

JUNE 2, 2005

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FLOOR DEBATE

June 2, 2005 LB 13, 28, 28A, 40, 40A, 114, 126, 126A, 146
 146A, 211, 211A, 332, 332A, 348, 348A, 713
 LR 12

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good morning. Welcome to the George W. Norris Legislative Chamber. Our acting chaplain this morning is Senator Lowen Kruse. Senator Kruse.

SENATOR KRUSE: (Prayer offered.)

SENATOR CUDABACK: Thank you, Senator Kruse, for doing that for us. Senator Kruse represents the 13th District. I call the ninety-ninth (sic) day, the First Session, to order. Senators, please record your presence. Members, the morning session is about to convene. Please record your presence. Record please, Mr. Clerk.

CLERK: I have a quorum present, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Are there any corrections for the Journal this morning?

CLERK: I have no corrections, Mr. President.

SENATOR CUDABACK: Messages, reports, or announcements?

CLERK: Mr. President, LR 12CA, passed yesterday by the Legislature, was presented to the Secretary of State at 4:29 p.m. Bills read on Final Reading yesterday were presented to the Governor at 4:27 p.m. (Re: LB 126, LB 126A, LB 348, LB 348A, LB 114, LB 40, LB 40A, LB 146, LB 146A, LB 332, LB 332A, LB 713, LB 211, LB 211A, LB 28, LB 28A.) That's all that I had, Mr. President. (Legislative Journal page 1879.)

SENATOR CUDABACK: Thank you, Mr. Clerk. The first agenda item, Final Reading. As you know, the bills with an asterisk in front will require suspension of the at-large reading, pursuant to Rule 6, Section 8. We're on Final Reading. Members, as you know, the rules require you to be in your seats. Please, all unauthorized personnel please leave the floor and senators return to their seats. We're on Final Reading. Mr. Clerk, the first bill will be LB 13E. The first vote will be to suspend the at-large reading. All in favor vote aye; all those opposed,

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nay. Please record, Mr. Clerk.

CLERK: 33 ayes, 3 nays, Mr. President, to dispense with the at-large reading.

SENATOR CUDABACK: The at-large reading is dispensed with. Mr. Clerk, please read the title of LB 13E.

CLERK: (Read title of LB 13.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 13E pass with the emergency clause attached? All in favor vote aye; those opposed, nay. (Visitors introduced.) Record please, Mr. Clerk.

CLERK: (Record vote read, Legislative Journal pages 1880-1881.) 46 ayes, 0 nays, 2 present and not voting, 1 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 13E passes with the emergency clause attached. Mr. Clerk, LB 13A.

CLERK: (Read LB 13A on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 13A pass? All those in favor vote aye; all those opposed vote nay. Record please, Mr. Clerk.

CLERK: (Record vote read, Legislative Journal page 1881.) 47 ayes, 0 nays, 1 present and not voting, 1 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 13A passes. Mr. Clerk, LB 343E. The first vote will be to suspend the at-large reading. All in favor vote aye; those opposed, nay. Please record, Mr. Clerk.

CLERK: 39 ayes, 2 nays, Mr. President, to dispense with the at-large reading.

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LB 343, 538, 573

SENATOR CUDABACK: The at-large reading is dispensed with. Mr. Clerk, please read the title of LB 343E.

CLERK: (Read title of LB 343.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 343E pass with the emergency clause attached? All in favor of the motion vote aye; those opposed vote nay. (Visitors introduced.) Record please, Mr. Clerk.

CLERK: (Record vote read, Legislative Journal page 1882.) 45 ayes, 3 nays, 1 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 343E passes with the emergency clause attached. We now go to LB 573E. Mr. Clerk.

CLERK: (Read LB 573 on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 573E pass with the emergency clause attached? All in favor vote aye; all those opposed vote nay. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: (Record vote read, Legislative Journal page 1883.) 45 ayes, 0 nays, 3 present and not voting, 1 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 573E passes with the emergency clause attached. Mr. Clerk, LB 538. The first vote will be to suspend the at-large reading. All in favor vote aye; all those opposed vote nay. Please record, Mr. Clerk.

CLERK: 41 ayes, 2 nays, Mr. President, to dispense with the at-large reading.

SENATOR CUDABACK: The motion was successful. The at-large reading has been dispensed with. Mr. Clerk, please read the title to LB 538.

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LB 538, 538A, 709

CLERK: (Read title of LB 538.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 538 pass? All in favor vote aye; all those opposed vote nay. Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1884.) Vote is 48 ayes, 0 nays, 1 excused and not voting.

SENATOR CUDABACK: LB 538 passes. Mr. Clerk, please read LB 538A.

ASSISTANT CLERK: (Read LB 538A on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 538A pass? All in favor of the motion vote aye; all those opposed to the motion vote nay. Everyone has voted. Please record, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1884-1885.) Vote is 48 ayes, 0 nays, 1 excused and not voting.

SENATOR CUDABACK: LB 538A passes. Mr. Clerk, LB 709E, when you get time.

ASSISTANT CLERK: (Read LB 709 on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 709E pass with the emergency clause attached? All in favor of the motion vote aye; all those opposed to the motion vote nay. Have you all voted who care to? Have you all voted who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1885-1886.) Vote is 45 ayes, 2 nays, 1 present and not voting, 1 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 709E passes with the emergency clause

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LB 227, 256A, 256, 709

attached. Mr. Clerk, LB 227.

ASSISTANT CLERK: (Read LB 227 on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 227 pass? All in favor vote aye; all those opposed, nay. Have you all voted who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1886.) 48 ayes, 0 nays, 1 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 227 passes. Next legislative bill is LB 256. First vote will be suspend the at-large reading. All in favor vote aye; those opposed vote nay. Please record, Mr. Clerk.

ASSISTANT CLERK: 42 ayes, 2 nays on the dispensing with Final Reading, Mr. President.

SENATOR CUDABACK: The motion was successful. Mr. Clerk, please read the title to LB 256.

ASSISTANT CLERK: (Read title of LB 256.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 256 pass? All in favor vote aye; opposed vote nay. Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1887-1888.) Vote is 48 ayes, 0 nays, 1 excused and not voting.

SENATOR CUDABACK: LB 256 passes. Mr. Clerk, we now go to LB 256A.

ASSISTANT CLERK: (Read LB 256A on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure

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LB 256A, 465, 484

having been complied with, the question is, shall LB 256A pass? All in favor of the motion vote aye; those opposed to the motion vote nay. Have you all voted who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1888.) Vote is 48 ayes, 0 nays, 1 excused and not voting.

SENATOR CUDABACK: LB 256A passes. We now go to LB 465.

ASSISTANT CLERK: (Read LB 465 on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 465 pass? All in favor vote aye; all opposed, nay. All present have voted. Please record, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1889.) Vote is 48 ayes, 0 nays, 1 excused and not voting.

SENATOR CUDABACK: LB 465 passes. We now go to LB 484E. The first vote will be to suspend the at-large reading. All in favor vote aye; opposed vote nay. Record please, Mr. Clerk.

ASSISTANT CLERK: 41 ayes, 3 nays on the dispensing with Final Reading, Mr. President.

SENATOR CUDABACK: Vote was successful. Please read the title, Mr. Clerk, to LB 484E.

ASSISTANT CLERK: (Read title of LB 484.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 484E pass with the emergency clause attached? All in favor vote aye; all those opposed vote nay. (Visitors introduced.) Please record, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1890.) Vote is 47 ayes, 1 nay, 1 excused and not voting, Mr. President.

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SENATOR CUDABACK: LB 484E passes with the emergency clause attached. Mr. Clerk, LB 557.

ASSISTANT CLERK: (Read LB 557 on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 557 pass? All in favor vote aye; all those opposed vote nay. Have you all voted who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1891.) Vote is 47 ayes, 0 nays, 1 present and not voting, 1 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 557 passes. Mr. Clerk, LB 761, please.

ASSISTANT CLERK: (Read LB 761 on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 761 pass? All in favor vote aye; all those opposed vote nay. Have you all voted on the question who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1891-1892.) Vote is 43 ayes, 1 nay, 4 present and not voting, 1 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 761 passes. Mr. Clerk, our final bill on Final Reading is LB 761A. Please read the bill, Mr. Clerk.

ASSISTANT CLERK: (Read LB 761A on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 761A pass? All in favor vote aye; all opposed vote nay. Have you all voted on the question who wish to? Please record, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1892.) Vote is 42 ayes, 1 nay, 5 present and not voting, 1 excused and not voting, Mr. President.

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SENATOR CUDABACK: LB 761A passes. That completes that portion of the agenda, being Final Reading. We now go to legislative resolutions. Mr. Clerk, do you have any items for the record or announcements?

CLERK: I have nothing at this time, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. We now go to LR 9.

CLERK: Mr. President, LR 9 was originally introduced by Senator Cunningham and others. It's found on page 144 of the Legislative Journal. The resolution was referred to Reference, who in turn referred it to Health and Human Services Committee for hearing. Resolution was reported back to the Legislature for further consideration by the Health and Human Services Committee, Mr. President.

SENATOR CUDABACK: Senator Cunningham, on LR 9.

SENATOR CUNNINGHAM: Thank you, Senator Cudaback and members. LR 9 would urge the U.S. Congress to amend the Social Security Act by deleting May 14, 1993, as the deadline for approval by states of certain long-term care partnership plans. The purpose of the long-term care partnership program is to provide incentives for purchase of long-term care insurance by allowing individuals who exhaust qualified private long-term care policy benefits to protect an equivalent value of assets and still meet Medicaid's financial eligibility requirements. In conjunction with LR 9, I also introduced LB 272, which was amended into LB 709, which was passed just a little while ago. It requires the Nebraska Health and Human Service System and the Department of Insurance, in consultation with Health and Human Services Committee, to prepare a plan for a long-term care partnership program in Nebraska by December 1 of 2005 to be used in the event that this federal restriction is rescinded. I introduced LR 9 and LB 272 after researching legislation passed in Indiana that allows a policyholder to protect their assets by purchasing and using an Indiana partnership policy. A policyholder's assets are disregarded during the Medicaid eligibility process and should they need Medicaid assistance after exhausting their

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policy benefits. In addition, Medicaid will not recover protected assets from the person's estate once the policyholder dies. Indiana's plan allows for two options. Policyholders can have total asset protection if an individual purchases an Indiana partnership policy with coverage that equals or exceeds the state-set dollar amount. Another option is dollar for dollar asset protection. Individuals who purchase an Indiana partnership policy with initial coverage of less than the state-set dollar amount for that year receive dollar for dollar asset protection. They earn \$1 of protection for every \$1 of benefits paid by the policy. The federal Omnibus Budget Reconciliation Act of 1993 recognized the states that were operating partnership programs; however, the act required that states obtaining a Medicaid state plan amendment after May 14, 1993, could proceed with partnership programs but they must recover from the estates of all persons receiving services under Medicaid, thereby resulting in the asset protection component of the plan be in effect only while the insured is alive. The states with partnership plans have experienced significant savings to taxpayers and have seen very few partnership purchases, less than 100 actually, qualify for Medicaid. In Indiana, sales were up 316 percent for long-term care insurance policies that enable residents to protect their savings. We're all aware that funding for Medicaid is consuming a larger portion of our budget every year. I believe we must find and change the public's mind-set regarding Medicaid, stressing that it is a program for those who are truly in need rather than the general belief that Medicaid should pay for any long-term care expenses. We must get the public to take control of their later years, thereby reducing the reliance on Medicaid to fund nursing home services and home or community-based care. Rather than sheltering their assets, we must provide incentives to encourage the purchase of long-term care insurance. If a partnership program were to be created in Nebraska, people who purchase a state recommended long-term care policy would no longer have to worry about losing their assets, the assets they have worked their entire life to obtain. They would be able to preserve their assets for their use during their lifetime and for their heirs later. A draft report on Medicaid reform by the National Governor's Association was recently circulated. In that draft document, they listed two policies that could help slow the

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growth of elderly enrollment in Medicaid. One was tax credits and deductions for long-term care insurance. The other was long-term care partnerships. The draft states federal law prohibits the expansion of these partnerships beyond those 4 states, but 17 states have passed enabling legislation allowing them to begin such a program should the federal prohibition be repealed, and several others are currently exploring that option. While long-term care partnerships do not promise a silver bullet for Medicaid's long-term care crisis, they can be a key part of the solution and, thereby, all...therefore, all states should be allowed to participate. Additionally, NCSL task force on Medicaid adopted a resolution last December. Within the resolution, it talks about the long-term care partnership program, stating the renewed interest in reinstating the long-term care partnership program is exciting and NCSL believes that the enactment of legislation to reinstate this program would be an important first step towards reform. NCSL urges Congress to repeal the provision in the Omnibus Budget Reconciliation Act of 1993, which restricts the ability of states to develop programs that provide limited asset protection within the Medicaid program to individuals who purchase long-term care insurance. In summary, LR 9 would memorialize Congress to remove the May 14, 1993, restriction on asset recovery on long-term care policies. Thank you.

SENATOR CUDABACK: Thank you, Senator Cunningham. Open for discussion. Senator Chambers.

SENATOR CHAMBERS: Mr. President, I'd like to ask Senator Cunningham a question or two.

SENATOR CUDABACK: Senator Cunningham.

SENATOR CUNNINGHAM: Yes.

SENATOR CHAMBERS: Senator Cunningham, how many of your colleagues do you think were paying attention to what you were reading?

SENATOR CUNNINGHAM: Probably one.

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SENATOR CHAMBERS: And who would that one be?

SENATOR CUNNINGHAM: You.

SENATOR CHAMBERS: You got that right. Now what do you think whoever gets this in Congress is going to do with it when they get it? You think they're going to read it?

SENATOR CUNNINGHAM: Well, this isn't what we're going to send to Congress.

SENATOR CHAMBERS: I know, the resolution. When they get the resolution, what do you think they're going to do with it?

SENATOR CUNNINGHAM: Well, I'm hoping they're going to read it and pass it.

SENATOR CHAMBERS: Okay, and be galvanized into action immediately because it came from the Nebraska Legislature.

SENATOR CUNNINGHAM: That would be my hope.

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Cunningham.

SENATOR CUDABACK: Thank you, Senator Chambers. Further discussion on the Cunningham LR 9? Senator Cunningham, there are no lights on. Senator Cunningham waives closing. The question before the body is adoption of LR 9, offered by Senator Cunningham. All in favor vote aye; opposed, nay. Have you all voted on the resolution who care to? Record please, Mr. Clerk.

CLERK: 33 ayes, 0 nays, Mr. President, on the adoption of LR 9.

SENATOR CUDABACK: LR 9 has been adopted. Mr. Clerk, LR 15, please.

CLERK: LR 15, Mr. President, a resolution introduced by Senator Smith and others is found on page 196 of the Legislative Journal. Introduced on January 11 of this year, referred to the Transportation and Telecommunications Committee for purposes of

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conducting a public hearing. The Transportation Committee reports the resolution back to the Legislature for further consideration, Mr. President.

SENATOR CUDABACK: Senator Smith, you're recognized to open on LR 15.

SENATOR SMITH: Thank you, Mr. President and colleagues. I am here to introduce LR 15. It's a request to repeal the federal excise tax on telecommunications. It is currently a 3 percent permanent excise tax on telecommunications, obviously, that was originally implemented as a luxury tax to fund the Spanish American War of 1898. It lasted six months and the taxes seem to last a lot longer than that. I've handed out some materials here for you to glance at, but it was originally supposed to be a temporary tax that applied to a very small portion of individuals. Right now, the 3 percent tax on everyone's phone bill racks up about \$5.8 billion per year that goes directly into the General Fund. It is not even a cssh fund relating to telecommunications or similar issues. There have been various attempts to make it that way, but that has not taken place. I would ask the body to think of what it would be like to place \$5.8 billion back into the economy of the United States before you think about the fiscal impact to the coffers of the federal government. What originally started out as a luxury tax has turned out to be one of the most highly regressive taxes that our country faces where everyone who owns a phone line or leases a phone line, whatever you'd like to call it, has to pay the 3 percent. Approximately 94 percent of today's population has a phone, and I would say it's probably even higher than that now. There's various litigation taking place that stands to threaten the \$5.8 billion, as it is, and will likely be reduced through that litigation, but there are various entities that are experiencing the costs of litigation that I think can be prevented by simply repealing the highly regressive tax and giving \$5.8 billion back to the taxpayers. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. You heard the opening on LR 15. Open for discussion. For discussion, Senator Smith, there are no lights on. Senator Smith waives closing.

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The question before the body is, shall LR 15 be adopted? All in favor vote aye; all those opposed, nay. Question before the body is adoption of the Smith LR 15. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 30 ayes, 0 nays, Mr. President, on the adoption of LR 15.

SENATOR CUDABACK: The resolution has been adopted. We now go to LR 76, Mr. Clerk.

CLERK: Mr. President, LR 76, offered by Senator Landis, found on page 1161 of the Journal, was introduced on April 11 of this year. At that time it was referred to Judiciary Committee, pursuant to the Spesker's authority to refer. The resolution was...public hearing was held. Judiciary Committee has reported the resolution back to the Legislature for further consideration.

SENATOR CUDABACK: Senator Landis, you're recognized to open on LR 76.

SENATOR LANDIS: Thank you. I will be taking this to a vote. This resolution was brought to me by a group of kids who, some of whom, had been through the foster care system. They were all part of the Governor's Youth Council. They brought it to me originally as a declaration of rights of students and kids who were in the foster care system, and I said I was uncomfortable with the use of the word "rights" because I was familiar enough with our system that it would be an exaggeration to say that kids in the system had rights. Because our theory is, with an outright right, you can enforce a right and require the system to do what you need it to do, and I wasn't inclined to make promises that would not be kept. So it was redrafted into a statement of aspiration, if you will, and the suggestion, by the way, is some reworking, but the text essentially came from the kids, most of whom were in high school in the Lincoln area, but it asks us to declare that every reasonable effort should be made to reunite a child with their biological parent, but if that doesn't work they should have a placement plan that reflects the child's best interests; that every child in foster

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care should receive an explanation appropriate to their age as to why they've been placed in the custody of the Department of Health and Human Services; that every child should be placed in a home where the shelter and foster care giver is aware and understands the child's history, makeup, background and the like. The child should know, in return, what is expected of him or her in that family; that they live in healthy, safe, comfortable placement and adequate healthy food, adequate clothing; that they receive medical, dental, vision, and mental health screening assessments and treatments; that they have monthly contacts with their caseworker; and that they be free from repeated changes in placement. This is a statement of goal, it's not a statement of promise because, frankly, these promises will be disappointed. Our system will not operate at the level that is contemplated by this resolution. However, what the young kids who had been through foster care said was they wanted essentially for the whole system to understand what kids in the system wanted and, among other things, what they wanted was information and a chance to be heard, information and a chance to be heard. The concluding section says, now therefore be it resolved by the members of the Ninety-Ninth Legislature of Nebraska that the legislative, executive, and judicial branches of government should combine efforts to ensure and improve timely and safe permanent placements of children and to provide adequate resources to the systems striving to accomplish this work, and that a copy of this resolution be sent to Governor David Heineman and the Governor's Youth Advisory Council, who is the source of this original idea. Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Landis. You heard the opening on LR 76. Those wishing to discuss it, Senator Stuthman.

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I am totally in favor of this resolution, but I would like to engage in a little discussion with Senator Landis. The thing that I would like to know is how or what steps would we make or how would we address this? What would be the formality part of it to try to improve the situation that we have with the placement of the foster care? Senator Landis, would you be

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willing to answer this?

SENATOR CUDABACK: Senator Landis.

SENATOR LANDIS: Sure. We have existing systems that need our constant monitoring, supervision and support. In fact, this Legislature has done, at the behest of Governor Johanns, a major investment in caseworkers. We still have and in fact recently just changed today the membership on the Foster Care Review Board for the purpose of making sure there was oversight. If we were to make gains it would be in monitoring and training foster care parents, it would be in making sure that there's adequate personnel so that the people needs and linkages could be made. And let me tell you what the kids say. The kids say the system would be better if they talked to the caseworker directly, if they were told the status of their placements and if they had a chance to interact with the system personally and directly rather than having all the adults talk and no one listen to them.

SENATOR STUTHMAN: Thank you, Senator Landis. I think that is very true, because I think, you know, the youth that are being placed in different situations, just different homes, as many as possibly 15 to 18 placements in the lifetime of a foster child, and I think that is a real disruption to the kids in their upbringing. So if we could help it in any way, I would be, you know, really happy about that part of it. And I really am, you know, concerned and I want those youth, you know, to be part of it, to address the concerns that they have. Because I think that's where the real need comes from, is those people. If we're just talking to the parents and we need to really improve the situation and the training for the foster care parents because you know as well...everyone knows as well as I do, you know, some of them are very good and other ones are in for the money part of it. But I am really concerned and I hope we can do this. Thank you.

SENATOR CUDABACK: Thank you, Senator Stuthman. On with discussion. Senator Howard.

SENATOR HOWARD: Thank you, Mr. President and members of the

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body. While I don't think anyone in this room would find fault with the premise behind this resolution, there's some parts of reality that really should enter in here. First and foremost, the system has continually and chronically shortchanged their first line of defense which is the child protective service staff. I had requested appropriations this year to add to the numbers of staff, to increase the training for staff, to provide incentives for the staff to meet these very goals, and unfortunately this bill did not leave the Appropriations Committee. So why we look at these things and we all denounce movement and placement for children, and why we...while we all say permanence is by far the best goal, we have to make this possible. We have to make a decision as a state and a funding body that we're committed to this goal, because words aren't really going to get us there. It's going to have to be dollars; it's going to have to be commitment. And so I thank you, Senator Landis, for bringing this in. I think this is a noble idea. Until there's more than just a resolution and just a statement, I feel we fall far short of our goal. Thank you, and I'll return the remainder of my time.

SENATOR CUDABACK: Thank you, Senator Howard. Further discussion on LR 76? Seeing no lights on, Senator Landis, you're recognized to close.

SENATOR LANDIS: Thank you. I am instructed by the remarks of Senator Howard in that it was perhaps exactly for that reason that I chose to ask the kids to help me redraft this not as a declaration of right, because as a declaration of rights we would fail on these scores. We don't have the resources to meet this aspiration level. And if you said it was a right, the mentality and the thinking of a right is that you are entitled to it and that you can force the system to give you what you're entitled to, and that's not true. I wish it was, but it's not. The system is underfunded. The system is understaffed. The system is already pressured unbelievably. However, it is, I think, appropriate to say what it is that we're trying to get at, and it includes, I think, listening to the kids. What the message was that came to me out of the Governor's Youth Council was, could the kid in foster care be consulted with, told why they're in foster care and what they can expect from the system;

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that that was a missing piece; that the adults, as well-meaning as they are, have a tendency to talk to each other in the foster care setting, in the HHS setting, in the judge or the courtroom setting with very little consultation or particularly valuable information. And towards that score I thought, look, I haven't been through the system; you have. I'll bring the resolution and with the redrafting it so that it is not a right, it is not a claim that says one is entitled to this, the state is bound to do this. It is a statement of aspiration, one that we fall short of because of the limitation of resources that we have. Our resources are already stretched, but it's not unreasonable, I think, to declare that aspiration level as the kids who brought me this resolution wanted to have happen. I ask for its adoption of LR 76.

SENATOR CUDABACK: Thank you, Senator Landis. Senator Howard, I had recognized Senator Landis to close before your light came on. The question before the body is adoption of LR 76. All in favor vote aye; opposed vote nay. Have you all voted on the resolution who care to? Record please, Mr. Clerk.

CLERK: 35 ayes, 0 nays, Mr. President, on the adoption of LR 76.

SENATOR CUDABACK: LR 76 has been adopted. Mr. Clerk, LR 65.

CLERK: Mr. President, LR 65 was originally introduced by Senator Byars. It's found on page 991 of the Journal. Pursuant to its introduction, it was referred to Health and Human Services Committee for public hearing. That committee reported the resolution back to the Legislature for further consideration, Mr. President.

SENATOR CUDABACK: Senator Byars, to open on LR 65.

SENATOR BYARS: Thank you, Mr. President. This resolution asks Congress to make it a priority to ensure that there is a stable, high-quality direct support work force for individuals with mental retardation or other developmental disabilities, and that they make it a priority to advance our nation's commitment to community integration for those individuals and to make sure

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that there is personal security for them and for their families. This has come about because of the crisis in attracting direct care staff, and has become an issue not only in Nebraska but across the United States. Congressman Lee Terry and Congressman Lois Capps from California have recognized this and have introduced legislation in this Congress to deal with this issue. I would ask the members of the body, as we all are familiar with this issue, to resolve to our congressional delegation to be supportive of this issue and to ensure that we give as much support as possible to a direct support work force. And I would ask your approval of the resolution.

SENATOR CUDABACK: Thank you, Senator Byars. You heard the opening on LR 65 by Senator Byars. Open for discussion. Anybody wishing to speak to the resolution? There are no lights on, Senator Byars. Senator Byars waives closing. The question before the body is adoption of LR 65. All in favor vote aye; opposed vote nay. Voting on adoption of the LR 65, presented by Senator Byars. Have you all voted on adoption of the resolution who care to? Record please, Mr. Clerk.

CLERK: 32 ayes, 0 nays, Mr. President, on the adoption of LR 65.

SENATOR CUDABACK: LR 65 has been adopted. We now go to the last resolution for the morning, LR 230. Mr. Clerk.

CLERK: LR 230, Mr. President, a resolution originally introduced by Senator Synowiecki, found on page 1689 of the Legislative Journal, introduced on May 20 of 2005.

SENATOR CUDABACK: Senator Synowiecki, to open on LR 230.

SENATOR SYNOWIECKI: Thank you, Senator Cudaback. Members, LR 230 was brought to me by a group called the Polish American Congress. LR 230 urges the United States government to include the country of Poland in the United States Department of State's Visa Waiver Program. Inclusion of Poland within this Visa Waiver Program will allow Polish citizens the ability to travel to the United States for business or pleasure for up to 90 days without requiring the formalities of acquiring a visa. In 1991,

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the Republic of Poland unilaterally repealed the visa obligation to the United States citizens traveling to Poland. Six states have passed a similar resolution, and Illinois, Florida, Indiana, Ohio, Wisconsin, Arizona are in the process of considering such a resolution. I would request adoption of LR 230, and I'm available to answer any questions that may arise. Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Synowiecki. You've heard the opening on LR 230. Open for discussion on that motion. Any members wishing to speak to LR 230? Senator Synowiecki, I do not see any. Senator Synowiecki waives closing. The question before the body is adoption of LR 230. All in favor vote aye; those opposed vote nay. Question before the body is the Synowiecki resolution, LR 230. Have you all voted who care to? Please record, Mr. Clerk.

CLERK: 29 ayes, 0 nays, Mr. President, on adoption of Senator Synowiecki's resolution.

SENATOR CUDABACK: LR 230 has been adopted.

SPEAKER BRASHEAR PRESIDING

SPEAKER BRASHEAR: Members, while the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign the following legislative bills: LB 13E, LB 13A, LB 343E, LB 573E, LB 538, LB 538A, LB 709E, LB 227, LB 256, LB 256A, LB 465, LB 484E, LB 557, LB 761, and LB 761A. In addition, members, I propose to sign and do hereby sign the following legislative resolutions: LR 9, LR 15, LR 76, LR 65, and LR 230. Mr. Clerk.

CLERK: Mr. President, one announcement: The Executive Board will meet upon recess in Room 2102. And I have a priority motion, Mr. President. Senator Heidemann would move to recess until 1:30 p.m.

SPEAKER BRASHEAR: Thank you, Mr. Clerk. You've heard the motion to recess. All those in favor signify by saying aye. Those opposed, nay. We are in recess. Thank you.

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SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good afternoon. Welcome to the George W. Norris Legislative Chamber. Senators, the afternoon session is about to reconvene. Please record your presence. Members, the afternoon session is about to reconvene. Please check in. Record please, Mr. Clerk.

CLERK: I have a quorum present, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Do you have any items for the record?

CLERK: I have no items at this time, Mr. President.

SENATOR CUDABACK: Okay. It is 1:30. Agenda item, legislative resolutions. Mr. Clerk, LR 98.

CLERK: Mr. President, LR 98, originally introduced by Senator Schrock and other members, calling for the Legislature to call on Mr. David Hergert to resign his seat on the Nebraska Board of Regents immediately. Pursuant to the introduction of that resolution, the resolution was referred to the Executive Board for purposes of conducting a public hearing. That hearing was held. The Executive Board has reported the resolution back to the Legislature for further consideration, Mr. President.

SENATOR CUDABACK: Thank you,...

CLERK: I do have amendments pending.

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Schrock, to open on LR 98.

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SENATOR SCHROCK: Mr. President, members of the Legislature, I have some written comments that I want to read. But I want to first say a little bit about my personal involvement with this. I do know Mr. Blank and Mr. Hergert. They are acquaintances, but I don't know either one of them well. I was not involved in either one of their campaigns. Mr. Schroeder, from Kearney, is my regent, so I don't live in that regent district, although I do live out there where I heard the ads and so that's why maybe I was a little more tuned in to this issue than some were. The reason I bring this to you today is because I think the office was gained because of unscrupulous means. And also it's because I have great respect for the university. Although I am a graduate of Nebraska Wesleyan University, my son, my brother, and my brother-in-law are all graduates of the University of Nebraska. I have a great deal of respect for that institution, and I have a great deal of respect for the people who should serve as regents on that Board of Regents. And it's for that reason that I became concerned when it looked like you could obtain this office in the manner that it was obtained, and serve there for six years. And I can tell you, the subject personally bothers me a lot. It bothers me a great deal. And that's why I decided I could not let go if there was something that I could do. And now I'm going to have my written remarks, so that we don't leave any bases uncovered. The subject of this resolution is extraordinary. It is exemplified by the highest fine ever levied by the Accountability and Disclosure Commission for a campaign violation. It is also remarkable because it was a campaign for a seat on the Board of Regents, whose own code of ethics was violated by the misdemeanor leading to the fine. What we have is a candidate for a constitutional state office thumbing his nose at our election laws in order to gain office, and then hiring lobbyists so he can maintain silence as he enjoys the fruits of his wrongdoing. The resolution specifically outlines Hergert's violation. He failed to timely report late contributions, namely, \$44,000 personal loan to his campaign. He loaned himself on...the money, on October 22, 2004, and did not report it until after the election. After choosing not to abide by statutory campaign spending limitations, which was his right, he failed to give timely notice of spending 40 percent of his estimated expenses in the primary, and also failed to timely give the same notice in the

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general election. In other words, he committed the same crime in the primary election he did in the...in the general election as he did in the primary election. So it's not as if he didn't know he hadn't done wrong in the primary. He not only did it in the primary, he did it in the general also. Notice was not given in the general election until ten days after the election. He accepted more than \$25,000 in campaign loans than the amount allowed by statute. In general, his campaign finance strategies involved violation of law and failure to timely disclose what he was spending, undetermined...I'm sorry, that undermined our fair election laws. Hergert's was no minor infraction. In violation of our campaign finance statutes, he created an unfair fight in the regents race to the tune of \$63,000, enough to reasonably conclude that his spending may have changed the outcome of the election. He did this after a similar type of violation and warning in the primary. And the warning was by Accountability and Disclosure. By declaring to spend \$25,000, but spending \$88,000, and not declaring his actual spending until it was too late, he not only violated the statutes in obtaining office, he trampled on the state's expectation of fair elections. This was bold, but not so bold as expecting that we will stand by and do nothing and allow him to retain benefit of his illegal activity. Hergert will say he paid his fine, it's over and done with, it was a plea bargain. The Accountability and Disclosure Commission could have chosen criminal prosecution, but the penalty for criminal offenses was no different than for civil offenses. His plea bargain amounts to an admission of the offenses. And whether civil or criminal, they are offenses of statute which amount to a misdemeanor in office, required for impeachment. If we do nothing as a result, this body violates an essential principle of the rule of law--no one may get something through breaking the law and then keep the ill-gotten gains after they've been caught. And I'm going to repeat that. No one may gain something by breaking the law and then keep the ill-gotten gains after they've been caught. This resolution creates a do-over for the tainted election. It is simple. There are two separate questions. The first is, at the bare minimum, given the bold facts, whether we resolve to ask Hergert to resign. If he resigns, we suggest a process for succession in order to quickly let the election decide again...the electors decide again, knowing the facts of the matter, who should be

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elected. Beyond that, if he refuses to resign, we resolve to look at other options. This is not a resolution calling for impeachment, as some have suggested. I would repeat, this is not a resolution calling for impeachment. It is a resolution for the Legislature to pursue our options, which is perfectly legitimate. It uses the model we used in the Douglas situation, basically creating a procedure for a special investigator to look at our options are...to look at what our options are if he does not resign. Hergert has his own counsel and lobbyist. You have seen evidence of their work. His defense team wants to confuse the issue by having you try the case right here, right now. They have, and will, during this debate, tried to make this some kind of legal issue. They will raise issues like Hergert's intent, and suggest you have to decide that, when his intent doesn't make any difference to what we are considering. Either way, his behavior doesn't pass the smell test. The election result was tainted. That is the problem. The integrity of our laws and the fairness of elections are at stake. In terms of the democratic process, I doubt if any of us will have any more basic policy decision before us in this body than this one. And I serve with 48 very honorable people, and I think you all abided by the campaign finance election law, and none of your activities during your campaign affected the outcome of the election because you violated campaign finance laws. We expect that of each other, and we expect that of other people running for higher office. Hergert's defense team will try and lead you to believe that you are some kind of jury. You are not. You are here simply to make policy decisions and decide whether we need some additional procedure to have the kind of information we will need in order to call the impeachment question, if it comes to that. I think we should rely on our own counsel to get the best information possible, and that is all the second part of this resolution proposes to do, so the matter of our options can be pursued in a thoughtful, prudent way. I have not taken this situation lightly. I am terribly offended by how our campaign finance laws have been violated. A year ago, I prioritized a repeal of our campaign finance election laws. That was not successful. So I don't totally agree with our campaign finance election laws. But that doesn't give Mr. Hergert or anybody else the right to trample on our election laws like he did. Now, we've all made mistakes,

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and certainly there's members in this body who have paid small fines, but nothing even compares to what happened here. And I think if we sit by and do nothing, we put our stamp of approval on for other people to do the same process and we just as well put these seats up for bid, just auction them off. Whoever wants to pay the most gets the job. And I think that's wrong. And I think the state of Nebraska is looking for us to say something and to do something. And I think not to do something is a dereliction of our duty. Those are my opening comments. I'll be glad to answer any questions. And I'm looking forward to this debate.

SENATOR CUDABACK: Thank you, Senator Schrock. You've heard the opening on LR 98. (Visitors introduced.) Mr. Clerk, please.

CLERK: Mr. President, the first amendment I have to the resolution is by Senator Friend and others, AM1757. (Legislative Journal page 1841.)

SENATOR CUDABACK: Senator Friend, you're recognized to open on your amendment.

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. I wanted to start off by, oddly enough, I think, or you'd find it odd, thanking Senator Schrock for bringing this issue to our attention. I honestly, sincerely mean that. I want to thank him for bringing this to our attention. That said, that's why I bring this amendment. Because there's a debate to be had here. There's a discussion to be taken by all of us, or some of us, whoever wants to get involved, about our...a practical discussion about our Campaign Finance Limitation Act, and the Accountability and Disclosure Act, and the violations and things that have occurred, in my opinion, not only by Dave Hergert, but by countless others. But this point that I'm making with this amendment goes further than just a reaction to Senator Schrock, my friend, Senator Ed Schrock's proposal. I hope I can call him my friend. Took a little liberty there. There's two points here. There's one point, and it's maybe a...two little aspects to it, as far as I'm concerned. One was the practical discussion that I talked about--the Campaign Finance Limitation Act and the

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Accountability and Disclosure Act. The second part is that I've never been involved in a political witch hunt. I thought it would be fun. And you all know me probably well enough to know that a political witch hunt, I can't stay out of that. Let's define those two things. The discussion, a public policy discussion about what we're doing here with Regent Hergert, is an easy definition. We're looking for why...how or why something like this could actually happen, the amount. I'm not here to stand up and defend Dave Hergert. I don't know the man. I can't. All I see are the numbers, and they look bad. They look real bad. I don't like it. But let's define witch hunt for a second. In the olden times, in 1692, we knew what a witch hunt was. They hung 20 people, a lot of young women. But today, a political witch hunt can be defined as an attempt to find and punish people whose opinions are unpopular and are said to be a danger to our society. Is that happening here? I don't know, maybe not, but I wanted to find out and I wanted to get involved in that discussion; hence, this amendment. The problem, as it exists, in my opinion, is we can't--and this will be played out--we can't impeach Regent Hergert. We can punish him. We can cane him in public. We can hang him in effigy. But legally, we can't impeach him. We can't impeach Don Blank--he's not in office anymore--for his violations, the admitted violations that he made; well, some of them. He hasn't admitted to all of them. It's my understanding that Hergert has admitted to every one of them. Some claim ignorance, whatever the case might be. I don't know what his intent was. Again, I've never met the man, haven't asked him about it. We can't impeach Regent Blank, former Regent Blank, for what he did. Now, here's the funny part of the whole thing. And I talked to Senator Beutler and I talked to Senator Schrock a little bit before, off the record, on this. We can impeach a guy like Drew Miller, Regent Miller. We can impeach him for his violations. The funny thing is, we've got information, almost a track record, to indicate that he not only violated the law, he intended to do it. He said, yeah, I want to violate the law; let's see how we can do it. Now, I'm not advocating the impeachment of any of these gentlemen. Two of them we can't, one of them we can. And I'm not advocating the impeachment of Regent Miller. But I'm making a point here. He's the only one we can impeach. And I'd be...I'm more than happy to discuss

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this all afternoon, that piece of it. So the question is, where do we go from here? What's the objective? What's my end game? And again, I talked to Senator Beutler briefly, Senator Schrock very briefly, about this, off the record. Senator Friend, you going to take this to a vote? I'd rather not, but I'd be willing to, depending on how this conversation goes. I think it depends on the discussion. It depends on the direction that this thing takes. Because if this turns into that witch hunt that I defined, or that I laid out there, maybe something like this needs to be voted on. I'd like to hear your views on that. Is it just to waste time, Senator Friend? Are you just here to run the clock out? Are you just here to wait till 4:00, 5:00, 6:00 at night, and then watch this whole thing go away? No. No, I'm not. That's not my intent. It's not my motive. Maybe it will, but I don't necessarily see that happening and I'm not going to try to instigate that. My motive is enlightenment. Not only for myself, because I'm fairly new to this game. Senator Beutler has got a lot to offer. There are others in this body that have plenty to offer as far as enlightenment is concerned. I'd like some of that. I'd like that discussion. And potential improvement or ideas that can be tossed out there for enhancement and the betterment, the betterment of our Campaign Limitation Act, a potential betterment of our Campaign Limitation Act, and the betterment of the Accountability and Disclosure Act. Because, would I admit that something is broken? I think I kind of already did. But I think you see what I'm trying to sum up as a problem here. One guy...Senator Schrock even passed out civil penalties paid by committees since 1990. We're going after this guy? That's it? I'm kind of surprised I'm not on this list. I don't know. I have to go back and look. Why don't we change this resolution to include this whole list? Or is it because we don't know the intent of every committee and everybody that directed this on this list? Is it because we don't know the intent? Because if that's the case, I don't know Dave Hergert. He hasn't called me and told me what his intent was. Maybe he told Senator Schrock. I'd like to hear that piece of the discussion. Maybe he told somebody else in here. I'd like to know what his intent was. Do we know it just because there's a paper trail and there's money out there? Sometimes you can. Sometimes you can go A, B, C. I haven't seen that yet. I don't know what this guy's

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intent was. Oddly enough, I have a feeling I know what Drew Miller's was. I've been handed five copies of an e-mail where this gentleman tried to divert, subvert the system, knowingly.

SENATOR CUDABACK: One minute.

SENATOR FRIEND: That's where we're at. I want to talk about this, and I want to see the direction this discussion takes. Let me sum it up. If I see a resolution at the end of this day, or the end of this hour, or the end of this 25 minutes, if that's all it takes, that pulls impeachment out of the original document, I think that that's legally legitimate. I'm not a lawyer, but I think we're going down the right path. I've discussed this with other people. I'd be agreeing. I don't even know this man. I don't know Drew Miller. I don't know Don Blank. I don't care. I'm not here to defend Dave Hergert. I'm not sure anybody in here can. I'm here to defend the process and the ability that we have in this body, the direction that we take. Because if we try to impeach this guy,...

SENATOR CUDABACK: Time, Senator Friend.

SENATOR FRIEND: Thank you.

SENATOR CUDABACK: You've heard the opening by Senator Friend on his amendment to LR 98. Open for discussion on that motion. There are a number of lights on, I think 14 lights. First to be...first five: Senator Beutler, Senator Brashear, Senator Brown, Senator Erdman, Senator Friend. Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, Senator Friend has raised several issues, and I think they're all legitimate issues and they're all things that we need to work our way through. He mentioned several things. And of course, in five minutes, we can each only begin to address something in part. But let me say generally, with the whole effort to inject Drew Miller into this debate, many people may feel now, many people may have felt in 2000, that Drew Miller should have been dealt with more...with more strictness than he was. But if at this late point in time there are a group of people who still feel that way or feel stronger that way, they

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should file a separate resolution, and we should deal with that on the facts of the matter, face up, one way or the other. And I might be supportive of that. But I haven't gone back and looked at all the details of the Drew Miller case. But the Drew Miller case isn't particularly relevant. It's like saying, well, we shouldn't prosecute X because three years before the prosecutor chose not to prosecute Y for a similar kind of offense. Each case is individual. You have to make up your minds on the facts. The facts between the Drew Miller case and this case are very, very different. In the Drew Miller case, both candidates were abiding candidates who didn't have any question of the affidavit that kicked off the fair fight money. In the Drew Miller case, it was a question of an independent committee. It was not a question of the transfer of fair fight monies. It wasn't a question of an estimate of expenditures that was way off. The amount of money at issue, the amount of extra money that Drew Miller got, was somewhere in the neighborhood of \$8 million (sic). The amount of money, I would argue, is involved here that was not appropriately transferred to Mr. Blank, was \$63 million...or, \$63,000. So there's a big difference between \$8,000 and \$63,000. But again, whatever you may think about this...that situation, I don't think it has...the difference between that situation and this situation, I hope to God, has nothing to do with issues. Because once we start deciding this matter on the basis of issues, we will never decide them fairly. It has to be decided on the basis of the sacredness of our election laws and our campaign laws. Nothing is more fundamentally important to a democratic government than its election laws. It's the election laws that cause people to trust government. It is the election laws by which we get consent to a democracy. They're not going to follow elected leaders, they're not going to listen to them, everything positive will be undermined, unless our election laws are in order. In other countries, in other times, revolutions have periodically erupted into violence because they couldn't get that first piece right, they couldn't get fair election laws that everybody adhered to and that were announced in advance and that people knew was a fair game to play. And so important are election laws that I think...to people's sense of legitimacy, that even dictators seek to rig elections so that they have the facade of an election law supporting them. But I want to say

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this about Nebraska. Do you know we have...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...over 27 felony offenses to reinforce our election laws? And I want to go over those next time, just to tell you how important we've made it. Every one of those 27 can land you in jail for five years and gain you a \$10,000 fine, for changing one vote, for just fraudulently changing one vote in one way or another. Sixty-three thousand dollars of campaign expenditures was involved here. How many votes did that change? More than one? A few? A great many? Who knows? None of us can say, and that's the problem. The election is flawed. It's fatally flawed. And the only fair thing to do is to go back and have another election next year. Let the people of the 7th District vote again. And the only way we can get there is to have Mr. Hergert resign. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Brashear, followed by Senator Brown and 12 others. Senator Brashear.

SPEAKER BRASHEAR: Thank you, Mr. President, members of the body. Senator Schrock, would you yield, please?

SENATOR CUDABACK: Senator Schrock, would you yield?

SPEAKER BRASHEAR: This will be an interesting camera angle. Thank you. Senator Schrock, I just want to start at the base point. I think my long-term relationship with, personal and professional, has been established as a matter of record. And if we want to go over that again, fine. And I represented Mr. Hergert before the Accountability and Disclosure Commission. But I didn't surrender my rights as a citizen or a legislator. And if somebody wants to discuss with me the inability of the media to understand what a conflict of interest really is, as defined at law, rather than hurled around as an insult, why, I'll deal with that issue. But what I'd like to do is inquire about some things that are in my mind as I begin the debate, Senator Schrock. Is it not a fact, as you indicated, that you were...you have joined me twice as one of more than 25

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supporters to repeal the Campaign Finance Limitation Act? Is that true?

SENATOR SCHROCK: That is correct, Senator Brashear.

SPEAKER BRASHEAR: And in addition to that, during the last session, you did, as you indicated--and you were gracious, and I appreciated it--you prioritized a bill to repeal the Campaign Finance Limitation Act. Isn't that true?

SENATOR SCHROCK: Yes. And if I may editorialize, it's because I didn't feel the act was working very well.

SPEAKER BRASHEAR: I would agree with that, or stipulate it, as we say. Now, Senator Schrock, on more than one occasion, in the run-up to this session, and before there were any Campaign Finance Limitation Act violations alleged as against Mr. Hergert, did you not call me personally to discuss with me the Blank-Hergert race, because you knew me to be a lawyer for Mr. Hergert?

SENATOR SCHROCK: Yes, I did. And at that time, you were Chair of the Judiciary Committee. And I consider you a personal friend. And that's why I called you to ask you for some input on that.

SPEAKER BRASHEAR: Well, in fact, we were discussing the Speaker's race, were we not, at those times?

SENATOR SCHROCK: That is correct.

SPEAKER BRASHEAR: And did you not indicate to me that you were very upset with the campaign?

SENATOR SCHROCK: Yes, I did.

SPEAKER BRASHEAR: And did you not indicate to me that Mr. Blank, Dr. Blank, was your friend?

SENATOR SCHROCK: Senator Brashear, I served on the Ag Advisory Committee under Kay Orr's administration, with Dave Hergert. I

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see Mr. Blank as a casual acquaintance at university functions. I do not consider one of them more of a friend than the other. And I was not involved in that election, other than listening to the commercials as I was out harvesting grain.

SPEAKER BRASHEAR: Senator Schrock, is it not a fact that, whatever we call this corner--we know we're not the culture corner--that whatever we call this corner, that you have, in this corner, on this floor, in the past, knowing that I represented Mr. Hergert, expressed your somewhat less than deep affection for him as a person, and also personally related it to water policy with me in conversation?

SENATOR SCHROCK: The water policy issue was hearsay. My thoughts towards Mr. Hergert did not change until I was hearing some very negative ads. Yeah, I admitted up front that the ads bothered me. But that's not the reason I'm here. And that's not the reason I'm here. But you know, interpret this any way you want, Senator Brashear. I'm interested in a fair fight, and that's why I'm bringing the resolution.

SPEAKER BRASHEAR: All right. I'll accept that, Senator Schrock. As you circulated this resolution on...

SENATOR CUDABACK: One minute.

SPEAKER BRASHEAR: ...the floor of this Legislature, asking 28 of your colleagues to sign on with you, did you tell them of our discussions, your characterizations of Mr. Hergert, or any other of these things that I have attempted to summarize in this colloquy?

SENATOR SCHROCK: When I asked my colleagues to sign on, I did not say anything about your involvement in this issue. I consider your acquaintance and your representing Mr. Hergert a coincidence. And I would like to think it had made no difference in me deciding to circulate the resolution and to have it drafted and to present it to the body. You know, nothing is ever certain. But the fact that I may like one of these individuals more than the other, what you're "allegating" there is totally false. That's not the issue, and it's not the

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reason I brought it. Yes, the election and the ads that I heard bothered me, because I had gone through an election two years earlier where a lot of negative ads were run against me.

SENATOR CUDABACK: Time is up, Senator Beutler and Senator Schrock...I mean Senator Brashear. Senator Brown, followed by Senator Erdman, Senator Friend, Senator Schimek, Senator Smith, and eight others. Senator Brown.

SENATOR BROWN: Thank you, Mr. President. Well, I guess that I will speak initially to the Friend amendment, because I'm absolutely in opposition to the Friend amendment. I think I am most probably in opposition to what we're doing here today, unless somebody can tell me what it is we are doing. I don't know Mr. Hergert. I have met him at a social event for the university once. We had a conversation about chicory and its economic impact on the state. That is very probably the only thing that I would agree with him on. I am deeply troubled by what I see as the pattern of activity that is a part of this, not the specific incidences, because the...Senator Brashear has passed out a sheet about some legislation that Hergert violated that resulted in the greatest part of the fine. That was legislation that I worked with Senator Brashear to sponsor. I am also a cosponsor with Senator Brashear in the repeal of the Campaign Finance Limitation Act. But I do believe that we need to be deeply troubled by the pattern of activity of Mr. Hergert. What I don't know is what we can do about it. Senator Schrock says we can't do nothing. I believe, prior to all of this happening, in previous items of impeachment, when I had spent some time with the constitution, with some of the other case law, that we cannot do anything in terms of impeachment. When I listened to Senator Beutler, I didn't really hear what it is we can do. When I listened to Senator Schrock, I didn't hear what it is we can do. I think it poses some questions for us, in terms of...the severity of this would have suggested to me that someone, Mr. Blank, since he was the one that was involved in it, should have filed a challenge to Hergert being seated as a regent. I don't know why that didn't happen. Do we believe in the processes that we put in place to deal with people who break our laws, the Accountability and Disclosure? And if so, are we going to support those processes? Or are we just going to say,

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well, if it doesn't work in the way that we think it should, we'll just bring it into the public sector and have this kind of debate, and then have the kind of response that Senator Friend just had, which, (laugh) I know that he was being somewhat facetious, but it makes me very uncomfortable when we seem to take pleasure that we have to take this step. Passion is one thing. But being excited about the possibility of having to do something like this is very uncomfortable to me. I think we should be as cool and objective as possible. I'm trying to do that about someone, as I said before, who I don't agree with, and whose actions, I think, show a pattern of behavior that I'm not comfortable with. But I think that we have to look at what it is that we can do, we should do. I've always thought that we should have appointed regents. I don't believe that regents...

SENATOR CUDABACK: One minute.

SENATOR BROWN: ...should be elected, because I think that that leads to the kind of buying of an office that we have talked about. I have some friends on the Board of Regents who are very fine individuals, who spent a lot of money in their election. I don't think that they are bad regents because of that. I just happen to believe that we would be better off with appointed regents. And then that brings me to...in terms of the question that I would pose to the lawyers on the floor, to Senator Beutler and Senator Chambers, about what it is we really can do. What is the impact of the Board of Regents v. Exon, in terms of what we can do and how we can compel? Because the case, Board of Regents v. Exon, was meant, in some ways, to depoliticize this whole project...process. I am very troubled by moving into this...

SENATOR CUDABACK: Time, Senator Brown.

SENATOR BROWN: ...kind of process. Thank you.

SENATOR CUDABACK: Thank you, Senator Brown. Senator Erdman, followed by Senator Friend and others. Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. Members of the Legislature, I appreciate the comments of Senator Friend, and of

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those that have already engaged. I think it's appropriate. I think the comments that I'm hearing are, this is about fairness. This is about a fundamental fairness in our election law, according to Senator Beutler. This is a fundamental fairness, according to Senator Friend, about how we treat all who have violated the act. And he's used information from Senator Schrock to show that there are others. Senator Friend has brought us an amendment that shows that there are others currently serving on the Board of Regents that have violated the act. And so it is a matter of fairness. The process is unique. The process in which you get elected is unique. Senator Beutler has worked tirelessly to adopt a policy for the state of Nebraska that governs the limitation or the process in which campaigns will be governed, as far as how money is spent and how that is disclosed. And for that, I think he should be commended, because I think Senator Beutler recognized a problem, and I think it's been shown on a national level that there is an interest. And I think there is sincere disagreement on the actual policy. But I would argue that that's not why we're here this afternoon. It flat-out isn't. I support the bill that Senator Brashear introduced to repeal Campaign Finance Limitation Act. I have my own ideas of what it would look like. But my humble opinion is, that is completely irrelevant to the issue at hand. In fact, in one of the local newspapers here, I was asked about the race, prior to any of the fines that were levied or agreed to, and my comments were this: quote, regardless of a person's position on existing law, I think we have to do everything we can to abide by it, end quote. Absolutely. It does not matter whether I agree with CFLA or not. It does not matter whether Dave Hergert agrees with it, Drew Miller, Don Blank, Mike Friend. It does not matter. That is the law of the land, and we are a nation that is governed by those laws, if we will abide by them. That is how we avoid those problems that Senator Beutler pointed out. So this is about fundamental fairness. It absolutely is. I think Senator Friend brings us a unique question. Is it fundamentally fair to pick one individual over another, who are current members of the same board, in regards to their actions that violated a similar act? That's how our legal system is now. Senator Beutler has pointed that out. Just because person X didn't get convicted, that doesn't mean person Y shouldn't. And that's what we have

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to weigh here. We have now become the jury. We are going to decide why it is that we're going to proceed down this path on one individual and not another. Both of them are wrong. They flat-out are. I know Mr. Hergert. I don't know Mr. Miller. I don't. I don't even know I've ever met the man. Regardless, they are both wrong, and I have never defended either one of their actions. But the other interesting part about this is, is that there is this idea that the results of the election in the 7th District Board of Regents would have somehow changed. Or there is an insinuation that you can prove that those results would have changed if more money would have been given to the candidate who happened to be an incumbent. In the primary, the incumbent received 38.9 percent of the vote. The incumbent spent the allowed \$25,000, or near that, plus another...I believe it was somewhere around \$40,000, or an amount, in public funds. So there was already money that was distributed because of other candidates in the race. And \$40,000 may not be the number. But I do know that there were other candidates in the race that, because of a result of their timely filings, those who agreed to abide received funding, so they had additional revenue on top of the \$25,000 that was given. That's the portion that Senator Beutler put into law, and that's the portion that worked in the primary. Even with that money, 61 percent of the people...

SENATOR CUDABACK: One minute.

SENATOR ERDMAN: ...voted for the challengers; 61 percent of the people voted for the challengers. I think it's hard to make that conclusion that with more money in a general election, one candidate would have won. Because you see, candidates aren't won based on the amount of money spent; it's based on what is said. And I listened to the same ads that Senator Schrock talked about, and they were from both sides. But again, we go back to the jury. The decision that we have to make as a Legislature is how we proceed. The election has been decided. It is not up to us to decide this election again. How do we proceed? Senator Friend has offered us an interesting proposal. I'm probably similar to where Senator Friend is. I believe there are severe limitations on what we think we can accomplish, based on the current constitutional law, as well as the case

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law. But I am interested in what the will of the body is, because I cannot defend the actions of any of those individuals who are in Senator Friend's amendment.

SENATOR CUDABACK: Time, Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Erdman. The next five speakers are Senators Friend, Schimek, Smith, Janssen, and Foley. Senator Friend.

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. I was wondering...Senator Schrock, I'm sorry I didn't ask you this before. I was wondering if he was available for...to answer a question. Senator Beutler, maybe you would...

SENATOR CUDABACK: Senator Beutler, would you...

SENATOR FRIEND: ...yield to a question if you...

SENATOR CUDABACK: ...yield?

SENATOR FRIEND: Senator Beutler, I think the...one of the points that I wanted to make in my opening...and I didn't do justice to the...I guess, to the amendment, to explain to the body exactly what I was trying to accomplish. But one of the things that I discussed was an objective, or an end game, or what we feel like we can get to as a body, and then, further, what I can get to with this amendment. In your opinion, where do you think we can get to? And let me make it a little more pointed. I don't personally believe that articles of impeachment are necessary in this situation. Nor do I believe that they are...I believe there's enough questions, legal questions, raised that it might not even be legitimate. But would you speak to the idea of maybe where you would see this going? Would a public, you know, resolution, just saying, Regent Hergert, resign, is that a sufficient type of thing? And I should ask that of Senator Schrock, too. But is that a sufficient type of thing or an end game for you?

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SENATOR BEUTLER: Senator Friend, thank you for the opportunity to respond. And I think it really relates to Senator Brown's question, to a certain extent, as to what the appropriate processes are here before us. Let me point out, to begin with, so that we understand the context of the situation, that this resolution doesn't ask for anybody's impeachment. This resolution does ask for resignation. And it says, if there is no resignation, then the special committee will be formed to consider impeachment, to consider impeachment. And that is simply, in my opinion, a prudent way to go--to form a committee, to argue what the law is, to do thorough legal research, not to listen to one set of lobbyists who are telling you one side of the story, or the other side that's telling the other story. Get some objective interpretations of what the law is. Do an investigation of the facts. The Accountability Commission really hasn't investigated this with respect to the facts at any length, because they didn't even get to the deposition of Mr. Hergert, because they settled the matter and plea bargained the matter before that. So you get...if you get past resolution, you get to the special committee, and they make a decision about whether to recommend to the Legislature if we go further or we don't go further, or recommend correcting the legislative law. Or it could recommend a number of things. But, Senator Brown, I think the second part of the process...the first part is the Accountability Commission. And if, considering the scale of the violations, it is believed to be unfair that a person should keep their office, then the second part of the process that's provided by law is impeachment. And, Senator Friend, I think impeachment, under the law, is a distinct possibility, under our law. And I'd be glad to go into that when I...

SENATOR FRIEND: Okay.

SENATOR BEUTLER: ...get some time.

SENATOR FRIEND: Okay, thank you. That's good and I appreciate that. And what I would say...and let me be a little more specific with the end game or the objective that I was talking about. I've seen enough, or at least a good amount, that indicates to me that that road, or that discussion, I don't even

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necessarily believe needs to be part of it for us to take action and to move in a direction where we...

SENATOR CUDABACK: One minute.

SENATOR FRIEND: ...make better a system that is not perfect, or broken. We don't need that piece of it. Because it's my contention that...and let's say it's wrong. It's still my contention--I mean, you can have any belief you want--that we can't impeach this guy. We're wasting this body's time, we're wasting the public's time, and we're wasting everybody else's time on that proverbial witch hunt that I was talking about. I'm not doing this out of enjoyment. Senator Brown brought that up. It's out of the idea that we would just toss that up there as a wrench, as something to get Regent Hergert to resign. I just don't think that's necessary. I think that public information and laying that out for the public to decide when it comes around again for people to vote for him, let those people decide what they saw, what he did.

SENATOR CUDABACK: Time, Senator Friend.

SENATOR FRIEND: Thank you.

SENATOR CUDABACK: Thank you, Senator Friend. Senator Schimek, on AM1757.

SENATOR SCHIMEK: Yes. Thank you, Mr. President and members. This is a very serious issue. And no matter what comes of this resolution, I think it's a very good discussion for us to be having today. And I hope that no matter what happens, that we have given a signal to all those who would run for office in the state of Nebraska that we think that the law is important, and that people really need to follow the laws of the state. Now, having said that, I can't tell you that I have never ever made a mistake on a campaign report (laugh), statement, as I'm sure that the rest of you have never done that either, right? But I think it's a question of degree here. And my distinction between Drew Miller, for instance--who I believe did...there was a violation in that case--and the violations of Mr. Hergert is that there are miles between them. And you can judge that

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somewhat quickly, at least, by the amount of fines that were imposed by the Accountability Commission. I don't think that we want to get in a position where we say that every little tiny infraction becomes a serious violation and is worthy of removal from office. But I do think that there were some serious problems here. And I want to say right up front, I don't have any ax to grind. I have met Mr. Hergert once, and it was actually after all of this broke, after this story broke. So I don't know him personally. I do know Don Blank, because he was a regent for so many years. But I don't have a personal friendship there, and certainly don't live in the district. And I wasn't involved in the campaign in any way, nor did I take sides in it in any way. I don't know, Senator Friend, whether we can have an impeachment or not. If you look at the constitution and you look at the plain meaning of the constitution, it appears, at least, that we don't have that ability. But I've seen other parts of the constitution where the plain reading of the constitution didn't necessarily determine a court decision. And I'm thinking most specifically of the decision regarding legislative expenses, which (laugh) I always thought, if you read the constitution closely, that there is no way that we would ever be allowed legislative expenses. But thanks to Senator Chambers and everybody concerned, we were allowed that. I think this is a very important discussion today. It really goes to the heart of fundamental questions regarding, one, whether we trust the election process, including the accountability laws; two, whether we have confidence in the laws of the state; and three, whether the people have trust that we can govern...

SENATOR CUDABACK: One minute.

SENATOR SCHIMEK: ...effectively. I think that David Hergert ought to resign. I think he's lost credibility and effectiveness. And you know, no matter how good of a regent he has the potential for being, I think this is always going to be there to shade or color what happens and what he tries to do. And history is replete with the names of politicians and elected officials, and even some appointed officials, who have had to resign once a certain bridge has been crossed. And I think...for myself, I think that Mr. Hergert has crossed that

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bridge. I think that we need to at least act in a way that says that we don't condone this kind of...

SENATOR CUDABACK: Time, Senator Schimek.

SENATOR SCHIMEK: ...action, and we do support the laws that are on the books. Thank you.

SENATOR CUDABACK: Thank you, Senator Schimek. The issue before the body is LR 98, an amendment to that by Senator Friend, AM1757. On with discussion. Senators Smith, Janssen, Foley, Schrock, Johnson, Senator Dwite Pedersen, and about 12 others. Senator Smith.

SENATOR SMITH: Thank you, Mr. President and members. This is kind of a stressful issue for me, I will admit. Life's events, politically and otherwise, I think would, if I might say, enable me to speak objectively. I try to balance things, be they political, personal, or otherwise, and make sure that politics stays where politics needs to be, and personal issues stay where those also need to be. I wholeheartedly, fundamentally disagree with not only what Mr. Hergert did, but with also what Senator Schimek just stated, in that Drew Miller's violations were not to the same level of egregiousness, if that's a word, as Mr. Hergert's. I want to speak to the Friend amendment, AM1757, and I'm glad I have the opportunity to do that. I have in my files the hard and fast evidence that showed that Mr. Miller violated the law, Campaign Finance Limitation Act. And had I not been a third-year member of the Legislature, you better believe I would have filed a resolution to address Mr. Miller's egregious and intentional violation of the Campaign Finance Limitation Act. Perhaps not all of the names mentioned in his e-mail would be considered accomplices to his intentional violation of the Campaign Finance Limitation Act, but I'll read you some lines: Thus, please do not send any e-mails of mine to anyone and describe this as an effort to help my campaign and some others. That is not controlled by me, and it won't be controlled by me. Even though, he goes on to list in his e-mail a list of names of potential donors, pro-life zealots he referred to, and some strategies that he was going to use in violating the law. I don't want to tolerate that, and I'm not

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going to tolerate Mr. Hergert's behavior either. But we need to be straight up, straightforward, and honest about this. Now, it concerns me a bit when Senator Beutler just acknowledged the fact that we don't have all of the facts yet. The commission is still looking into this. That's fine. I'm willing to wait for more information. If we're forced into a vote here, I'll make the tough decision. And quite honestly, we don't know how the resolution is going to be voted on yet. There are amendments. We know that he can't be impeached, constitutionally. And if this is a good, healthy discussion, so be it. Perhaps it is, Senator Schimek. We need to know what the law is. We need to enforce it consistently and fairly. We need to come up with laws. And perhaps, I hope that we all can arrive at the fact that we need to adopt some changes in our current law, so that these things do not undermine our electoral process. That, to me, is the biggest issue here, is the undermining of our electoral process. And there's a lot at stake. There's always this rush to regulate campaign finances, perhaps without the constitutional authority to levy the right penalties to make them effective. Whether it's the federal level, whether it's the state level, it seems like every cycle we have...

SENATOR CUDABACK: One minute.

SENATOR SMITH: ...some terrible examples of how, A, campaign finance laws aren't working and, B, there are those who probably, perhaps intentionally, violate them so as to get elected. And then what's difficult is when they just absorb the fines as a cost of doing the election. And if you've got a lot of money, hey, pay it. You got the office; no big deal. That disturbs me and I think that's why we're here today. But for us to say that Mr. Miller's violations, well, those were long enough ago we shouldn't be concerned about those, that's wrong. And I'll be happy to submit for the record even more quotations from this e-mail that shows his deliberate...in fact, the commission didn't even hold him accountable for that. They held him accountable for some other things,...

SENATOR CUDABACK: Time, Senator Smith.

SENATOR SMITH: ...late filings and otherwise, and that's why

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the fine was so low. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. Senator Janssen.

SENATOR JANSSEN: Thank you, Senator Cudaback, members of the Legislature. I want to first start out saying that when Senator Schrock brought this resolution to ua--and I thank him for doing that--that I had no knowledge of the Speaker's involvement with Mr. Hergert. You know, but it seems to me Mr. Hergert is a slow learner. You know, if you get...a dog bites you once, it's probably the dog's fault. But if he bites you twice, it's your fault. You know, and it...to me, it...I feel as though people are laughing at our campaign finance laws. You know, there are people in this Legislature...Senator Beutler has worked very hard on campaign finance laws, you know. And I think that it sends a message to anyone who wants to run for office, that, you know, if you've got enough money, you can just do about whatever you want to do. And that's wrong. My opinion, that's very wrong. I feel as though the right thing for Mr. Hergert to do would be to resign. I don't...why would someone want to spend that much money for a job that all it is, is prestige? And, hey, hopefully, hopefully these people want to do some good for the University of Nebraska. But to the point where you have to buy that position, I don't feel that's right. This discussion is good. But it's also a shame that we have to spend our time discussing something like this. There are other subjects that could use much more of our attention than this. But I guess that there are people that think that every resolution we pass, every law that we enact is there to be tested from time to time. Well, maybe this needs to be tested. Maybe we should make a test out of this. And to save face, and to protect the integrity of all elected offices, I think it would be the right thing for Mr. Hergert to resign. With that, thank you, Senator Cudaback. I'll give the rest of my time to Senator Connealy.

SENATOR CUDABACK: Senator Connealy,...

SENATOR CONNEALY: Thank you, Mr. President. Thank you, Senator Janssen.

SENATOR CUDABACK: ...1, 45.

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SENATOR CONNEALY: Thank you. I won't need much. I just wanted to mention that, you know, we are all politicians. We had to go out and ask for support, ask for resources and, you know, put ourselves in front of the people. A lot of you that are term limited out are going to do it again, going to go out and ask for that. It paints us all with this. I think that this case taints the system. I think that it's a good response on our part to ask for his resignation, and then to go from there. This isn't an impeachment vote. This is the first step in the process for us. And I think that this is a good response for us, as politicians who have to go out and do what we do to get support--ask for somebody's money, and hopefully show that that's going to be used in an effective and legal manner. And I just think that this is...

SENATOR CUDABACK: One minute.

SENATOR CONNEALY: ...a justifiable response. And I want to thank Senator Schrock for bringing this in the way you did. And I want to thank you for getting the broad support here in the Legislature. And I think it shows that we take these matters very seriously.

SENATOR CUDABACK: Thank you, Senator Connealy, Senator Janssen. Senator Foley, followed by Senator Schrock.

SENATOR FOLEY: Thank you, Mr. President. I'd like to yield my time to Senator Friend.

SENATOR CUDABACK: Senator Friend, you have almost 5 minutes.

SENATOR FRIEND: Thank you, Mr. President. Members of the Legislature, I'll pound on the objective piece. What I wanted to try to accomplish...what I didn't want to try to accomplish is to--and hear it clearly--is to impeach Regent Miller. I do not want to do that in this legislative body. I don't want to take that effort forward. But there's a point here. And I don't want you to think the last hour and we've been working on it has been a waste of time. The end game for me, the objective for me is to try to establish an idea of what our responsibility

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is here in this body in regard to these type of violations, intentional, and the ones we just don't know about. We might suspect. We might all just sit there and say, well, we don't know Dave Hergert. But guess what. You know, 30...boy, \$33,000 in fines. Ooh, that's bad. Well, it is. That's what I'm saying. I'm heaving when I think about that. For that type of job...Senator Janssen is right. For that type of job...what is it about being a regent? Senator Landis, you'll be a regent soon. Tell me. (Laugh) It's just a joke. A bad joke, evidently. Look, before I go on taking time that is not necessary, I wanted to clarify the objective and finish it. We can't impeach this gentleman. The case law that I've seen, and the reading of the constitution that I have, can't be done. Okay? I think it's a waste of taxpayer money. Senator Beutler disagrees. Maybe Senator Schrock disagrees. Others out here disagree. We can continue talking about that. But I will say this. I don't want to impeach Regent Miller. I don't want to impeach Regent Hergert. I wouldn't wanted to have impeached Regent Blank. But other options and other ways of showing that this type of behavior is unacceptable I think are more appropriate under these circumstances. With that, Mr. President, I'd like to withdraw AM15...or, AM1757. Thank you.

SENATOR CUDABACK: AM1757 is withdrawn. Mr. Clerk, next motion, please.

CLERK: Mr. President, the next amendment I have to the resolution is offered by Senator Foley, AM1714. (Legislative Journal page 1848.)

SENATOR CUDABACK: Senator Foley, you're recognized to open on AM1714 to LR 98.

SENATOR FOLEY: Thank you again, Mr. President, members. And thank you, Senator Friend, for offering your amendment. I think it did provoke an interesting and fruitful discussion. It was not time wasted, by any means. The amendment that I'm offering, AM1714, is an amendment that I'm very serious about. It is an amendment that I'd like us to consider and then vote on. Campaign finance issues are matters that I do take very

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seriously. And like many of you, I have imposed upon myself some stringent limitations on who I will accept funds from in my campaigns, and how much, and so forth. And again, I know many of you have done that as well. In addition, I've attempted in my five years here to sponsor some legislation that would fix what I see as some deficiencies in our Campaign Finance Limitation Act. And I've been very complimentary to Senator Beutler for all the work that he's done on that act. And if any of you try to head down that path of trying to fix the CFLA, what you will quickly discover is that it's enormously difficult to fix it, because there's so many people here who just don't like the act altogether. And it makes the problem of trying to fix that act all the more difficult. And I'm highly offended when politicians run for office and flaunt the CFLA. And I can't get into the mind of Regent Hergert or Regent Miller, but I can observe their actions, and I'm offended by them, very much so. But I'm concerned about the path that we're on here today. Because--I think this will be an obvious statement--I think the Nebraska Unicameral is probably the most political body in our state. I don't say that to disparage us any. That's just a matter of fact. We are the most political body in this state. And the University of Nebraska Board of Regents isn't far behind in that regard. And here we have one political body throwing stones at members of another political body, and I think that's a path we ought to be very, very careful about going down. I would much prefer to see violations of law dealt with and adjudicated by the courts and by appropriate commissions who are empowered to deal with those questions. We have the Nebraska Accountability and Disclosure Commission, and they have the authority to deal with these questions, and they have. And they've levied the biggest fine ever against this man Hergert. Was it enough? I don't know. I didn't have all the facts in front of me. They did. They had the facts, and they said, we're going to hit this guy with \$33,000 in fines, the biggest fine we've ever levied. Maybe they should have gone further. I don't know. Maybe they should have pressed criminal charges against that man. I don't know. They had the facts. I didn't. But I think we ought to be very, very cautious about heading down this path and throwing around the word "impeachment" so loosely, as has been done so here. Senator Beutler has circulated to all of us the relevant citation and language from

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our state constitution. And it's right on point. It's only one sentence. I'll read it: All civil officers of this state shall be liable to impeachment for any misdemeanor in office. Underscore "in office." Whatever Mr. Hergert did, he didn't do it while in office. I think we can all agree to that. He didn't do it while in office. Whatever he did, he did it as part of his campaign to win an office. There's been litigation on that very question. Our state Supreme Court has addressed that very question. I know it's a long time ago. But that case was never overturned. It still stands. I didn't have the pleasure of going to law school, but I think I know what that case meant. The case meant, you can't impeach somebody for what they did when they weren't in office. And you can't impeach them for what they...you can't impeach them after they leave office. I think we ought to take the impeachment dimension of this resolution off the table. And that's what this amendment is all about. I don't think we have any business talking about impeachment in this particular case. Because in this particular case, the offenses occurred prior to the assumption of the office. It's a very simple amendment. I hope you'll give it your fair consideration and adopt it. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Foley. You've heard the opening by Senator Foley on AM1714 to LR 98. Open for discussion. There are a number of lights on. If you wish to discuss that, you don't...you may pass over. Senator Schrock, followed by Senators Johnson, Dwite Pedersen, Stuhr, McDonald, Beutler, Preister, Thompson, Brashear, Loudon, and eight others. Senator Schrock.

SENATOR SCHROCK: Thank you, Mr. President. Senator Friend and "Senator Foe," I thank you for the discussion this afternoon. I'm sorry. Senator Foley, not "Senator Foe." Senator Foley, I oppose your amendment. I do not know whether we have the power to impeach or not. And that's not what the resolution is about. It's about discovering our options. Senator Friend, if someone would have brought around a resolution four years ago, asking me to sign, to ask Mr. Miller to resign from the regents, I may have signed it. I do not know. But I can tell you that in the information we have--and I did have it here--in his settlement with Accountability and Disclosure, the part about intentionally

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violating our campaign finance law was not admitted. And I did pass out a sheet. And if you look at the back side, on Section 5, it is the position of the respondents that violations to which he admitted to were unintentional violations. And then 6 goes on a little further to explain. So I do not know whether Mr. Miller intentionally violated or did not. I thank you for bringing the amendment. I thank you for withdrawing it. Senator Foley, I don't know what to...how to respond to what you're saying. But in an editorial in one of the papers in western Nebraska, I would say that there was some interesting things said. And I will quote: Politicians are there to serve their own interests, not the people's interests, as the current firestorm concerning Dave Hergert confirms. Twenty-nine of forty-nine state senators of Nebraska have called for Mr. Hergert's resignation or face impeachment. Kudos to the 29. But what about the other 20? Do they think it's okay for someone to flagrantly violate our campaign finance laws, get elected because of it, and then hold on to that elected office to boot? Their silence says yes. Maybe we should look at how each of them got elected as well. Even Governor Heineman took the politician's way out, instead of the public servant's, by saying, there is no question that he violated the law; whether or not he should be impeached or asked to resign is a legislative matter. So I do thank those 28 who signed on with me. And I don't think I twisted anybody's arm unreasonably. I tried not to misrepresent the situation. I think we should leave this legislative resolution as is, and investigate our options. This resolution does not call on the Legislature to impeach Regent Hergert. It says we should investigate that. I think that's fair. And if the Exec Board and whoever they counsel decides that that's not a fair option, fine. I'm not going to answer your proposal that says we can't impeach him, because I think there's some attorneys on this floor that will answer that. And I think there's some question there. And if there is some question there, then I think we ought to explore it. And if we adopt your amendment, then we can't explore it. And I just happen to feel, not knowing Mr. Hergert very well, but considering where he's gone so far, he will thumb his nose at us if we ask him to resign, because I don't think he will. He thumbed his nose at our campaign finance election laws. Obviously, there's about a dozen daily newspapers that have

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asked him to resign. He doesn't care. I don't think he will resign. And I think we'll be...I think he'll still be in office if we just pass a resolution. I don't think he'll leave. And I don't think that's fair to the University of Nebraska. I don't think that's fair to the people who got there legitimately. And I don't make any excuses...

SENATOR CUDABACK: One minute.

SENATOR SCHROCK: ...for Drew Miller, but you're four years too late. And that was mixing apples and oranges. And the amount of the violations, there's no comparison. And I don't think Drew Miller's violations caused his opponent not to receive campaign finance matching funds. If I'm wrong there, won't be the first time. But I thank you, Senator Friend and Senator Foley, for your discussion. I know you mean well. I mean well. We may have some differences here, but that's why we're having the discussion. And we have some attorneys that are going to say some things--some for, and some against--but I think they are really the ones that have a little better knowledge of what's going on here. Thank you for your time.

SENATOR CUDABACK: Thank you, Senator Schrock. On with discussion. Senator Johnson, followed by Senator Dwite Pedersen and others.

SENATOR JOHNSON: Senator Cudaback, members of the Legislature, yesterday, stood before this microphone and talked about freedom. It was in a different context than than it is today, but it still applies. We talked about freedom of speech. We talked about the importance of the vote. And certainly, this is a classic example of how important the vote is. We also talked about trial by our peers. But I think the most important thing that I said yesterday regarding this type of issue was this: These other--the freedom of speech, voting, and the trial by jury--were put in place so that people like us in this Legislature would do our duty. Senator Schimek said, send a signal. How many signals? How big a violation do we need? Seems to me there's two problems that we have to consider before this Legislature--this one that we're talking about today; and the other one is changing the laws, as several people have

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talked about. We're not going to change the laws regarding our campaign laws today. But we can do something about what we're supposed to be here meeting about. Regent Hergert was asked to resign by this resolution by innumerable editorials in every newspaper I read. What was his response? Hire another attorney, and hire a lobbyist to twist our arms so that we might get a more favorable result for him. That's the response we got for asking him to resign. Do you really think that he's going to change, when he did that as his initial response? I don't think so. In the past, if Legislatures shirked their duty, as some people have suggested, let's not let somebody down the line say that this Legislature shirked our duty. If we don't learn anything else from this exercise today, let's stand up and say...and be counted for where we stand. Thank you.

SENATOR CUDABACK: Thank you, Senator. Thank you, Senator Johnson. Senator Dwite Pedersen, followed by Senator Stuhr.

SENATOR Dw. PEDERSEN: Thank you, Mr. President, members of the Legislature. First of all, I need to publicly state that I have regretted the fact that I signed on to the amendment of Senator Friend's, AM1757. And not because of Senator Friend, but because the reason I did was to be revengeful in the way a man treated me in committee hearing not too many months ago. And revenge does nothing to me but treat me as a cancer and eat away at me. And for that, I apologize. But it is beside me why we spend this much money to get these jobs that don't pay anything. What are we telling the people of Nebraska when we break the campaign laws and when we spend money like this to get offices we don't want? What's hidden here? Why are they untrustworthy of the regents and the senators and us politicians? Why do we have to set up so many laws to govern us, and so quick for us to break them, and lock up other people who have done lesser things, and fill our prisons with them? This bothers me. I'm not going to vote for this legislative resolution, either for it or against it. But I will sure make sure in the future that I look more at Senator Beutler's work, and those of you who have worked with campaign laws, to see that we do the right thing for the people of Nebraska. That's what's most important here to me. How many times have we made laws in this body that governed agencies--Health and Human Services, Corrections, Roads? And

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they have not paid any attention to the law either. They've gone right around it with rules and regulations. And I think it is wrong, especially for me, to make any decisions due to the R or the D behind my name, or pro-life or pro-choice, which, I happen to be pro-life and very proud of it, and very pro-life. But I'm never going to put down anybody who's pro-choice. We need to look at ourselves. And why do we make these rules and regulations? And why are we so quick to jump at those who have done things that we might have done ourselves? With that, I'll give the rest of my time to Senator Brashear. Thank you.

SENATOR CUDABACK: Senator Brashear, about 2 minutes.

SPEAKER BRASHEAR: Mr. President, members of the body, thank you, Senator Dwite Pedersen. I appreciate it. I...since my last...only time to speak and colloquy with Senator Schrock, why I've explained to him what I was going to do, I've decided that I greatly have to pick up the pace. Because, as Senator Beutler observed, we're not going to have much time in this debate, given the amount of interest. So let me tell you where I was going. What I was going to demonstrate is that none of us come in here a neutral, uninformed, unrelated individual. And so I was going to take Senator Schrock, through this colloquy, ask him if he had a conflict of interest. He was, I assume, going to tell me, no. And I was going to tell him I agree with him. And then I was going to explain...I also need to state--and I'm only going to waste time on it once--I do not condone what Mr. Hergert did and admitted he did. I do not condone what Mr. Miller did and admitted he did. And I don't condone what Dr. Blank did. And nobody but nobody cared to do anything about it.

SENATOR CUDABACK: One minute.

SPEAKER BRASHEAR: And I'll reflect back, I am--I say this with affection--distressed that my colleague, Senator Schimek, who knows so much about this law, stresses the amount. I have to speak against the amount. If...first of all, I hope it's self-evident that if anybody had said, you pay the...you admit your guilt, or your responsibility...this is a civil matter, not a criminal matter. You admit your responsibility, you pay the

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maximum fine. Whoever asked, they didn't know whether it was enough, guess what. It's all the law allowed, so it was enough. And then the next point is, if the statute had said, and the Legislature might, on a selective basis, decide that it would like to impeach somebody maybe on a whim, guess what. I wouldn't have taken the case. I'm allowed, but I'm not stupid. Impeachment is a legislative function. It isn't prescribed here. The case law has been correctly stated. You could stretch it any way you want to.

SENATOR CUDABACK: Time, Senator Brashear.

SPEAKER BRASHEAR: The case law is on both ends clear, you can't do it.

SENATOR CUDABACK: Time, Senator Brashear. Thank you, Senator Dwite Pedersen and Senator Brashear. Senator Stuhr, followed by Senator McDonald.

SENATOR STUHR: Thank you, Mr. President and members of the body. I do stand in support of the resolution that was introduced by Senator Schrock. I do have my name among all of those...rest of those people that also signed, asking for the resignation of Dave Hergert. I do oppose the Foley amendment. I do believe that we need to investigate some of the options. I do so because I believe that...I do not believe that it is right that someone flagrantly and blatantly disregards the law. If a situation happens once, as Senator Janssen said, I think we can all understand. And most of us have been in that position, where possibly...we know that the campaign finance laws are very complicated, and that we have made some errors. But we do it immediately and correct it, so it doesn't happen a second time. But violating some of the same campaign provisions the second time, I believe, is wrong. I don't personally know either Dr. Blank or Mr. Hergert. So I think that puts me in a rather neutral position. But I wanted to share with you...and you have before you 12 articles from across the state, from various newspapers, from Scottsbluff to Lincoln. And I'm going to share some excerpts from those editorials from around the state. And they don't contain any high-level legal analysis. They're just common sense. And I just want to share what some of the people

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think on this issue. The Lincoln Journal Star on May 6: University students know cheating is wrong. So should regents. The senators who called for Hergert to resign are right. The best service Hergert can provide for the state, the university, and his constituents at this point is to step down. From The Grand Island Independent on May 6: We understand the legislators' concern and support their call for Hergert's resignation. Hergert could resolve much of this by resigning. We believe, given the current circumstances, that would be the right thing to do. From the Hastings Tribune on May 9: Hergert should resign. From the Kearney Hub on May 4: Dave Hergert did the honorable thing in admitting he violated campaign finance laws. Now he should do the next honorable thing and surrender his seat on the University of Nebraska Board of Regents. From The North Platte Telegraph on May 4: Regent Hergert has set a terrible example for our young people, and unless he has a pretty good explanation for this sorry episode, he should be doing western Nebraska a favor by submitting his resignation. From the Ogallala Keith County News on May 2: Not only did he break state law; Hergert violated the spirit of fair play, if such a thing still exists in the political arena, and showed serious character flaws in effectively buying the seat. Questionable character, illegal campaign tactics, record fines--Hergert should resign, if not for himself, for the fair and effective representation of the constituents of District 7. From the Gering Courier, May 6:...

SENATOR CUDABACK: One minute.

SENATOR STUHR: ...local boy Dave Hergert won the regent's position in the last general election, but broke the law to do it. He recently admitted wrongdoing in the election. It will be not...and this continues from this: We need leaders who are not looking to take the easy road but the honorable road. We must expect more from those who want to be our leaders. If they cannot follow the rules then they cannot lead. The idea of the leader is that others will follow. If the rules aren't important to the leader they will stop being important to the followers. The ends do not justify the means. Seven Nebraska daily newspapers have severely criticized Mr. Hergert and basically endorsed resolution...LR 98, including several in his

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146, 146A, 211, 211A, 227, 256, 256A, 332
332A, 343, 348, 348A, 465, 484, 538, 538A
557, 573, 709, 713, 761, 761A
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own districts.

SENATOR CUDABACK: Time, Senator Stuhr.

SENATOR STUHR: No newspaper in the entire state has criticized the Legislature. Thank you.

SENATOR CUDABACK: Thank you, Senator Stuhr. Mr. Clerk, items for the record, please?

CLERK: I do, Mr. President, thank you. Bills read on Final Reading this morning were presented to the Governor at 1:45 p.m. (Re: LB 13, LB 13A, LB 343, LB 573, LB 538, LB 538A, LB 709, LB 227, LB 256, LB 256A, LB 465, LB 484, LB 557, LB 761, LB 761A.) Mr. President, subsequent to that, I have communications from the Governor. (Read re: LB 28, LB 28A, LB 40, LB 40A, LB 114, LB 146, LB 146A, LB 211, LB 211A, LB 332, LB 332A, LB 348, LB 348A, LB 713, LB 13, LB 13A, LB 227, LB 256, LB 256A, LB 343, LB 465, LB 484, LB 538, LB 538A, LB 557, LB 573, LB 709, LB 761, LB 761A.) A second communication. (Read re: LB 126 and LB 126A.)

Mr. President, Senator Raikes would move that LB 126 become law notwithstanding the objections of the Governor, and that LB 126A become law notwithstanding the objections of the Governor. I have a new study resolution, LR 242, by the Agriculture Committee, be referred to Reference; and a rereferral of LR 104. That's all that I had, Mr. President. Thank you. (Legislative Journal pages 1894-1897.)

SENATOR CUDABACK: Thank you, Mr. Clerk. On with discussion of the Foley amendment, AM1714 to LR 98. Those wishing to speak are, the first five: Senator McDonald, Senator Beutler, Senator Preister, Senator Thompson, Senator Brashear, and others. Senator McDonald.

SENATOR McDONALD: Yes, Mr. President and the members of the body, I also did sign onto the legislative resolution. I do not know Mr. Hergert personally. I did meet him briefly the first year that Rick was campaigning for the...Rick was campaigning for the Legislature. I don't remember what Mr. Hergert was

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campaigning for. But this wasn't his first election, and I truly believe that when you run for an election you certainly do abide by the laws. And I remember the first campaign report that I needed to have submitted and, being my first report, I was a little late and understood the fine. And I certainly couldn't afford the fine. I don't remember if I paid it or not. I...it was taken care of, regardless of what it was, but I saw that it didn't happen again. And if you violate the laws, campaign laws, in the primary and you slap your hands, and you do it again in the general because you feel that you can afford to pay the fine because the fine is less ominous to you than the crime, then we need to sit back and look, what is the intent of this. Why are we doing what we're doing? Do we look in the mirror and say, are we doing the right thing? Can Mr. Hergert look in the mirror and say that he did the right thing? And I think as we make this decision here, we have to do the right thing because that's what it's all about--doing the right thing. I also serve on the Executive Board and prior to going into that meeting I was lobbied by the lobbyist that represented Mr. Hergert. Looking at us as a juror, I don't believe, as a jury, we need to have influence from outside. We have to make the decisions that we have to make. Does money buy everything, buy the best attorney, buy the best lobbyist to get what we want? That's not what we're all about. We're all about doing the right thing. Thank you.

SENATOR CUDABACK: Thank you, Senator McDonald. Senator Beutler, followed by Senator Preister and others.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I categorically reject the argument there are not two sides to the impeachment question. The whole strategy of the lobbyist and the lawyers has been to get you to believe that there's not two sides to that argument; therefore, you delete Section 4 of the resolution. Clearly, that's the strategy. And let me try, I'm going to try to take you through, as best I can, why I believe absolutely that's not true. And let me tell you...to begin with, let me ask you to think about the way the law works. There is the law. I passed out to you the constitutional provision and I'd like you to find that on your desk because I want to kind of go through it with you a little bit. But

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besides the law, there are possible interpretations of the law, and when the court comes to decide what interpretation of the law it's going to take, if there's more than one interpretation possible, it's going to look to the thing we call in law "equity"--what's fair, what's right, what would the people probably have intended in a particular situation if they had envisioned what in fact might have occurred. You and I well know from our own efforts in legislation that out there in the future there are situations that we will not anticipate with each and every law that we pass. We know that. The courts know that. And so there is a certain latitude there where the courts have to decide what the people would want, what is best, so long as that can be done within the language of the law. Now, let's talk about this amendment a little bit. First of all, it says all civil officers of the state for impeachment are...shall be liable to impeachment for any misdemeanor in office. Now nobody has talked about the word "misdemeanor," have they? You know why? Because the court doesn't interpret "misdemeanor" to mean the narrow view of it that you and I would assume it means, a criminal misdemeanor. It doesn't mean that. And let me...let me describe for you the process, how the court got there, so that you understand how the court can get to the Hergert case in addition. Now, back in this case, State v. Hastings, more than 100 years old, here's part of the dialogue: What under our constitution amounts to an impeachable misdemeanor? It is safe to say that no question of greater importance has ever been submitted to the consideration of this court and, in its solution, we have endeavored to adopt the rule best sanctioned by authority and which is just alike to the state and its servants...and its servants. It is sufficient for our purpose at present to say that we are constrained to reject the views of Professor Dwight, Judge Curtis, and other advocates of the doctrine that an impeachable misdemeanor is necessarily tending to defeat...that an impeachable misdemeanor is necessarily an indictable offense as too narrow and tending to defeat. So what happened? One side in that case had come in and argued that misdemeanor meant exactly that, a criminal indictment for a misdemeanor offense, and the court said, no, we aren't going to do that, even though the language said misdemeanor, and then they said the result is that an impeachable high crime or misdemeanor is one, in its nature or consequences, subversive of

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some fundamental or essential principle of government or highly prejudicial to the public interest. So it looked to principles of law and fairness and equity to interpret what the word "misdemeanor" meant. What are they going to say about the language "in office?" They can say a number of things. They have given...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...broad principles of language from which they can go in a number of directions. In the Douglas case, they talked about the language from previous cases that indicated that they're going to look to the nature of consequences subversive of some fundamental or essential principle of government or highly presidential...prejudicial to the public interest. It doesn't have to be a duty of the office that's violated even. In the Douglas case, the matters that were alleged didn't relate to the duties in office, so it's not "in office" in that sense, at least, we know. Now, there's been no case on election law and whether that relates to the duties of the office. There's been no case in Nebraska, so it's what we call a case of first impression. The facts are entirely different from anything they've ever decided before. Now, here's an interesting...

SENATOR CUDABACK: Time, Senator Beutler. On with discussion. Senator Preister, followed by Senator Thompson.

SENATOR PREISTER: Thank you, Honorable President. I would yield my time to Senator Beutler, so he might continue.

SENATOR CUDABACK: Senator Beutler, you have almost 5 minutes.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, let me tell you what they did in a Florida court. Now, when I passed out that constitutional matter to you, the constitutional language in Nebraska, the next page behind it is the constitutional language in Florida. It says basically the same thing--misdemeanor in office. Now, the court in Florida has never had a case exactly on point of the one that we're talking about, but they also came...a concurring judge in an opinion

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down there used this kind of reasoning, and I want to point it out to you because it points the way to which a court gets to equity and fairness and I'm going to tell you more later about why they have to get there. But here's what they said. This is a concurring judge: I think it is far from axiomatic that illegal conduct or activities of a prospective holder of an office of Governor, prior to his entry upon the performance of his official duties, are necessarily beyond the reach of impeachment after assumption of office, particularly where the conduct or activity has an "impactual" carryover and baneful effect or influence upon the official action or conduct of the officeholder, or devolves upon him a positive duty to see that the laws of the state are faithfully executed. By the way, you could also look into the oath of office, which most oaths of office require that you have done no illegal thing to garner votes in the election. That's another line of possible inquiry here. The main point is I want to convince you that there are two reasonable sides to this and that you're being played upon in this matter to decide this matter so early. It's simply not black and white, and the amendment and the resolution that you're being asked to approve doesn't say that it's black and white. It says we're going to get the facts, we're going to get the law, we're going to do in-depth legal briefs and we're going to see what we think our chances are in terms of impeachment should Mr. Hergert fail to resign. And, by the way, why is this tactic so important to the opposition here, to the lobby and the lawyers? Why don't they want us to get to the impeachment question? If it's so open and shut, why worry? It is a worry. It's a worry for them, it's a big worry, because this is a great court and they're a very common-sense court and this will be a real question for them. They won't take it lightly. I could go on with more of the rationale of the concurring judge in that Florida case, but I don't think there's any point to it. I hope the point is that the courts fashion law where the language allows it to be fashioned to meet the goals and intent and objectives of society. They try to be fair and reasonable and I would suggest to you that a man's campaign for an office is as important as anything he does in the office, is related to the office, and I bet the court would find that. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Did you wish to

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have some of your time back, Senator Preister? I'm sorry, but just about gone. Senator Thompson, followed by Senator Brashear.

SENATOR THOMPSON: Thank you, Mr. President, members of the body. I support Senator Schrock's resolution. I oppose the Foley resolution and I'm going to encourage all of you to oppose the Foley amendment, excuse me, for a number of reasons. One is certainly I think Senator Schrock should have a shot at making his case as he presented it. I had the opportunity to hear this for several hours, as a member of the Executive Board. And, as Senator Beutler has pointed out, this is an extremely complex issue. I'm not an attorney. Actually, by training, I guess, I'm a historian and I think there are lots of parallels through history and we're hearing a lot of things in...that are coming up on the floor that have called up things in my mind from the way things happen historically on these kinds of issues. But I think the fundamental thing to think about, as a member of the Legislature, representing the roughly 35,000 people that we each represent, is that we shouldn't send out a "gummer" here. We should send out...we should...our message should be we take this seriously. We believe and know that there have been serious infractions of the law, and I stress serious, and we trust our rules of the Legislature and the way we create an Executive Board to take it to the next step and decide what should happen. So instead of just saying this person should resign, and we heard Senator Stuhr list all the western Nebraska newspapers saying he should resign, we should also say this is serious. And this is a matter of degree. Now, a lot of you said, well, we should prosecute, we should bring this for everyone who breaks our law, finance law. Well, that isn't the way it works. Police don't stop everyone in a 30-mile-an-hour zone who's going 31 miles an hour. They don't. It's a matter of degree and prioritization, and this is a very, very serious offense. The Executive Board of the Legislature is chosen far differently from our other committees for a reason. That's so each caucus can make sure and votes for two people to represent it on that board. The other members are elected by the Legislature at large. This is going to take time, and it should take time. But you should, I believe, support Senator Schrock, the two parts of this resolution, one saying we would like this person to resign,

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we've talked about that for a significant amount of time; and second, to put some teeth into this, say we also believe that the Executive Board, which is our elected board of the Legislature, should hire whatever help we need, bring in the resources to the Executive Board, examine what next steps should happen should he not resign. That's appropriate. We are set up to do that as a legislative body and we shouldn't let this go by. We've never had this level of an infraction before. It's huge. And we should pass the resolution, ask Mr. Hergert to resign, and then defer it to the Executive Board, which is created by this...rules of the Legislature, to which you have elected members that you trust or they wouldn't be on that board. You have elected all of us. I'm elected by my caucus. You elected Senator Engel, the Chair. You elected Senator Cudaback, the Vice Chair. Let us take the detail of this. Let us take it to the next step,...

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: ...if we need it. And maybe that would be impeachment, maybe not, but let this process continue. Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. Senator Brashear, followed by Senator Louden.

SPEAKER BRASHEAR: Thank you, Mr. President, members of the body. All right, trying to develop the scenario a little faster, so I had indicated to you that I was distressed over the emphasis upon the degree of infraction, and I'm going to share a little history. With all due respect, Senator Thompson is just wrong. In the first place, Senator Beutler filed as an individual, within his absolute right to do so, filed three complaints. Those complaints were adjudicated by Accountability and Disclosure. The maximum fine was paid and that was a resolution. Christopher John Beutler has filed another further complaint putting at issue before the Accountability and Disclosure Commission--I know this by reading the newspapers and no other way--the exact issues which he would like to ask you to use this "superprocess" for. You are right to pause and wonder just what other kinds of cases will we be asked to jump into the

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middle to on some pretext or another? I guess, since Kermit Allen Brashear II, in his personal citizenship, has filed a complaint against Dr. Blank and detailed it so anybody who wants to, unless they have a prior predilection or prejudice, can read it and interpret the law for themselves, then I guess impeachment...well, I guess you can't impeach somebody when they lose. But maybe we can find another remedy, maybe we can come up with something so in any instance you won't quite know what the law is and will just apply something new. Now, let me explain this supposed enormity situation. This is a fun trip down memory lane. I pulled this off of my wall this noon. I happened to look up. It's the first bill, significant bill of any kind, that I was proud of as a member of the Legislature--LB 399 by Brashear and 41 of his colleagues. If you're curious if you're on it--and, yes, Senator Schimek, Senator Beutler, Senator Schrock, you'll find your names there--this was the bill...think of the irony of this, this is the bill that cost Mr. Hergert the additional \$30,000. Where did it come from? Some of you will recall E. Benjamin Nelson ran for Governor of the state of Nebraska. He loaned himself \$500,000. We'd never had anything like that before. I was coming off of the partisan political trail and I was indignant, because after he got elected Governor, when he was what we call Governor designate, he went out and started soliciting money from people all over the state, including people who traditionally had not supported someone of his political party, and he raised the money to pay himself back the \$500,000 at 11 percent interest, and that was well above the market at the time. So I thought there needed to be some reform; 41 of my colleagues joined me. We adopted the law that imposed this penalty, which is not about degree of depravity or anything else. It's simply the more you loan...the more you loan yourself of your own money, the higher the penalty you pay, period. It was also this senator...

SENATOR CUDABACK: One minute.

SPEAKER BRASHEAR: ...who increased the late filing fees. That's why you have the suggestion here in the exhibit that was distributed to you on the floor. Under the bills, as Senator Beutler developed them, Mr. Hergert would have paid \$4,450.

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After the Brashear amendments to try and put teeth into the law, Mr. Hergert had to pay \$33,512, so that was a \$29,062 increase--ironical indeed. By the way, this is signed by E. Benjamin Nelson and I hang it on my wall; is the only piece of legislation that I hang there. But that's a little...please, I'll, in the next segment, I'll develop why it is not irrelevant to talk about Regent Drew Miller and how his misdeeds, which I said I don't condone any of them, were just as egregious and I'll explain why, and we won't be able to pretend to blank that fact for the...

SENATOR CUDABACK: Time, Senator.

SPEAKER BRASHEAR: ...rest of the afternoon.

SENATOR CUDABACK: Thank you, Senator Brashear. Senator Louden, followed by Senator Brown.

SENATOR LOUDEN: Thank you, Mr. President. I'll turn my time over to Senator Brashear. Senator Brashear, you have almost five minutes.

SPEAKER BRASHEAR: Thank you, Mr. President, members of the body. Thank you very much, Senator Louden, particularly after that song last night. (Laughter) All right, so here we are at the Regent Miller episode. What I am protesting is the lack of equity and proportionality on a path that, if not clear, is certainly not obvious. When I came to the floor and circulated the e-mails, which were written in part on the university system and which Drew Miller indicated that he was, and it's clear beyond doubt--if you're in doubt, read it before you doubt it--in which he indicated that he was setting up separate organizations and that people of the establishment who favored his point of view could contribute their money to those organizations, just don't tie him back to it. When I came to the floor and circulated those e-mails, Senator Schimek expressed concern, at least to me, as I recall it. I will tell you no one, including me, stood and talked about impeachment because nobody was trying to exceeds the bounds of jurisdiction, nobody was trying to impose a "superpenalty," and nobody was trying to carry out some sort of extra "supercrusade." And if

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the amount of money given to the separate organizations for Regent Miller had been loaned by Regent Miller to himself, under this bill his penalties would have been as large and then we wouldn't be constantly talking about...I know it's difficult for the media to really investigate substantively, but we wouldn't be talking about the worst fines ever, the worst fines ever, the worst fines ever. They were civil penalties. I know about them because I'm proud to have worked with you to enact them. We had civil penalties between Drew Miller and David Hergert roughly equivalent, and the extra enormous sum that we're using for our own purposes, without examination of the premise and the facts, would be the same. So we're not talking degrees of culpability measured by money, and that's not to condone anything. My question is, why is the Legislature establishing itself as a "supercourt" in this instance when nobody was morally indignant, and we were here, we weren't morally indignant last time? Jack Gould and Common Cause didn't see any need to file a complaint to protect the law with regard to Dr. Blank's violation. I did that only because I felt I had to, as a matter of integrity. We're talking proportionality, equality, justice, and if we want to change the law, and I'll let Senator Beutler do it on his time, he and I, at his instigation and leadership, have developed a technique that I think, let's see, if we want to change the law, let's change the law; let's don't set ourselves up as some sort of a special court with undefined power to exercise as we want to. Did you say time, Mr. President?

SENATOR CUDABACK: I did not. You have 1, 14.

SPEAKER BRASHEAR: Oh. And then I would like to remember, if you'll bear with me, when we get to a bill, a real live debate on campaign finance limitation and you start hearing about how it impedes free speech, please do remember, my colleague and friend Senator Beutler, forgive me, but it's what we call an admission against interest. Senator Beutler is acting like money would have been the difference. This 18-year incumbent of the Board of Regents, this 18-year incumbent who had a record of taking hundreds of football tickets...the people judge that, I'm not going to get into it...traveled at extensive expense on a regent expense account, these were some of the objects of the campaign war ads you've heard people talk about. This man

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needed \$50,000 more dollars to get elected and the absence of \$50,000 is why he lost the election and 60 percent of the people voted against him? That's the best indication I know that, as the Supreme Court has said,...

SENATOR CUDABACK: Time is now up, Senator.

SPEAKER BRASHEAR: ...money and free speech relate. Thank you.

SENATOR CUDABACK: Thank you, Senator Brashear. Senator Brown, followed by Senator Chambers, on the Foley amendment to LR 98.

SENATOR BROWN: Thank you, Mr. President, members. I feel like I'm between the bookends, and I don't...(laugh) do I feel like a prairie dog? And I don't like the way the discussion is going, that we're going to throw some old oranges into the basket so that we can conceal whether the apple is rotten on the underside. I did listen to what Senator Beutler said about what we might be able to do. It still is very unclear to me whether that's possible, but I appreciate knowing it and knowing that there may be some legal options. If I would support anything, I will support the amendment that's coming up of Senator Bourne's because I think it's, at least, defensible. But I still have reservations about this whole process because I want to know what coming to an agreement with Accountability and Disclosure means if it doesn't mean, oh, I'll pay all these fines and then we'll move forward. I have concerns about whether we aren't just spitting on an institution that we've created and we expect to have some meaning. And when it's meaning that doesn't accomplish what we want to accomplish, then we just, well, we'll reject that and we'll find a different way to do what we wish to do. I'm trying very hard not to get into this from the standpoint of does this person...do I agree with this person, do I disagree with that person, but really what is the right thing for us to do as a precedent for the way we are going to deal with these situations, the situations in the past that we've dealt with, the situation that we have in front of us now, and future situations. And as much as I understand and appreciate where my friend Senator Brashear is coming from in some ways, and I was one of the people that sponsored the legislation that he cited that resulted in most of the fines that Mr. Hergert paid,

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I don't think that we are doing a service by throwing up these straw horses or straw what, straw men to (laugh) well, I guess straw prairie dogs, to...(laughter) to do mean things to, rather than talk about what our process should be, what our institution should be. And with that, I'll yield some time to Senator Chambers so he can get started.

SENATOR CUDABACK: Senator Chambers, you have about 1, 44.

SENATOR CHAMBERS: Thank you, Mr. President, members of the Legislature. To make good use of the time that Senator Brown graciously gave me, I'm going to read a few words from a Nebraska Supreme Court case in another context. State ex rel. Nebraska State Bar Association v. Holscher, 193 Nebraska, and the first page would be 729. In a concurring opinion, this is what a court said, a judge said, while finding that a lawyer had violated a law and should be disciplined, and this is from page 751: The...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...the statute which the respondent, in his ignorance, violated might well be said, when viewed in the light of accepted principles of distributive justice, is an unjust one for the reasons we have discussed. That, of course, would not justify a knowing and deliberate violation of the statute by respondent, but his violation was not knowing and deliberate. He was punished anyway. When people stand up here and talk about how they don't like the campaign finance laws, all of that is irrelevant. It is the law. It was violated. Mr. Hergert acknowledged it and now the thing for us as a Legislature to do is to carry out our responsibility. Contrary to what Senator Brashear said, the Legislature is not setting itself up as a "supercourt." We're not a court at all. We're more like a prosecutorial arm because impeachment simply means we make the charge or the accusation; the Nebraska Supreme Court conducts the trial.

SENATOR CUDABACK: It's now your time, Senator.

SENATOR CHAMBERS: Thank you. That court will decide whether or

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not Mr. Hergert is guilty. What is impeachment? It is the accusation. What is the purpose of impeachment? Not to punish. No penalty is imposed other than a person being denied the right to run for another office if impeached and convicted. Now, what is the purpose? The purpose is to cleanse or free the office from a wrongdoer or a miscreant. People have made a lot of statements about the two words "in office." Senator Beutler touched on how constitutions expand in meaning and scope, and courts have done it throughout the history of this country at the state level, at the federal level. The U.S. Supreme Court has said that constitutions grow. Now, when you take the words "in office," I believe, without a shadow of a doubt, that the court would say those words also mean in office or in connection with procuring the office. It would be illogical for the court to be...the Legislature to impeach, the court to convict and remove a person from office for doing the kind of things that Hergert did were he in office, but it cannot cleanse that office of this person when he violated the criminal law to get there. The court is not that simpleminded, and what the court will look at is the purpose of impeachment. The purpose of that process is to remove a wrongdoer from office, and the court is going to construe the language in the constitution to apply to whatever wrongful conduct was engaged in, in order to obtain that office. There were a couple of other things I wanted to be sure and not overlook. Some people are saying that because a fine was imposed by the commission, that should be the end of the story. That's not even what the law says. The law says that the Attorney General has concurrent power to prosecute no matter what the commission does. All of these actions are cumulative, and I defy Senator Brashear or anybody else who knows anything about the law to successfully challenge what I say. The court has pointed out that if a person is impeached, convicted, and removed from office, that does not free that person from any civil liability or criminal prosecution. In other words, the law itself makes it clear and the courts have made it clear that there can be a civil punishment, a criminal prosecution following or preceding impeachment. One does not exclude the other two. These are what are called cumulative actions. You can do them all successively, and in some cases perhaps simultaneously. What we're looking at here is the responsibility of the Legislature to do what the constitution

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gave to us as a duty. We are the only ones to impeach any civil officer of this state, and it does not have to be a constitutional officer because sheriffs and others who were holding county offices were found to be subject to impeachment. So, although we're the legislative branch, the constitution has reposed on us, in us, the duty to impeach any civil officer, judges not excluded.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: So we have not only the right to do this; we have a duty. All this resolution will do, if we vote for it as we should, is ask this man to resign. If he doesn't do so within 60 days, then the Executive Board appoints a committee to review the Legislature's options to see what the fallback position ought to be. It's as simple as that. All these other e-mails and threats that are being made to the senators should be totally disregarded, and we can look at the constitution, the laws and court decisions, and arrive at what we ought to do. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion of the Foley amendment, AM1714. Senator Erdman, followed by Senator Flood and others. Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. Members of the Legislature, I rise in support of the Foley amendment and if the Foley amendment is adopted, it does not remove any option on the table. And I would argue that because we as a Legislature have a number of resolutions that have been introduced, and one in particular, LR 182, requests the Judiciary Committee to examine the extent in which the current language in the constitution can be enforced. That's an option. That's going to happen regardless of whether this resolution passes and assuming the Judiciary Committee takes that up. That option is on the table. Senator Chambers pointed out other options--criminal offenses. You can pursue those, absolutely. Attorney General could bring criminal charges; it's my understanding that the county attorney as well, at least that's what I heard in the Exec Board hearing on this issue. There are other options there and, depending upon the resolution of those, there could be further actions

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taken. Then there comes, if necessary and if appropriate, the articles of impeachment, which is a separate resolution that outlines the reasons for an individual to be impeached, which Senator Chambers has accurately outlined, which is a process in which you impeach the individual, you preclude them from doing their duties until the Supreme Court can be convened to determine whether or not that individual is guilty of the actions committed and should be removed from office. Those options are still on the table. If Senator Foley's amendment does not get adopted, those options are still on the table. So somehow the idea that if the Foley amendment is not adopted that we are somehow limiting ourselves, I don't believe that's accurate, I simply don't. And short of the discussion that we had in the Exec Board, we never got an answer to a question that I had about what power the Executive Board of the Legislature has to pursue this on their own in the event that this resolution doesn't pass, and I would argue I would think that we had the responsibility as an Executive Board to act in a way that is according to the interest of the Legislature when the Legislature is not in session. So those options are still all on the table. Here's what the Foley amendment does, and I believe that it is appropriate. It allows the body to make a decision and it allows the body to make a decision in a timely manner that says, is what Mr. Hergert did wrong, which he has already admitted and which the resolution then would say, if so, we should ask him to resign--plain and simple. It still leaves all the options that Senator Beutler has placed in LR 182 and that the Judiciary Committee has been asked to decide or to investigate. In addition to that, I would argue that the Exec Board still has the authority to decide whether or not we would pursue other actions beyond that. So we're not limiting anything. We're clarifying what the body can do at this point, what the body is willing to do. Now, if there are enough votes, if all 28 individuals that signed onto the resolution would like to support the resolution in the green copy, without amendment, again, that's the prerogative of the body. But somehow the idea that what we're doing today simply limits any option that we have is not true. It simply is not. The fun part or the lack of fun in this proposal is that we are asked to do something that individuals should have done on their own, and that is to be accountable. And I think the body is generally in support of

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the idea that if an individual breaks a law, there should be a remedy. And if the remedy that is allowed is not appropriate, we have one of two options. We can fix the law, which may not solve the problem that's before us, or we can try to do something to remedy the situation. I think the balance is there and I think there is an opportunity to try to remedy both. And I think Senator Stuhr has some comments about what needs to be done in the future on campaign finance law before our next election. I think those are healthy,...

SENATOR CUDABACK: One minute.

SENATOR ERDMAN: ...and I think that's healthy to spur us on to action to resolve some of these issues. But again, the Foley amendment before us does not limit our actions in any way. It simply clarifies where the body is today. It still allows us to proceed with other actions. In the event that the Attorney General would take up that or in the event that the Exec Board would see to go forward on this issue on their own, I would believe we would have that authority. And at the same time, the Judiciary Committee has promptly before them the opportunity to further examine this issue as far as whether or not an individual who has committed an act on the way to office is guilty and is punishable under the same language in the constitution as an individual who commits an act while in office. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Erdman. Senator Johnson, I'm sorry, but your light isn't on next. Your light is not next. I'm sorry. Senator Flood's light is next. Senator Flood.

SENATOR FLOOD: Mr. President and members, thank you. I rise today in support of Senator Foley's amendment, AM1714, to LR 98, offered by Senator Schrock. I did sign the resolution and, as I remember that day that I was offered the resolution, knowing full well that it contained in there a clause to ask for Mister...or Regent Hergert's resignation, I remember thinking to myself, if enough of us sign this maybe he will do what I think is the right thing and step down. And now obviously that is not the case, so I reviewed the resolution again and, like Senators

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Chambers, Brashear, other lawyer members of the Legislature, apply the law to the facts as I see them. Now, I do not know every fact but some of them are, shall we say, stipulated, and those facts would be that whatever violations of our laws pertaining to campaign finance rules and regulations occurred prior to Regent Hergert taking office. So then I asked myself, what are our options other than asking him to resign? We are in the legislative branch. We do not have the law enforcement authority of the executive branch other than the checks and balance system, which allows us to approve articles of impeachment, walk down the hall with two senators and try the case in the Supreme Court. Senator Erdman earlier said we are the jury. No, we are not the jury. We are a grand jury of sorts, agreeing on whether or not to issue an indictment of sorts against an individual that holds a state office. Unfortunately, given these facts, I do not feel comfortable in even threatening somebody with impeachment, a crime of sorts, that we cannot follow up with. I do not want the Legislature to make baseless threats that we can't follow through on. We're in the wrong branch of government for that. This situation demands a judicial remedy, not a political remedy. Signing the legislative resolution a few weeks ago, I was looking for a political remedy, one that would get him out of office, we could move forward. Unfortunately, that's not the case. I'm not interested in engaging in a system where we threaten somebody with the articles of impeachment that we can't follow through on. I compare it to this. A county attorney anywhere in the state of Nebraska should never file a complaint against a defendant unless that defendant, he or she, has committed acts that would qualify as the necessary elements of a criminal complaint. If you're charged with theft, you must as a county attorney meet the elements of the crime in your petition, on its face, file the same with the court, and then prove up those elements at trial. The most important element of the articles of impeachment, in my opinion, would be whether or not this alleged crime that he has admitted to on the civil side with the Accountability and Disclosure Commission occurred in office. He did not take office until January. The alleged incidents that we're talking about here, that he has admitted to in front of the Accountability and Disclosure Commission, occurred in 2004, prior to him taking office. Without the ability to prove up one

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of the most essential elements of our cause, given the current state of the constitution and the way in which we work, I am supporting Senator Foley's amendment. I have relied on State v. Hill, same versus Benton, Supreme Court of Nebraska, 1893. Now, Senator Chambers offered up in his discussion about this matter the idea that the Supreme Court of Nebraska would engage in some constitutional construction. Looking at this in the broader picture and determining possibly what the intent of Nebraskans is when applying the facts to the situation, maybe saying that under the law technically it's a gray area, but in the broader picture he broke our laws, does not deserve to serve in office, I think that is reserved for the people of the state of Nebraska in the constitution. And I would imagine that the Nebraska Supreme Court would strictly apply the constitutional provisions that it will consider in Article IV, Section 5, and its prior cases in this matter when the court heard the case of State v. Hill and same versus Benton in 1893. For that reason, I am going to vote for...

SENATOR CUDABACK: Time, Senator Flood.

SENATOR FLOOD: ...AM0714 (sic). Thank you.

SENATOR CUDABACK: Thank you, Senator Flood. Further discussion? Senator Landis, followed by Senator Smith.

SENATOR LANDIS: Members of the Legislature, this is the second time that I've had a chance to speak about the issue of impeachment for an officeholder in the state of Nebraska. The first time was in the case of Paul Douglas. As usual, I find myself (laugh) partially impressed and persuaded by pieces of every argument that I've heard so far today, for the most part, which means I wind up being someplace in the middle. Let me tell you that I, while impeachment is a possibility, at best it's a long shot. At best it's a long shot from my perception. You have to construct a pretty tenuous argument to get there, from my perspective. Could be wrong. In that sense, I agree more with the Foley amendment than the underlying resolution, which I believe I signed. However, I don't agree with the Foley amendment on its face because it simply leaves the piece where it is and it takes out Section 4, and my big problem now is

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whether or not we need more fact-finding. Because if this letter from Hergert to our Executive Committee is the sum total of what they're going to tell us then we don't need this debate. We need to get a chance to get into some room between now and tomorrow morning and draft a resolution of censure and pass it tomorrow before we leave. We could do that in a heartbeat. If we're not going to learn anything more than this, and that is a legal counsel who will not testify, will not come, Hergert won't be there, hires a lobbyist, if this is the best we've got then we know enough and we can censure now, because we're only going to get headlines, newspapers, the Accountability and Disclosure, and we're not going to get any more information. If, on the other hand, we're going to do more than this then we're going to have to have a fact-finding process. And I got to say, one of the things we don't exactly in LR 98 is a clear...you know, I'd like to have that prospect figured out, because I think there are two paths. Either we decide we're going to engage in a significant fact-finding process at which...at the end of which we either go with censure or we go with impeachment, if that's a possibility and the body is persuaded, on the facts that we learn. Or, if we're not going to have any more facts, my guess is this body could fashion a censure resolution which, if we had to vote on the limited information we have, we would pass, and we could do that tomorrow. We could draft it tonight and do it tomorrow. The question is, what kind of an information gathering process do we want to have and where should it lead to? And, by the way, I would subtract the word "impeachment." On that I would agree with Senator Foley. I don't think we need to name it as one of our options. I think we could say, as Senator Erdman and Senator Bourne have essentially (inaudible). That is our options, unnamed. Because, to me, the dividing task is whether or not we're going to do anything more for information gathering and learning and decision making, in which case we need to get to what that's going to be like, and then I think all we have to say is, and then, whatever we learn, we're going to exercise our options after we learn. Or we're going to say, you know, given the response that we've gotten (laugh), it's not going to get any better than this. There's going to be a lobbyist, there's going to be a...there's going to be some political forces out there, and there's going to be a lawyer, in which case we don't need to do anything more; we can do what is

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before us. I think I'll vote for the Foley amendment, understanding that I would put back into the resolution some of the things...

SENATOR CUDABACK: One minute.

SENATOR LANDIS: ...that are probably lost by that. And...but I'm a supporter of LR 98. I do not need to recite impeachment as a remedy.

SENATOR CUDABACK: Thank you, Senator Landis. On with discussion. Senator Smith, followed by Senator Redfield, on the Foley amendment.

SENATOR SMITH: Thank you, Mr. President and members. I appreciate the topic of discussion that Senator Landis points out. I want to add emphasis to my prior remarks that the integrity of our system is at stake here, and that's why I say that doing nothing and just glossing over this is not the right thing to do. I think perhaps something would be in order, such as Senator Landis suggested with the censure. I also believe that a lot of things can take place, they already are, without LR 98 being adopted today; that the Accountability and Disclosure Commission can continue their criminal investigation, as requested by Senator Beutler, and to see if they can turn up anything criminally. I kind of tend to agree with Senator Landis, or at least speculate with him, that perhaps I think all the information is out there right now. We need to look at changing our laws in terms of campaign finance. They're clearly not working, whether you agree or disagree with the Campaign Finance Limitation Act as it is on the books right now, or even philosophically, when you had a law-abiding, but didn't quite figure out all of the loopholes, candidate running for State Treasurer suffered his opponent getting, I think it was, \$150,000 of public funds, public funds in the days of budget shortfalls a couple years ago, when the candidate Lorelee Byrd, campaigning for election to State Treasurer, the incumbent, (laugh) received \$150,000 of public funds to campaign with. Perhaps I don't need to emphasize what eventually happened to that office and officeholder. But we've got a system that's messed up. That's what I want to emphasize here today. We have

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accusations. We have legal boundaries. We have politics, can't forget that. And we have some egregious behavior. Senator Brashear, I think, has pointed out very appropriately some of the details that needed to be mentioned. And again, I believe that I can offer these things on a pretty objective basis, based on my previous experience. And as we move forward with something that's rational and reasonable, I do not see impeachment as a rational alternative right now or even a rational objective, and for us to threaten with that, it's an idle threat. I'm not about idle threats and I don't think the Legislature is about an idle threat. That comes back to credibility. The Legislature's credibility is on the line here to do the right thing. Our electoral process is on the line waiting for the right thing to take place, and it is possible to do the right thing. To threaten this and threaten that when pretty much we know that it cannot be done, I've even sought outside legal advice...

SENATOR CUDABACK: One minute.

SENATOR SMITH: ...on this and the conclusion was that impeachment is not a feasible item at this point. We either need to bracket this and let the commission do their work over the interim and the further investigatory measures that they're taking at Senator Beutler's request, or we need to, I believe, scale back the language of LR 98 to something that's more reasonable and rational, or go the route of Senator Landis, looking at the censure. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. On with discussion. Senator Redfield, followed by Senator Foley.

SENATOR REDFIELD: Thank you, Mr. President, members of the body. When Senator Schrock brought the proposal to me and asked me to sign, I asked what is the standard. What's the standard? Is the Legislature going to ask everyone who violates the Accountability and Disclosure Act to resign? He said, oh, no. Then what is the standard? If they violate it twice, is that the standard? Is it a matter of time? If they're one day late in their filing that's okay, two days is not, five days is really wrong? Is it a matter of dollars? If you exceed the

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limits by \$1 is that okay, \$2 maybe, \$10 too much? What's the standard? Is it one violation or is it two? Is it about the section of the act that's violated? Section 1? Section 2? Should be about the law and the law is what we created through the Accountability and Disclosure Act, and the remedy that the Legislature created I believe is the process that has occurred, that in fact Regent Hergert had to appear before the Accountability and Disclosure Commission, a penalty was assessed, a fine was paid, and that was the remedy that the Legislature created. Senator Brashear has told us that it was the maximum that they could actually fine, so the provisions of the law were fulfilled. And yet, what I'm hearing here today is that was not enough. If it was not enough then the problem lies with the act, and perhaps we need to address the act. But, in fact, the remedy was put in place by the Legislature and the law has been fulfilled and, yet, some want more. Public humiliation, Senator Stuhr told us that from Scottsbluff to Lincoln there has been public humiliation, trial by press. There have been penalties even beyond what Accountability and Disclosure has assessed. Senator Beutler has told us that even though we read the constitution and the language very strictly, that a judge might interpret it to mean what it clearly does not say. What is the standard? That's what we should be talking about. I have not yet heard someone tell me what the standard is. I have heard discussion about a whole list of people who have violated the Accountability and Disclosure Act and, yet, we have not had these proceedings for all of them. In no way do I condone any violation. In no way do I condone it. But the penalties, the remedies have been put in place and we have abided by that law. We have enforced that law. If the law is at fault, we should fix the law. I am troubled by what we are doing today because I don't believe we have a clear standard. I have heard people say it is a matter of degrees. And I believe that, for each of us, we may have an independent degree...

SENATOR CUDABACK: One minute.

SENATOR REDFIELD: ...and an independent standard of what we believe for ourselves is right and wrong, but it's a matter of what the law tells us is right and wrong, and I believe we are bound by that law. Thank you.

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SENATOR CUDABACK: Thank you, Senator Redfield. Further discussion? Senator Foley.

SENATOR FOLEY: Thank you, Mr. President. Earlier this session Senator Beutler offered a constitutional amendment, LR 26CA, which provides that civil officeholders may be impeached for campaign violations. I wasn't aware of that CA until recent days, when we started to get into some of these issues, and I don't know where that sits. Obviously, it's had a public hearing. I don't know if there's been a vote taken or not. I don't think there has been a vote taken. But I would support that. I would certainly support what Senator Beutler is trying to do with that constitutional amendment. And I think in the offering of that constitutional amendment, Senator Beutler is at least acknowledging that there is a very significant legal issue here about whether or not a person can be impeached for something he did prior to assuming office. And in the transcript of the hearing on that constitutional amendment, Senator Beutler indicated that he was going to be requesting an Attorney General Opinion on this whole matter of when and under what circumstances an officeholder can be impeached, and I would hope we would go forward with that as well. I think we do need to get an Opinion from the Attorney General on that critical question. So I support what Senator Beutler is doing in that area. I'm also very intrigued and supportive of the notion that Senator Landis tossed on the floor, which is the possibility of drafting a resolution of censure. That might be the way to go here. When I opened up on my amendment well over an hour ago, I was not aware that Senator Bourne was going to offer another option to us, and that's an interesting option. I wonder if Senator Bourne would yield to a question or some dialogue.

SENATOR CUDABACK: Senator Bourne, would you respond?

SENATOR BOURNE: Certainly.

SENATOR FOLEY: Senator Bourne, I'm kind of interested in one of the ideas that you've tossed out for us and that is to take out the whole issue of impeachment, at least in the immediate sense,...

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SENATOR BOURNE: Right.

SENATOR FOLEY: ...and urge us to do somemore fact-finding.

SENATOR BOURNE: Exactly.

SENATOR FOLEY: Would you like to speak to that for a moment, Senator Bourne?

SENATOR BOURNE: You bet. Yes, Senator Foley, and thank you for your interest. What my amendment would do would drop the language, that says whether impeachment proceedings against Mr. Hergert are appropriate, that's found in the green copy of LR 98, and replace it with this language that would say that and recommend legislative options, which of course would include a censure from Senator Landis. It wouldn't limit the special committee to simply looking at impeachment because, again, I'm not certain if impeachment is appropriate here. And so...but I do think that the situation warrants some additional investigation and that's what my amendment would do. And with all due respect, Senator Foley, if your amendment is adopted, it would prevent us, as a legislative body, from investigating further.

SENATOR FOLEY: Thank you, Senator Bourne. Well, actually, if my amendment were adopted, you could still offer yours in a different form and offer some additional language to add to the resolution. But I think that...I think you're trying to take us on the right track because what I hear you saying is that we ought to slow down just a little bit here and do somemore fact-finding and really explore some of the legal questions here that have not been properly addressed, and they really can't be in an afternoon's discussion. I think these are the weightier questions here and I appreciate the direction that you seem to be trying to take us in. So thank you for your work and we can talk about that in due course, unless you have additional comments, Senator Bourne.

SENATOR BOURNE: I do, Senator Foley. Thank you. And I would say that, you know, we've been here before. We had a

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constitutional officer a couple years ago that did some things and, you know, we were here before about whether or not impeachment was appropriate. We don't know. The case that we're relying on is some years old and I think looking into it means that we could look into all options available to the Legislature and have a clear understanding of how the process works and...

SENATOR CUDABACK: One minute.

SENATOR BOURNE: ...I think it makes sense.

SENATOR FOLEY: Very good. Thank you, Senator Bourne. Thank you, members.

SENATOR CUDABACK: Thank you, Senator Foley. On with discussion. Senator Mines, followed by Senator Schrock.

SENATOR MINES: Question.

SENATOR CUDABACK: The question has been called. Do I see five hands? I do see a number of hands. The question before the body is, shall debate cease on the Foley amendment? All in favor vote aye; all those opposed vote nay. Voting on ceasing debate on AM1714 to LR 98. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 26 ayes, 1 nay, Mr. President, to cease debate.

SENATOR CUDABACK: Motion was successful. Debate does cease. Senator Foley, you're recognized to close on your amendment, AM1714, to LR 98.

SENATOR FOLEY: Thank you, Mr. President and members. I will take this to a vote. I sense from the discussion here that people would like to vote on this amendment. I don't know if it will be attached or not, but even if the amendment is attached, it does not preclude us from going back to the resolution and adding some additional language, something along the lines of what Senator Bourne has suggested to us, or even maybe going down the route that Senator Landis has offered to us, which I

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think is certainly worthy of discussion. We might wish that we could impeach Regent Hergert. We might wish we could do that. I don't believe we can and I...and again, you know I'm not an attorney, but the constitution does seem rather clear on this point. Says you can impeach for something that occurred while in office, and we know the facts of this case well enough to understand that whatever this man did, he did it prior to the assumption of office. So I think we ought to be honest enough to acknowledge that we cannot impeach him, as much as some might want to. We ought to take that out of the resolution. And then, if we want to proceed further with a resolution of censure, I'm willing to look at that, Senator Landis, if you want to work on something along those lines. Senator Bourne has offered us another route to take that's...I think that's worthy of our consideration. But let's at least be honest enough to acknowledge what the state constitution says very clearly, very clearly, that you can only impeach for crimes committed while in office. Senator Beutler has offered a constitutional amendment. I don't think there's been any votes on that yet at the committee level. I support the direction he wants to take us in that regard, I would vote for that, but we're not there yet. Hasn't been offered to us on the floor yet. State Supreme Court has litigated this matter. It's an old decision, I acknowledge, but that decision was never overturned and the finding was rather clear--you can only impeach for crimes committed while in office. So I think this amendment takes us forward. It takes the impeachment language out of the resolution. We can go back to that resolution and add back language. That's always an option available to us. So I'd ask you to vote favorably for AM1714. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Foley. You've heard the closing on the Foley amendment, AM1714. Senator Foley, for what purpose?

SENATOR FOLEY: Mr. President, I think we're a little light. Maybe we could call the house.

SENATOR CUDABACK: There's been a request for a call of the house. All in favor of the house going under call vote aye; those opposed vote nay. Record please, Mr. Clerk.

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CLERK: 37 ayes, 0 nays, Mr. President, to place the house under call.

SENATOR CUDABACK: The motion was successful. The house is under call. All unauthorized personnel please leave the floor. Unexcused senators...there aren't any unexcused, so all senators report to the Chamber, please. The house is under call. All senators please check in. The house is under call. All members are present. The question before the body is adoption of the Foley amendment, AM1714, to LR 98. All in favor vote aye; opposed vote nay. Voting on adoption of the Foley amendment to LR 98. Have you all voted on the question who care to? Have you all voted? Record please, Mr. Clerk.

CLERK: 20 ayes, 25 nays, Mr. President, on the amendment.

SENATOR CUDABACK: Amendment was not adopted. I do raise the call. Mr. Clerk, do you have any items first? Next motion.

CLERK: Mr. President, the next amendment I have...and, Senator Bourne, what I've done, pursuant to our...what I think was our discussion, is draft the amendment, so I've got a floor amendment now, if you're okay with that. You okay? So it's going to be FA324, Senator. That incorporates yours and Senator Stuhr's conversation. Senator Bourne would move to amend, Mr. President, with FA324. (Legislative Journal page 1897.)

SENATOR BOURNE: Thank you, Mr. President.

SENATOR CUDABACK: Senator Bourne, to open.

SENATOR BOURNE: Thank you, Mr. President, members. This is along the lines of what Senator Foley and I discussed, but then Senator Stuhr came over to me and she wanted the Executive Board to have the option of whether or not to hire a special counsel, and that seems to make sense. But then I also said let's add a "shall" so that the Executive Board may hire special counsel but shall finance whatever investigation is necessary. And so that is a comprehensive amendment that's Senator Stuhr's and mine, and I'm going to tell you exactly what it does. We had a lot of

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conversation here today about whether or not this individual can be impeached or can't. Should he be censured or not? I don't know. But the point is, is that I think that this is a significant enough of an issue that we should at least investigate it. So if my amendment is adopted, what would happen is we would issue a resolution that sets forth the allegations of what the individual did wrong. It would ask the regent to resign his seat. It would call upon the Governor to fill the vacated seat, pursuant to statute. It would call for a special election, to be held in conjunction with the general election, to fill the vacated seat. But then we'd add this language here, this floor amendment, and it would say that if Mr. Hergert fails to resign within 60 days of receiving notice of this resolution, the Exec Board of the Legislative Council shall meet forthwith and appoint a special committee of the Legislature to consider and recommend legislative options. So I took out the language that says...talked of impeachment and simply says to consider and recommend legislative options. The Executive Board may hire special counsel and shall finance whatever investigation is necessary to aid the special committee in reaching a proper determination. The special committee shall render its recommendations to the Exec Board by January of 2006. So that's what my amendment does. It simply takes away the impeachment language and gives the special committee room or flexibility to discover or look at other options. As I'm listening to the discussion, I, you know, you can hear the passion. People are interested, people are concerned about this, and I, quite honestly, I don't know how we got here, but I think we have an obligation to make sure we don't get here again, and I think looking into it helps prevent this in the future. I would urge your adoption of the floor amendment. Senator Stuhr, I appreciate your help on this. If you have any questions, I'd be glad to answer them. With that, I'd yield the remainder of my time to Senator Chambers.

SENATOR CUDABACK: Senator Chambers, about 8, 32.

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Bourne. Members of the Legislature, this is indeed what could be called a compromise. Those people who feared the word "impeachment" no longer have that fear. The fact that this

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matter has such a high public profile makes it one that the Legislature cannot ignore. There is no way the Legislature can do that. I'm aware of the pressure, through e-mails and other means, that has been brought to bear on some of our members. It goes along with Mr. Hergert, himself, hiring a lobbyist and a lawyer. When a person is under what he or she considers an attack, he or she will do whatever is possible to stave it off. So Mr. Hergert is free to do whatever...I started to say within the law, it should be within the law...available to try to pull his chestnuts out of the fire. We as a Legislature must take some action. Even those who talked in favor of Senator Foley's amendment did not disregard or find fault with the request from the Legislature that Mr. Hergert resign. If he does not do that, after the 60-day period elapses the Legislature will not be in a position to do anything, even through the Executive Board, until we reconvene in January. All this resolution is intended to do and which it will do is to lay out a process. There are steps, discrete, distinct, I know that's redundant, steps that are to be taken and the sequence in which they are to be taken. No one of those steps alone, nor all of them taken cumulatively, will constitute a course of conduct that is irresponsible. The Legislature is behaving prudently. If option one, which is under the exclusive control of Mr. Hergert, does not pan out, namely, he refuses to resign, then there is another step that will be triggered--a response by the Legislature, acting through the Executive Board, which has received explicit authorization and guidance from this resolution. The resolution imposes on the Executive Board the responsibility to appoint a special committee composed of members of the body. That committee, if it decides to, may hire special counsel or assistance, but it is not mandated that it do so. It is given that prerogative. But if it does so, the cost will be borne...will be assumed. That was not a pun intended. Whatever its conclusions are, relative to the options that are practical for the Legislature to take, will be reported first to the Executive Board. Then the Executive Board will decide whether to refer something to the Legislature. Whatever in the way of action would ultimately be recommended by the Executive Board, after these other steps have been taken, would require a vote of at least 25 of the members. So neither the Executive Board nor the special committee that would be appointed is given

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leeway to run off without any restriction or guidance. The Legislature will make the ultimate decision as to whether anything else is done. Adoption of this resolution, with Senator Bourne's amendment, will do nothing other than tell Mr. Hergert that the Legislature says he should resign. That is the active ingredient. The other steps will follow if that step is not taken by Mr. Hergert. I support Senator Bourne's amendment with the provisos that Senator Stuhr added. I don't see where it goes that much contrary to what Senator Flood, Senator Foley and others talked about, but what Senator Foley's amendment would have done is to take away any alternatives or action that could be taken if Mr. Hergert refuses to resign. I believe this is a very reasonable, reasoned, and prudent approach. I support the amendment and I also will support the resolution. But I just have to make one other comment. When people talk about what the constitution says relative to impeachment, don't keep misquoting it by saying "while in office." The constitution does not say "while in office." It says "in office," and those words easily can embrace "in office or in connection with procuring the office." I had mentioned to Senator...how much time do I have, Mr. President?

SENATOR CUDABACK: About 2, 41.

SENATOR CHAMBERS: Thank you. I had mentioned to Senator Flood how the Nebraska Supreme Court created out of whole cloth a constitutional right in this state that was not found in the constitution. That principle or right is equal protection of the law. Nebraska's Constitution had no such explicit requirement, so the Nebraska Supreme Court declared that under the provisions of the constitution that deal with no special legislation being enacted, it was going to construe those words to have the same meaning as the words "equal protection of the law" or "under the law," such as would be found in the U.S. Constitution and other state constitutions. That's what the Supreme Court did by creating, through construction and interpretation of the constitution's language, because constitutions are meant to be general statements of principle. They provide elasticity and flexibility so that new circumstances could be considered. There was nothing that the founders and drafters of the constitution could have known about

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wine being sold by way of the Internet, but through construction and interpretation, the present U.S. Supreme Court was able to outlaw certain laws that state's had enacted which restricted that kind of activity. Now, the Nebraska Supreme Court has also said that where a right exists, even if the Legislature has not provided a remedy, the Supreme Court will fashion a remedy. All of these things are known...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...by those who study the law, who know the law, and are familiar with what courts have done ever since they have existed. There's an entire area of authority that courts have under the rubric of inherent powers. That means courts have arrogated to themselves the power and authority to do anything and everything necessary to carry out the functions of a court, whether they're found in the constitution or statutes, or not found there. So it would not be a stretch for the Nebraska Supreme Court to say that the words "in office" also include in connection with obtaining the office. That's all I'll say on that. I support Senator Bourne's amendment. And since I've had so much to say, I will also answer any questions anybody would like to put to me. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. You heard the opening on the Bourne amendment by Senator Bourne and Senator Chambers. On with discussion. There are 11 lights on. Senator Schrock, you're number one.

SENATOR SCHROCK: Mr. President, members of the Legislature, in the interest of time, this will be my last comments before I get to close on this resolution. I would thank Senator Bourne for bringing this amendment. It seems reasonable. It seems like a compromise. It...the main thrust of this amendment will leave LR 98 into place, and that is for asking Regent Hergert to resign. That was my mission when I started on this, was this body should send a clear message to this gentleman that he should resign from the Legislature. The part about leaving some options open I think is very, very good. It also means that we do have options. If the Foley amendment would have passed and it would have advanced as is, that means we have no teeth left.

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And maybe we don't have any teeth left, but we'd never find out. So I support the Bourne amendment. I will not discuss this until my option...till my opportunity to close on the main bill. Thank you, Senator Bourne.

SENATOR CUDABACK: Thank you, Senator Schrock. On with discussion. Senator Beutler, followed by Senator Howard.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I would go along with whatever the body says with regard to this amendment, but let me finish the argument with regard to the impeachment matter. Remember again that what the opposition to the resolution is asking you to adopt is a narrow interpretation of this language, "misdemeanor in office." Now, consider the implications of that language if you...if you require that to mean a misdemeanor committed while in office. First of all, harkening back to Senator Friend's amendment, you may recall that he put Drew Miller's name in the place of Hergert's name in terms of suggesting that Miller is subject to impeachment but Hergert is not. The theory was that Miller was subject to impeachment because, you see, he was an incumbent and in office at the time that the election for his second term took place. So if you give the law that interpretation, then an incumbent who runs for a second term is subject to impeachment because he's in office when he's running, and one who's not an incumbent is not subject because he's not in office when he's running, or she. So that's not an interpretation that should be adopted where it treats two different people differently, subjects them to the law or not subjects them to the law, because one is an incumbent and one is not. That's just an impossible interpretation of that law. Secondly, what if a felony is committed in December, before a person takes office in January? What if, in fact, he has stuffed the ballot box or rigged a computer and, while he was in office, he was convicted of that felony offense, or maybe some other kind of felony offense committed in December, before he was in office but not while in office? How do you get rid of him? You can't. You can't, under their interpretation, and that's another major flaw in adopting that interpretation of the constitution. Now there's another provision of the constitution that says you can't stand for office when you've been convicted of a felony, but it

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doesn't apply unless you switch...unless you stretch that language all over the place. So even though you can't run for an office when you've committed a felony, there's no way to get you out of an office if it's discovered that you committed a felony while in office. So the more logical language is to say "in office" means convicted of it while in office. That would be a more logical interpretation, and that's why I suggest to you that what the court would really do is make that kind of interpretation. Otherwise, the law has incongruities that are...that are just not acceptable to the people of the state. Thanks.

SENATOR CUDABACK: Thank you, Senator Beutler. Further discussion? Senator Howard, followed by Senator Brown.

SENATOR HOWARD: Thank you, Mr. President and members of the body. I'm new to this political world. I've been here 89 days. I come from social work. I come from an average neighborhood and a pretty common life. But when I decided to run for District 9, I learned about the A & D requirements and I respected those, and I learned the time frames and I respected those. We filed the reports. If we had a question, we knew who to call. And when I was elected, I was told that working as a case manager for Health and Human Services would be a conflict of interest, and I resigned. And what I'm saying is that I think the rules should be applied universally; that there should be respect for what's been established and for what people have worked hard to put into place to ensure our system. I thank Senator Schrock for bringing in this resolution. It's not easy to stand up. And I often think of what a constituent in my district has said. They said you need three things to be successful. You need energy, you need intelligence, and you need integrity. And if you don't have the first two...if you don't have the last, the first two will surely kill you. I thank you for bringing this in and I return my time to the Chair.

SENATOR CUDABACK: Thank you, Senator Howard. Further discussion? Senator Brown, followed by Senator Erdman.

SENATOR BROWN: Thank you, Mr. President. My sense is that we

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want to resolve this. My question is, are we going to resolve it in either voting for or against the Bourne amendment, or whether some action of censure which would be more definitive at this point in time is warranted? I would yield my time to Senator Landis. Thank you.

SENATOR CUDABACK: Senator Landis.

SENATOR LANDIS: Thank you, Senator Cudaback. I'm going to vote for the Bourne amendment. I will vote for LR 98, but I wonder if we actually need to do it because I think we're getting down the rabbit hole of legalisms as opposed to what is essentially a pretty clear picture of what's right and what's wrong. I wonder how much difference in time, effort and energy we will spend going down this path, although it's entirely legitimate, as compared to passing a resolution tomorrow in this body that said something like David Hergert should resign from the Board of Regents and we ask him to do so; that his actions and his inactions subverted the electoral process; that the fruits of his campaign, namely, his office holding, it tainted by dishonorable practices; that the Legislature condemns those actions, finds and declares that David Hergert's campaign practices dishonorably subverted the legitimate electoral process; and that the Nebraska Legislature censures David Hergert; that a copy of this resolution will be sent to Mr. Hergert, to the Governor, to the Attorney General, to the Historical Society where it will be kept in perpetuity, and to the secretary of the Board of Regents where it will be kept as a permanent record as long as those records are kept. I wonder if we will get a better result or clearer result than that. If we do, then let's go down the path, because I'll do it. I'll vote for the Bourne amendment and I'll vote for LR 98. I think it's entirely possible we will spend three months, some money, get into the interregnum between one session and another, have gotten to essentially this place, and then we'll wait till next session to pass something like the resolution I've just suggested to you. I'll do this. My guess is that we'll get to roughly the place that I just outlined, in which case we could do that tomorrow and speak with authority and clarity and proximity to the wrong, which we could do tomorrow if we wanted to.

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SENATOR CUDABACK: Thank you, Senator Landis. Further discussion? Senator Erdman, followed by Senator Smith.

SENATOR ERDMAN: Thank you, Mr. President. Members of the Legislature, it does appear that there is a movement toward some resolution, obviously, specifically the one before us. I find it interesting, and maybe I shouldn't, that there are arguments made to extend language that simply, by logic, cannot be done, but that's beside the point. Senator Chambers points out the example of the equal protection clause not being in our constitution, but the court found another segment of the constitution that enabled them to do that. I think it's completely different in this situation. There is no other section that you can point to that says, oh this, we can do this and we know that, so that's a more feasible approach. I don't think that's there, so I think Senator Flood's comments are still on point as far as the construction that would be done by the court to accomplish the goal. If the Bourne amendment gets adopted, the Legislature will go down this process and the Exec Board will decide whether or not we want to spend our time in the interim determining whether or not it's appropriate to do what I believe we already know our options are. We can do the Landis option, which is a censure motion, where we condemn you for the actions you take, those were wrong; we're there today. You can go down the impeachment, which takes quite a bit of searching and compiling and investigating and trying to determine intent and then trying to make the stretch that says we've compiled this but now we need to make the next step that says "in office" applies beyond in office. So that's that step. The third one is we do nothing. Those are the options before us. If you chose the third one, you still have the other options beside it. If LR 98 doesn't pass, you still have other options. They are criminal charges can still be filed. They are LR 182, if you read it, and I would encourage you to do that. LR 182 says that the Judiciary Committee should essentially do what's in the Bourne amendment. They should. Senator Beutler introduced the language. It specifically talks about analyzing what the constitution says in regards to extending that to those who are running in office. So we are doing something, and it didn't take a vote of the body to do

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that. The Judiciary Committee is going to expend their time, and now we're going to ask the Exec Board to do that as well. Maybe that's a good idea. If we hire special counsel, will we hire the Judiciary Committee special...or legal counsel to do it? Because they're going to be undertaking the same exact activity if the committee chooses to take it up. It's interesting. And I understand that there are going to be a few more speakers and then there will be a vote, but again, I think we step back and look at where we are. I think Senator Redfield is absolutely correct. There have been no standards set. We are setting precedent, we flat-out are. We are choosing in this situation, not in a confinement of impeachment but in a confinement of we disapprove, we didn't have the insight to ensure that the law had the proper penalty to ensure the right assessment, we're going to do it now. Little uneasy about that, but I am willing to see what the body wants to do, knowing that we have other options. And to those that would say we don't have any other options, simply not true. And to those that would say that we can construct something in the constitution to accomplish a goal based on other states or other statutorily crafted challenges, again, is not reality. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Erdman. Senator Smith, followed by Senator Landis.

SENATOR SMITH: Thank you, Mr. President and members. Again, I appreciate what Senator Landis is offering...or, I don't know if he's going to offer it officially, but what he is suggesting. I'm afraid we are looking for more and we won't be able to find it, but we can spend a lot of money in the meantime. We can bring some resolution to this, perhaps, in some form. Does that mean any form? Seriously, I don't know. This is serious business when the Legislature attempts to overturn an election or even suggests that, and I understand that. I want to do the right thing. But we also have to realize the bigger picture and so far the rationale that I've heard is difficult for me to sort out on, you know, the amount of the fines therefor or the type of violations therefor. I'm a bit conflicted. But I would like to see Senator Landis perhaps issue his amendment on the censure so that we can move on. Thank you, Mr. President.

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SENATOR CUDABACK: Thank you, Senator Smith. Senator Landis.
Senator Landis.

SENATOR LANDIS: Question.

SENATOR CUDABACK: The question has been called. Do I see five hands? I do see five hands. The question before the body is, shall debate cease on the Bourne amendment, FA324? All in favor vote aye; all those opposed vote nay. Voting on ceasing debate on the Bourne amendment, FA324. Record please, Mr. Clerk.

CLERK: 30 ayes, 1 nay, Mr. President, to cease debate.

SENATOR CUDABACK: The motion was successful. Debate does cease. Senator Bourne, you're recognized to close on FA324 to LR 98.

SENATOR BOURNE: Thank you, Mr. President. Members, again, my amendment eliminates the language calling for impeachment and allows the Executive Board of the Legislature to appoint a special committee to consider and recommend all legislative options. The Executive Board may hire special counsel, but will finance whatever investigation is necessary. With that, I guess Senator Chambers feels it's been too quiet this afternoon and he's asked me to yield the remainder of his time. Hopefully, he won't mess this up for me. But in all seriousness, I would urge your adoption of this amendment. I think it's a fair compromise. It makes sense. I think it makes...I think it sends a message to other people who might do this in the future that the Legislature is going to treat this seriously and look into it. With that, I'd urge your adoption of this amendment. I'd yield the remainder of my closing to Senator Chambers.

SENATOR CUDABACK: Senator Chambers, about 4 minutes.

SENATOR CHAMBERS: Thank you, Mr. President. And I especially thank Senator Bourne for that ringing endorsement and the confidence he expressed in me. (Laughter) But I want this time just to explain one point, which I'm sure is evident to everybody, but I want it to be in the forefront of our mind. If

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we reject Senator Bourne's amendment, the resolution remains as it was originally drafted with the reference to impeachment. I think the vote on Senator Foley's motion or amendment indicated the sense of the body that the resolution should be adopted. We should adopt Senator Bourne's amendment if you want to do away with the reference to impeachment. That was the only point that I wanted to make. And thank you, Senator Bourne. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator. You heard the closing on FA324 by Senator Bourne and Senator Chambers. The question before the body is, shall that amendment be adopted to LR 98? All in favor vote aye; all those opposed vote nay. Voting on adoption of the Bourne amendment to LR 98. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 33 ayes, 2 nays, Mr. President, on the adoption of Senator Bourne's amendment.

SENATOR CUDABACK: The Bourne amendment has been adopted.

CLERK: I have no further amendments at this time, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Back to discussion, adoption of LR 98 itself. There are three lights on. Senator Flood, yours is number one. Senator Flood waives close...or waives speaking, rather. Senator Beutler. Senator Beutler waives speaking. Any further discussion, adoption of LR 98? Seeing no lights on, the Chair recognizes Senator Schrock to close on LR 98.

SENATOR SCHROCK: Mr. President, members of the Legislature, I want to thank everyone for their involvement this afternoon and for those who have helped with LR 98. I'm not going to name names, but you know who you are. I think this is an important afternoon we've had, it's an important discussion. I do not know where the path leads, but I know that our campaign finance laws have been terribly violated and I think it's time for us to speak, and I think the shape that LR 98 is in is an appropriate way for us to speak. And I, from the bottom of my heart, I

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thank everybody for the discussion this afternoon. Thank you.

SENATOR CUDABACK: Thank you, Senator Schrock. You've heard the closing on adoption of LR 98. The question before the body is, shall LR 98 be adopted? All in favor of the motion vote aye; those opposed, nay. Voting on adoption of LR 98, and this will require 25 votes, at the request of a senator. Have you all voted who care to? Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 31 ayes, 0 nays, Mr. President, on the adoption of LR 98.

SENATOR CUDABACK: LR 98 has been adopted. Mr. Clerk, do you have any...we now go to the last item on the agenda, LR 223.

CLERK: Mr. President, LR 223, offered by Senator Pederson, Don Pederson, found on page 1633, authorizes, pursuant to 85-408, the Legislature approving the plans for renovation of existing Harper-Schramm-Smith dining services facility and approve the plan for a multiyear parking lot improvement project at Wayne State College.

SENATOR CUDABACK: Senator Pederson, you're recognized to open on LR 223.

SENATOR D. PEDERSON: Thank you, Mr. President. Members of the Legislature, I know you've been anxiously waiting for this resolution, primarily because it's the last thing on the agenda today. But I would like to first clarify that it's described in the agenda that this is to approve the issuance of revenue bonds for renovation, and that's not quite accurate. The revenue bonds had previously been issued. This is simply a matter dealing with excess funds from revenue bonds, both at the university and at the state college level. The process is the revenue bonds are issued and then the bills from those revenue bonds are applied, and after that there may be additional revenue available from fees and also from principal and interest on the outstanding revenue bonds. Well, that's what's happened in this case. There is money available in both of these...both of these situations, so we have a combined resolution for both

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the university system and the state college system. And what this calls for is that under our statutes we require that any expenditure of \$250,000 or more from revenue bond surpluses must be presented to the Coordinating Commission for Higher Education. The Coordinating Commission then reviews the request of the various bodies that are involved and, after that, if they approve, which they did in this case, it's submitted to the Legislature, in this case to the Appropriations Committee. It was presented to the Appropriations Committee and that committee approved the expenditure of these funds. The first one for the...that the regents were proposing was to improve and renovate the dining facilities at Harper-Schramm-Smith residence complex, and it's involving many changes there involving \$6,525,000. And it reconfigures the dining area, and improves the building heating, ventilating and air-conditioning system, and many other improvements which I don't think you want to hear about. The third one is the trustees of the state colleges have proposed a multiyear parking facility at Wayne State College and it's estimated this project will cost \$1,140,000. So there's more detail in connection with that, but it will provide for 200 additional parking stalls. The Coordinating Commission has approved this, the Appropriations Committee has approved this, and under our law it's required that we present it to you for your consideration. I might add that this does not involve any new funds by the Legislature. What this involves is the expenditure of funds by the various bodies, the Board of Regents and the trustees of the state college. And also, in case you had a question, this does not...it is not a situation where funds not expended would come back to the Legislature. It's, by the revenue bonds, it must be used on appropriate process such as this, and it's been approved by all of the parties involved, and I would ask for your approval of this resolution. Did anyone notice I've finished? (Laugh)

SENATOR CUDABACK: Mr. Clerk, an announcement, please.

CLERK: Mr. President, Education Committee will meet briefly underneath the north balcony right now. Thank you.

SENATOR CUDABACK: Discussion on the Pederson...? Seeing no lights on, Senator Pederson, you're recognized to close.

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SENATOR D. PEDERSON: I will waive closing and ask that the various...I don't know if there are 25 people still in their chairs, but I would ask that we have a vote on this issue and request that you approve what we have already approved ourselves through the various committees. Thank you.

SENATOR CUDABACK: Thank you, Senator Pederson. You've heard the closing on LR 223. The question before the body is, shall that amendment be adopted? All in favor vote aye; opposed, nay. Have you all voted who care to? Record please, Madam Clerk...or Mr. Clerk, whoever.

CLERK: 31 ayes, 0 nays, Mr. President, on the adoption of LR 223.

SENATOR CUDABACK: The amendment...the LR has been adopted. Mr. Clerk, do you have items for the record?

CLERK: I do, Mr. President. New resolution, LR 243, offered by Mines...Senator Mines and others; that will be laid over. And, Mr. President, name adds: Senator Thompson to add her name to LB 605...actually, Senator Cudaback to add his name to LB 605, and Senator Heidemann to LR 135. (Legislative Journal pages 1898-1899.)

Mr. President, a priority motion.

SENATOR CUDABACK: Mr. Clerk.

CLERK: Senator Janssen would move to adjourn until Friday morning, June 3, at 9:00 a.m.

SENATOR CUDABACK: Heard the motion to adjourn till Friday morning at 9:00 a.m. All in favor say aye. Opposed, nay. The ayes have it. We are adjourned.

Proofed by: J. Hurlbut