**For Release Wednesday, October 18, 2023**

**Capitol View**

**Commentary by J.L. Schmidt**

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**Attorney General Fighting Laws He Supported as A Senator**

Attorney General Mike Hilgers is now fighting prison reform measures he supported not too long ago as a state senator.

That’s politics. In the Attorney General 's office. Imagine that!

Not hard to believe if you've been paying attention. The last AG walked in lockstep with the governor as did the guy before him, and ...

Let's not forget Don Stenberg, the AG who wanted to be anything else, mostly US Senator (he took a shot and failed a couple times) and finally wound up as State Treasurer before "retiring" from public service. I'd liken Hilgers, a successful private practice attorney before he became a senator, to Stenberg. He has higher political aspirations.

As Sen. Danielle Conrad said, Hilgers is an activist in an office that needs an attorney.

He's against provisions of the prison reform measures but has offered no real alternatives or constructive criticism so far. His office said he couldn’t comment on pending litigation.

Conrad, a Lincoln Democrat now serving her third term after a term-limited hiatus, said Nebraskans deserve an explanation about why the attorney general was OK with such legislation while in the Legislature but is attacking the laws now.

“That’s politics at its worst,” Conrad said and it “challenges the credibility” of the Attorney General’s Office when it is involved in negotiating legislation. By the way, there hasn’t been a Democrat attorney general since 1950.

Conrad said that next session she will seek more oversight over the budget of the attorney general who seems more interested in pursuing “culture war” issues like abortion and student debt than in protecting Nebraska consumers and pursuing cold cases. She told the Nebraska Examiner that Hilgers is pursuing a radical political agenda that’s at odds with how he voted in the Legislature.

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Senator Justin Wayne of Omaha, a Democrat who chairs the Judiciary Committee, said it all boils down to an effort to justify building a $366 million new state prison. The facility will replace the aging Nebraska State Penitentiary and simply replace those beds without creating room to ease the nation’s worst prison overcrowding situation.

Wayne introduced the two laws that Hilgers is challenging in court. He said if his “deferred judgment” law of 2019 is ruled unconstitutional, he would move to eliminate drug- and other problem-solving courts — which provide a similar second chance for some convictions — because they would also be constitutionally suspect. The process, in some form, is now used in at least 47 states, including neighboring Iowa and Colorado, allowing mostly first-time offenders a second chance to wipe a felony off their record, if they behave.

The other law Hilgers is attacking (LB50) makes numerous changes to sentencing laws and could ultimately impact the overcrowding problem. Wayne and Conrad have been among advocates of adopting alternatives to incarceration for some lower-level criminal offenses. The legislators, as well as a prison consultant, have projected that if nothing is done to decrease the flow of inmates into state prisons, Nebraska will have to build a second new prison in a few years.

Wayne said he’ll introduce bills to eliminate both the State Parole Board — which decides if inmates should be released early on parole supervision — and the State Board of Pardons, which decides if those convicted of crimes should win an official forgiveness after living crime-free lives.

Wayne told the Nebraska Examiner that the Parole Board “isn’t doing its job” in paroling inmates. He added that he feels there’s an “inherent conflict” when the attorney general — the state’s top prosecutor and a member of the Board of Pardons — sits in judgment over those seeking a pardon for a criminal conviction.

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It’s time to stop playing politics and get down to the business of solving problems. The old law and order, lock ‘em up and throw away the key, mentality must change. It’s not working.

Let’s cooperate and get creative. Nebraskans deserve as much.

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*J.L. Schmidt has been covering Nebraska government and politics since 1979. He has been a registered Independent for more than 20 years.*