

Legislative Resolution 449
Adopting Articles of Impeachment

**Introduced by: Chambers, 11; Beutler, 28; McDonald, 41; Stuthman, 22;
Thompson, 14**

Resolution Adopting Articles of Impeachment
Ninety-Ninth Legislature, Second Session, State of Nebraska

Nebraska Legislature on behalf of the State of Nebraska

v.

C. David Hergert,
Regent, University of Nebraska

Legislative Findings

The Legislature Finds:

1. C. David Hergert is a civil officer of this State and, as such, is liable to impeachment for any misdemeanor in office. *Neb Const Art IV, § 5*. C. David Hergert was elected to the University of Nebraska Board of Regents on November 2, 2004, to represent District 7, and he continues to hold the office of University Regent.

2. The Legislature has “the sole power of impeachment by a majority of its members.” *Neb Const Art III, § 17*. Impeachment occurs by adoption of a Resolution adopting Articles of Impeachment. Trial occurs thereafter before the Nebraska Supreme Court.

3. Clear and convincing evidence exists to establish that C. David Hergert committed each, and all of the impeachable offenses identified in the Articles of Impeachment in this Resolution. Each of these offenses is an impeachable offense because each is an offense “in its nature or consequences subversive of some fundamental or essential principle of government, or highly prejudicial to the public interest, and this may consist of a violation of the Constitution, of law, of an official oath, or of duty by an act committed or omitted, or without violating a positive law by the abuse of discretionary powers for improper motives or for an improper purpose.” *State v. Douglas*, 217 Neb 199, 202, 349 NW2d 870, 875 (1984).

4. The integrity of democratic government in Nebraska rests upon honest and honorable obedience to Nebraska's election laws and other laws by candidates for office. The Legislature previously found, and now reaffirms that "there is a compelling state interest in preserving the integrity of the electoral process in state elections by ensuring that these elections are free from corruption and the appearance of corruption and that this end can be achieved if ... the sources of funding and the use of that funding in campaigns are fully disclosed." *Neb Rev Stat* § 32-1602(2); *Neb Rev Stat* § 49-1402(2).

5. The People of Nebraska have determined that only persons elected lawfully, following fair, legally conducted campaigns, may serve as civil officers of this State. This determination is expressed in the State's Constitution; it prescribes a mandatory oath of office which requires one who prevails in an election for the office of University Regent to swear or affirm that he or she has "not improperly influenced in any way the vote of any elector...." *Neb Const* Art XV § 1. This Legislature has an obligation, in matters of impeachment, to protect, defend and preserve the credibility of this Constitutional Oath. C. David Hergert swore this oath, but he did so falsely.

6. A Constitutional officer is bound by the Oath of Office to comply with both Federal and State law, *Neb Const* Art XV, § 1.

7. Candidates who are not incumbents seeking election as a civil officer, owe the public the same duty to avoid corruption, illegality, and fraud as does an incumbent civil officer seeking re-election to a public office in Nebraska. C. David Hergert was not an incumbent seeking re-election in 2004.

8. C. David Hergert may not be lawfully elected to office, or serve, after committing violations of Nebraska's election laws so flagrant as to subvert fundamental and essential principles of government or be highly prejudicial to the public interest. To permit an official misdemeanant to hold office would improperly provide a model of behavior and conduct that would, if emulated by University students or others, foster and encourage fraud, cheating, lying, plagiarism, false pretense, or other acts and

omissions subversive of the daily educational processes and integrity of the University, and the laws of the State of Nebraska.

9. Clear and convincing evidence persuades the Legislature that C. David Hergert violated Nebraska's laws and did so by committing misdemeanors in office, including acts or omissions affecting his service as a University Regent. C. David Hergert's offending conduct is so inimical to his duties as to render him unfit to hold office. Clear and convincing evidence persuades the Legislature that C. David Hergert's acts and omissions, including violation of his oath of office, relate to his official duties because the People of Nebraska constitutionally prescribe that the governance of the University of Nebraska shall be vested in a Board of Regents elected from Districts, in a manner prescribed by the Legislature. *Neb Const* Art VII § 10. The Legislature prescribed that candidates for the office of University Regent must conduct their campaigns by complying with Nebraska's election and election accountability and disclosure laws. *Neb Rev Stat* §§ 32-1601 *et seq.* and 49-1401 *et seq.*

10. Clear and convincing evidence persuades the Legislature that C. David Hergert's acts and conduct committed during and after the 2004 primary and general election campaigns for the office of University Regent involved official misconduct, false oaths, election fraud, false statements, false reports, and obstructions of government operations. As a result, Hergert's election is tainted. He entered office under false pretense, held office while continuing to commit more violations of law, and his conduct constitutes obstruction of the general governance of the University, and of the State of Nebraska.

11. Clear and convincing evidence persuades the Legislature that Hergert perpetrated his election campaign misconduct by filing a false, deceptive report with the Commission on January 11, 2005, after he took the oath of office and became a University Regent. By doing so, he falsely reaffirmed his previous false, deceptive, untimely, and unlawful filings with the Commission, and falsely reported more information. This official misconduct is inconsistent with the duty of a University Regent to obey the law, including election and accountability laws, while in office. It

constitutes unlawful acts and violations of *Neb Rev Stat* §§ 28-924, 49-14,134, and 28-915.01, and obstructed operations of the Nebraska Accountability and Disclosure Commission and the State of Nebraska contrary to *Neb Rev Stat* § 28-901.

12. Clear and convincing evidence persuades the Legislature that C. David Hergert used the United States Postal Service, or private or commercial interstate carriers, to transport false reports, affidavits, and submissions to the Commission for the purpose of accomplishing a scheme or artifice to defraud the Commission and the electors concerning Hergert's campaign and its finances, expenditures, and borrowings during the course of, and after the conclusion of, his 2004 primary and general election campaigns for the office of University Regent. These unlawful uses of the mail, or private or commercial interstate carriers, occurred during the primary and general election processes, and again after Hergert took office. These acts and omissions constitute violations of 18 *USC* §§ 1341 and 1346, prohibiting the use of the mail to effectuate any scheme or artifice to defraud, including his artifices and schemes to abuse public records contrary to *Neb Rev Stat* § 28-911, falsely report and conceal actual campaign loans and expenditures, and to commit election fraud contrary to *Neb Rev Stat* §§ 32-1601 *et seq.* and 49-1401 *et seq.*

13. Clear and convincing evidence persuades the Legislature that C. David Hergert knowingly and intentionally concealed, deceived and misrepresented material facts during his interview of October 8, 2005, conducted by Donald W Kleine, Chief Prosecutor, Nebraska Attorney General's Office, and Lieutenant Mark Funkhouser, Nebraska State Patrol. By doing so, Hergert violated either or all of the following Nebraska statutes: *Neb Rev Stat* §§ 28-901, 28-907 and 28-924.

Acts Constituting Impeachable Offenses

On or After January 6, 2005

Article I

False Oath of Office (Neb Const Art XV, § 1)

1. On or about January 6, 2005, following the general election of November 2, 2004, C. David Hergert (“Hergert”), having been certified as the candidate who won the general election for the position of the University of Nebraska Board of Regents (“University Regent”) for District 7 as established by the Nebraska Legislature, falsely swore the following oath:

“I, C. David Hergert, do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of Nebraska, and will faithfully discharge the duties of member of the Board of Regents of the University of Nebraska according to the best of my ability, and that at the election at which I was chosen to fill said office, I have not improperly influenced in any way the vote of any elector...”

A Constitutional officer is bound by the Oath of Office to comply with both Federal and State law, *Neb Const Art XV, § 1*.

2. Nebraska Const Art XV, §1, requires the foregoing oath be sworn truthfully. C. David Hergert’s foregoing oath was materially false because he made false and misleading filings with the Nebraska Accountability and Disclosure Commission (“Commission” or “NADC”) during the election process on one or more of these occasions, each, any, and all, of which improperly influenced electors:

2.1 Hergert filed a false NADC Form CFLA-7, Candidate’s Forty Percent Affidavit, on November 3, 2004. The form contained false, deceptively late, and misleading information.

2.2 Hergert failed to timely file a Forty Percent Affidavit on multiple occasions, including, but not limited to:

2.2.1 April 21, 2004, after the candidate was reminded by a letter from the Commission, of the filing requirement.

2.2.2 May 3, 2004.

2.2.3 May 5, 2004.

- 2.2.4 Within five (5) days of September 7, 2004, when Hergert was specifically notified by letter from the Commission that failure to timely file the required Forty Percent Affidavit renders the offending candidate subject to criminal prosecution.
 - 2.2.5 Early October, 2004, when the Jackson-Alvarez Group expended funds on the Hergert campaign for which repayment was expected, and again within five (5) days of October 17, 2004, when Scott Cottingham, Inc., invoiced Hergert for funds expended earlier which Scott Cottingham, Inc., expected to be paid.
 - 2.2.6 October 20 and October 22, 2004, when Scott Cottingham, Inc., was paid by Hergert with insufficient funds check number 1043 for \$36,000, and October 22, 2004, when Hergert's insufficient fund check to Scott Cottingham, Inc., was cleared and paid by the drawer bank.
 - 2.2.7 October 21, 2004, when a \$65,000 line of credit was extended to Hergert who executed a Promissory Note for the funds, and on or about October 26 or 28, 2004, when an advance of approximately \$44,000 was made as a loan to Hergert's campaign, which loan should have been, but was not, reported within two (2) days as required by *Neb Rev Stat* § 49-1415, defining contributions to include loans, and *Neb Rev Stat* § 49-14,134.
- 2.3 Hergert filed a false candidate's Forty Percent Affidavit (NADC Form CFLA-7) on November 12, 2004.

2.4 Hergert filed false campaign statements using NADC Form B-1 on multiple occasions when he failed to properly record and report campaign expenditures including, but not limited to, expenditures for one or more of the following persons or organizations, expecting reimbursement from Hergert or his campaign, on behalf of his campaign:

The Jackson-Alvarez Group;
Majority Strategies; and
Scott Cottingham, Inc.

2.5 Hergert otherwise filed false, deceptive, misleading, or tardy reports with the Commission on some or all of these dates in 2004: April 22, May 3, May 12, November 3, November 12.

2.6 Hergert otherwise filed false, deceptive, misleading, or tardy reports with the Commission.

2.7 Hergert failed to report late contributions as required by *Neb Rev Stat* § 49-1458.

2.8 Hergert violated *Neb Rev Stat* § 49-1446.04 because he, or his Committee, accepted loans in an aggregate amount of more than fifty percent (50%) of the contributions of money or did not timely, truthfully report them.

2.9 Hergert used the United States mail, or public or private carriers, to transport his false filings from Scottsbluff, Nebraska or other locations to the Commission, contrary to 18 *USC* §§ 1341 and 1346.

3. These acts and omissions were calculated to, and did, influence and deceive voters, the media, election watch groups, and the Commission. These acts and omissions created false impressions about Hergert, his campaign and finances, and prevented or delayed release of public campaign finance funds to his general election opponent. Delay in the release of these funds prevented Hergert's general election

opponent from fully developing or disseminating his campaign, qualifications, platform, and reasons for seeking the office of University Regent. Electors were deprived of information, deceived, and improperly influenced as a result.

4. Hergert's actions were related, but inimical, to his duties in office, subversive of fundamental and essential principles of government, and were highly prejudicial to the public interest.

Article II

Mail Fraud (18 USC §§ 1341 and 1346)

1. A Constitutional officer is bound by the Oath of Office to comply with both Federal and State law, *Neb Const Art XV, § 1*.

2. On or shortly before January 9, 2005, C. David Hergert caused to be deposited in the United States mail, or with an interstate public or private carrier, an envelope directed to the Commission, containing for filing, his Campaign Statement filed with the Commission on January 11, 2005. This item was received by the Commission from Federal Express, a public or private interstate carrier. The January 11, 2005 Campaign Statement contained false, fraudulent, representations, pretenses, or promises intended to constitute a part of Hergert's scheme or artifice to defraud the Commission, and the electors. By reason of these acts and omissions, Hergert violated 18 USC § 1341, defining, and prohibiting, use of the U.S. Postal Service, or private or commercial interstate carriers, to carry out or effectuate any scheme or artifice to defraud. Hergert thereby engaged in a scheme or artifice to deprive another of the intangible right of honest services contrary to 18 USC § 1346.

3. This conduct by Hergert perpetuated a pattern of mail fraud activity that occurred during and after the primary and general election campaigns and before January 6, 2005, including Hergert's deposits of false or deceptive documents for filing with the Commission in the United States mail, or an interstate public or private carrier, on or about one or more of these dates in 2004:

3.1 April 20 for an April 22 filing.

- 3.2 April 29 for a May 3 filing.
- 3.3 May 10 for a May 12 filing.
- 3.4 An unspecified date for a mailing made with a “neopost” device for a November 3 filing.
- 3.5 November 1 for a separate November 3 filing.
- 3.6 November 10 or 11 by Federal Express parcel 6880074 for a November 12 filing.

4. Some, each or all of these acts constituted part of a scheme and artifice to defraud the Commission and electors and to commit election fraud. These acts are contrary to 18 *USC* § 1341. Hergert engaged in a scheme or artifice to deprive another of the intangible right of honest services contrary to 18 *USC* § 1346 by these acts. Hergert's January 11, 2005 filing was designed to, and did, fraudulently conceal his scheme to improperly influence electors during the 2004 election campaign.

5. Hergert's actions were related, but inimical, to his duties in office, subversive of fundamental and essential principles of government, and were highly prejudicial to the public interest.

Article III

False Reporting (*Neb Rev Stat* § 28-907)

1. During the final calendar quarter of 2004, the Commission initiated one or more investigations of C. David Hergert after receiving two complaints from citizens and initiating an internal complaint within the Commission. The Commission is empowered by law to conduct criminal investigations and has concurrent jurisdiction with the Attorney General to prosecute election crimes as provided by *Neb Rev Stat* § 49-14,126. Hergert was informed of the investigations and entered into a series of submissions of information and communications with the Commission about the matters under investigation.

2. Thereafter, Hergert prepared or caused to be prepared, signed, and filed on January 11, 2005 his Campaign Statement. This Campaign Statement contained

false, deceptive and misleading entries and information including, but not limited to, false reporting of the date when Hergert or his campaign incurred an expenditure of a reported \$13,272.66 to the Jackson-Alvarez Group, McLean, Virginia. Hergert reported to the Commission, and citizens of the State, that this expenditure was incurred December 14, 2004; however, the expenditure actually commenced to be incurred no later than October 5, 2004, when Hergert's political consultants confirmed prior requests for public records from the University of Nebraska by giving University officials a Federal Express number to be used to transport the requested information.

3. Hergert's January 11, 2005 Campaign Statement contained material information Hergert knew to be false. Hergert knowingly furnished this materially false information to the Commission with the intent to impede the investigation of an actual criminal matter contrary to *Neb Rev Stat* § 28-907.

4. Hergert's actions were related, but inimical, to his duties in office, subversive of fundamental and essential principles of government, and were highly prejudicial to the public interest.

Article IV

False Reporting (*Neb Rev Stat* § 28-907)

1. Nebraska law enforcement initiated an investigation of C. David Hergert and his Campaign for Election as a University Regent prior to October 8, 2005. On October 8, 2005, Chief Criminal Prosecutor Donald W. Kleine and Nebraska State Patrol Lieutenant Mark Funkhouser conducted a recorded interview of Hergert.

2. During the October 8, 2005, interview, Hergert falsely reported concerning (a) his awareness of campaign expenditures, (b) when they were incurred, (c) how campaign loans were arranged and funds were advanced, and (d) why prior reports made to the Commission failed to report truthfully the date(s) when expenses were actually incurred or loan funds were actually arranged or advanced to the campaign, to or by, the Jackson-Alvarez Group, McLean, Virginia, Majority Strategies, Columbus, Ohio,

Scott Cottington, Inc., Bloomington, Minnesota, and/or Valley Bank & Trust Co., Scottsbluff, Nebraska.

3. Hergert further falsely reported on October 8, 2005, that he found, inadvertently misfiled in a “chicory plant file,” a Commission NADC Form CFLA-7 “Forty Percent Affidavit.” This report contradicts Hergert’s signed November 10, 2004, letter to the Commission in which he reported the “Forty Percent Affidavit was mailed to your office on October 29.”

4. Hergert’s October 8, 2005, recorded statement contained material information given to a peace officer and another official, and constituted representations Hergert knew to be false. This information was furnished by Hergert to Commission officials with the intent to impede the investigation of an actual criminal matter contrary to *Neb Rev Stat* § 28-907.

5. Hergert’s actions were related, but inimical, to his duties in office, subversive of fundamental and essential principles of government, and were highly prejudicial to the public interest.

Article V

Obstructing Government Operations (*Neb Rev Stat* § 28-901)

1. During the final calendar quarter of 2004, the Commission initiated one or more investigations of C. David Hergert after receiving two complaints from citizens and opening an internal inquiry within the Commission. The Commission is empowered by law to conduct criminal investigations and has concurrent jurisdiction with the Attorney General to prosecute election crimes under *Neb Rev Stat* § 49-14,126. Hergert was informed of the investigation(s) and entered into a series of submissions of information and communications with the Commission about the matters under investigation.

2. Thereafter, Hergert prepared or caused to be prepared, signed, and filed his Campaign Statement on January 11, 2005. This Campaign Statement contained false, deceptive and misleading information including, but not limited to, false reporting

of the date when Hergert or his campaign incurred an expense of \$13,272.66 to the Jackson-Alvarez Group, McLean, Virginia. Hergert reported this expenditure was incurred December 14, 2004, but the expenditure actually commenced to be incurred, and was made, no later than October 5, 2004, when Hergert's political consultants confirmed prior requests for public records from the University of Nebraska by giving University officials a Federal Express number to be used to transport the requested information.

3. Hergert's January 11, 2005, Campaign Statement constituted intentional obstruction, impairment or perversion of the administration of law or other governmental functions by unlawful acts, including submission of material information to the Commission which Hergert knew to be false. Hergert furnished materially false information to Commission officials with the intent to impede a criminal investigation. Hergert's conduct violated *Neb Rev Stat* § 28-901.

4. Hergert's actions were related, but inimical, to his duties in office, subversive of fundamental and essential principles of government, and were highly prejudicial to the public interest.

Article VI

Obstructing Government Operations (*Neb Rev Stat* § 28-901)

1. The Nebraska Attorney General's Office and the Nebraska State Patrol initiated an investigation of C. David Hergert and his Campaign for Election as a University Regent prior to October 8, 2005. On October 8, 2005, Chief Criminal Prosecutor Donald W. Kleine and Nebraska State Patrol Lieutenant Mark Funkhouser conducted a recorded interview of Hergert.

2. During the October 8, 2005 interview, Hergert falsely reported on one or more of (a) his awareness of campaign expenditures, (b) when expenditures were incurred, (c) how and when campaign loans were arranged and funds were advanced, or (d) why prior reports made to the Commission failed to report truthfully the date(s) when expenditures were actually incurred or loan funds were actually arranged or advanced to

the campaign, to or by, the Jackson-Alvarez Group, McLean, Virginia, Majority Strategies, Cottingham, Inc., and/or Valley Bank & Trust Co., Scottsbluff, Nebraska.

3. Hergert further falsely reported on October 8, 2005, that he found, inadvertently misfiled in a “chicory plant file,” a Commission NADC Form CFLA-7 “Forty Percent Affidavit.”

4. Hergert’s October 8, 2005, recorded Statement included his false and intentionally misleading statements which were designed to, and did, obstruct, impair, or pervert the administration of law or other governmental functions by unlawful acts intended to impede the investigation of an actual criminal matter.

5. Hergert’s false reporting regarding his NADC Form CFLA-7 misfiling, constituted false and intentionally misleading statements designed to obstruct, impair, or pervert the administration of law or other government functions by unlawful acts with the intent to impede a criminal matter. This conduct violated *Neb Rev Stat* § 28-901.

6. Hergert’s actions were related, but inimical, to his duties in office, subversive of fundamental and essential principles of government, and were highly prejudicial to the public interest.

**Acts Occurring Before January 6, 2005,
Affecting Service In Office and
Constituting Impeachable Offenses**

Article VII

Violation of Campaign Finance Limitation Act (*Neb Rev Stat* § 32-1604(5)(b))

1. Candidates who are not incumbents seeking election as a civil officer, owe the public the same duty to avoid corruption, illegality and fraud as an incumbent civil officer seeking re-election to a public office in Nebraska.

2. During the 2004 Primary and General election campaigns for the office of University Regent in District 7, C. David Hergert failed to file a timely, truthful disclosure of his campaign expenditures. By so failing, Hergert violated *Neb Rev Stat* §

32-1604(5)(b), which required Hergert file an affidavit within five days of exceeding 40% of his candidate's estimated expenditures. Hergert was required to, but failed to, make such required disclosure on at least one of these occasions:

2.1 Hergert was required to report by no later than April 27, 2004, but failed to report until May 12, 2004, after the primary election, his expenditure of more than 40% of his primary election expenditure estimate of \$65,000.

2.2 Hergert was required to report by no later than October 24, 2004, but failed to report until November 12, 2004, after the general election, his expenditure of more than 40% of his amended general election expenditure estimate of \$40,000.00.

3. These actions impacted the release of public funds to Hergert's opponent in one or both of the 2004 elections and thereby improperly influenced the vote of one or more electors in one or both the 2004 elections. Hergert's conduct was intentional, and violated election laws including *Neb Rev Stat* § 32-1604(5)(b).

4. Hergert's actions were related, but inimical, to his duties in office, subversive of fundamental and essential principles of government, and were highly prejudicial to the public interest.

Article VIII

Violation of Nebraska Political Accountability and Disclosure Act (*Neb Rev Stat* § 49-14,134)

1. Candidates who are not incumbents seeking election to an office, owe the public the same duty to avoid corruption, illegality and fraud as an incumbent civil officer seeking re-election to a public office in Nebraska.

2. During the 2004 general election campaigns for the office of University Regent in District 7, C. David Hergert failed to file a truthful Campaign Statement by October 25, 2004. The filing Hergert made on that date deceptively and

intentionally omitted Section D, Schedule 2 of the required Campaign Statement filed on NADC Form B-1 which was required to be filed to disclose unpaid bills and expenditures as defined by *Neb Rev Stat* § 49-1419(4), including any advance, loan, payment, pledge, or subscription of money or anything of value and any contract, agreement, promise, or other obligation, whether or not legally enforceable incurred.

3. Instead, Hergert filed on October 25, 2004, an intentionally false, incomplete and deceptive Campaign Statement which omitted material expenditures, including one or more of the following material expenditures:

The Jackson- Alvarez Group	\$ 13,272.66
Majority Strategies	\$ 10,295.00
Scott Cottingham, Inc.	\$ 36,000.00

4. These actions impacted the release of public funds to Hergert's opponent in one or both of the 2004 elections and thereby improperly influenced the vote of one or more electors in one or both the 2004 elections. Hergert's conduct was intentional and violated *Neb Rev Stat* § 49-14,134.

5. Hergert's actions were related, but inimical, to his duties in office, subversive of fundamental and essential principles of government, and were highly prejudicial to the public interest.

Article IX

Violation of Nebraska Political Accountability and Disclosure Act (*Neb Rev Stat* § 49-1446.04)

1. Candidates who are not incumbents seeking election as civil officers owe the public the same duty to avoid corruption, illegality and fraud as an incumbent civil officer seeking re-election to a public office in Nebraska.

2. During the 2004 general election campaign for the office of University Regent, C. David Hergert borrowed from Valley Bank & Trust Co., Scottsbluff, Nebraska, \$44,000 on October 22, 2004, and \$5,000 on or before October 29, 2004.

3. These loans were unlawfully received by Hergert and used in his campaign. Section 49-1446.04 prohibits candidates, like Hergert, from accepting loans in an aggregate amount of more than fifty percent (50%) of the contributions of money, other than the proceeds of loans, which Hergert received during the relevant reporting period and as of the date of the receipt of the proceeds of the loan.

4. Hergert's conduct was intentional and violated *Neb Rev Stat* § 49-1446.04.

5. Hergert's actions were related, but inimical, to his duties in office, subversive of fundamental and essential principles of government, and were highly prejudicial to the public interest.

Article X

Violation of Accountability & Disclosure Act (*Neb Rev Stat* § 49-14,134)

1. Candidates who are not incumbents seeking election as a civil officer, owe the public the same duty to avoid corruption, illegality and fraud as an incumbent civil officer seeking re-election to a public office in Nebraska.

2. During the 2004 general election campaign for the office of University Regent in District 7, C. David Hergert, borrowed from Valley Bank & Trust Co., Scottsbluff, Nebraska \$44,000 on October 22, 2004.

3. Hergert reported falsely and intentionally that the Valley Bank & Trust Co. loan of \$44,000 was advanced to him on October 26, 2004, when he filed a Report of Late Contribution on Commission Form B-5 on November 3, 2004. However, the loan was advanced to Hergert on or about October 22, 2006, as he later admitted in a filing made to the Commission on January 11, 2005. Hergert's false reporting violated *Neb Rev Stat* § 49-14,134 and delayed disclosure of the loan until after the general election of November 2, 2004.

4. Hergert's conduct was intentional and violated *Neb Rev Stat* § 49-14, 134.

5. Hergert's actions were related, but inimical, to his duties in office, subversive of fundamental and essential principles of government, and were highly prejudicial to the public interest.

NOW, THEREFORE, BE IT RESOLVED, that C. David Hergert, Regent, University of Nebraska is hereby impeached, saving unto the Legislature of the State of Nebraska at any time hereafter any further articles or other accusations or impeachment against the said C. David Hergert, and also of replying to his answers which he shall make to the articles herein preferred against him, and of offering proof to the same and every part thereof, and all and every other article, accusation or impeachment which shall be exhibited as the case shall require, and do now demand that the said C. David Hergert be put to answer the misdemeanor(s) in office herein charged against him, and that such proceedings, examination, trials, and judgements may be thereupon had and given as may be agreeable to law and justice.