

January 29, 1991 LB 125

constitutional doctrine. It might be Brown v. Board of Education, or whatever, that makes that kind of a law unconstitutional and it might be possible that the first prosecution after that time might be subject to the kind of challenge that is contemplated in LB 125. Under that situation, I don't think the court should necessarily award damages. The Legislature might well have been acting in good faith and have passed at the time a constitutional act. It is, to me, most egregious when we know in the face of constitutional doctrine that what we do is suspect or even unlikely to be unconstitutional. Those are the situations when I think it would be most appropriate for the court to award damages. And let me conclude my remarks by recalling to you a phrase I once heard on this floor. Peter Hoagland, in attacking one of Pat Venditte's bills on the floor, raised the specter that it was unconstitutional, dropped a Supreme Court case on all of our desks and said, look, it is patently unconstitutional. Pat stood up and said, Peter, when are you going to stop hiding behind the U.S. Constitution? Well, we should all be hiding behind the U.S. Constitution in that standard and that should be a measure by which we do our business. That is why I think LB 125 makes good sense and I yield Senator Kristensen his time back.

SPEAKER BAACK: Senator Kristensen.

SENATOR KRISTENSEN: Thank you. How much time do I have?

SPEAKER BAACK: Three minutes.

SENATOR KRISTENSEN: Thank you. Senator Elmer, could I ask you a few questions, just to put some of this into the record, please?

SPEAKER BAACK: Senator Elmer.

SENATOR ELMER: Certainly, Senator Kristensen.

SENATOR KRISTENSEN: Now, is it your intent that, when a bill is found unconstitutional by the Nebraska Supreme Court, that one person is doing the appealing, in other words it is not a number of defendants?

SENATOR ELMER: You're talking something like a class action?