMS: Are there other opponents to the bill? Could you hand in your registration, please. Thank you. [LB440]

GERARD HARBISON: My name is Gerard Harbison. That's H-a-r-b-i-s-o-n. I'm happy to have the opportunity to address this committee. I've been a chemistry professor at the University for the last 17 years. But I'm here representing only myself. I can tell you, start off with a short story, we had to...to actually answer Senator Adams' questions about the use of the word diversity. About four years ago, I received a letter from my colleagues at the Chemistry Department of the University of Puerto Rico in Mayaguez, and it was a letter basically promoting their program and that's fine. And they were urging us to hire chemistry majors from that program and they said...as graduate students. And they said, proudly, that the University of Puerto Rico has the most diverse student body in the United States since it's 98 percent Hispanic. And that's an example of how the word diversity has been abused. Diversity used to mean variety. And it was something that we wanted in universities. It was something, you know, it made sense to have students from diverse, from different backgrounds, from different socioeconomic classes, students who grew up speaking different languages and so on. These were the kind of students that a good university would try to attract. The trouble is that it has been taken over and it's been abused. And as this example I've given you shows that basically, very often now, people, when they say diversity mean just members of this group or that group or that group, defined by race or ethnicity or gender in some cases. This statute and I did look up its legislative history, when it started off in the 1980s, it was called the Minority Scholarship Program. And it quite explicitly was here...it was here to serve black, American Indian, and Hispanic students. Now it's been modified several times as we've heard in order to essentially make the language consonant with Supreme Court decisions. But it's not clear to me that the program itself has ever really been intended; it's never intended to be broadened to include that. Diversity was used in the statutes in 2001. It was used in 2007. It's used in 2009. Diversity as it was used then is no different...the word is the same as it was used previously. I think in, and in the year

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2000, it meant black, American Indian, and Hispanic students. If you want to really make it diverse, then spell out what the word diversity means. We've had a list...it's funny, the list of kinds of diversity that I came up with are almost identical to the ones that former Speaker Withem gave when he came here. Spell them out. That way nobody's under any doubts about what diversity means, and nobody will be tempted to use this as a proxy for anything else. [LB440]

SENATOR ADAMS: All right. Are there questions for this testifier? Senator Haar. [LB440]

SENATOR HAAR: Thank you. Well, would variety, do you like that word better? [LB440]

GERARD HARBISON: It's, yeah, sure. [LB440]

SENATOR HAAR: Because I'm...listening to Miss Hunter, I think she was talking about variety. Because in my mind I don't automatically equate diversity to race. I just don't. [LB440]

GERARD HARBISON: But as you've seen, some people do. I mean, how could you describe a group that is 98 percent Hispanic as diverse except by saying that diverse means a member of a specific group. Obviously they're not very diverse. They're actually ethnically quite homogenous. But it is being used in that context. [LB440]

SENATOR HAAR: By some people. Yeah. [LB440]

GERARD HARBISON: By some people. So that would then say the word is very ambiguous, wouldn't it. [LB440]

SENATOR HAAR: Maybe I have a broader view of that word because I was a chemistry major. I don't know. (Laughs) [LB440]

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GERARD HARBISON: Well, congratulations. It's nice to have some people, it's nice that some people can make something out of it. [LB440]

SENATOR ADAMS: Are there other questions here for this testifier? Thank you, sir. [LB440]

GERARD HARBISON: Thank you. [LB440]

SENATOR ADAMS: Other opponents? Opponents? Neutral testimony? [LB440]

ERNIE CHAMBERS: Senator Adams and members of the committee, my name is Ernie Chambers. I'm here as a common citizen. I'm from Omaha, Nebraska. And I'm speaking as one in the neutral capacity, because we learned in the Legislature what you learn in the legal profession, that you have to position yourself to address the opponents to an idea that you favor. When you have a situation such as in America, where white men have all of the advantages, their advantages have been institutionalized, then they can say we don't want any law that makes reference to anything other than what they call ability. But they have always determined who has the ability. They have defined ability. They have managed to make sure that they always maintain control over everything that is of value. The Constitution of Nebraska is rapidly becoming a document which is designed to trumpet to the world what a racist, narrow-minded, intolerant place this is. When these people come along who are white and have had a favored existence all of their life, have benefitted from white male affirmative action all of their life--even the term grandfather refers to white males who couldn't cut the mustard and in order that they did not have to meet qualifications--they were allowed to slip in under the wire and not meet those qualifications. You never hear of grandmothering. In this particular instance, where they talked about employment, nonwhite people make up such an infinitesimally small percentage of the overall population of this state that to suggest that those few people are going to deprive white people of jobs is preposterous. The

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Constitution was amended, I believe, to demonstrate that white people always have, always intend to maintain absolute and total dominance over anybody who is not white. When you look at the antiimmigration legislation, especially doing away with the opportunity for Latino children to go to the university, 28 students have been magnified, blown out of all proportion, and created the appearance that white students are not going to be allowed to go to school because of this. They cannot show where black people have competed in an unfair way against white people with reference to anything. When it comes to athletics, they come out and recruit black children. None of these people who are opposed to what they call diversity have condemned the university for having black football players, black track stars, black basketball players, because what they do redounds to the benefit of a white run university. I know my time is going to run out, but I had to get those things in. I believe in education when it really serves the function of education. But when it's used as a dodge for creating a system of discrimination, then it is not education, it is miseducation and oppression. And I see that my time is up, and I always play by the rules. But if you have any questions, i would answer them. [LB440]

SENATOR ADAMS: Thank you, Senator Chambers. I'm going to call you Senator if that's all right? [LB440]

ERNIE CHAMBERS: Habits are hard to break. [LB440]

SENATOR ADAMS: I know it. I know, a good habit. Are there questions for Senator Chambers? Yes, Senator Avery. [LB440]

SENATOR AVERY: If you don't mind explaining again why you're testifying in a neutral capacity? [LB440]

ERNIE CHAMBERS: Because I wanted to hear what the opponents...I knew there would be some people opposing this kind of legislation because they pop up all the time

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in different names, different guises, but after being in the Legislature 38 years, I know which bills will bring them out. Had I testified in favor of it, I could not follow them and counteract the kind of, what I consider poison, that they spew. There is no definition of racial, there's no definition of cultural, there's no definition of ethnic, and if you would question the people who were up here as to what cultural means, they couldn't tell you. All the words that are used in this realm are not defined anywhere. What the federal law talks about is certain protected classes of people because history and tradition has shown that practices and policies are put in place that damage and discriminate against these groups. So when one of these groups is involved and the Supreme Court of the United States is reviewing a program that impacts on them, the court says there's going to be very close minute scrutiny to make sure that the program does not discriminate. It can discriminate on its face or it can have a discriminatory effect. The courts know the dodges that are used by the racists to dress what they are going to do in language that sounds neutral. They might call something a Civil Rights Initiative when the purpose is to destroy civil rights. In the 38 years I was in the Legislature, there were programs that I fought for that benefitted white people. It may come as a shock to some of you youngsters that many years ago, Nebraska's pension plan required female employees to pay the same percentages into the plan, but they got a smaller payout as women. The argument by the white men was that women live longer, so they'll wind up taking more out of the fund. So it took a black man to have that provision abolished. And here was one of the arguments I gave. Are you going to tell me that a white woman, because they were the ones who was an employee of Nebraska, and now is on a pension, goes to the store with a white man who is on a pension, and the white man is charged 50 cents for a loaf of bread, will the woman be charged 25 cents? In other words, if she has to pay the same amount for all the goods and services that the men will have to pay, they should not get a lesser payout. This state has never been fair. It has always been discriminatory. The two men who testified, if they studied the history of this state, would know that when they first made application to join the union, they were turned down because the Legislature refused to put in a guarantee of the rights of all people and that there would be no discrimination based on race. It happened that Andrew Johnson, a

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pro-slavery person, was President at that time. And he was the one who had to send back and deny the application of Nebraska. So under federal compulsion, and that compulsion was, if you don't change your law to make sure that nondiscriminatory language is put in your constitution, you cannot join the Union. White people who are not in the deep south or the border states, like to think of the north and the west and the so-called Midwest as being different from the south. Those of us who are the victims know that address a racist geographically as you will, a racist is a racist still and you find it in their laws, in their constitutions, and you don't have to go very far back in the history of Omaha to find what they called restrictive covenants where people who were not white could not live in certain parts of Omaha. They could not own property there. They could not lease property there, and the only way they could live in a house is if they were a maid or a domestic for white people. That was during my lifetime. So when I hear these people come up here and talk the trash, and that's what I call it, and they have lived a favored existence, have a favored existence right now, then it is somewhat off-putting to me to say the least, and I'm trying to be diplomatic. The new senators don't know me. And in the language of diplomacy, if a diplomat says yes, it means maybe. If a diplomat says maybe, it means no. If a diplomat says no, that person is no diplomat. But I think I can make my meanings clear. [LB440]

SENATOR ADAMS: Senator Sullivan. [LB440]

SENATOR SULLIVAN: Thank you. Senator Chambers, in light of the constitutional amendment that we passed, is it reasonable to expect that we probably wouldn't pass an equal rights amendment in this state? [LB440]

ERNIE CHAMBERS : Yes, we tried, and when I was the chairperson of a committee, and we couldn't get it done. And Phyllis Schafly and people that I had never heard, swooped down on the Legislature. We were having it in the Warner Chamber and they were all up in the balconies, and for the life of me, I could not help seeing a comparison between a buzzard's roost and those people. But here's what I'm looking at. If this were

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a fair country, we wouldn't even need to talk about an equal rights amendment which would say that women are entitled to the same rights without discrimination that white men have always had. But that's the way it is. And to give you an idea of how strong I feel about this, let's say that we have a nation or a territory inhabited by wolves and rabbits. The wolves outnumber the rabbits more than ten to one, but the wolves have to...they're going to put in a law to make sure that the rabbits don't take power from them. The rabbits already hold the subservient position. They're preyed upon by the wolves. But because the wolves have the numbers, they say we need to pass laws to protect we wolves, us wolves from the rabbits. And that's the way I see it. When you back people into a corner where the place where there should be education, you find discrimination, where doors are constantly closed, a student of history would realize that people are not going to tolerate that kind of situation forever. A change must come, and in this country, white people are not going to be the numerical majority. And if those nonwhite groups become the majority and would put in place against the white people the same laws that the white people have put against them, the white people would be saying, that's unfair, you shouldn't do it. You shouldn't do it. They need to think beyond the ends of their nose. When they don't want Latino people to have jobs, there are older and older white people living in Nebraska, fewer and fewer working people. As these younger groups, who are discriminated against, and made to feel that they're not welcome, realize that it's their money that is providing the care for these old white people, then when they get the numbers to get political power, then they may decide to get even with these old white people and structure pensions, social security, and other things to hit these old white people who have created so much animosity, hostility, and hatred. And that's what I've confronted all my life. I never had a black teacher. Education, the place where it's given, has always been a depressing, hostile environment for me; at Lathrop Elementary School, at Technical high school, at Creighton undergraduate school, at Creighton Law School. And I never flunked an exam, I never flunked a course, and once I got to Creighton University, I stopped attending classes. I would go to a few. I went to a few in law school. White people's academia has never been difficult for me...ever. I didn't need to attend classes to learn

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what they taught. So when I see them trying to create the impression that they are superior, and the only way they can do it is restrict opportunities to those who are weak, to those who are vulnerable, to those who are voiceless; it really shows how inferior, at least morally that they are. The university should be, in fact, a place where different ideas, different groups, all types of people are welcome. There is not a global economy. The communication system that exists now with the Internet embraces people throughout the globe, and our children who come up through a narrow-minded bigoted system like you find in Nebraska are not going to make it anywhere. They're protected here, the white children, they're given the advantages. They don't have to compete. Then when they get away from Nebraska, they can't make it. [LB440]

SENATOR ADAMS: Other questions for Senator Chambers. Senator Cornett, did you have a question? Let me ask one more. [LB440]

ERNIE CHAMBERS: Um-hum. [LB440]

SENATOR ADAMS: This word diversity. You're on the new Metro Learning Community Coordinating Council, and one of your changes as you're well aware is to develop a diversity plan. When you hear that word diversity for the Metro area, developing a diversity plan, what, what do you see? [LB440]

ERNIE CHAMBERS: I'll be frank, the word, words like that don't conjure anything in my mind, because I see racism wherever black people come into contact with white people, there's going to be discrimination. To this day, I will go in a store. I will be at the counter first. A white person will come after me. And the clerk will go to the white person. That happens now. And you know what I just say, let's be fair. I was here first. Then they apologize. Neither person was blind, neither the clerk, nor the white person who was going to be served before me. But when you call their hand on it, then they pretend that they didn't know. So when time comes for us, on that council, to address this issue, my views are going to be that anything which does not redound to the benefit of the

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students who currently are disadvantaged, who are two to two-and-a-half years behind the white students, I don't care about that program. I want something that is going to address the specific needs of these children. And if they're black children, Latino children, and poor white children, I will say who they are so that we have the benchmarks and know which populations we're targeting. Those are the ones I want to help. I don't need to help these white men who are here. They've got everything anyway. They don't have to be competent. They don't have to prove anything, just be white. And that's all that they need. And it's why I have such contempt for their positions and such contempt for white men who are so cowardly, who are so fearful of competition, who destroyed the financial system worldwide? White men. Who brought down the banking system? White men. Who were the mortgage lenders? Who were those who create and benefit from derivatives? White men. They have destroyed everything they have touched, everything. And I'm saying we should look only at the facts and those things that can be established even in the daily newspapers, not what I'm saying. And then we will see that they have been favored. They've been given their way, and when given their way, they have destroyed everything they've touched, and it's continuing. And the only way a black man got elected to be president, he didn't run as a black person's candidate. But there are white people who will say we are so sick of what these white men have done, we're willing to try anything. And my analogy is if you're drowning and I'm the devil himself, and I pull out a sword that has two edges and each edge is as sharp as a razor, and I say take it or leave it. To leave it is certain death. To take it might result in death, but it might save you. So you grit your teeth and you grab it. And that's what America did when they elected Obama. So we don't have any delusions. There is no postracial society now. Look what's happening when we're talking here about a little program that might spend \$150,000 a year to benefit some students who obviously do not have the opportunities to be on a level playing field. And it brings out the white men with favored positions to criticize that, to attack that. What they would say if they were really not hypocrites is that we want to say that Nebraska universities should be in place for white people. Of, by, and for white people. That's what we want, and we're going to oppose anything other than that. But they're going to

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have people like me to contend with. When I was in the Legislature, I manifested restraint, which now that I'm not representing a district, allows me greater leeway to function in the way that I ordinarily do. While I was in the Legislature, I never would have grabbed somebody in the collar and taken him out and shaken him and popped him in the nose. Senators don't behave like that. Plain citizens might. [LB440]

SENATOR ADAMS: Are there other questions for Senator Chambers? Seeing none, thank you, sir. [LB440]

ERNIE CHAMBERS: Thank you for the opportunity, and may the force be with you. [LB440]

SENATOR ADAMS: Is there other neutral testimony? Seeing none, Senator Council to close. [LB440]

SENATOR COUNCIL: Thank you, Senator Adams. Briefly, I want to convey to this committee that the purpose of LB440, despite what the opponents may say, is to harmonize the language of the existing scholarship program act with the current state of the Constitution of the State of Nebraska. Because quite frankly, members of the committee, we didn't have to go in and delete the reference to racial, ethnic, or cultural to mandate that the administration of the scholarship program be consistent with the Constitution as it currently exists. The Act currently states that. It specifically says: awards shall be consistent with the intent stated in the act and with the Constitutions and Laws of the United States and the State of Nebraska. So regardless of whether those terms remained in the act or not, this scholarship program has to be administered in accordance with the Constitution of the United States. Again, the purpose of introducing LB440 was to make it clear that this act was in harmony with the Constitution. And it is rather disheartening, members of the committee, to sit back and listen to individuals where we're talking about this act that was designed to provide educational opportunities for young people in the state of Nebraska, young people who

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grew up in the state of Nebraska, educated in our K-12 system to provide them opportunities to attend our university, our state colleges, and our community colleges, to hear individuals--educated individuals, purportedly highly educated individuals--sit before this committee and say when they hear the word diversity, all they can think of is race. When they hear the word underrepresentation, all they can think of is race; that in my mind further, I guess, magnifies the need for us to continue this program. If for no other reason than to provide the level of diversity to help educate individuals like the opponents, to broaden their understanding of the world that we live in. Because I was sitting there and I quite frankly, when the question was asked, what do you think of when you think of underrepresented? I think of urban kids applying to the School of Agriculture. Highly underrepresented in the College of Agriculture are youngsters from urban backgrounds. I think of a lot of opportunities, a lot of programs where individuals who you don't normally consider pursuing those types of coursework have an opportunity to do so. That's all the intent of this act is designed to provide for. The Legislature set that as its intent, to make sure that our state colleges, our university, and our community colleges represent the diversity of this state, and I urge the committee to advance LB440. Thank you. [LB440]

SENATOR ADAMS: Thank you, Senator Council. Are there any final questions for Senator Council? Seeing none, thank you. That will conclude the hearing on LB440. And we will move on to LB21. Senator Harms is here. Go right ahead Senator Harms, whenever you're ready. [LB440]