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FLOOR DEBATE

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ask Senator Synowiecki if he wants to ask me a few questions, because he and I just had a conversation off the mike, that he hasn't been in here, and has been in an Exec Session of some kind. So Senator Synowiecki, would you like to use my time to do that?

SENATOR SYNOWIECKI: Very much so. Senator Schimek, I appreciate that. And as you indicated, I've been off the floor, attending a Retirement Committee Executive Session. I support LB 53. I had myself put forward constitutional amendments for this body to consider, relative to reinstating a felon's right to vote. Senator Schimek, however, I do have a question relative to current language. And it concerns the authority of the court to set aside a conviction, page 2 of the committee amendment, beginning in line 6. While this is all outlined, Senator Schimek, on what duties are assigned the judiciary relative to setting aside a conviction, it is my understanding that case law, current case law in the criminal courts, has found that the authority to set aside a conviction rests solely with the executive branch, and not the judicial branch, and thus, in a sense, throws out these provisions in our state statute. I would be interested to know if that is your understanding as well, Senator Schimek, relative, again, to the authority of the court to set aside convictions.

SENATOR SCHIMEK: Senator, there is a court case, State v. Spady, which I will be happy to share with you to look at between now and Select File. But I believe we're okay on this.

SENATOR SYNOWIECKI: I believe...and I'm trying to think back to my old probation days...it was a Phillips case, State v. Phillips, which indicated that the authority to set aside a conviction rests exclusively with the executive branch. And the purpose for me bringing this up, Senator Schimek, so you understand, is, I would like, if we can, while this bill is going through the legislative process, I would be interested in attempting to do, if we can do it, in reinstating the prerogative of the courts and the discretion of the courts to go ahead and set aside convictions for those cases in which an individual was convicted for a relatively low classification of a felony, excels during the probation period, pays full amounts