

State v. Ebke

Case Number

S-18-0795

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May 21, 2019

Court Number

Lancaster

Case Location

Lincoln

Case Summary

S-18-0795 State of Nebraska ex rel., Douglas J. Peterson, Attorney General, and Scott Frakes, Director of the Nebraska Department of Correctional Services v. Senator Laura Ebke, Chairperson of the Judiciary Committee of the Nebraska Legislature, Senator Dan Watermeier, Senator Ernie Chambers, Senator Roy Baker, Senator Matt Hansen, Senator Bob Krist, Senator Adam Morfeld, Senator Patty Pansing Brooks, Senator Steve Halloran, Senator Kate Bolz, Senator Sue Crawford, Senator Dan Hughes, Senator John Kuehn, Senator Tyson Larson, Senator John McCollister, Senator Jim Scheer, and Patrick J. O'Donnell, Clerk of the Nebraska Legislature (Appellants)

Lancaster County District Court, Honorable Lori Maret

Attorneys: Douglas J. Peterson, Ryan S. Post, James D. Smith, & David A. Lopez (Attorney General's Office) --- William M. Connolly & Patrick R. Guinan (Erickson | Sederstrom, P.C.) (Appellants)

Civil: Legislative subpoena; motion to quash; immunity; Speech or Debate Clause; Separation of Powers Clause; jurisdiction

Proceedings Below: The district court issued an order quashing the subpoena issued by Judiciary Committee to compel Director Frakes to appear before the Committee to testify about the execution protocol.

Issues: The district court erred in 1) not finding that the Members are absolutely immune from litigation under Nebraska's Speech or Debate Clause, 2) not finding that Neb. Rev. Stat. § 50-406, on its face, violates the Nebraska Constitution's Speech or Debate and Separation of Powers Clauses, 3) not finding that Neb. Rev. Stat. § 50-406, as applied to Legislative subpoenas, violates the Nebraska Constitution's Speech or Debate and Separation of Powers Clauses, 4) not finding that the Attorney General lacked standing or capacity to sue the Members and O'Donnell, 5) not dismissing Appellees' Complaint, 6) finding that the Judiciary Committee was not "discharging a duty imposed by the Legislative Council, by statute or by resolution of the Legislature", 7) not finding that the Judiciary Committee had jurisdiction to investigate, hold hearings, and issue subpoenas independent of Neb. Rev. Stat. § 50-406, and 8) in granting Frakes' Motion to Quash.
