Members Present:

Chairman Hayes
Vice Chairman Stewart
Mr. Banner
Mr. Brady
Mr. Coulter
Mr. Fielding
Mr. Horn
Mr. Malone
Mr. Polish
Mr. Prengaman
Mr. Sena

Members Absent:

None

Guests Present:

Peggy Cavnar	Assemblyman
Sam Cavnar	
D. W. Foster	Nevada National Bank
David Hagen	Nevada National Bank
F. DeArmond Sharp	Security National Bank
Don Walcom	Security National Bank

Chairman Hayes called the meeting to order at 8:32 a.m.

SENATE BILL 262

Specifies certain rights and liabilities of lessor and lessee upon termination or expiration of lease of motor vehicle.

Mr. Sharp said that this bill deals primarily with vehicle leases. He said leasing is becoming a very popular way for people to acquire automobiles as an alternate to buying them.

Mr. Sharp said that in 1976, Congress passed the Truth in Leasing Act which only applies to consumer leasing contracts. He said the bill was brought about because of the differences involved in leasing a vehicle or buying it on a conditional sales contract. He outlined several of those differences.

Mr. Sharp said that the problem arose when the Nevada Supreme Court decided in a 1978 case of Nevada National Bank v. Huff that upon analysis of the lease agreement considered in that case, it would appear to be nothing more than a sales contract with the traditional down payment held until the end of the contract period. He said that if this decision was followed by the Internal Revenue Service, it could cause substantial tax problems for those involved in the leasing business. He said that if there are no changes in the law, companies

presently involved in leasing probably would not do any more of this business.

Mr. Sharp said that the attempt in this bill had been to define in NRS 262 what a vehicle lease actually is. He said that when parties enter into a lease contract, they should be able to know that it is a lease, and not a conditional sale. He said it was hoped that passage of this bill would undo the damage done in the NNB v. Huff case.

Mr. Sharp said that the Senate Judiciary Committee had amended the bill to add several sections dealing with commercial leases of vehicles. These amendments would require for commercial leases the same provisions now required by Federal law for consumer leases.

Mr. Walcom said that most states had defined the open-end lease in their law. He said that Nevada had not, and this is part of what caused the problem in the Huff case. He said the original intent of the bill was to define what this type of lease transaction was so that it could be written in the law.

ASSEMBLY JOINT RESOLUTION 27

> Urges Congress to exclude United States Supreme Court from jurisdiction to review certain cases involving prayers in public schools.

Mr. and Mrs. Cavnar distributed information to the Committee concerning the Helms Amendment being considered by the United States Congress (Exhibit A).

Chairman Hayes stated that she had talked to a constitutional attorney about this resolution. She said that his opinion was that this would create a "Frankenstein." He said that the action to limit the purview of the Supreme Court should be taken before an issue has already been decided by them. She said that his suggestion was to go the route of the constitutional amendment whereby individual states could make their own rules regarding prayers in public schools.

Mr. Cavnar stated that the Committee had received several differing opinions on this issue. He said that this was not setting a precedent. He said that there is a saying in the courts today that "If Congress did not give it to us, we do not have it; and what Congress gives, Congress can take away." He said that the constitutional amendment process has already been tried in Congress, and it failed in the House of Representatives by about 14 votes. He said there have been cases in the courts since the 1962 decision of the Supreme Court, and as long as the 1962 decision was allowed to stand, these lower court decisions will probably never reach the Supreme Court.

Mr. Cavnar said that the Constitution is very clear when it states that the reason for freedom of religion is that basically they were trying to prevent a national religion like the Church of England. He said that many states at that time had state churches.

Mrs. Cavnar further stated that it seemed foolish to ask Congress to submit a constitutional amendment concerning prayer when the Constitution says that Congress shall make no law in regard to religion.

Chairman Hayes presented a proposed amendment to A.J.R. 27 which would ask Congress to submit a constitutional amendment to the states on this issue.

Mr. Stewart stated that to reach the same end, the Helms Amendment could be used as could a constitutional amendment.

Mr. Stewart moved to amend the resolution to the nature of Amendment No. 1235, and Do Pass as Amended; Mr. Sena seconded the motion. The Committee approved the motion on the following vote:

Aye - Hayes, Stewart, Brady, Coulter, Horn, Malone, Polish, Sena - 8.
Nay - Fielding, Prengaman - 2.
Absent - Banner - 1.

The meeting was adjourned at 9:53 a.m.

Respectfully submitted,

Carl R. Ruthstrom Jr.

Carl R. Ruthstrom, Jr.
Secretary

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ANDREW P. GROSE, *Research Director* (702) 885-5637

May 19, 1979

TO: Assemblyman Peggy Cavnar

FROM: J. Kenneth Creighton, Research Analyst JKC

SUBJECT: Helms Amendment

Enclosed are sections 1253, 1254 and 1257 of Chapter 81 of Title 28, United States Code (jurisdiction of the Supreme Court).

The Helms Amendment would simply limit the Supreme Court's jurisdiction with respect to voluntary prayer in public schools and public buildings (new § 1259). The court's jurisdiction would not be limited with respect to sections 1253, 1254 and 1257. In addition, a new section (new § 1364) would be added to Chapter 85 of Title 28, United States Code, limiting the jurisdiction of federal district courts in accordance with § 1259.

For additional information about district court cases regarding voluntary prayer in public schools, I suggest you contact the legal division because of the complexity of legal research on cases below the Supreme Court level.

If I can be of any further assistance to you on this matter, please let me know.

JKC/llp
Enc.

UP AMENDMENT NO. 69

(Purpose: To restore the right of voluntary prayer in public schools)

Mr. HELMS. Mr. President, I have an unprinted amendment which I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated. The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an unprinted amendment numbered 69.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following:

TITLE VII—VOLUNTARY PRAYER IN PUBLIC SCHOOLS

SEC. 701. (a) Chapter 81 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1259. Appellate jurisdiction; limitations

"(a) Notwithstanding the provision of sections 1253, 1254, and 1257 of this chapter the Supreme Court shall not have jurisdiction to review, by appeal, writ of certiorari, or otherwise, any case arising out of any State statute, ordinance, rule, regulation, or any part thereof, or arising out of any Act interpreting, applying, or enforcing a State statute, ordinance, rule, or regulation, which relates to voluntary prayers in public schools and public buildings.".

(b) The section analysis at the beginning of chapter 81 of such title 28 is amended by adding at the end thereof the following new item:

"1259. Appellate jurisdiction; limitations.".

SEC. 702. (a) Chapter 85 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1364. Limitations on jurisdiction

"Notwithstanding any other provision of law, the district courts shall not have jurisdiction of any case or controversy which the Supreme Court does not have jurisdiction to review under section 1259 of this title.".

(b) The section analysis at the beginning of chapter 85 of such title 28 is amended by adding at the end thereof the following new item:

"1364. Limitations on jurisdiction.".

SEC. 703. The amendments made by the first two sections of this Act shall take effect on the date of the enactment of this Act, except that such amendments shall not apply with respect to any case which, on such date of enactment, was pending in any court of the United States.

Mr. HELMS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HELMS. Is there a time limitation equally divided on this amendment?

The PRESIDING OFFICER. The Senator is correct.

Mr. HELMS. I thank the Chair.

Mr. President, this morning as we joined with the Chaplain of the Senate, Dr. Elson, in prayer, as we do each day the Senate is in session, I could not avoid the irony that while we in the Senate begin our day's activities by asking God's blessing on our efforts, the Supreme Court has effectively denied this same right and privilege to millions of schoolchildren across this Nation.

Mr. President, one would think that if the legislators of this country are entitled to ask for divine blessing upon their work, then so are schoolchildren. However, the Court has ruled to the contrary and in so doing has overturned more than 200 years of American custom. Indeed, the Supreme Court has even ruled that schoolchildren may not read the prayer of the House or Senate Chaplain as printed in the CONGRESSIONAL RECORD as a beginning to their school day.

Mr. President, the interpretation of the first amendment used by the Supreme Court to strike down this practice of the American people, distorted the intent and language of the first amendment. The Justices of the Court held that a voluntary, nondenominational prayer constituted a violation of the "establishment of religion" clause of the first amendment. The Court's interpretation of the first amendment indicated not only what must be interpreted as an animosity toward the effect of religion in the public life of our Nation, but also a misunderstanding of its historic role.

In February, the Senate once again assembled to listen to George Washington's Farewell Address. Washington brought the unique experiences of his service as first President of the United States, as Commander of the Continental forces during the War of Independence, and as President of the convention which wrote and presented the Constitution to the States for ratification. He rejected the narrow opinion that religion must be excluded from the public life of the Nation. In his final counsel to the Nation, Washington warned that:

Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism who should labor to subvert these great pillars of human happiness.

Mr. President, Washington's view has indeed been the mainstream of the legal and social attitude of the American people and the drafters of the Constitution in regard to the religious rights preserved in the Bill of Rights. Professor Edwin S. Corwin, one of our most distinguished constitutional scholars, rejected any interpretation of the first amendment which would force upon government institutions a formal agnosticism. Professor Corwin writes:

The historical record shows beyond peradventure that the core idea of an "establishment of religion" comprises the idea of preference; and that any act of public authority favorable to religion in general cannot, without manifest falsification of history, be brought under the ban of that phrase.

THE SUPREME COURT DECISIONS

Nearly 200 years after the drafting of the Constitution, the Supreme Court for the first time ruled that prayer and Bible-reading in public schools encouraged by the State constitutes an establishment of religion in violation of the first amendment. At the time of these decisions, 26 States permitted Bible reading in the public schools and 13 authorized the saying of the Lord's Prayer.

The first amendment provides that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." In *Engel v. Vitale*, 370 U.S. 421 (1962), the Court prohibited a requirement of the New York State board of regents that each class begin the school day with the following prayer:

Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country.

In *Abington School District v. Schempp*, 374 U.S. 203 (1963), the Court struck down a Pennsylvania statute requiring the reading of at least 10 verses from the Holy Bible without comment and the saying of the Lord's Prayer at the beginning of each school day. In a companion case, the Court invalidated a Maryland requirement concerning the reading of a chapter of the Holy Bible and/or saying the Lord's Prayer.

In each case, the Court ruled that voluntary school programs including Bible-reading or prayer violate the establishment clause of the first amendment. In Engel, Justice Black wrote:

the constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government. (370 U.S. at 425)

In Schempp, Justice Clark concluded that the Bible-reading programs:

Are religious exercises, required by the States in violation of the command of the First Amendment that the Government maintain strict neutrality, neither aiding nor opposing religion. (374 U.S. 303)

Mr. President, the point is this: In both rulings, the Court went beyond the language of the establishment clause to construct an interpretation of it which would overturn the long-standing State practices.

In Engel, Justice Black asserted:

Its first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and to degrade religion . . . The Establishment Clause thus stands as an expression of principle on the part of the Founders of our Constitution that religion is too personal, too sacred, too holy, to permit its "unhallowed perversion" by a civil magistrate. (370 U.S. 431–32)

Mr. Justice Clark argued in Schempp that the Court had previously "rejected unequivocally the contention that the Establishment Clause forbids only governmental preference of one religion over another." (374 U.S. 216) He maintained that the establishment clause must be considered together with the free exercise clause, and that they impose on government a "wholesome neutrality" toward religion—whatever that is. In Justice Clark's view, the first amendment prohibits Government from any action favoring one religious sect over all others, or religion in general over nonreligion.

EXHIBIT A
Page 3 of 7

PART IV—JURISDICTION AND VENUE

CHAPTER 81—SUPREME COURT

1251. Original jurisdiction

(a) The Supreme Court shall have original and exclusive jurisdiction of:

(1) All controversies between two or more States;

(2) All actions or proceedings against ambassadors or other public ministers of foreign states or their domestics or domestic servants, not inconsistent with the law of nations.

(b) The Supreme Court shall have original but not exclusive jurisdiction of:

(1) All actions or proceedings brought by ambassadors or other public ministers of foreign states or to which consuls or vice consuls of foreign states are parties;

(2) All controversies between the United States and a State;

(3) All actions or proceedings by a State against the citizens of another State or against aliens.

§ 1252. Direct appeals from decisions invalidating Acts of Congress

Any party may appeal to the Supreme Court from an interlocutory or final judgment, decree or order of any court of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam and the District Court of the Virgin Islands and any court of record of Puerto Rico, holding an Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States or any of its agencies, or any officer or employee thereof, as such officer or employee, is a party.

A party who has received notice of appeal under this section shall take any subsequent appeal or cross appeal to the Supreme Court. All appeals or cross appeals taken to other courts prior to such notice shall be treated as taken directly to the Supreme Court.

As amended Oct. 31, 1951, c. 655, § 47, 65 Stat. 726; July 7, 1958, Pub. L. 85–508, § 12(e), (f), 72 Stat. 348; Mar. 18, 1959, Pub.L. 86–3, § 14(a), 73 Stat. 10.

§ 1253. Direct appeals from decisions of three-judge courts

Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.

§ 1254. Courts of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

(3) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

§ 1255. Court of Claims; certiorari; certified questions

Cases in the Court of Claims may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted on petition of the United States or the claimant;

(2) By certification of any question of law by the Court of Claims in any case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions on such question.

§ 1256. Court of Customs and Patent Appeals; certiorari

Cases in the Court of Customs and Patent Appeals may be reviewed by the Supreme Court by writ of certiorari.

§ 1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

1258. Supreme Court of Puerto Rico; appeal; certiorari

Final judgments or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of the Commonwealth of Puerto Rico on the ground of

its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of the Commonwealth of Puerto Rico is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution, treaties, or statutes of, or commission held or authority exercised under, the United States.

Added Pub.L. 87–189, § 1, Aug. 30, 1961, 75 Stat. 417.

CHAPTER 83—COURTS OF APPEALS

§ 1291. Final decisions of district courts

The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

As amended Oct. 31, 1951, c. 655, § 48, 65 Stat. 726; July 7, 1958, Pub. L. 85–508, § 12(e), 72 Stat. 348.

§ 1292. Interlocutory decisions

(a) The courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;

(2) Interlocutory orders appointing receivers, or refusing orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property;

(3) Interlocutory decrees of such district courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed;

§ 959. Trustees and receivers suable; management; State laws

Amendment Effective October 1, 1979

Pub.L. 95–598, Title II, § 234, Title IV, § 402(c), Nov. 6, 1978, 92 Stat. 2667, 2682, provided that, effective Oct. 1, 1979, subsec. (b) of this section is amended by substituting "Except as provided in section 1166 of title 11, a" for "A".

PART IV—JURISDICTION AND VENUE

CHAPTER 81—SUPREME COURT

§ 1251. Original jurisdiction

(a) The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States.

(b) The Supreme Court shall have original but not exclusive jurisdiction of:

(1) All actions or proceedings to which ambassadors, other public ministers, consuls, or vice consuls of foreign states are parties;

[*See main volume for text of (2) and (3)*]

As amended Sept. 30, 1978, Pub.L. 95–393, § 8(b), 92 Stat. 810.

§ 1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

[*See main volume for text of (1) to (3)*]

For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

As amended July 29, 1970, Pub.L. 91–358, Title I, § 172(a) (1), 84 Stat. 590.

CHAPTER 83—COURT OF APPEALS

§ 1293. Bankruptcy appeals

(a) The courts of appeals shall have jurisdiction of appeals from all final decisions of panels designated under section 160(a) of this title.

(b) Notwithstanding section 1482 of this title, a court of appeals shall have jurisdiction of an appeal from a final judgment, order, or decree of an appellate panel created under section 160 or a District court of the United States or from a final judgment, order, or decree of a bankruptcy court of the United States if the parties to such appeal agree to a direct appeal to the court of appeals.

Added Pub.L. 95–598, Title II, § 236(a), Nov. 6, 1978, 92 Stat. 2667.

Effective Date. Section effective Apr. 1, 1984.