

prosecutions, in some instances, or in some other instances legislators, or persons who are enacting ordinances. I cannot see that it accomplishes either goal. In the case of a prosecution under an unconstitutional law, it isn't the county attorney or the county that the county attorney is working for that bears the cost of the prosecution, or the defense costs, it is the state. And the state had no stake in the decision that was made by the county attorney. It seems to me also that the legislators, who are responsible for the passing of an unconstitutional law, might no longer be present once the court finally determines that it is unconstitutional and reverses a conviction. It cannot serve any legitimate deterrent as I imagine it is intended to. The other aspect of it is that I cannot distinguish between someone who is found not guilty, because the statute that they were prosecuted under is declared unconstitutional, and simply those people who are found not guilty by reason of a lack of evidence. Both have been subjected to the weight and force of the state. They have both borne significant costs. I cannot see making any distinction between those two cases. I do not believe the bill should be passed.

SPEAKER BAACK: Next we have Senator Elmer.

SENATOR ELMER: Thank you, Mr. Speaker and members. Just some brief comments about some of the debate that's gone on. There's been doubt cast on how this would be passed, how these claims could be paid, if the state were the entity found to have passed an unconstitutional law. It would be paid through the current state claims process and would have to be approved by this body. And the purpose, the basic purpose of this remains this foundational thing, that an individual citizen of this state, no matter what his condition, whether he be poor or not, if he is prosecuted in a criminal case on a...because of a statute or an ordinance that's been passed that is patently unconstitutional and declared to be so, and the case has been appealed on the basis of the constitutionality, may, if they choose, apply to be compensated for their legal fees. And the Supreme Court, at its own discretion, may award some legal fees and may decide to what degree. It's for the protection of our citizens along with a tempering effect for us to be very responsible. As far as a city or a municipal ordinance, I doubt very much if ordinances would be passed by a city that are not canopied and protected by a state ordinance. And I would ask for the advancement of LB 125.