

February 19, 1991

discuss the issues at hand this morning, we are guided by one overriding consideration; that is the oath that we took as a senator representing our constituents in the State of Nebraska. There are no "ands" or "ors" or "buts" in that oath. It just says solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Nebraska. We have read the words also in the Constitution that the Legislature this morning is sitting as a judge of the election returns, the elections, the returns, and qualifications of its members. There has been some reference made to the fact that we are, in fact, sitting as the court of law. I cannot in all simplicity agree with that, that our discretion is limited only to our findings on the principles of statutes relative to this question. If that were the case, there would be, in fact, no need for including in our Constitution, which, incidentally, is word for word the identical language found in our Article I that I just quoted, that the Legislature shall be the judge of the elections, returns, and qualifications of its members. It would have been much more expedient, I think, if the drafters of both the U.S. and our State Constitutions had simply prescribed that the legislative election contests should be resolved by the judiciary. That is not the case. I find it instructive that the Constitutional Convention of 1925 rejected a proposed amendment to do just that. Proposal 196 of that convention would have stated that the Legislature could submit an election contest to the judicial system and agree to abide by the court's decision. That was not incorporated in our Constitution. So here we are this morning considering on the basis, I believe, of strictly constitutional issues. As we look at that document, which is the people's document, the people, the voters, the franchise voters of the State of Nebraska, we do not find references made to privileges but we find much devotion given to rights. Starting in the Preamble, where they say we establish the following declaration of rights and frame of government, as the Constitution of our state. And in Article I, Section 22, "All elections shall be free; and there shall be no hindrance or impediment to the right..."

SPEAKER BAACK: One minute.

SENATOR L. JOHNSON:...of a qualified voter to exercise that elective franchise." In fact, I believe that a strictly legal judgment in this case based exclusively on either a strict or substantial compliance with the dictates of the absentee voting laws is not the only criteria we are required to follow. Yes,