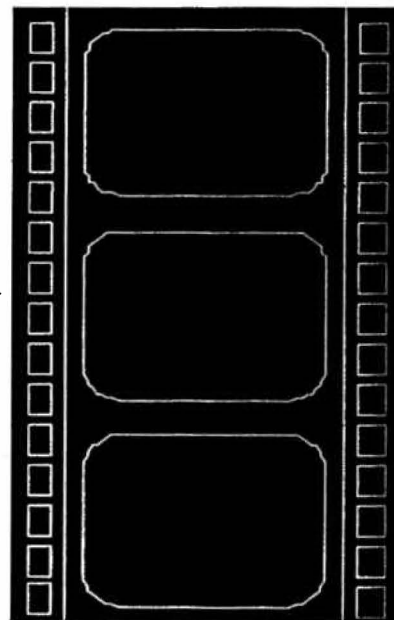
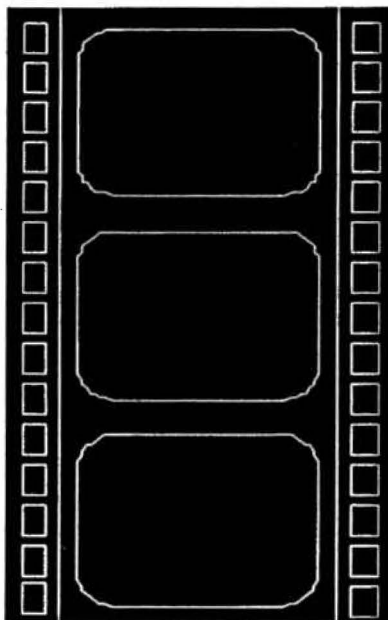
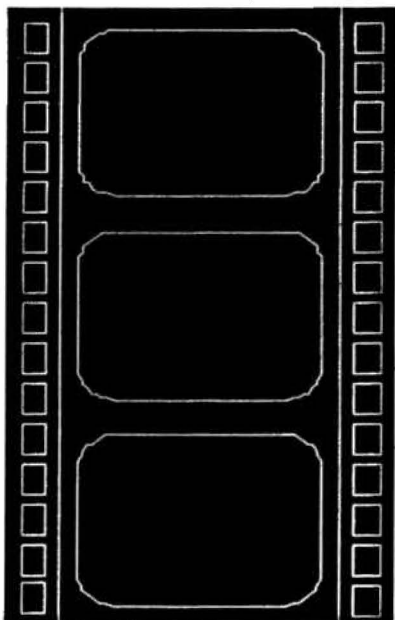


SUPPLEMENTAL MATERIAL

A.B. 300



STATE OF NEVADA  
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING  
CAPITOL COMPLEX  
CARSON CITY, NEVADA 89710



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March 7, 1977

Assemblyman John M. Vergiels  
Chairman of the Committee on Education  
3966 Visby Lane  
Las Vegas, Nevada 89109

LCO 44

Constitutionality of A.B.  
300 on voluntary, silent  
prayer in public schools

Dear Mr. Vergiels:

You have requested an opinion upon the constitutionality of Assembly Bill No. 300, whose substantive provision reads in its entirety:

Every school district shall set aside a silent period for voluntary individual prayers by pupils at the beginning of each school day.

This opinion is premised upon the interpretation that the bill as written requires every person present to be silent, teacher and pupils alike.

The first constitutional provision which must be considered is Nev. Art. 11, §9, which reads:

No sectarian instruction shall be imparted or tolerated in any school or University that may be established under this Constitution.

"Sectarian" means "of or pertaining to a sect \* \* \* especially of a religious nature." This was the sense in which it was

Assemblyman John M. Vergiels  
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used in the constitution, as shown in MARSH, NEVADA  
CONSTITUTIONAL DEBATES AND PROCEEDINGS, page 661:

If the people of a neighborhood, made up largely  
of one particular religious element, desire to  
establish a school of their own denomination, \* \* \*  
[t]hat would not be a public school.

See also State ex rel. Nevada Orphan Asylum v. Hallock, 16  
Nev. 373 (1882), construing Nev. Art. 11, §10. This is con-  
sistent with Nev. Art. 1, §4, which reads in relevant part:

The free exercise and enjoyment of religious  
profession and worship without discrimination  
or preference shall forever be allowed in this  
State \* \* \*.

Neither provision forbids or implies any disapproval of prayer  
as such, and neither has ever been so construed in a reported  
opinion.

Next to be examined is the First Amendment to the United  
States Constitution, which has been construed to be applicable  
to the states through the Fourteenth Amendment. The First  
Amendment provides, in relevant part:

Congress shall make no law respecting an estab-  
lishment of religion, or prohibiting the free  
exercise thereof \* \* \*.

A period of silence during which each pupil may inwardly pray  
in his own way or refrain from praying altogether does not  
"establish" any one form of religion, or prefer "religion"  
over the absence of religion; and it certainly does not "pro-  
hibit" or inhibit "the free exercise" of religion. In School  
District of Abington Township v. Schempp, 374 U.S. 203 (1963),  
the Supreme Court held unconstitutional a Pennsylvania statute

Assemblyman John M. Vergiels

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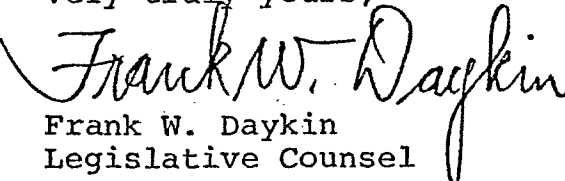
which required the reading aloud of verses from the Bible, and a Maryland statute which required such reading or the recitation aloud of the Lord's Prayer. The statutes provided that a pupil could be excused upon request. Mr. Justice Brennan, concurring in the result, discussed the effect of this provision at length on pages 287-293 of the official report. He concluded that by requiring the positive request and by setting the excused pupil aside from his fellows, the statute "subjects [the nonparticipating pupil] to a religious stigma."

A.B. 300 was carefully drawn to avoid this problem. The pupil who chooses not to pray during the period of silence cannot be distinguished from those who do pray, for all must observe the same silence. Indeed, at page 281 the concurring opinion suggests that "the observance of a moment of reverent silence" does not jeopardize "either the religious liberties of any members of the community or the proper degree of separation between the spheres of religion and government." It is therefore my opinion that A.B. 300 is constitutional.

Another member of the bar, seeking a basis upon which to mount a rebuttal of this argument, has contended that the bill could be read to require only the teacher to be silent, while permitting pupils to pray aloud. This construction could be foreclosed by amending A.B. 300 to read:

Every school district shall set aside a period at the beginning of each school day, during which all persons present must be silent, for voluntary individual prayers by pupils.

Very truly yours,

  
Frank W. Daykin  
Legislative Counsel

FWD:jll

## School Prayer Proponent Seeks Support in Isles

Sam Cavnar, chairman of Project Prayer, is in Honolulu to start a national campaign to have prayer restored to public schools.

"We believe the Supreme Court will uphold us this time," he said.

"We are encouraging schools, school boards, individual teachers and state legislatures to reinstitute voluntary school prayer at once," he said.

Cavnar will leave today to tour the Neighbor Islands before traveling to the Mainland.

## 'Silent Minute' in Schools OK'd

PHILADELPHIA (AP) — The Philadelphia Board of Education has voted to require the city's public schools to provide pupils an opportunity to begin the day with the Pledge of Allegiance and a minute of silent meditation.

Pupils could abstain from participating, however, for religious or other personal reasons.

# School prayer battle reopened

Ralph de Toledano



WASHINGTON — The vote by a majority of the House of Representatives to end Supreme Court-imposed prohibitions on prayer in the public schools reopens an old battle.

Already, the New York Times has begun to thunder that it is "a move to undermine rather than to amend the Constitution" and argues with hypocritical concern that prayer in the schools will only "politicize" religion.

Those who have brought this country to the point where the mention of God in public institutions is considered un-American will rally round their slogans and muster their considerable forces to prevent a return to what in the past never subverted our way of life.

Some of this is maneuver for political advantage.

Traditionally, liberalism has been anti-clerical and anti-religious.

So the Liberal Establishment sees votes and contributions in attacking a school prayer amendment to the Constitution.

• • •

It will also appeal to the younger generation of voters — or so it is believed — though as young men and women start their families, they look with new eyes on the importance of religion in bringing up children.

As the battle develops, all the hoary clichés about separation of church and state will be wheeled out and used to frighten the uninformed into believing that school prayer is the first step to-

ward an official religion.

Opponents of the amendment will wrap themselves in the Constitution and invoke the memory of the Founding Fathers. But what, precisely, does the Constitution say about religion? And what did the Founding Fathers mean?

The First Amendment states flatly that "Congress shall make no law respecting an establishment of religion." No more, no less. This meant simply that no particular religion could be established as the official church of the United States — a reference to the Established Church of England, supported by the state and playing a significant role in its political affairs.

It was not an anti-God clause in the Constitution. After all, the Declaration of Independence had cited God and God's law in asserting the "unalienable rights" which authorized the break with England.

The Founding Fathers, moreover, saw the prohibition on the establishment of religion as applying solely to the federal government. The states were never bound by it, and this was made clear. In point of fact, Maryland — one of the states which ratified the Constitution and the Bill of Rights — had an established church and continued to sustain it for years afterward.

• • •

The Founding Fathers saw nothing wrong in this. It was a state prerogative and in no way conflicted with the federal government's powers and rights. Like education, religion was within the purview of the states, brooking no interference by a central authority.

This situation continued to obtain until the Supreme Court, inexorably broadening the reach of the federal government into areas not constitutionally sanctioned, ruled that the utterance of a prayer in celebration of God and God's

law was violative of the First Amendment.

As in its seizure of the educational process, it found reasons for its action outside the law and legal precedent. There was no referendum of the people, no demand by the states for the ban of school prayer. The nine justices had no constituency except themselves. In a sense it was a usurpation of power that belonged to the people alone.

The verity of that observation can be established by looking back at the people's reaction. A solid majority of the American people at the time were troubled by the Supreme Court's decision against school prayer and a movement sprang up to reverse it.

The House of Representatives would not have given its legislative backing to a school prayer amendment were this not so. This is why the opponents of school prayer are so troubled by this latest development.

• • •

But it can be asked: Why the passion of the opposition to school prayer? Do those who oppose it really believe that it will be the opening wedge to an established religion in the United States? The multiplicity of religious association in this country would bar it even without the constitutional ban.

Or do they believe that there is something inherently pernicious about allowing a child to address himself to the Creator at the start of the school day? By and large, religion has served to enhance freedom in this country, and its efforts against rendering in Caesar the things that are Caesar's have been frustrated or eroded with the passing of the years.

Perhaps they fear that a society which looks to God for guidance may reject the man-oriented and materialistic precepts of what passes for our contemporary culture.

# Prayers in classrooms by 1976?

By JANICE WOLF  
Advertiser Religion Writer

Can prayers be returned to the classrooms of Hawaii?

If Sam Cavnar, chairman of Project Prayer, has his way, voluntary prayers and Bible reading will be back in public schools throughout America by the 1976 Bicentennial celebration.

"Total freedom of religion and speech as set forth by our founding fathers cannot be a reality on the 200th anniversary of our nation's birth until the right to say or not to say a voluntary prayer

in our public schools is restored to our children," Cavnar said.

Cavnar is in the Islands this week to confer with community and religious leaders and to drum up local support for Project Prayer.

**THE GROUP** pins its hopes on a bill introduced in September by Sen. Jesse Helms of North Carolina that would nullify the 1962-1963 Supreme Court decisions banning Bible reading and prayers in public schools.

"The Supreme Court has for all intents and purposes outlawed reli-

gion in schools," Cavnar said. "We violently oppose a forced religion but, as it stands now, children are forced not to participate."

Cavnar said the Helms bill would prevent the courts from making any decisions concerning prayer in public schools and would return that power to the local communities.

**CAVNAR SAID** the Helms bill would require a simple majority for passage and would not have to be ratified by the state

legislatures.

"Three years ago we lost our effort in Congress to get an amendment passed to allow voluntary prayers in public schools," he said, adding that constitutional amendments require two-thirds majority votes.

Cavnar said the 1971 amendment fight — led by then Congressman Gerald Ford — failed by 14 votes.

**HE SAID A** number of congressmen already

have pledged support for the bill and he expects full cooperation from the President.

Cavnar predicted passage of the Helms bill no later than July 4, 1976, but said it could

## Douglas Quits High Court

WASHINGTON—Justice William O. Douglas resigned from the Supreme Court Wednesday on the advice of his doctors, ending a judicial career unprecedented in American history, both for its length and productivity.

The 77-year-old justice, who had



PEANUTS  
Schulz

## Some School Prayers OKd

Children could pray in New Hampshire's public schools if the local school districts approve, and Connecticut pupils would have a chance to meditate silently at the beginning of each day under bills passed Thursday by the state legisla-

the court said prayer in public schools violated the Constitution's First Amendment provision for separation of church and state. Connecticut's meditation proposal is tied to a bill which would prohibit penalties against state college and university students missing religious holidays.

Opponents' objections led a House-Senate compromise committee to substitute word meditation for the prayer.

But supporters of the measure said the New Hampshire legislature could enact any law it chooses. "I could care less whether the Supreme Court thinks this bill is unlawful," said Sen. Robert B. Monier, R-Cot-

The New Hampshire Senate overwhelmingly approved a bill to permit the voluntary recitation of the Lord's Prayer and the Pledge of Allegiance in public elementary schools at the option of local school districts.

Originally the meditation amendment said teachers would be required to set aside their time for students to say a silent prayer of their choice.

"Meditation can be anything you want it to be. It can be prayer, it can be just thought," said Rep. Nicholas Motto, D-Hartford, as he introduced the bill.

Ironically, in New Hampshire, opponents had main-

The bill, which earlier had won approval in the House, was sent to Gov. Meldrim Thomson, who is expected to sign it.

Other Mattox amendments to allow prayer at sporting events and to prevent teachers from being fired for not praying failed.

"If the teacher says they should be quiet, they should be quiet," Lumbo said. "We'll have gone too far if we allow the teacher to extend leadership."

On Monday, the House voted 112 to 24 in favor of the bill after being assured by its sponsor, Rep. Anthony Polunbo of Houston, that it was not a "religious bill."

The Connecticut measure, which the House passed 88 to 56, was sent to Gov. Ella Grasso who said she will sign it. The Senate approved the bill 28-6 Wednesday.

Mattox succeeded, however, in attaching an amendment to prevent children from being disciplined if they do not join the prayer.

Dallas Rep. Jim Mattox was concerned about how voluntary the "brief period of silent prayer or meditation" would be. "What if the children don't want to get quiet and meditate?" Mattox asked. "Will you force it on them?"

Representative is expected to give rapid approval today to a bill permitting voluntary silent prayer in Texas public schools, despite objections of some members that the law is unnecessary and subject to court challenge.

## School Prayer May Go Back to Courts

Lord's Prayer. The practices were held to violate the first 10 words in the Bill of Rights. "Congress shall make no law respecting an establishment of religion."

Since then, there have been many developments. One was a federal court in Texas last year, in a case

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PAT BOONE  
NAT'L CHRM.

School prayer faces vote  
Texas House expected to approve bill

By SARALEE TIEDE  
Times Herald Austin Bureau

House of