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# Common Cause Nebraska

NEWSLETTER / SEPTEMBER 2005

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## CFLA Under Attack Again An Understanding Calls for Action

In the first session of the 99th Legislature, Senator Chris Beutler's LB188 was a final try to strengthen the Campaign Finance Limitation Act (CFLA). Near the end of the session, with the bill still in committee, "An Understanding" was signed by Senator DiAnna Schimek, Chair of the Government Committee, Senator Beutler and Senator Brashear.



*Chris Beutler*

### The Understanding

- The senators agreed that LB188 would advance to general file. It will be scheduled for debate by the Speaker in January of 2006, and for a final reading vote not later than mid-February.
- Senator Beutler will be allowed one amendment "to put the bill in the best possible shape from the perspective of the proponents of the bill." No "unfriendly" motions or amendments will be supported by Brashear or Schimek.
- Following this, and following the same procedure, Senator Brashear will present one amendment to totally repeal the CFLA.
- Then "regardless of whether Senator Brashear's repeal amendment passes", LB188 will advance immediately to select file.
- The same process will be followed on select file.
- **On final reading there will be an up or down vote on LB188.**

The Campaign Finance Limitation Act is Senator Beutler's law. It was sponsored by him, and he has fought both to keep and to improve it for years.

- Senator Brashear has fought the CFLA from its inception. In 2001 alone, he: filed an injunction to keep a candidate from receiving matching funds, which the court denied;
- introduced a bill to repeal the law, which died in committee;
- filed a suit to declare the CFLA unconstitutional, later withdrawn.

And on and on. He has, of course, refused to support any bill which would tighten and improve the law.

*(continued on page 2)*

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*The Salvation of the State is Watchfulness in the Citizen*

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**COMMON  
CAUSE  
NEBRASKA  
BOARD OF  
GOVERNORS**

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**...An Understanding Calls for Action by CCNE**

*(continued from page 1)*

Common Cause Nebraska will be working with the same coalition of 13 grass-roots organizations which stopped Senator Brashear's bill to kill the CFLA in the 98th Legislature. CCNE has met with Senator Beutler, the League of Women Voters and the Nebraska Appleseed Center for Justice to formulate plans to pass LB188 and stop Brashear once last time.

**We will need everyone's help.  
You'll hear much more from us.**

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***This Law Works!***



*Sen. Kermit Brashear*

The CFLA is meant to provide a fair playing field for candidates. All candidates, rich or poor, can afford to run for state office.

**Nebraska can be proud of its record.** Look anywhere, in any state, and see how campaign spending has escalated in the last several years.

**Yet, in Nebraska, in five elections since 1996**

- **NO SENATOR HAS EXCEEDED THE \$73,000 SPENDING LIMIT.** Not all senators have signed the document, but none has spent more than the limit. Only three state races since 1996 have triggered public funds and two of those races were for the office of Regent. Speaker Brashear has been legal counsel for both Regent Ferlic and Regent Hergert when they triggered the public funds.
- **THE PLEDGE IS VOLUNTARY.** Any state candidate can decide not to sign and may pledge above the limit
- **NO TAX MONEY IS INVOLVED.** The public money which can be claimed (and has been claimed only twice, neither time in legislative races) comes from NADC fine money, now including Hergert's \$33,000.

## The CFLA Is Unique

The Nebraska Campaign Finance Limitation Act (CFLA) is unique among states: it does not limit **donations** to candidates; it limits candidate **spending**. The courts have not found voluntary spending limits in violation of the First Amendment. Donations are more difficult to limit and to trace than is campaign spending; *the McCain-Feingold bill and resulting 527s are the 2004 example*.

The CFLA was passed in 1991 and has covered every legislative campaign since 1996. Costs for legislative races, **which were exceeding \$100,000**, had begun to discourage those interested in running.

Senator Beutler, recognizing the need to tighten and update the law, has previously made several attempts in the legislature to strengthen it, but the bills had never made it out of committee.

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## A Refresher Course in Rules

**Is the law too complex and hard to follow? Somehow senators through five general elections have found their way and stayed within the rules.**

- The campaign spending limit for University of Nebraska Regent, Secretary of State, Treasurer, Attorney General, Auditor of Public Accounts, and the Nebraska School Board is \$50,000, \$25,000 each for primary and general elections.  
**LB188 provides for raising limits in all future races to allow for inflation.**
- Limits for legislature are \$73,000, \$36,500 for primary and general elections. Limits for race for governor have been waived by the legislature.
- An opponent **who refuses to sign the document**, and estimates spending over the limit, triggers public funds after spending 40% of the estimate.  
*For example: a candidate estimates expenditures of \$100,000. After spending \$40,000, the candidate must file with the NADC. At this time the opponent may apply for public funds.*

At present, if a non-signing candidate estimates spending \$400,000, as, for example, Regent Hawkes did, by the time 40% of the estimate has been spent it maybe too late in the campaign for the opponent to claim public money. **In LB188 a candidate who spends over the limit will immediately trigger public funds.**

- But to ensure validity of the candidacy, the legislative candidate who has signed must raise and spend \$18,250 before being eligible for public funds; other state offices must raise and spend \$12,500.
- All campaign contributions must meet set reporting dates; if payment is overdue, a fine is assessed. Public funds accrue from fines collected by the Accountability and Disclosure Commission. (Regent Hergert was fined \$33,512. This fine is now a part of the public fund.)

# We've Said It Before. We Say It Again: Dave Hergert Should Resign

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Dave Hergert

On April 30, a resolution signed by 29 senators asked Dave Hergert to resign from the University of Nebraska Board of Regents within 60 days or face impeachment. The 60 days passed and he once again refused to resign.

Hergert paid a \$33,512 civil penalty for breaking four campaign finance laws in the 2004 election. He still faces a criminal investigation by the Nebraska attorney general's office. If that office finds that Hergert intentionally broke the campaign finance laws to keep his opponent, Don Blank, from receiving campaign finance funds, he will face a felony charge.

Hergert's excuse for not filing the affidavit of campaign expenditure within the time required was that he had sent it but "it must have been lost in the mail." Some writers to the editors of the Omaha World Herald and the Lincoln Journal Star have excused this loss, saying that a big, busy, business man like Hergert could easily lose a letter on his desk, or fail to remember the dates required for reporting.

**The Nebraska Accountability and Disclosure Commission does not play "gotcha". After Hergert, and any candidate, form an election committee, they receive a brochure explaining all the rules to**

**follow and the dates that must be met.**

In addition to this, **Hergert received five letters from the NADC** during the campaign reminding him of reports that he had failed to file. Hergert estimated general election expenditure of \$40,000. He spent over \$87,923. An affidavit should have been filed on October 19 when spending reached 40% over the estimate. The affidavit, not notarized, was faxed to the NADC on November 9. The election was November 2.

**Of course, Hergert's affidavit was "lost in the mail" and Don Blank never received the matching funds due him. With those funds he could very possibly have counteracted Hergert's negative ads that blanketed the press and TV in the week before the election.**

### **Legislative Committee Formed**

On Monday, August 2, senators formed the committee that will recommend what, if any, action should be taken against Hergert.

**Committee members are Senators Vickie McDonald, Ernie Chambers, Chris Beutler, Pat Bourne, Nancy Thompson, DiAnna Schimek, Pat Engel, Mike Flood, Ed Schrock, Tom Baker and LeRoy Louden.**

Impeachment has been called into question because of two words in

the Nebraska Constitution: "in office". The constitution says that all state officers shall be liable for impeachment for any misdemeanor in office.

Can Hergert be impeached for laws he broke before taking office?

Senator Ernie Chambers says yes. In a letter to the *Lincoln Journal Star* he wrote, "It borders on the absurd to acknowledge that an official can be impeached for conduct during a term of office as well as a preceding term, but contend the impeachment is unavailable for repetitive violations in connection with procuring the office."

A legal brief written by Chambers to give to the senators, argues that impeachment is constitutional.

Other senators disagree. Senator Phil Erdman of Bayard, a constituent of Hergert's, and a member of the Executive Committee, believes not.

Another possibility is censure, an official reprimand which shows disapproval—and little else. It carries no legal weight. Some senators call it a cop-out, but it will surely enter the executive council debate.

Whatever the decision of the committee, a final decision must wait for the legislature to convene in January 2006.

## Student Senate Has Courage to Act

The UNL Student Senate isn't waiting: at an August 31 meeting they voted unanimously to accept a resolution asking for Regent Hergert's resignation. In the Lincoln Journal Star, Matt Schaefer, writer of the resolution said, "A lot of people expressed very deep concerns ethically about what it says when you cheat and win."

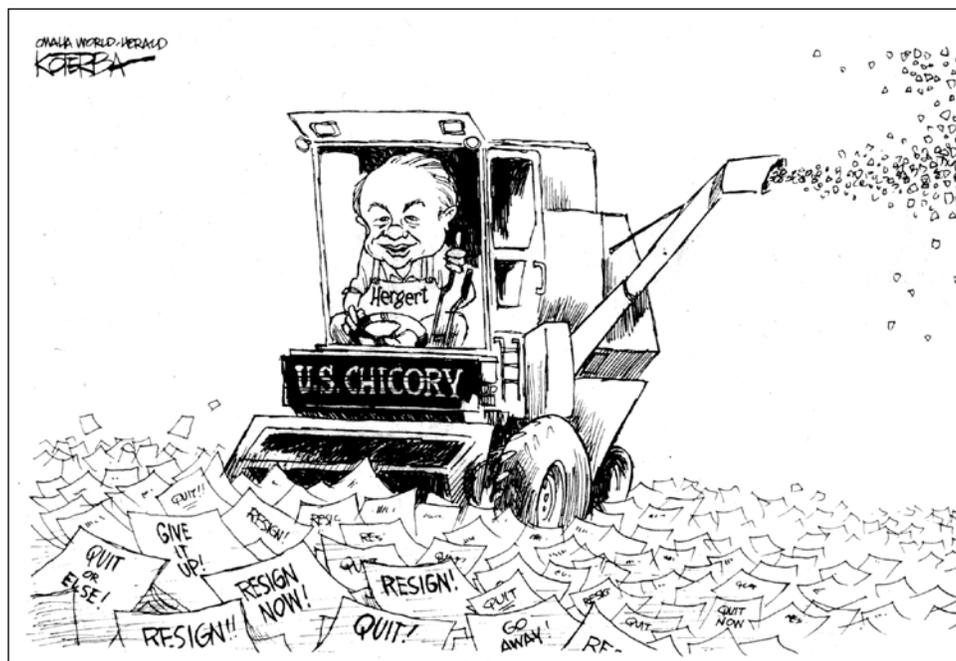
Schaefer will read the resolution at the Regent's meeting September 16.

But the combined faculty senates of Lincoln, Omaha, Kearney and the Medical center are divided and will not

agree to a resolution. The UNL Faculty Senate will vote on a resolution "expressing concern", said Mary Beck, president of the senate. It will not vote for Hergert's resignation, as Beck personally had hoped.

Apparently the students consider the ethical standards that the university expects them to uphold as being of more importance than does the body of professors who are their teachers. A frightening thought.

## "Hergert's Firm Dealt Setback in Court" World Herald headline August 25, 2005



A federal jury in Omaha dealt the setback, ruling that Hergert's U.S. Chicory plant owes \$465,693 to Simco, a Minnesota company which does industrial construction. Simco said it was not fully paid for work it had done.

The answering artist is Jeff Koterba, long-time political cartoonist for the *World Herald*.

*From the Nebraska Municipal Review*

## Of All States with Term Limits, Nebraska Is Hardest Hit

*By Dick Herman,*

*Retired Lincoln Journal Editorial Page Editor and CCNE Board Member*

Do Nebraskans, as a general population, truly have any comprehensive idea of how legislative term limits will bring changes—some obvious, other subtle—in their state government starting next year? Is it going to be a casual crap-shoot for most? Frankly, do they give a hoot anyway? Does it do any good to provide the majority with warning labels on bottles?

Not really, is my pessimistic judgment. For well into the 21st century, Nebraskans are now simply going to have to play out the ill-considered consequences of the big electoral mistake of the 2000 election. Of course, the assessment that the term limits vote was a big error in democratic self-government is the author's.

The March issue of the Nebraska Municipal Review had several excellent takes on term limits. Lynn Marienau, communications director of the League of Nebraska Municipalities, talked at length with the five senior lawmakers on the effects of term limits. Their responses seemed to carry a saddened tone of resignation; not for personal, but for institutional reasons. It was mature, adult reportage.

League Executive Director Lynn Rex contributed an on-spot analysis, too. She is clearly correct there henceforth will be a "profound loss of institutional memory." She's also onto something that term limits will transfer power--the ability to do things--away from the Unicameral Chamber, thus weakening the Peoples' House. Maybe that aforesaid majority of citizens don't and won't care, except when their particular issues get pinched or blunted in years to come.

Well, for all the good work of Marienau and Rex, they were pretty much preaching to the choir in their organizational magazine. Those who need to get alarmed about what's ahead are not in the League's membership or normal audience.

And, as I say, it's too late in the day for alarm bells.

The wave of popular enthusiasm for legislative term limits crested 15 years ago. Nebraska in 2000 was the last

state to saddle its constitution with term limit restriction. The kinds of personalities and boat loads of money pushing term limits moved on, mostly now perhaps part of the tide behind what today is called Red State Might.

But of all the states whose legislatures are locked by term limits, Nebraska is the hardest hit. That's because only Nebraska has a unicameral system. Experienced representatives term-limited in Ohio or Florida, for instance, can still run for reelection after eight concluding years. They can do so in the Senates of those states and serve a further eight years. The termination of the office is not personal, as it uniquely is in this unfortunate state.

Nobody remembers what the political power relationships were in Lincoln when Nebraska had its final partisan bicameral legislature nearly 80 years ago. At that time, the governor had two-year terms, as did previous legislators. But the governor by virtue of being the supreme executive and often commanding a partisan loyalty in either or both houses could be a mighty potent figure.

Gubernatorial clout was, to some real extent, moderated with the steady development of a nonpartisan unicameral of first 43 and then 49 members. It is the smallest of all American state legislatures, and, in theory, the most independent.

My memory as a newspaper reporter is that of several past Nebraska governors having difficult days with state Senators, even those of their own political persuasion. Frank Morrison was often treated rudely. J.J. Exon's service as governor includes the modern record of veto overrides.

What will happen in time to come when legislators looking at the mandated end of their service are tested by an activist partisan governor with big program goals? He or she may be tough to buck. And this says nothing about lobbyists who have no curb at all on the length of their service, lobbyists who do have institutional memory.

## Guess Who is in the Search for New Senators?

To paraphrase Dick Herman: Lobbyists have no curb at all on the length of their service. Lobbyists do have institutional memory.

They are already hard at work, as are special interest groups, finding new candidates for the legislature.

An August 29 *World Herald* headline reports, "Groups are beating the bushes for candidates to fill the 20 vacancies created by the term-limited Nebraska legislators."

The Nebraska Chamber of Commerce and Industry, the Nebraska Bankers Association, the Nebraska Farm Bureau, the Nebraska Rural Electrification Association, the Nebraska Trucking Association—all are looking, some even offering non-partisan candidate training schools.

Said Omaha lawyer James Brown, president of the Nebraska Association of Trial Lawyers, in the *World Herald*,

"There will be fewer senators who have previously worked

with us and our lobbyists. In addition, fewer senators will have the power that often comes with long-term incumbency...Although the identity and election of compatible senators is not the entire answer to the challenges of term limits, it surely is one of the important first steps."

**In the World Herald Vince Powers, a Democratic National Committee member says that he thinks it's critical to find strong candidates for the 2006 election.**

**"If you don't get a number of quality people, then the Legislature is going to be run by lobbyists, and I don't think that's a good idea. They're not elected, and they are not accountable to the general public."**

So plan now to check on the candidates who are running for the seat in your district. To whom will they be accountable if elected, to you or to special interest groups and their lobbyists?

## Right to Vote

**RESTORED**



Sen. DiAnna Schimek

Although Senator Schimek tried for a bill to restore voting rights to felons who had completed their terms and probation, her bills died in committee. LB53 restored to ex-felons who had completed their terms and probations the right to vote after two years. Now, how to let them know about the change in the law?

When she first ran for legislature, Senator Diana Schimek campaigned door-to-door. She was surprised to find the number of people who could not vote because they were ex-felons. The law required a ten year wait, then a request to appeal for rights before the Board of Pardons. The 3-person board, chaired by the governor, heard only a few cases a year. Following a pardon, a three year wait was still required before voting. Not surprisingly, while about 1000 people a year complete their terms, in 2003-2004, only 145 applied.

**Schimek's bills always died committee. This year LB53 went to general file and was passed by the legislature—only to be immediately vetoed by Governor Dave Heineman. Thirty votes are needed to override a veto. The legislature responded with a 36-11 override vote.**

### Now, How to Let People Know about the Law?

How to let people know about the change in the law and how to implement it?

After the legislative victory, the Nebraska Appleseed Center for Justice and the League of Women Voters applied for and received a grant from the William Brennan Center for Law to publish a brochure explaining the law and procedures for registration and voting. On July 27, representatives of the League of Women Voters, the Appleseed Center, and Jack Gould and Charlotte Manton from CCNE met with Senator Chris Beutler to discuss follow-up activities on LB53. A detailed plan for distribution of the brochures and other means of reaching those needing it will be decided at a September meeting.

# Common Cause: IN THE NEWS

## Hergert broke law, should be impeached

BY ERNIE CHAMBERS  
The writer, of Omaha, is a state senator representing Nebraska's District 11.

## Drive to oust Hergert reaches UNL campus

Student, faculty  
senators likely will  
endorse measures



against Hergert. That vote will come after Academic Senate President Mary Beck meets with the faculty of the three other campuses and urges them to...

## Group questions Brashear's role

The Omaha lawmaker says he's followed rules on potential conflicts of interest.

BY LESLIE REED  
AND MARTHA STODDARD  
WORLD-HERALD BUREAU

LINCOLN — Common Cause of Nebraska criticized Speaker Brashear Friday for a potential conflict of interest...

## Committee will consider action against Hergert

BY MATE JENKINS  
Lincoln Journal Star

The next phase of NU Regent David Hergert's battle with the state Legislature was set Monday, as senators formed a committee that will recommend what, if any, course of action to take against him.



The 11 senators will go to work, with a tentative January deadline.

The 11 senators — including a couple from the western Nebraska district Hergert represents — will begin their work shortly after Labor Day. Its goal is to release recommendations before the Legislature convenes in January.

"I think we have to look at everything on the table, including impeachment," said Sen. Vickie McDonald, a member of the committee formed by the Legislature's Executive Board.

Hergert broke four campaign finance laws on Monday, including receiving, according to the Legislature's Executive Board, at least \$15,000 and violating state officials, at least \$35,000 and up to \$63,000 in public campaign money. In addition, Hergert paid a \$33,512 civil penalty with the state Accountability and Transparency Commission, Hergert paid a \$33,512 civil penalty with the state Accountability and Transparency Commission, Hergert paid a \$33,512 civil penalty with the state Accountability and Transparency Commission, Hergert paid a \$33,512 civil penalty with the state Accountability and Transparency Commission.

See HERGERT, Page 2B

## Campaign money in spotlight

Spending may... issue in 2006

## Campaigns transform regents' races

Many are scrutinizing Brashear's ties to all three campaigns.

BY MATTHEW HANSEN  
Lincoln Journal Star

The last three men elected to the University of Nebraska's Board of Regents took strikingly similar paths to the boardroom at Varner Hall.

The trio spent nearly \$1 million combined to unseat incumbents, collectively transforming regents' races into high-profile political affairs.



# Keep Politics Out of Public Broadcasting

Of great concern to Common Cause is the intrusion of the federal government into the operations of the Corporation for Public Broadcasting. The original mission of CPB was to provide to the public programming of interest and concern that avoided bias in ideology and politics. We believe that PBS and NPR have remained true to this mission and have given us 50 years of fine broadcasting otherwise unavailable -- especially to children. And with no commercials.

CCNE is proud to support public radio (now NET) with a short announcement each Tuesday morning at 7:30 central and 6:30 mountain times. We are also heard on "Fresh Air", This is one way, really the only way we can let Nebraskans from one end of the state to the other know about us.

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## CC Fighting for Public Broadcasting; A Message from Chellie Pingree, President of Common Cause

**July 27, 2005:** Common Cause along with nine other public interest groups delivered a letter today to each member of the Corporation for Public Broadcasting's board of directors and to new CPB President Patricia Harrison. The letter was signed by the Center for Creative Voices in Media, the Center for Digital Democracy, Chicago Media Action, Citizens for Independent Public Broadcasting, Common Cause, the Consumer Federation of America, Free Press, Media Alliance, Media Access Project and the National Hispanic Media Coalition.

The long list of ill conceived policy and staffing decisions by CPB Chairman Kenneth Tomlinson makes clear that the CPB is failing in its duty to protect the editorial independence of public broadcasting and shield it from partisan influences. The letter calls for increased openness and transparency in the way the CPB board operates and conducts its meetings. It specifically asks for the board to vote on resolutions at its next meeting that would:

- Prohibit board members from approving any contracts without the full knowledge and consent of the board, and make those contracts public;
- Require that any time the CBP studies public broadcasting programming, it must first notify and get the consent of PBS, NPR or the appropriate public broadcasting entity it intends to examine;
- Make its quarterly meetings public via real-time online, video, audio and other communications and release online its directors' conflict-of-interest statements; and
- Permit the public to address the board at its open meetings.

Common Cause and its partners will be requesting meetings with each member of the CPB in the next few weeks to urge their support of the resolution.

# Common Cause Nebraska

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THE NEWSLETTER OF **Common Cause Nebraska**

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# Join Us!

We are looking for people to join Common Cause Nebraska who value ethics in government. Now in our 35th year, we will continue in our nonpartisan, nonprofit and completely volunteer way to work for good government – and the good life – in Nebraska and nationally.

Common Cause Nebraska  
7221 South Street, Suite 17  
Lincoln, NE 68506  
(402) 489-6902

*Questions, comments:*  
Charlotte Manton, Editor

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Enclosed are my dues for:

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