

Nebraska State Legislature

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LB 441 Floor Debate – Monday, March 18, 2024

On March 24, 2023 the Judiciary Committee held a public hearing on Senator Joni Albrecht’s LB 441 to “Change provisions relating to obscenity”.

LB 441 advanced from Committee to General File debate on Friday, March 6, 2024.

An accusation of sexual harassment is one of the most significant accusations that can be made in our modern world. Look at the last decade for evidence of this. Even a false accusation—even if made just once—can be the death knell to somebody’s career and livelihood. While any accusation should be closely reviewed, it’s all the more true with sexual harassment.

In most instances of these accusations, one must rely on he-said, she-said claims, and are left depending on second-hand knowledge or circumstantial evidence. But here, the situation is different. There is evidence that was witnessed first-hand and is readily available for anybody to review. Instead of being swayed by after-the-fact interpretations, I want this committee to look closely at the evidence that is available, which I will recount in a chronological fashion. This information is sufficient for recognizing that I did not engage in sexual harassment of any Senator, least of all Senator Machaela Cavanaugh. This is self-evident from the public record, which includes my clear testimony and stated intentions.

Please take note that I took steps to avoid creating a hostile or intimidating or offensive environment by warning my colleagues and the public that the material I was about to read was graphic, the words being from testimony by a parent reading directly from obscene materials found in several of our Nebraska public schools.

The following is a timeline of portions of the floor debate for LB 441 on Monday, March 18th. The times provided are shown in the recording Nebraska Public Media provided. Also, I listed the pages referenced in the transcript.

- **0:01.28** – (Page 45 of Transcript of Floor Debate): Senator Dungan said, “But there is actually a very - - actually a very specific definition of obscene in our statutes as well as our case law. And so simply because books or videos or movies contain things in them that are perhaps sexual in nature, or perhaps adult in theme does not make them obscene. And I think that that’s an important delineation to keep in mind when we’re talking about this.” Additionally, “just because there is that adult material contained in the book does not make the entirety of that book obscene, nor does it make that entire piece an obscene material that would be in violation of the law if it’s distributed in the schools.” Senator Dungan’s comment struck me as a legalese justification for the salacious language found in some books made available to very young students in some Nebraska schools. His comment motivated me to call out Senator Dungan’s name when I read the transcript from Lucky.
- **0:51.16** – (Page 62 of Transcript of Floor Debate): Senator John Cavanaugh said, “Obscenity is not now allowed in schools”....and.... “But a lot of the conversation here is conflating what is obscene and what is something you don’t like. And the Constitution, the reason for this strict scrutiny - - scrutiny standard, the reason for this high threshold protection is because the Constitution protects not just your speech, but everyone else’s speech. And it protects speech that you find unfavorable, unpleasant, uncomfortable.”

Additionally, he gave his belief that there should be no limits on what written materials, no matter what the sexually graphic nature of the text is and no matter what the age of the reader is because any kind of limit would be infringing on the freedom of speech.

Senator John Cavanaugh’s comment struck me as ‘sanitizing’ the salacious language found in some books made available to very young students in some Nebraska schools. This comment motivated me to call out Senator Cavanaugh’s name when I read the transcript from Lucky, written by Alice Sebold.

- **0:56.03** – (Page 64 of Transcript of Floor Debate): Senator Michaela Cavanaugh stated, “I would say as a parent of school age children who go to public school, this not my experience in Omaha.....I’ve never had a moment’s concern about it being inappropriate or salacious at all. So I find it very incongruous to say we need to be putting into statute this type of enforcement.” My only comment towards Senator Machaela Cavanaugh’s floor comments happened **after** my reading from *Lucky*. My indirect comment to her was that “if it’s just one school that experiences this (books like Lucky), it’s one too many”.
- These statements by these three Senators occurred before I quoted from a transcription of a testifier at the Judiciary Committee Hearing on LB 441. This testimony quoted an obscene rape scene from the book “Lucky”. I was periodically calling out the names of these Senators in response to their earlier floor statements.....and, their lack of attention to the example of obscene materials available to some Nebraskan children in some of our schools. Their statements gave the impression that there is no evidence of these salacious books in Nebraska schools and that there is no need to address inappropriate books containing salacious language exposed to children at an inappropriate age.
- All three noted Senators were not listening to the graphic language that our school children are exposed to....so I called out their names to get their attention.
- **01:07.0** – I began my reading from the book “Lucky” to demonstrate that there are obscene books provided to some children in some of our Nebraska Public Schools.
- **01:07.55** – (Page 68 of Transcript of Floor Debate): I first mentioned “Senators_u Cavanaugh_s (I used the plural) in this context...”the language in this book (Lucky) was found in 16 school libraries, 5 of those books in accelerated reader course, Senators_u Cavanaugh.” Note that I used the plural...both Senator Cavanaugh_s (from Transcript of Floor debate – page 68). I was not focusing on Machaela Cavanaugh. This was not sexual harassment — it was me doing my job to make sure those who were dismissive of obscenity of the book a parent testifier read from at the committee hearing.

- **01:08.36** – The second time I mentioned “Senator Cavanaugh, the video recording clearly shows I was looking straight ahead at Senator John Cavanaugh, who sits four rows directly in front of me on the floor. I did not use Senator Machaela Cavanaugh. I was not visually focusing on Senator Machaela Cavanaugh. This was not harassment or sexual harassment — my focus was straight ahead, not purposed to intimidate, but to make sure naysayers knew what material they were defending.
- **01:09.0** – The third time I mentioned “Senator Cavanaugh”, my comment was again directed at Senator John Cavanaugh in response to his earlier statement regarding “conflating what is obscene vs. what you don’t like”. This was not harassment—it was me doing my job—representing my constituents by responding to earlier comments that we were conflating that was obscene with what I don’t like.
- **1:09:36** – The fourth time I mentioned “Senator Cavanaugh” – again, my eyes were looking forward to Senator John Cavanaugh....seeking him to pay attention to the graphic, obscene reading that is in fact in too many Nebraska schools. I did not look at Senator Machaela Cavanaugh. This was not sexual harassment of any kind! This was me doing the job I have been elected to do—defending what is best for my constituents and best for children and aggressively attempting to make certain colleagues listen to what I was saying.
- **1:10.02** – The fifth time I referenced Senator Cavanaugh and Senator Dungan – I did not address Senator Machaela Cavanaugh. My comment was addressing the “lawyerly” comments previously made on the floor from these two male Senators who are lawyers. Senator Machaela Cavanaugh is not a lawyer – so these comments were not addressing her. *This was not sexual harassment.*

On March 19th, I received a “Confidential Letter” from Senator Aguilar, Chair of the Executive Board of the Legislative Council, announcing that he had filed a formal workplace harassment complaint against me and had appointed a committee to investigate this unfortunate incident. This committee, by policy, will hire an outside investigator to also look into this event. The findings will be used to determine the appropriate consequences for the actions taken on the floor of the Unicameral.

This “formal workplace harassment complaint” has now been superseded by a Resolution filed by Senator Machaela Cavanaugh...LR 335 Censure and condemn Senator Steve Halloran for his conduct toward other members of the Legislature. Apparently, the Committee will not be hiring an outside (objective) investigator to look into this event.

If I am guilty of anything, it is of working zealously to protect Nebraska’s children, exercising my First Amendment Right of Free Speech in debate on the Legislative floor. Though I sought to make certain of my colleagues listening and hearing the truth, nothing that I said or did was intended to be, nor was it, workplace or sexual harassment.

Thank you for allowing me to defend my character and my rights.