

DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

This information is supplied as an informational service only and should not be relied upon as an official record.

Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or library@lcb.state.nv.us.

AB 341

ALLIANCE

AAUP NATIONAL AWARD-WINNING NEWSPAPER OF THE NEVADA FACULTY ALLIANCE

An Affiliate of the American Association of University Professors

VOLUME 2002

ISSUE NO. 4

NOVEMBER/DECEMBER 2002

ORIGINALS ARE ON FILE AT THE LEGISLATIVE COUNSEL BUREAU RESEARCH LIBRARY

Governor concerned about higher ed

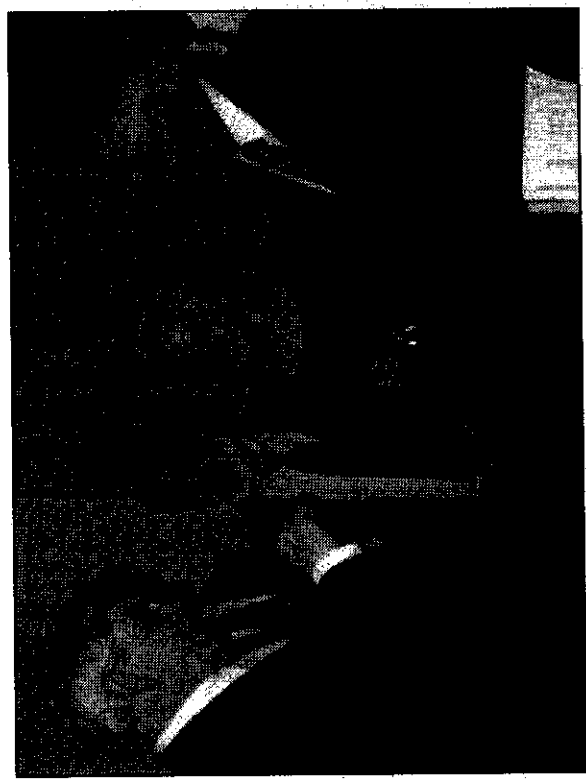
A delegation meets with Guinn

Even Nevada Faculty Alliance leaders met Nov. 15 with Governor Kenny Guinn and his assistant chief of staff, Mike Hillerby. The meeting lasted for more than a half-hour.

The NFA delegation included Candace Kant, State President (CCSN), Jim Frasz, Lobbyist (UNR), Geoffrey Frasz (CCSN NFA president), Len Weinberg (NFA president), Jerry Landwer (UNLV), Fred Rogers (DRI), Jim Strange (C), Carol Conder (Part-time representative, UNLV), Julie Hammett (TMCC), Patrick Rice (GBC), and Berch Berberoglu (Past NFA president, UNR).

Governor Guinn congratulated Governor Guinn on his election victory and expressed his appreciation for his support of the new formula package, the COLAs by faculty this biennium, and the bail-out of the health program.

The delegation also presented copies of the September Alliance to Guinn and



(ABOVE) Meeting with Governor Kenny Guinn are NFA leaders Berch Berberoglu, past president; Candace Kant, state president, and Geoffrey Frasz, CCSN/NFA president

ASSEMBLY WAYS AND MEANS

DATE: 4/15/03 ROOM: 3137 EXHIBIT

SUBMITTED BY: JIM RICHARDSON

Nevada case goes to United States Supreme Court

On June 24, 2002 the U.S. Supreme Court granted certiorari in a case from the Ninth Circuit Court of Appeals that may have broad ramifications for the entire country.

The case, *Nevada Department of Human Resources v. Hibbs* (No. 01-1368) is another in a line of cases dealing with the question of sovereign immunity of the states. The issue raised in *Hibbs* is whether the Eleventh Amendment of the U.S. Constitution precludes application of certain federal laws to public employers.

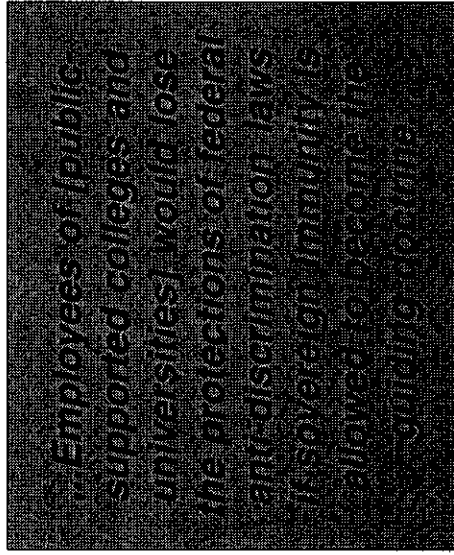
The specific federal law being challenged by the State of Nevada in this case is the Family and Medical Leave Act (FMLA). The State of Nevada is taking the position that this federal law does not apply to the State, which has sovereign immunity under the Eleventh Amendment.

Nevada is claiming that Congress exceeded its authority when it wrote FMLA to cover state employers.

The Act included provisions to remedy gender discrimination in the caring for ill family members. It is those provisions which are under challenge in *Hibbs*.

Hibbs, a state of Nevada employee, sought and was granted leave to care for his ill wife, but was eventually terminated when he requested additional leave. He sued in federal court and lost a summary judgment motion at the trial court level on the grounds that Congress did not adequately establish coverage of FMLA over state employers.

The Ninth Circuit reversed the ruling, stating that Hibbs could sue the state (273 F.3d 844, 9th Cir. 2001). The Court disallowed precedents in which the Supreme Court ruled that federal laws in the areas of age discrimination and disability discrimination do not apply to the states because of sovereign immunity. The Court stated that, since the FMLA involved gender discrimination, a higher level of scrutiny was



required than the "rational basis" test used in the earlier decisions. Congress did have the authority to extend the FMLA to include state employers, according to the Ninth Circuit.

Nevada has appealed the case to the U.S. Supreme Court, which will review the case this term. Oral arguments will be heard in January.

AAUP Involvement in Similar Cases

The national AAUP has signed amicus briefs in several other cases in the area of sovereign immunity. The AAUP position is that federal laws against discrimination should not be disallowed with public employers.

Most colleges and universities in the country are publicly supported, which means that employees of those institutions would lose the protections of federal anti-discrimination laws if

sovereign immunity is allowed to become the guiding doctrine.

This has been the case in recent years, with a number of closely divided decisions that have severely limited the application of federal laws to state employers.

The brief that the AAUP signed in *Hibbs* was drafted by the National Partnership for Women and Families, and co-signed by the AAUP, AAUW, AARP, ACLU, the American Jewish Committee, the Anti-Defamation League, Business and Professional Women, the Disability Rights Education and Defense Fund, the Epilepsy Foundation, the National Council of Jewish Women, the National Council of Negro Women, the National Education Association, the National Employment Lawyers Association, the National Health Law Program, the National Organization of Women Foundation, the National Association of Working Women, the Older Women's League, People for the American Way, the Women's Law Project, Women Work! and others.

Twelve states have filed amicus briefs supporting the position of Nevada in the case.