

Wardens of Coat Room

J. EDWARD SILVA, Concord
JOHN B. MULAIRE, Hooksett

Stenographers

ALICE V. FLANDERS, Henniker (Chief Stenographer)
MARION COLBY, Penacook
DOROTHY SPEAR, Meredith

Secretary's Stenographer

MARGARET FORD, Concord

President's Page

GEORGE HEON, Salem

Pages

A. KENNETH HAMBLETON, Goffstown
FLORENCE SHERIDAN, Dover
GEORGE W. ANGUS, Claremont
MERTON A. WEBBER, Windham
JAMES MARTIN, Concord

Mileage Clerk

ALICE P. PINKHAM, Northwood

Tellers

Division 1 — WILLIAM H. CRAIG, Manchester
Division 2 — DORIS SPOLLETT, Hampstead
Division 3 — NED SPAULDING, Hudson
Division 4 — GARDNER C. TURNER, Sullivan
Division 5 — LEONARD B. PEEVER, Salem

JOURNAL

OF THE

CONVENTION TO REVISE

THE CONSTITUTION

MAY 1964

WEDNESDAY, MAY 13, 1964

The delegates to the Convention to Revise the Constitution assembled in the hall of the House of Representatives on Wednesday, May 13, 1964 and were called to order at eleven o'clock by Mr. Joseph H. Geisel of Manchester.

Prayer was offered by Reverend William L. Shafer of North Chichester as follows:

ALMIGHTY GOD — creator and sustainer of all life and all liberty, let Thy blessing be among us as we prepare to undertake the privilege and the responsibility of this 15th Constitutional Convention. Grant unto us wisdom in our deliberations, courage in our convictions, and faith in our freedoms. Inspire us to meet the challenges of the future through the consecration of our present efforts as we strive to perfect peace and prosperity through our daily witness. May our judgments and our evaluations constantly seek a more perfect government, finding favor in Thy sight and with our fellow citizens. Watch over us and keep us safe in the light of truth, preserving our heritage through the power of love for all eternity . . . in Thy most precious Name we pray — Amen.

Mr. Jackman of Concord placed in nomination Mr. Sheehan of Manchester as temporary chairman, and moved his election.

On a *viva voce* vote, Mr. Sheehan of Manchester was declared elected temporary chairman and was escorted to the

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Johnson, of Monroe	Sanborn, of Kingston
Massin, of Fitzwilliam	Snell, of Landall
MacDonald, of Concord	Tessier, of Manchester
Niles, of Strafford	Thayer, of Dorchester
Painade, of Derry	Wallace, of Columbia
Prince, of Claremont	Young, of Clarksville

Mr. Bell of Plymouth offered the following resolution:

Resolved, That the President of this Convention be authorized to appoint five Pages for the Delegates and one Page to the President.

On a *viva voce* vote the resolution was adopted.

The President announced the following named persons as Pages:

President's Page, George Heon of Derry.

Floor Pages

George Angus of Claremont, Thomas Armstrong of Manchester, Merton A. Webber of Windham, James Martin of Concord and Florence Sheridan of Dover.

Mr. Spaulding of Hudson offered the following resolution:

Resolved, That a Committee, consisting of twenty-four delegates, each county to be represented thereon, be appointed by the President to select and report to the Convention the names of persons to fill the office of Sergeant-at-Arms, Chaplain, five Doorkeepers, a Library Messenger, assistant Library Messenger, a Mileage Clerk, a Telephone Messenger, a Custodian of Mails and Supplies, a Supervisor of Amplification and Recording, a Warden of the Coat Room, an Assistant Warden of the Coat Room, three Staff Stenographers, a President's and Secretaries' Stenographer, and such other attaches as the Committee may deem necessary.

On a *viva voce* vote the resolution was adopted, and the following committee was named:

Permanent Organization

Spaulding, of Hudson, Chairman
Sherman, of Lancaster, Vice Chairman
Adams, of Charlestown
Barnes, of Sandown
Chamberlain, of Alton
Clancy, of Manchester

Davis, of Rochester	A. Martel, of Manchester
Guild, of Winchester	Pickering, of Hebron
Karnis, of New Ipswich	Quinn, of Manchester
Keith, of Sutton	Roden, of Conway
Lagotte, of Rochester	Rollins, of Rollinsford
Lake, of Brentwood	Schultz, of Easton
Lavoie, of Nashua	Thompson, of Wilnot
Legasse, of Portsmouth	Underwood, of Chester
Marsh, of Colebrook	York, of Concord

Mr. Heald of Keene offered the following resolution:

Resolved, That, following prayer by the Chaplain, the President appoint some delegate each day to lead the Convention in the salute to the flag of our great nation.

On a *viva voce* vote the resolution was adopted.

The President appointed Mr. Heald of Keene a Committee of One, to select a delegate each day to lead the Convention in the salute to the flag.

Mr. Turner of Sullivan offered the following resolution:

Resolved, That, until otherwise ordered, the hours of the meeting of the Convention be at 11:00 o'clock in the forenoon and 2:00 o'clock in the afternoon.

On a *viva voce* vote the resolution was adopted.

Mr. Bowles of Portsmouth offered the following resolution:

Resolved, that the Rules of the Convention be so far suspended as to permit the reading of the resolutions to amend the Constitution by their caption only.

On a *viva voce* vote the motion was adopted.

Introduction of Resolutions

The following resolutions were read by caption only and referred to the following committees:

Resolution No. 1, Establishing the size of the senate and fixing the formula of its quorum, to Legislative Departments.
Resolution No. 2, Providing that representation in the senate be based on population, not taxable property, to Legislative Departments.

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CONSTITUTION
of the
STATE OF NEW HAMPSHIRE

ESTABLISHED OCTOBER 31, 1783 TO TAKE EFFECT JUNE 2, 1784,
AS SUBSEQUENTLY AMENDED AND IN FORCE
JANUARY 1, 1970

PART FIRST—BILL OF RIGHTS	
Article	Article
1. Equality of men; origin and object of government.	33. Excessive bail, fines, and punishments prohibited.
2. Natural rights.	34. Martial law limited.
3. Society, its organization and purposes.	35. The judiciary; tenure of office, etc.
4. Rights of conscience unalienable.	36. Pensions.
5. Religious freedom recognized.	37. Separation of powers.
6. Morality and piety.	38. Social virtues inculcated.
7. State sovereignty.	39. Changes in town and city charters, referendum required.
8. Accountability of magistrates and officers.	
9. No hereditary office or place.	
10. Right of revolution.	
11. Elections and elective franchise.	
12. Protection and taxation reciprocal; private property for public use.	
13. Conscientious objectors not compelled to bear arms.	
14. Legal remedies to be free, complete, and prompt.	
15. Right of accused.	
16. Former jeopardy; jury trial in capital cases.	
17. Venue of criminal prosecutions.	
18. Penalties to be proportioned to offenses; true design of punishment.	
19. Searches and seizures regulated.	
20. Jury trial in civil causes.	
21. Jurors; compensation.	
22. Liberty of the press.	
23. Retrospective laws prohibited.	
24. Militia.	
25. Standing armies.	
26. Military subject to civil power.	
27. Quartering of soldiers.	
28. Taxes, by whom levied.	
29. Suspension of laws by legislature only.	
30. Freedom of speech.	
31. Meetings of legislature, for what purposes.	
32. Rights of assembly, instruction, and petition.	

PART SECOND—FORM OF GOVERNMENT	
1. Name of body politic.	
GENERAL COURT	
2. Legislature, how constituted.	
3. General court, when to meet and dissolve.	
4. Power of general court to establish courts.	
5. Power to make laws, elect officers, define their powers and duties, impose fines and assess taxes; prohibited from authorizing towns to aid certain corporations.	
5-A. Continuity of government in case of enemy attack.	
5-B. Power to provide for tax valuations based on use.	
6. Valuation and taxation.	
6a. Use of certain revenues restricted to highways.	
7. Members of legislature not to take fees or act as counsel.	
8. Open sessions of legislature.	
HOUSE OF REPRESENTATIVES	
9. Representatives elected every second year; apportionment of representatives.	
9a. Legislative adjustments of census with reference to nonresidents.	
10. [Stricken out, 1889.]	

PART FIRST

BILL OF RIGHTS

Article 1st. [Equality of Men; Origin and Object of Government.]

All men are born equally free and independent: Therefore, all government, of right, originates from the people, is founded in consent, and instituted for the general good.

CROSS REFERENCES

Law against discrimination and state commission for human rights, see RSA 354-A: 1 et seq.

ANNOTATIONS

Cited, 6

Discriminatory legislation, 2-5

Generally, 2

Licenses, 3

Discriminatory legislation (cont.)

Sunday sales, 4

Zoning, 5

Generally, 1

1. Generally

All men are viewed as equal, entitled to enjoy equal privileges, and to be governed by equal laws. *State v. Pennoyer* (1889) 65 NH 113, 18 A 878, 5 LRA 709.

The equality of freedom and birth is not limited to any particular religion, and the continuance of this equality is sedulously maintained throughout the Constitution. *Hale v. Everett* (1868) 53 NH 9, at p. 212.

2. Discriminatory legislation—Generally

Legislative classification to be constitutional must be based upon some substantial foundation, it may not be arbitrary, it must be germane to the purpose of the law. *H. P. Welch Co. v. State* (1938) 89 NH 428, 199 A 886, 120 ALR 282, affirmed 306 U.S. 79, 83 L.Ed. 500, 59 S.Ct. 438.

Classification to be valid must reasonably promote some proper object of public welfare or interest and may not be sustained when the selection and grouping is so arbitrary as to serve no useful purpose of a public nature. *Marine Corps League v. Benoit* (1951) 96 NH 423, 78 A2d 513.

3. —Licenses

A licensing statute which discriminates

in favor of doctors who have resided in one town in the state for a specific length of time violates the equality provisions of the bill of rights. *State v. Pennoyer* (1889) 65 NH 113, 18 A 878, 5 LRA 709.

4. —Sunday sales

The fact that merchants in one municipality can sell certain merchandise on Sunday and merchants in an adjoining municipality cannot sell the same articles does not constitute a violation of the equal protection of the law. *State v. Rogers* (1964) 105 NH 366, 200 A2d 740.

5. —Zoning

Equal protection is not denied by a provision of a zoning ordinance making consent of neighboring property owners a condition of considering an application for a variance. *Robwood Advertising Associates, Inc. v. City of Nashua* (1959) 102 NH 215, 153 A2d 787.

6. Cited

Cited in Opinion of the Justices (1933) 86 NH 597, 166 A 640 stating that an act denying to employers of labor any part of the full right accorded to others to resort to the courts for relief is unconstitutional.

[Art.] 2d. [Natural Rights.] All men have certain natural, essential, and inherent rights—among which are, the enjoying and defending life and liberty; acquiring, possessing, and protecting, property; and, in a word, of seeking and obtaining happiness.

HISTORY

Revision note. The abbreviation "Art." articles of Bill of Rights in General was first inserted in this and following Statutes, 1867.

Orr v. Quimby

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174 A 193, 94

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classification does not unconstitutionally
invade a newspaper's right of freedom of
contract. Chronicle & Gazette Publishing
Co. v. Atty. Gen. (1946) 94 NH 148, 48
A2d 478, 168 ALR 879, appeal dismissed
67 S.Ct. 495, 329 U.S. 690, 91 L.Ed. 604,
rehearing denied 67 S.Ct. 632, 329 U.S.
835, 91 L.Ed. 707.

A statute providing for the recovery of
private damages for causing the death of
a human being in no way infringes upon
the property rights of the person so
charged. Bedore v. Newton (1873) 54 NH
117.

A distinction in legislation is not arbi-
trary if any state of facts reasonably can
be conceived that will sustain it. Chronicle
& Gazette Publishing Co. v. Atty. Gen.
(1946) 94 NH 148, 48 A2d 478, 168 ALR
879, appeal dismissed 67 S.Ct. 495, 329
U.S. 690, 91 L.Ed. 604, rehearing denied
67 S.Ct. 632, 329 U.S. 835, 91 L.Ed. 707.

4. Cited

Cited in State v. United States & Canada
Express Co. (1880) 60 NH 219; and in
Dow v. Northern R. Co. (1887) 67 NH 1,
36 A 510, holding that the natural, essen-
tial, and inherent rights of life, liberty,
and property are inviolate.

[Art.] 3d. [Society, its Organization and Purposes.] When men enter
into a state of society, they surrender up some of their natural rights to
that society, in order to ensure the protection of others; and, without such
an equivalent, the surrender is void.

ANNOTATIONS

Cited, 3
Generally, 1

Qualifications, 2

1. Generally

The bill of rights does not guarantee to
every individual or to every group of
individuals absolute liberty, but rather
they must surrender up some of their
natural rights to society in order to
insure the protection of others. State v.
Derrickson (1951) 97 NH 91, 81 A2d
312; State v. Drew (1937) 89 NH 54,
192 A 629.

While a state may not be required to
enact a statute forbidding discrimination
in privately owned places of public ac-
commodation it unquestionably has the
power to do so. State v. Sprague (1964)
105 NH 355, 200 A2d 206.

2. Qualifications

Although the rights of freedom of
assembly, speech, and worship are guaran-
teed, they may be subjected to reasonable
and nondiscriminatory regulation in order
that the rights of others may be equally
protected in the interest of public order

and convenience. State v. Derrickson
(1951) 97 NH 91, 81 A2d 312.

An ordinance requiring a license for the
holding of any public meeting within the
municipality is a constitutional qualifica-
tion of natural rights. State v. Derrick-
son (1951) 97 NH 91, 81 A2d 312.

While the compulsory school attendance
statute is an invasion of natural parental
rights, since it is for the benefit and
welfare of the state and for the govern-
ing and ordering thereof, the parent, in
fulfilment of the social compact, must
yield submission and obedience thereto.
State v. Jackson (1902) 71 NH 552, 53
A 1021, 60 LRA 739.

The right to hold public office is a civil
or political right which may be surren-
dered to the government or to society in
order to secure the protection of other
rights. Hale v. Everett (1868) 53 NH 9.

3. Cited

Cited in State v. United States &
Canada Express Co. (1880) 60 NH 219.

[Art.] 4th. [Rights of Conscience Unalienable.] Among the natural
rights, some are, in their very nature unalienable, because no equivalent
can be given or received for them. Of this kind are the Rights of
Conscience.

Pt. 1, Art. 5 CONSTITUTION OF NEW HAMPSHIRE

ANNOTATIONS

Cited, 3
Generally, 1

Limitations, 2

1. Generally

The rights of conscience are not only natural, essential, and inherent rights but are also unalienable, and not capable of being surrendered voluntarily or taken away or abridged by the government, because no equivalent can be given or received for them. *Hale v. Everett* (1868) 53 NH 9.

It is not customary to permit an inquiry into a man's peculiarity of religious belief, because it would be a personal scrutiny into the state of his faith and conscience contrary to the spirit of the Constitution. *Free v. Buckingham* (1879) 59 NH 219.

2. Limitations

No person can claim his constitutional rights of conscience without making concessions of some of his natural rights. *State v. Drew* (1937) 89 NH 54, 192 A 629.

The right guaranteed by this section is not infringed by an order requiring the production, in a legislative inquiry into subversive activities, of correspondence between the operator of a discussion center with speakers thereat, notwithstanding his assertion of its irrelevancy. *Wyman v. Uphaus* (1957) 100 NH 436, 130 A2d 278, judgment vacated and remanded 355 U.S. 16, 2 L.Ed.2d 22, 78 S.Ct. 57, decision reaffirmed 101 NH 139, 136 A2d 221, affirmed 360 U.S. 72, 3 L.Ed.2d 1090, 79 S.Ct. 1040, subsequent appeal dismissed 364 U.S. 388, 5 L.Ed.2d 148, 81 S.Ct. 153.

3. Cited

Cited in *Muzzy v. Wilkins* (1803) Smith (NH) 1.

[Art.] 5th. [Religious Freedom Recognized.] Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience, and reason; and no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession, sentiments, or persuasion; provided he doth not disturb the public peace or disturb others in their religious worship.

ANNOTATIONS

Cited, 3
Generally, 1

Regulation, 2

Library references

Constitutional guaranty of freedom of religion as applied to license taxes or regulations. 146 ALR 109 and 152 ALR 322.

Constitutional right to religious freedom as affecting power of public authorities to order medical care for a child over objection of parent or custodian. 30 ALR2d 1138.

Power of legislature or school authorities to prescribe and enforce oath of allegiance, salute to flag, or other ritual of a patriotic character. 127 ALR 1502, 141 ALR 1030 and 147 ALR 698.

Sectarianism in schools. 5 ALR 866 and 141 ALR 1144.

Use of streets or parks for religious purposes. 133 ALR 1402.

What constitutes "prayer" under federal constitutional prohibition of prayer in public schools. 30 ALR3d 1352.

1. Generally

No person can claim his constitutional rights of religious freedom without making concessions of some of his natural rights. *State v. Drew* (1937) 89 NH 54, 192 A 629.

This article sets forth and declares specifically the natural, essential, inherent, and unalienable rights of conscience guaranteed to all citizens of the state. *Hale v. Everett* (1868) 53 NH 9.

The natural and unalienable right to worship God according to the dictates of a person's own conscience embraces the worship of God according to the beliefs of Christian Science. *Glover v. Baker* (1912) 76 NH 392, 83 A 916.

CONSTITUTION OF NEW HAMPSHIRE Pt. 1, Art. 6

It is not customary to permit an inquiry into a man's peculiarity of religious belief, because this would be a personal scrutiny into the state of his faith and conscience contrary to the spirit of the bill of rights. *Free v. Buckingham* (1879) 59 NH 219.

In this country there is absolute religious equality, and no discrimination in law is made between different religious creeds or forms of worship. *Webster v. Sughrow* (1898) 69 NH 380, 45 A 139, 48 LRA 100.

2. Regulation

A religious doctrine that divine law should be obeyed rather than man's law when the two conflict may be entitled to statement but not to observance. *State v. Cox* (1940) 91 NH 137, 16 A2d 508, affirmed 312 U.S. 569, 85 L.Ed. 1049, 61 S.Ct. 762, 133 ALR 1396.

While legislation for the establishment of religion is forbidden and its free exercise permitted, it does not follow that everything which may be so called can be tolerated. Crime is not less odious because sanctioned by what any particular sect may designate as religion. *Glover v. Baker* (1912) 76 NH 393, 83 A 916.

Individual religious opinions, where no questions of religious liberty are involved, do not affect the validity of a statute or entitle such person to be excepted from its provisions. *State v. Drew* (1937) 89 NH 54, 192 A 629.

The right guaranteed by this section is not infringed by an order requiring the production, in a legislative inquiry into subversive activities, of correspondence between the operator of a discussion center with speakers thereat notwithstanding his assertion of its irrelevancy. *Wyman v. Uphaus* (1957) 100 NH 436, 130 A2d 278, judgment vacated and remanded 355 U.S. 16, 2 L.Ed.2d 22, 78 S.Ct. 57, decision reaffirmed 101 NH 139, 136 A2d 221, affirmed 360 U.S. 72, 3 L.Ed.2d 1090, 79 S.Ct. 1040, subsequent appeal dismissed 364 U.S. 388, 5 L.Ed.2d 148, 81 S.Ct. 153.

Freedom to worship is not abridged by a statute prohibiting parades upon any

public street or way without first obtaining a license therefor. *State v. Cox* (1940) 91 NH 137, 16 A2d 508, affirmed 312 U.S. 569, 85 L.Ed. 1049, 61 S.Ct. 762, 133 ALR 1396.

A statute prohibiting unusual traffic within two miles of any public assembly convened for religious worship is designed to protect the citizens in the unmolested and undisturbed enjoyment of the right of worship. *State v. Cate* (1878) 58 NH 240.

Statutes requiring compulsory school attendance and vaccination do not violate the constitutional guaranties of religious freedom. *State v. Drew* (1937) 89 NH 54, 192 A 629.

Religious liberty does not mean a license to engage in acts having a tendency to disturb the public peace under the form of religious worship, nor does it include the right to disregard those regulations which the legislature has deemed necessary for the security of public order. Thus a statute prohibiting the beating of a drum in the compact part of a town does not infringe the right of religious worship. *State v. White* (1886) 64 NH 48, 5 A 828.

3. Cited

Cited in Opinion of the Justices (1955) 99 NH 519, 113 A2d 114, in holding that grants in aid of hospitals offering training in nursing without regard to the auspices under which they are conducted or to the religious beliefs of their management, so long as the aid is used for nurses' training and for no other kind of instruction or purpose, is not a prohibited use of money raised by taxation for the schools or institutions of any religious denomination; *Muzzy v. Wilkins* (1803) Smith (NH) 1; *State v. Poulos* (1952) 97 NH 352, 88 A2d 860, affirmed 345 U.S. 395, 97 L.Ed. 1105, 73 S.Ct. 760, 30 ALR2d 987, rehearing denied 345 U.S. 978, 97 L.Ed. 1392, 73 S.Ct. 1119 holding that one will not be heard to say that his constitutional right of freedom of worship has been violated by refusal of a license where he has not exhausted available remedies for such refusal.

[Art.] 6th. [Morality and Piety.] As morality and piety, rightly grounded on high principles, will give the best and greatest security to government, and will lay, in the hearts of men, the strongest obligations to due subjection; and as the knowledge of these is most likely to be propagated through a society, therefore, the several parishes, bodies corporate, or religious societies shall at all times have the right of electing

Pt. 1, Art. 7 CONSTITUTION OF NEW HAMPSHIRE

their own teachers, and of contracting with them for their support or maintenance, or both. But no person shall ever be compelled to pay towards the support of the schools of any sect or denomination. And every person, denomination or sect shall be equally under the protection of the law; and no subordination of any one sect, denomination or persuasion to another shall ever be established.

HISTORY

Amendments—1968. Amended generally.

ANNOTATIONS

Cited, 3
Generally, 1

Right to elect religious teachers, 2

Library references

Constitutional Law \S 84(e).
CJS Constitutional Law \S 206(1).

1. Generally

Morality and piety rightly grounded on the principles of the gospel will make the best citizens and subjects. *Muzzy v. Wilkins* (1803) Smith (NH) 1.

Although the Protestant religion is regarded with peculiar favor, still every denomination of Christians, demeaning themselves quietly and as good subjects of the state, are equally under the protection of the law. *Warde v. Manchester* (1876) 56 NH 508; *Hale v. Everett* (1868) 53 NH 9.

The term "houses of public worship" includes such buildings as are usually and popularly termed churches and used for the encouragement of religion and piety. *St. Paul's Church v. Concord* (1910) 75 NH 420, 75 A 531, 27 LRA, NS, 910, Ann. Cas. 1912A 350.

A college chapel is a church. *Sisters of Mercy v. Hooksett* (1945) 93 NH 301, 42 A2d 222.

2. Right to elect religious teachers

The right given to towns to select teachers applies only to teachers of morality and religion and not to public teachers. *Amyot v. Caron* (1937) 88 NH 394, 190 A 134.

[Art.] 7th. [State Sovereignty.] The people of this state have the sole and exclusive right of governing themselves as a free, sovereign, and independent state; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, pertaining thereto, which is not, or may not hereafter be, by them expressly delegated to the United States of America in congress assembled.

Ministers chosen by a political subdivision are civil officers of the state. *Ricker's Petition* (1890) 66 NH 207, 29 A 559, 24 LRA 740.

The provision which reserves for religious societies the exclusive right of electing their own public teachers does not confer upon a parish the right of electing the public teachers of a church connected with the parish. *Holt v. Downs* (1877) 58 NH 170.

While this article does encourage the employment of Protestant teachers of morality and religion it does not directly or by implication forbid the employment of Christians other than Protestants. *Hale v. Everett* (1868) 53 NH 9.

3. Cited

Cited in *Opinion of the Justices* (1955) 99 NH 519, 113 A2d 114, in holding that the grants in aid of hospitals offering training in nursing without regard to the auspices under which they are conducted or to the religious beliefs of their management, so long as the aid is used for nurses' training and for no other kind of instruction or purpose, is not a prohibited use of money raised by taxation for the schools or institutions of any religious denomination; *Union Baptist Soc. v. Town of Candia* (1819) 2 NH 20; *Carter v. Eaton* (1910) 75 NH 560, 78 A 643; *Glover v. Baker* (1912) 76 NH 393, 83 A 916.

Pt. 2, Art. 81 CONSTITUTION OF NEW HAMPSHIRE

not give the supreme court power or jurisdiction to appoint such trustees. *Petition of Straw* (1917) 78 NH 506, 102 A 628.

5. —Accounts

An accounting to determine an administrator's liability must first be rendered in the probate court. *Lisbon Sav. Bank &*

Trust Co. v. Moulton's Estate (1941) 91 NH 477, 22 A2d 331.

An action by one coexecutor against the other for an accounting is in no sense a part of the settlement of an estate and therefore must be brought in a court other than the probate court. *Patten v. Patten* (1920) 79 NH 388, 109 A 415.

[Art.] 81. [Judges and Registers of Probate Not to Act as Counsel.] No judge, or register of probate, shall be of counsel, act as advocate, or receive any fees as advocate or counsel, in any probate business which is pending, or may be brought into any court of probate in the county of which he is judge or register.

HISTORY

Amendments—1793. Inserted this article.

ANNOTATIONS

Acting as counsel, 2

Acting as executor, 3

Cited, 4

Wills, 1

1. Wills

A judge of probate who has written a will is disqualified to sit upon the probate of it. *Moses v. Julian* (1863) 45 NH 52.

2. Acting as counsel

When a judge of probate acts as counsel in a cause in which he also acts as judge, his acts as judge are not absolutely void, but are voidable on appeal. *Stearns v. Wright* (1872) 51 NH 600.

3. Acting as executor

The acts of a judge of probate in the settlement of an estate in which he is interested as an executor are void. *Bedell v. Bailey* (1876) 58 NH 62.

4. Cited

Cited in *Opinion of the Justices* (1909) 75 NH 613, 72 A 754.

CLERKS OF COURTS

[Art.] 82. [Clerks of Courts, by Whom Appointed.] The judges of the courts (those of probate excepted) shall appoint their respective clerks to hold their office during pleasure: And no such clerk shall act as an attorney or be of counsel in any cause in the court of which he is clerk, nor shall he draw any writ originating a civil action.

HISTORY

Amendments—1793. Substituted this article for original article; and deleted former next article, which related to "Delegates to Congress".

ANNOTATIONS

1. Drawing writs

The provision of this article which declares that no clerk of any court shall draw any writ originating a civil action only prohibits such clerks from making writs

returnable to the courts of which they are clerks, and does not prevent a clerk of one court from drawing a writ returnable to another court of which he is not clerk. *Carlisle v. Dodge* (1831) 5 NH 386.

ENCOURAGEMENT OF LITERATURE, TRADES, ETC.

[Art.] 83. [Encouragement of Literature, etc.; Control of Corporations, Monopolies, etc.] Knowledge and learning, generally diffused

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CONSTITUTION OF NEW HAMPSHIRE Pt. 2, Art. 83

through a community, being essential to the preservation of a free government; and spreading the opportunities and advantages of education through the various parts of the country, being highly conducive to promote this end; it shall be the duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and public schools, to encourage private and public institutions, rewards, and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and economy, honesty and punctuality, sincerity, sobriety, and all social affections, and generous sentiments, among the people: *Provided, nevertheless*, that no money raised by taxation shall ever be granted or applied for the use of the schools or institutions of any religious sect or denomination. Free and fair competition in the trades and industries is an inherent and essential right of the people and should be protected against all monopolies and conspiracies which tend to hinder or destroy it. The size and functions of all corporations should be so limited and regulated as to prohibit fictitious capitalization and provision should be made for the supervision and government thereof. Therefore, all just power possessed by the state is hereby granted to the general court to enact laws to prevent the operations within the state of all persons and associations, and all trusts and corporations, foreign or domestic, and the officers thereof, who endeavor to raise the price of any article of commerce or to destroy free and fair competition in the trades and industries through combination, conspiracy, monopoly, or any other unfair means; to control and regulate the acts of all such persons, associations, corporations, trusts, and officials doing business within the state; to prevent fictitious capitalization; and to authorize civil and criminal proceedings in respect to all the wrongs herein declared against.

HISTORY

Amendments—1903. Inserted antimonopoly clause.

—1877. Inserted proviso at end of first sentence.

CROSS REFERENCES

State commission on the arts to further performing and fine arts, see RSA 19-A:1 et seq.

ANNOTATIONS

Aid to hospitals, 8
Cited, 10
Education, 2-5
Aid to nonpublic schools, 4
Generally, 2
Power of legislature, 3

Education (cont.)
Tax exemption for educational facilities, 5
Generally, 1
Liquor control, 7
Tax exemptions, 6
Unfair sales, 9

Library references

Public payments of tuition, scholarship, or the like, as respects sectarian school. 81 ALR2d 1309.
Schools and School Districts 3, 19(6), 110.

CJS Schools and School Districts §§ 5, 21(a).

1. Generally

An exact and constant adherence to justice and honesty is indispensable to the

SJR 5

providing a supplemental appropriation for the cancer commission. Ought to pass. Rep. Drake for Appropriations.

Provides for deficit appropriation of \$40,000 for 1973.

Ordered to third reading.

HB 639

relative to permitting the Lord's Prayer and the pledge of allegiance in public schools at local option. Majority: Ought to pass with amendment; Rep. Albert C. Jones for Education. First Minority: Ought to pass with amendment; (Reps. T. Anne Webster, Mary R. Roy, LaRoche, French, DeCesare, William P. Boucher, Rock and Cecelia L. Winn); Second Minority: Inexpedient to legislate. (Rep. Horan)

Majority: Since the founding of New Hampshire and the United States concerning the free and voluntary exercise of religious observance, a majority of the committee recommends passage of the bill as amended.

First Minority: Feels that the bill as originally drafted with minor amendments as proposed by the State Board of Education is a bill worthy of the full consideration of the entire General Court.

Second Minority: The bill is poorly drafted.

Rep. William P. Boucher moved that the report of the first minority, ought to pass with amendment, be substituted for the report of the majority, ought to pass with amendment, and spoke in favor of the amendment.

AMENDMENT

Amend the bill by striking out all after the enacting clause and inserting in place thereof the following:

1 Declaration of Purpose. The general court hereby declares that the Lord's Prayer has become a part of our heritage and culture and has become, and still is, a symbol of our religious freedom. Because the Lord's Prayer is such a symbol of freedom and because the pledge of allegiance to the flag of the United States is likewise an affirmation of our many freedoms, the general court declares it to be in the public interest to encourage school boards and school districts to authorize the recitation of

000120

the Lord's Prayer and the pledge of allegiance to the flag in the public schools every day.

2 Adoption in School Districts. Amend RSA 194 by inserting after section 3 the following new section.

194:3-a Lord's Prayer and Pledge of Allegiance in Public Schools. A school district may authorize the voluntary recitation of the Lord's Prayer and the pledge of allegiance to the United States flag in the public schools in the following manner:

I. Upon unanimous vote of the school board; or

II. Upon approval by majority vote at any duly warned school district meeting in accordance with the procedure specified in RSA 197:1 or RSA 195:13.

3 Adoption in Cities. Amend RSA 47 by inserting after section 26 the following new subdivision:

Prayer in Public Schools

47:27 Lord's Prayer and Pledge of Allegiance in Public Schools. A city may authorize the voluntary recitation of the Lord's Prayer and the pledge of allegiance to the United States flag in the public schools in the following manner:

I. Upon a vote of approval of two-thirds of the members of the school board; or

II. By voter referendum at any regular municipal election for the election of city officers. The question shall be placed on the official ballot upon a majority vote of the school board or upon submission of a petition signed by ten percent of the registered voters of the city to the school board. The provisions of this section shall be deemed to have been adopted upon approval by a majority of those voting on the question.

4 Effective Date. This act shall take effect sixty days after its passage.

Reps. Webb, Lockhart, Albert C. Jones, Horan, Donnelly, Daniell and Winkley spoke against the motion.

Reps. Cecelia L. Winn, T. Anne Webster and Barrus spoke in favor of the motion.

Reps. Seamans, Southwick, David T. Sullivan, Barka,

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Hackler, Hodgdon, Chandler, Vesta M. Roy, Burke, Dorothy W. Davis, Donalda K. Howard, Helen F. Wilson, Roy W. Davis, Tripp, Gagnon, Pryor, Lebel, Brungot, Curran, Harvey, Romeo A. Chasse and Boisvert, nonspoke in favor of the first minority report.

Rep. Cobleigh moved the previous question.

Sufficiently seconded.

Adopted.

A division was requested.

192 members having voted in the affirmative and 71 in the negative, the motion prevailed.

First minority amendment adopted.

Rep. Horan moved that HB 639 be reported inexpedient to legislate, and spoke in favor of the motion.

Rep. Nelson moved the previous question.

Sufficiently seconded.

Adopted.

Motion lost.

Ordered to third reading.

RECESS

AFTER RECESS

ENROLLED BILLS REPORT

HB 308, relative to the income and operating charges of state buildings at Eastern States Exposition.

HB 352, relative to state-wide school food and nutrition programs.

HB 398, prohibiting use of certain types of traps.

HB 583, to authorize the pesticides surveillance scientist to perform in the same capacity as the chief aquatic biologist in relation to the pesticides control board in the absence of the executive director.

HB 667, to prohibit the hunting of wild birds on Back Lake in the town of Pittsburg.

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Rep. Coutermarsh wished to be recorded in favor of the minority report.

Rep. Tony Smith abstained from voting on HB 696 under Rule 16.

The Speaker announced that Reps. Migneault, John H. Perkins Jr. and George T. Healy are celebrating birthdays today.

RESOLUTION

Rep. George B. Roberts, Jr. moved that all bills ordered to third reading be read a third time by this resolution and that all titles of bills and captions of resolutions be the same as adopted, and that they be passed at the present time, unless otherwise ordered by the House, and that when the House adjourns today it be to meet Tuesday next at 11:00 a.m.

Adopted.

LATE SESSION

Third readings and final passage

HB 422, increasing the personal exemption under the interest and dividends tax.

HB 256, relative to outdoor advertising on the interstate, federal-aid systems and turnpikes.

HB 266, relative to salary increases upon certification and eligibility for certification of certain medical personnel.

SJR 5, providing a supplemental appropriation for the cancer commission.

HB 639, relative to permitting the Lord's Prayer and the pledge of allegiance in public schools at local option.

HB 832, increasing the debt limit for the Merrimack school district.

SB 106, relative to the use of voting machines.

HB 847, permitting the employment of inmates of houses of correction at municipally owned recreational facilities and conservation projects.

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SB 2, to provide partial exemption from real estate taxes for persons sixty-five years of age or older, and complete exemption from real estate taxes for persons seventy years of age or older, under certain circumstances.

SUSPENSION OF JOINT RULES

The Senate suspended the joint rules by the necessary two-thirds vote in order to consider, HB 639, relative to permitting the Lord's prayer and the pledge of allegiance in public schools at local option.

Rep. French moved that the House concur with the Senate on the suspension of joint rules to allow the introduction of HB 639.

Rep. French explained the motion.

Rep. Albert C. Jones spoke in favor of the motion.

Adopted by the necessary two-thirds.

CONCURRENCE HB WITH SENATE AMENDMENT

HB 639, relative to permitting the Lord's prayer and the pledge of allegiance in public schools at local option.

(Amendment printed in SJ June 29)

The clerk read the amendment in full.

The Speaker referred HB 639 to the committee on Education and withdrew his referral.

SUSPENSION OF RULES

Rep. French moved that the Joint Rules of the House be so far suspended as to place HB 639 on third reading and final passage at the present time.

Adopted by the necessary two-thirds.

Question being on whether HB 639 be placed on third reading.

Reps. Rock, D'Allensandro, T. Anne Webster and Winkley spoke against ordering HB 639 to third reading.

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Rep. Albert C. Jones spoke in favor of ordering HB 639 to third reading.

Motion to order to third reading failed.

COMMITTEE OF CONFERENCE REPORTS
CONTINUED

HB 20, removing the requirement of public convenience and necessity for common carriers by motor vehicles.

(Printed SJ June 29)

Reps. George E. Gordon and Albert C. Jones spoke in favor of adopting the committee of conference report.

Committee of Conference report adopted.

HB 463, establishing a sire stakes program and a standard-bred breeders and owners development agency.

Rep. Hanson moved that the speakers' time be limited to five minutes each on HB 463.

Adopted.

Question being on accepting the committee of conference report.

Reps. Lawton and Daniell, spoke against accepting the report.

Reps. Zachos and George B. Roberts, Jr. spoke in favor of the report.

(Rep. Harvell in the Chair)

Reps. Joseph M. Eaton, Nelson, Gerry F. Parker, George E. Gordon, Bednar, George I. Wiggins, Richard L. Bradley, Read, Sayer and T. Anne Webster spoke against adopting the committee of conference report.

Reps. Coutermarsh, Spirou, David J. Bradley, Fred E. Murray and Plourde spoke in favor of adopting the committee of conference report.

(Speaker in the Chair)

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I. SALARIES OF JUSTICES. The cities and towns in which the district courts are regularly located shall annually appropriate and pay the justices of the district courts salaries computed in the following manner; for the first fifteen hundred cases, four hundred dollars for each one hundred cases or fraction thereof; for the next one thousand cases, three hundred dollars for each one hundred cases or fraction thereof; and for all cases over twenty-five hundred, one hundred and fifty dollars for each one hundred cases or fraction thereof provided that the sum of five hundred dollars shall be added to the salary of each justice of a district court which has exclusive civil jurisdiction in cases where the damages do not exceed five hundred dollars. No justice shall be paid a salary less than a sum equal to one hundred and eighty dollars for each thousand persons residing in the district, as reported in the last federal census and no justice shall receive a salary greater than twenty-four thousand dollars a year. The total cases reported annually from each district court to the judicial council shall be used in the computation of the salary of each justice as provided herein. The administrative committee of the district and municipal courts shall compute the salaries as provided in this section and shall annually, in November, notify the local governing body of each city or town in which each district court is regularly located the amount to be paid the justice, special justice and clerk for the next calendar year.

Further amend the bill by striking out section 3 and re-numbering section 4 to read 3.

Sen. BRADLEY: This bill as amended by the House does three different things with respect to the district court. It makes the amount that a district court judge can make from \$15,000 to \$20,000. Secondly it raises the maximum salary to \$21,000. The third thing it has to do is to increase the entry fees. The amendment does two things. It changes the maximum salary from \$23,000 to \$24,000. This would only apply in about two cases. And the other part of the amendment is to remove the increase from what it was.

Amendment Adopted. Ordered to third reading.

HB 639

relative to permitting the Lord's prayer and the pledge of allegiance in public schools at local option. Send to Supreme Court for advisory opinion. Sen. Porter for the Committee.

Sen. PORTER: Mr. President, the Senate Judiciary had a hearing on this bill on the 5th of June and the delivery on it at length. Some six or eight people spoke on behalf of the bill. The bill as amended by the House provides for the Lord's Prayer and Pledge of Allegiance in public schools after the approval of the school board or majority vote of the school district. The Governor's office indicated that the bill needed an amendment and the bill should be amended the same as the majority amendment presented in the House which was defeated. It was the feeling of Mr. Douglas that the bill as it now stands from the House would be unconstitutional. Therefore, even though the committee felt in sympathy with the bill we felt that we could send it on to the supreme court and ask for their decision as to whether it would be a constitutional issue as it now stands. If their answer were yes, would the proposed amendment as offered by the Governor's office stand the test of constitutionality?

Sen. LAMONTAGNE: I rise in opposition to the pending motion. I feel that if the committee does this then this will be the end as far as prayer. I think that this should be sent to the people on a referendum.

Sen. BRADLEY: Senator Porter could you advise us as to the issue that came up in connection with this?

Sen. LAMONTAGNE: Senator Porter, could you tell us whether there is such a thing as the prayer being introduced in other states?

Sen. PORTER: There are nine bills in Congress for voluntary prayer in school. There were four people who appeared in opposition to the bill and three in favor.

Sen. SPANOS: I rise in support of the report of the committee. I was impressed by the fact that Senator Porter indicated that the Governor felt that without the amendment this bill would probably be unconstitutional. I would like just once in this session to stand up supporting the position of his excellency — in this case I feel he is right.

Adopted.

HB 1027

amending in general the workmen's compensation laws.

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Third reading and final passage

HB 1054, amending the powers of the legislative facilities committee.

Sen. Trowbridge moved reconsideration.

Motion lost.

SUPREME COURT DECISION

To the Honorable Senate:

The undersigned justices of the supreme court submit the following answers to the questions contained in your resolution filed June 20, 1973, relating to House bill 639 as presently amended and also as it would be amended by a proposed senate amendment.

House bill 639 as already amended would empower school districts and cities to authorize by specified votes the voluntary daily recitation in the public schools of the Lord's Prayer and the pledge of allegiance to the flag of the United States.

Amend House bill 639 in its declaration of purpose recites that it is in the public interest to encourage school boards to authorize the recitation of the Lord's Prayer and the pledge of allegiance to the flag in the public schools every day. In furtherance of this purpose, it permits but does not require local enactments authorizing their voluntary recitation. Since the amendment in the senate includes the pledge of allegiance to the flag but does not include the Lord's Prayer, we consider first the constitutionality of encouraging by law a daily recital of the Lord's Prayer in the public schools.

In determining whether amended House bill 639 is constitutional, we are concerned with the guaranty of religious liberty contained in the first amendment to the Constitution of the United States. We are bound in the interpretation of this amendment by the decisions of the Supreme Court of the United States. The significant language of the amendment provides, "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. . . ." By

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We find that amended House bill 639 insofar as it encourages and authorizes the recital of the Lord's Prayer in the public schools does not avoid the constitutional difficulties present in a proposed 1967 House bill which mandated morning exercises to include in the discretion of the classroom teacher the use of the Lord's Prayer, and other religious readings. *Abington School District v. Schempp supra*; *Opinion of the Justices*, 108 N.H. 97, 228 A.2d 161 (1967).

In a recent elaboration of the test to be applied to determine whether a law offends the first amendment prohibition on enactments "respecting an establishment of religion", the Supreme Court of the United States speaking through Chief Justice Burger stated:

"In the absence of precisely stated constitutional prohibitions, we must draw lines with reference to the three main evils against which the Establishment Clause was intended to afford protection: 'sponsorship, financial support, and active involvement of the sovereign in religious activity.' *Walz v. Tax Commission*, 397 U.S. 664, 668, 90 S. Ct. 1409, 25 L. Ed. 2d 697 (1970).

"Every analysis in this area must begin with consideration of the cumulative criteria developed by the court over many years. Three such tests may be gleaned from our cases. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion, *Board of Education v. Allen*, 392 U.S. 236, 243, 88 S. Ct. 1923, 1926, 20 L. Ed. 2d 1060 (1968); finally, the statute must not foster 'an excessive governmental entanglement with religion.' *Walz, supra* at 674, 90 S. Ct. at 1414." *Lemon v. Kurtzman*, 403 U.S. 602, 612, 29 L. Ed. 2d 745, 755, 91 S. Ct. 2105, 2111 (1971).

Tested by these standards amended House bill 639 by encouraging and authorizing the daily recital of the Lord's Prayer in the public schools "sanctions and encourages a religious exercise to be conducted by teachers in the public schools and would therefore be in violation of the First Amendment to the Constitution of the United States as interpreted by the Supreme Court of the United States. *Schempp supra*; *Chamberlin v. Public Instruction Board*, 377 U.S. 402." *Opinion of the Justices*, 108 N.H. 97, 228 A.2d 161 (1967).

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"It is neither sacrilegious nor antireligious to say that each separate government in this country should stay out of the business of writing or sanctioning official prayers and leave that purely religious function to the people themselves and to those the people choose to look to for religious guidance." *Engel v. Vitale*, 370 U.S. 421, 435, 8 L. Ed. 2d 601, 610; 82 S. Ct. 1261, 1269 (1962).

The amendment proposed in the senate to House bill 639 would provide for "voluntary silent meditation" in place of the Lord's Prayer. In our opinion neither the encouragement nor authorization of voluntary silent meditation nor a voluntary pledge of allegiance to the flag violates the first amendment to the Constitution of the United States as interpreted by the United States Supreme Court. *Opinion of the Justices*, 108 N.H. 97, 228 A.2d 161 (1967).

"It has not been shown that readings from the speeches and messages of great Americans, for example, or from the documents of our heritage of liberty, daily recitation of the pledge of allegiance, or even the observance of a moment of reverent silence at the opening of class, may not adequately serve the solely secular purposes of the devotional activities without jeopardizing either the religious liberties of any members of the community or the proper degree of separation between the spheres of religion and government." *Brennan, J. concurring in Abington School District v. Schempp*, 374 U.S. 203, 281, 10 L. Ed. 2d 844, 891, 83 S. Ct. 1560, 1602 (1963).

In the event the proposed senate amendment should be enacted, it should explicitly provide for a voluntary pledge of allegiance as well as voluntary silent meditation in order to avoid the possibility of conflict with the Constitution of the United States. In *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 87 L. Ed 1628, 63 S. Ct. 1178 (1943), it was held that a school child may not be compelled to pledge allegiance to the flag. See *Kurland, The Supreme Court, Compulsory Education And The First Amendment Religion Clauses*, 75 W. Va. L. Rev. 213, 223 (1973).

In summary, you are advised that amended House bill 639 would be unconstitutional and that if amended as proposed by the senate as herein suggested, it would be constitutional.

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Sens. Lamontagne, Sanborn and Downing moved that the two letters be printed in the Senate Journal.

Adopted.

SUSPENSION OF RULES

Sen. Bradley moved that the rules of the Senate be so far suspended as to allow that HB 639 be placed on second reading at this time without previous notice in the Journal.

Adopted.

HB 639, relative to permitting the Lord's prayer and the pledge of allegiance in public schools at local option. Ought to pass with amendment.

Sen. BRADLEY: This is the so-called prayer bill. As you recall the bill was sent to the Supreme Court for an opinion and we asked for an opinion on the bill as it passed the House and on the proposed amendment. The Supreme Court told us last night that the bill as it passed the House is going to unconstitutional but that the proposed amendment would be constitutional provided that we made it clear that both the prayer and the pledge of allegiance is voluntary.

Sen. S. SMITH: Mr. President, I rise in favor of the pending motion.

Sen. PRESTON: The voluntary pledge of allegiance, Sen. Bradley, is that something that is part of the amendment?

Sen. BRADLEY: I believe that the Supreme Court made the ruling that it be voluntary.

Sen. LAMONTAGNE: Mr. President and members of the Senate, I really rise and feel very badly that the Lord's Prayer has been taken out of the schools.

Sen. S. SMITH: Sen. Lamontagne, do you believe that people of the Jewish faith should have to recite the Lord's Prayer?

Sen. LAMONTAGNE: The Jewish people have had the Lord's Prayer in school years ago.

Sen. PRESTON: I just wanted to say that I don't like the word voluntary in front of the pledge of allegiance.

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Sen. BRADLEY: Sen. Preston, have you seen the amendment thoroughly?

Sen. PRESTON: I agree that he is correct but I dislike the voluntary pledge of allegiance.

Sen. Poulsen moved that HB 639 be laid on the table.

Adopted.

COMMITTEE OF CONFERENCE REPORT

HB 289, providing that banks which give mortgages on real property may not levy a service charge against the seller of the property.

COMMITTEE OF CONFERENCE REPORT ON HB 289

The committee of conference to which was referred HB 289, An Act providing that banks which give mortgages on real property may not levy a service charge against the seller of the property, having considered the same report the same with the following recommendation:

That the House of Representatives recede from its position of nonconcurrence with the Senate amendments and the Senate recede from its position of adopting its amendments and the House and Senate each adopt the following amendments to the bill:

Amend the title of the bill by striking out the same and inserting in place thereof the following:

AN ACT

limiting banks which give mortgage loans on real property from levying certain service charges.

Amend the bill by striking out all after the enacting clause and inserting in place thereof the following:

1 Charges Prohibited. Amend RSA 384 by inserting after section 19 the following new section:

384:19-a Certain Fees Prohibited. No bank, person, partnership or corporation shall directly or indirectly, take or receive for a mortgage loan secured by any real estate any fee or other consideration other than the stated rate of interest on the mortgage, except for actual service rendered or actual ex-

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SB 76, brings the amount available for education of the handicapped to \$1,900,000?

Sen. GREEN: Absolutely, Senator.

Adopted.

Sen. Bradley moved that HB 639 be taken from the table.

Adopted.

HB 639, relative to permitting the Lord's prayer or the Pledge of Allegiance in public schools at local option.

Sen. Bradley moved the following amendment.

AMENDMENT

Amend the title of the bill by striking out same and inserting in place thereof the following:

AN ACT

permitting voluntary silent meditation
in public schools at local option.

Amend the bill by striking out all after the enacting clause and inserting in place thereof the following:

1 Declaration of Purpose. The general court declares it to be in the public interest to encourage school boards and school districts to authorize voluntary silent meditation in the public schools every day.

2 Adoption in School Districts. Amend RSA 194 by inserting after section 3 the following new section:

194:3-a Voluntary Silent Meditation in Public Schools. A school district may authorize voluntary silent meditation in the public schools in the following manner:

I. Upon unanimous vote of the school board; or

II. Upon approval by majority vote at any duly warned school district meeting in accordance with the procedure specified in RSA 197:1 or RSA 195:13.

3 Adoption in Cities. Amend RSA 47 by inserting after section 26 the following new subdivision:

Silent Meditation in Public Schools

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47:27 Voluntary Silent Meditation in Public Schools. A city may authorize voluntary silent meditation in the public schools in the following manner:

I. Upon a vote of approval of two-thirds of the members of the school board; or

II. By voter referendum at any regular municipal election for the election of city officers. The question shall be placed on the official ballot upon a majority vote of the school board or upon submission of a petition signed by ten percent of the registered voters of the city to the school board. The provisions of this section shall be deemed to have been adopted upon approval by a majority of those voting on the question.

4 Effective Date. This act shall take effect sixty days after its passage.

Roll Call requested by Sen. Trowbridge, seconded by Sen. Foley.

Yeas: Sens. Lamontagne, S. Smith, Gardner, Bradley, Green, Jacobson, Spanos, Nixon, Trowbridge, Porter, McLaughlin, Claveau, R. Smith, Ferdinando, Sanborn, Provost, Brown, Bossie, Johnson, Downing, Preston and Foley.

Nays: 0.

Result: Yeas 20, Nays 0.

Sen. LAMONTAGNE: Isn't it true Sen. Bradley, that by not mentioning the Pledge of Allegiance that it leaves it in the same manner that it is now without a law?

Sen. BRADLEY: That's right.

Sen. GREEN: I rise in support of the amendment as presented.

Sen. JOHNSON: I rise in support of this amendment. This bill was introduced by two outstanding legislators from Strafford County and it's a good bill.

Sen. PRESTON: I want to go on record as favoring this bill.

Amendment Adopted.

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Sens. Blaisdell and Poulsen being out of the Senate Chambers at the time of the roll call wished to be recorded as being in favor of the amendment to HB 639.

Sen. Bradley moved that HB 639 be placed on third reading and final passage at this time.

Adopted.

Third reading and final passage

HB 639, permitting voluntary silent meditation in public schools at local option.

Adopted.

Sens. Lamontagne and Foley moved Reconsideration of HB 639 at this time.

Motion lost.

Sen. Bossie moved that HB 798 be taken from the table.

Adopted.

COMMITTEE OF CONFERENCE REPORT
ON HB 798

(See Journal of June 28)

Sen. Downing moved that the Senate concur with the report.

Adopted.

Sens. Bradley, Bossie, Trowbridge and Green wish to be recorded as being against the adoption of the committee of conference report in respect to HB 798.

Sen. Downing moved Reconsideration of our action on the committee of conference report in respect to HB 798.

Motion lost.

COMMITTEE OF CONFERENCE REPORT

HB 888, making appropriations for the expenses of certain departments of the state for the fiscal years ending June 30, 1974 and June 30, 1975.

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COOS COUNTY

Fortier, Oleson and Poulin.

GRAFTON COUNTY

Ira Allen, David Bradley, Richard Bradley, Chambers, Copenhaver, Cornelius, Melnick, Taylor and Ward.

HILLSBOROUGH COUNTY

Arnold, Bernier, Wilfrid Boisvert, Corey, Corser, Day, Joseph Eaton, Fleisher, Gardner, Lynch, Martin, McGlynn, Fred Murray, Nardi, Normand, Orcutt, Quigley, Shea, Leonard Smith, Theriault, Van Loan, Woodruff and Zechel.

MERRIMACK COUNTY

Castaldo, John Cate, Milton Cate, Raymond Chase, Christensen, Eugene Daniell, Gamache, Hager, Haller, Hess, H. Gwendolyn Jones, Kenison, McLane, McNichol, Millard, Plourde, Rich, Riley, Shapiro and Underwood.

ROCKINGHAM COUNTY

Appel, Bisbee, Blanchette, Campbell, Cotton, Flanagan, Ganley, Gillis, Greene, Hoar, Krasker, Lockhart, Niebling, Parolise, Parr, Anthony Randall, Reese, Rogers, Sanborn, William Stevens, Stimmell and Wolfsen.

STRAFFORD COUNTY

Shirley Clark, Dudley, Dunlap, Horrigan, Joos, McManus, Parshley, Preston, Robillard and Barbara Thompson.

SULLIVAN COUNTY

Frizzell, Lucas, Sara Townsend and Tucker.

and the motion passed.

Rep. Riley who voted nay notified the clerk that she inadvertently voted incorrectly and wished to vote yea.

Rep. Hanson moved that HB 783 be indefinitely postponed.

Adopted.

HB 915, permitting the voluntary recitation of the Lord's prayer and the pledge of allegiance in public elementary schools at the option of the school district. Refer to the Committee on Judiciary for interim study. Rep. Cynthia Clark for Judiciary.

Rep. Schwaner moved that the words, ought to pass, be substituted for the committee report, refer to committee on Judiciary for interim study, and spoke to her motion.

Rep. Shapiro explained the committee report.

Rep. Winkley spoke in favor of the motion.

Rep. Morrisette requested a roll call.

Sufficiently seconded.

YEAS 209 NAYS 96
YEAS 209

BELKNAP COUNTY

Beard, Brouillard, Barbara Kidder, Lawton, Mansfield, Marsh, James Murray, Sabbow and Young.

CARROLL COUNTY

Conley, Dickinson, Howard, Kenneth Smith and Towle.

CHESHIRE COUNTY

Ames, Francis Callahan, Cooke, Cournoyer, Fillback, Cleon Heald, Knight, Ladd, Langille, Marshala, Milbank, Proctor, Russell, Turner and Whipple.

COOS COUNTY

Cooney, Rebecca Gagnon, Horton, Huggins, Hunt, Judd, Victor Kidder, Oleson and Patenaude.

GRAFTON COUNTY

Ira Allen, Altman, Richard Bradley, Buckman, George Cate, W. Murray Clark, Gaylord Cummings, Myrl Eaton, Mann, Pepitone, Bruce Townsend and Ward.

HILLSBOROUGH COUNTY

Ackerson, Ahern, Baker, Barrett, Bednar, Belanger, Bishop, Wilfrid Boisvert, Boyd, Bragdon, Bruton, Burke, Carter, Cobleigh, Coburn, Corey, Joseph Cote, Crotty, Cullity, Douzanis, Drewniak, Favreau, Gabrielle Gagnon, Gauthier, Gelinas, Granger, Salvatore Grasso, Gravelle, Philip Heald, Holland, Howard Humphrey, Karnis, Edmund Keefe, LaChance, Levasseur, Lynch, MacDonald, Martel, McLaughlin, Milne, Morgan, Morgrage, Morrisette, Fred Murray, Nardi, Normand, Timothy O'Connor, Orcutt, Paradis, Russell Perkins, Polak, Quigley, Record, Reidy, Henry Richardson, Shea, Andre Simard, Sing, Kenneth Spalding, Sullivan, Sweeney, Theriault, P. Robert

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constructing an addition or additions to the Wentworth-Douglass Hospital, provided that RSA 33:4-a shall not apply to the borrowing of such sum.

Amendment adopted. Ordered to third reading.

HB 915, permitting voluntary recitation of the Lord's Prayer, and the pledge of allegiance in public elementary schools at the option of the school district.

Majority report: Ought to pass.

Minority report: Ought to pass with amendment.

Sen. Sanborn for the majority of the Committee on Education.

Sen. SANBORN: This is a very simple bill that should have been passed many years ago. All it does is allow a school district to establish the voluntary use of the Lord's Prayer in the schools. It does not mandate that anyone has to remain in the class. If anyone objects they may leave. It just requires voluntary use of the Lord's Prayer. The bill does go one step further in something that has been missing from the schools for years. It does require the Pledge of Allegiance that we use here every time we open the Senate or the House, in respect to our nation's flag. This is the only thing that this bill does.

Sen. ROCK: I rise in strong support of the motion before you. I think that all of us have heard many instances where there have been attempts to read into that which our founding fathers gave us by courts of this land things which were never intended. I think it is very important that we realize and consider that those founding fathers had a deep and well-rooted respect for the Almighty. If you think of the words of the prayer that are contained in this bill, it would be difficult for anyone at any time to see them as the teaching of a religion. I think that all of us here daily in our deliberations, while we may not be in the same position as a school child who is in the classroom, by the rules or the laws that we make as lawmakers, can understand that one of the problems our nation is facing today is that drifting away of the respect and the thoughtfulness that we should have for a Supreme Being, the Ten Commandments, and the allegiance that we should have to the flag of our country. I cannot say words strong enough in praise for the sponsor of this measure, originally, who traditionally in the House has brought before each of the 400 members in that body some very deep thoughts that we seem to be forgetting as a nation. I frankly am very sick and tired of having judges read into the amendments to our Constitution and the Constitution itself things that our forefathers never put there and never intended that they be there. I see no problem with this bill in any respect since it gives the local option to the school district, since it puts no burden on any student to perform any act that is unpalatable to them, and I sincerely hope that members of this Senate will in good conscience say the words of that prayer to themselves and think of anything in there that could be offensive to anyone in this state. You say the Pledge of Allegiance daily here, and I think that we have given the example of the Pledge of Allegiance and should give the example with the passage of this bill.

Sen. LAMONTAGNE: I rise in support of this bill. I was very unhappy about the report that Rep. Morrisette brought to me that information was given to him that I was in opposition to having this prayer. I certainly would like to have the record show that I am in favor of the bill, and at the same time that I support this bill very highly, that I have never ever said that I was against it.

Sen. S. Smith moved adoption of the amendment.

Sen. S. SMITH: What this amendment does is change the Lord's Prayer to a voluntary silent meditation and recitation of the Pledge of Allegiance. It allows the school district to authorize this voluntary silent meditation. I sense that this amendment will not probably be adopted. But I arise basically as a matter of conscience and also because of our Constitution. I, too, have respect for religion and attend church most Sundays during the year with my family. I also read in the First Amendment to the Constitution where it says Congress shall make no law respecting an establishment of religion. Now it has been stated that this is not an establishment of religion. But in my view, it is. It is mandating something or allowing something to be mandated by school boards, even though it is called voluntary. When you have a child of five years of age whose parents insist that he either leave the classroom or wants to leave the classroom, this is a restriction on that child's freedom. It is a restriction and an embarrassment to him, and therefor creates pressure on that

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person. Not only have we had this bill before, similar legislation, but we have had an opinion from the Supreme Court which you will find in the 1973 Senate Journal, saying that similar legislation was deemed unconstitutional. But beyond that, I think that we had in fact reached a point where we have a great intrusion of the state upon the family and upon the individual. Day after day we hear reports of a breakdown in the relationship of families. The school, by giving this prayer, and having a prayer in school, particularly the Lord's Prayer, is not going to bring back people to a religious belief. This has to be done in the family. To have the state involved in imposing prayer in this manner is not only unconstitutional, but it is in my view again the state taking over for the responsibility of the family in this nation. The question I asked in committee is which do you consider to be the traditional Lord's Prayer? And this immediately raised questions among even the sponsors of this legislation, and the proponents of it because they could not agree. I hope that this Senate will not be pressured by rhetoric and by some attitudes that seem to prevail that we must impose this upon people, but listen carefully to what our forefathers talked about in the Constitution and one of the great concerns in the Constitution which was the ability to be free in the practice of one's religion. I think this bill works counter to that. I also believe that the people, most of us who are here in this room, have ancestors who came to this country basically for this reason. That is to escape religious persecution. No matter to what faith one belongs, this is a major reason why this country was established and why our Constitution speaks so clearly and precisely about not imposing any religion through government.

Sen. ROCK: Would you agree with me that the original settlers, the Pilgrims, came here not to escape religion but to escape a state imposed religion of one singular faith wherein they felt they should have a right to choose a religion or a faith of their own.

Sen. S. SMITH: I think they felt that they should have a right to establish a faith of their own in their particular community. But I think also that one of the concepts of most of those settlers was not to impose their religion on other groups.

Sen. ROCK: Assuming then that we agree on that point, Senator, and I am sure we do. Would you agree with me also that your study of our early history in the United States showed on numerous occasions our Pilgrim forefathers giving thanks through prayer, joining in Thanksgiving prayer, offering prayers for harvests, for crops, and appealing to a Supreme Being to continue to allow them to enjoy the fruits of the great land in which they had settled and that they were in fact not anti-religion or atheists, but a very religious people.

Sen. S. SMITH: Yes, I would agree with you one hundred percent. They did this voluntarily, and they did not impose it through a school board or a state legislature which mandated that some form of religion be expressed.

Sen. ROCK: Since this bill is based on the concept and the precept of voluntarism, that it is voluntary for the community to adopt it, that it is voluntary for the student to recite it, and since theirs is a voluntary acceptance, aren't we on the same track, and don't you now agree with me, Senator, that we should pass this legislation?

Sen. S. SMITH: No, I don't because I am not concerned about the community. Nor am I concerned about the school. But I am concerned about the individual which our Constitution and our forefathers talked about to a great extent and that individual particularly who might feel recrimination as an elementary student at one of the schools in our state.

Sen. BRADLEY: Two years ago when a somewhat similar bill was before the Senate, we referred it over to the Supreme Court for an opinion as to its constitutionality. The Supreme Court wrote an opinion and indicated that that bill, by encouraging and authorizing the daily recitation of the Lord's Prayer in the public schools, sanctions and encourages a religious exercise to be conducted by teachers in the public schools and would therefore be in violation of the first amendment to the Constitution. Do you have any indication that this bill is not just as unconstitutional as that bill two years ago?

Sen. ROCK: I don't know if what I am saying is in the true spirit of a legislator, but it certainly is in the true spirit of a parent and of a citizen who is sick to his eyeballs of liberal judges and their decisions. If you send this to the Supreme Court and they strike it down, I will introduce it two years from now, and I will make them keep striking it down until they get the message that the people of this country are tired of their decisions that are favoring minorities and opposing what the majority of this country wants, which I believe is the Pledge of Allegiance and voluntary prayer.

Sen. BRADLEY: I assume that you take your oath to uphold the Constitution as seriously as I take my oath?

Sen. ROCK: I certainly do.

Sen. BRADLEY: Don't you agree that the Supreme Court of the United States and the Supreme Court of the State of New Hampshire are the final arbiters of what the Constitution means until the Constitution has been changed by the constitutional process?

Sen. ROCK: It is my belief that the liberal courts of today have read things into the Constitution that our forefathers never intended to be there and which are a travesty upon the Constitution and its amendments, and I think their interpretations are wrong. I would not in any case go in without statute and force this on anybody, but I think we have the right to pass a law of this nature. I think this does differ in degree from the previous legislation in that it is permissive in the community to allow it. It is also permissive voluntarily on the part of the student, and I do think it does differ from the previous legislation that you sent to the Court enough so that we could submit it again if you wish, but I would like to see the burden on someone else to test it in the courts, and let us pass the bill as it now is before us.

Sen. LAMONTAGNE: I personally feel that the prayer was in the schools for many years until the courts started getting the picture and found that the people cannot have a prayer in schools. Again, I personally feel that the trouble today is the parents that we have. Because I am sure if the courts had not brought up this subject about not having the prayer in school, that the subject would have stayed, and therefore the school prayer would have lived. But because of the interpretation, the prayer has been discontinued. I personally feel that it is wrong. At the same time, we have the right of passing this bill because there have been other times that the courts have been wrong. I will still agree with the Senator from the Twelfth District. Let's pass it and let someone else take it to court to prove the merits of this bill.

Sen. BERGERON: I rise in opposition to the minority report and in full favor of the majority. I have listened to the minority report and wholeheartedly disagree with the rhetoric contained therein. I think what they are trying to do is destroy the intent of the entire bill, and I urge you to vote for the majority report.

Sen. MONIER: I was not going to speak on this bill, but I would like to have the record show that I thoroughly agree with Sen. Rock's comments. I have to remind some of those who have been speaking for the minority report, which I stand in opposition to, that I agree with comments of Senator Smith that family morality has broken down, that religion has become of lesser importance to children. I have even had children of my own with me at public meetings which are inevitably opened with prayer and Pledge of Allegiance, and I have had one of them ask me, and this was back when the Supreme Court said some silly thing like our New Hampshire Supreme Court is now following, and that was how come we pray and have the Pledge of Allegiance here when all of a sudden now it is not proper in the schools? I think if some of these self-anointed judges that have been interpreting our Constitution for the forefathers were to remember that they are a co-equal branch of government, not the dictatorial branch of government. We have a perfect right, Senator, to pass this bill. They have a perfect right to declare it unconstitutional. I agree with Sen. Rock; I hope they keep doing it until twenty years from now, as twenty years before, they'll change their mind. It is up to the Legislature to speak for the citizens of the state. The judges have certainly not done it. Therefore I urge that we pass this bill. If they want to strike it down, pass it again. Maybe eventually they will get the message. At least we can answer to the citizens. They are appointed, under tenure, and they don't have to. Maybe they want to set public policy, and that is what they have been doing in these social issues for the last fifteen years. I don't agree with it, and I want to take every opportunity I can to oppose it. Passage of this bill is one opportunity to do so.

Sen. CLAVEAU: Senator Bradley, are you telling us that the Supreme Court is infallible, that we should always follow their decisions?

Sen. BRADLEY: No, I am not saying the Supreme Court is infallible. But I am saying that under our Constitutional means of government that the Supreme Court is the final arbiter as to what the First Amendment means. That has been interpreted quite clearly by the U.S. Supreme Court, as well as our own court to prohibit this kind of bill. If we do not agree with that decision, there are at least two avenues, lawful avenues, open to us. One is to go to the Supreme Court and re-argue it. The

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other is to introduce a constitutional amendment. However, it seems to me that we are just admitting that we are acting totally lawlessly by passing something which has been declared to be unlawful under the Constitution.

Sen. CLAVEAU: I suppose that in your studies of the law you have heard about the Dread Scott decision? Do you think that was a proper decision?

Sen. BRADLEY: No, I don't. I do not think the Supreme Court or any branch of government or any organ of government or anything run by humans is infallible. But I do believe there are laws and a Constitution which we are sworn to follow and uphold and clearly we are not following it.

Sen. CLAVEAU: Are all members of the Supreme Court lawyers?

Sen. BRADLEY: In both New Hampshire and United States supreme courts they are at the present time.

Sen. MONIER: I am intrigued by your commentary about lawlessness. Are you implying that if the Supreme Court overturned something that a legislative body has enacted that from that point on the legislative body should never enact a law that is in opposition to what they had said?

Sen. BRADLEY: I would not state it quite in those terms. I would have to answer no because as Senator Claveau mentioned, the Dread Scott case, and historically we recognize that that was probably a mistake and the Supreme Court has so indicated. There is a vast difference between that and a Supreme Court decision which is only two years old, where there has been nothing to indicate that constitutional principles have changed, or that the Supreme Court would in any way change their view, and in the face of that, we are going outside the Constitution and telling the judges, we don't care what you say the Constitution means. We are going to pass this law anyway. That is a much different thing.

Sen. MONIER: To follow that logic, then, under those circumstances, we would have a certain time interval that we would wait till we sensed that the judges had changed their mind, like the Dread Scott or anything else, before we would pass another bill that might be in opposition to what they have already ruled. If that happened, is it not true, that there never would really be any legislative challenges to the judicial branch?

Sen. BRADLEY: No, I do not think that is true at all.

Sen. MONIER: Then it is within the prerogative of the Legislature to pass a law that a Supreme Court may have already said is illegal. It still is very responsible. We are not imposing upon them by saying that they may go ahead and declare it again.

Sen. BRADLEY: I think the difference is this, Senator. If you pass a bill which may have been declared unconstitutional sometime in the past, and you have a good faith belief or even perhaps an arguable belief that you can go with that bill that you are passing, before the Supreme Court and argue your case and have any chance of winning, that is one thing. That is responsible. But if you and every other Senator in this room know that there is not one iota of a chance, and don't care whether there is a chance or not, of this bill being upheld by the New Hampshire Supreme Court, that is what I say is the unlawful and the lawless disregard for our constitutional process.

Sen. MONIER: Do you believe that I don't believe that my carrying out the responsibilities of what I consider to be the legislative process is lawless or unfaithful or anything else. I could care less if the Supreme Court thinks it is lawless or not. It is their prerogative to rule it unconstitutional. It is still our prerogative to pass a law that they have ruled unconstitutional, that they have not ruled unconstitutional, that they have never even had an action taken on. If that was not so, we would still have slavery.

Sen. BRADLEY: I have said most of what I want to say in response to questions. The statements that we are fed up with liberal judges who are interpreting the Constitution is a way with which we don't agree and its time that we therefor acted contrary to it, that kind of language is so close, in my mind, to some of the language that I was listening to only a few years ago by campus radicals saying, just changing the words only slightly, conservative judges or the conservative members of the establishment are making these decisions which are so contrary to what the majority of the people want, that we have got to take the law into our own hands. Now I think each of you has to look into your own conscience to see how close what you are saying is to that same thinking.

Sen. TROWBRIDGE: A long time ago when I did practice law, I happened to be working in the law firm that was the plaintiffs in the Jenks case, which was the case that struck the federal case, in the Eastern District Court of Pennsylvania. In that case the Jenks's were hardly irreligious. They were, I believe, Jehovah's Witnesses, and they had an entirely different view of the old testament than did the current or the normal Protestant or Catholic view of the Bible. So these cases did not come up from people who were atheists or something like that, is that not true? It was from people who said, I do not want my child exposed to a version of the Bible, I do not believe in a wrathful God and that kind of thing. Wasn't that the argument, not the fact that they were someone who said I don't want to hear a prayer?

Sen. BRADLEY: That is a very good point. As legislators I think we have to, despite our personal feelings, give the same consideration to someone who is a Jehovah's Witness as we do to an atheist as we do to a Unitarian.

Sen. SANBORN: I rise in opposition to the proposed amendment and hope the majority views of the bill as originally presented will prevail. We have discussed in my mind the prayer section of this, but what upsets me is also the further restriction put on the Pledge of Allegiance to the flag of the United States in this amendment. It makes it voluntary. I have noticed over the years, and I think most everybody here has, the increased lack of respect for our country. There is to me only one symbol of this country of ours, and that is the flag of the United States. We have gotten so that children in school today, the only time they do know what the Pledge of Allegiance is, is when they come up here and visit the Senate or the House and hear it here. Because they don't hear it in the schools any longer. It is interesting in a way to listen to our good lawyer member from District Five relative to Supreme Court decisions when only two years ago he and I were working trying to find out some solution to the Supreme Court decision on abortion. We fought together trying to make some kind of ruling under then HB 606, that was finally killed here in the Senate. It is interesting to know that one time we see a court decision one way and another time we see it another.

Sen. GARDNER: I once again speak in favor of this bill. I have always been in favor of prayer in schools. I think it hurts no one. In fact I think I am in favor of prayer anywhere, regardless of what denomination says it. I think it does everyone a lot of good to open a school exercise with prayer and a Pledge of Allegiance to the flag. I think it starts the day right. I also feel the same about the Pledge of Allegiance as the Senator from District Seventeen has expressed.

Sen. JACOBSON: Since I was a very small boy, I have been praying, and I am still praying because I recognize the frailty of human beings such as myself. However I came down from the podium to speak to one question and that is the question about the Supreme Court, or the courts of our land. I may say that I am deeply disturbed by some statements that were made here in the Senate today with respect to our court system. I think that we have to be very careful when we make statements that border on the radical with respect to the system which we have so zealously preserved over the years since 1787. I think we can disagree with a Supreme Court decision. I agree with Sen. Bradley that we have options open to us, to amend the Constitution of the United States and to amend the Constitution of New Hampshire. But if we are to enter into continuing confrontation with the Supreme Court, we begin to weaken and destroy the fabric of our country. That distresses me. Questions were raised on the Dread Scott decision. The issue in Dread Scott was whether or not a Negro who was a slave in Missouri traveling to Wisconsin by definition could then be free because he happened to live in a free state. Bear in mind this, that at the time, the year 1856, slavery was not prohibited. There was no prohibition of slavery. There was no thirteenth amendment, fourteenth amendment or fifteenth amendment. The issue was a very clear one. After the thirteenth, fourteenth and fifteenth amendments were adopted, of course, slavery in itself became illegal. Under the terms of the law as it was in 1857 the Dread Scott decision was reasonable, though we surely would not want to agree with it. There were many in the abolition societies who disagreed with it at the time. But the Dread Scott decision was made on circumstances that were entirely different. As to the first amendment, the first amendment says very clearly in the United States Constitution that Congress shall make no law respecting religion. I cannot quote the New Hampshire Constitution, but it is relatively similar to that. The question is whether or not we should abide by the Constitution and the Supreme Court decision as they exist. I think it is a very dangerous precedent that we vote

contrary to them in view of the fact that we have legitimate avenues open. We have the opportunity to amend our New Hampshire Constitution, and we have an opportunity to amend our American Constitution. This has nothing to do with whether people believe in prayer. Frankly I believe that children should have the opportunity to say prayer in schools or anyplace else. I am distressed that Jehovah's Witnesses cannot have the Pledge of Allegiance, yet they have been by Supreme Court decision allowed not to do it. If we get into this kind of action, we may find ourselves in the tyranny of the majority, where our laws were essentially formed to protect the minority as well as the majority. I hope that we will consider very seriously our action today. I could not allow myself not to take the opportunity to speak on this question because I believe in law; I believe in equity; I believe in integrity, and that we ought to follow a course that provides for the continuance of law, and of equity and of integrity.

Sen. PRESTON: With all due respect to your position and your coming from the podium to speak on this matter, I just want to follow through, if I may. It was suggested that we do away with the motto, "In God We Trust" on our coins as produced by the Treasury. Or it came to us that we should pursue your philosophy and perhaps have meditation in the Senate Chamber instead of prayer. I was just curious as to what your position would be in regard to these two issues.

Sen. JACOBSON: If "In God We Trust" were to be a Supreme Court decision, then the mint in all probability would have to remove "In God We Trust". With regard to prayer in the Senate, there has been no court decision. Therefore that continues.

Sen. FERDINANDO: Under the bill I cannot understand what your objection would be to the bill, because it seems to me that it would be very permissive prayer participation, which doesn't seem to be your argument.

Sen. JACOBSON: It is permissive legislation, and it allows the authorization of a school district to provide for it. As I read the bill very quickly what happens when there are objections to this authorization? If the majority feel they want this, can they impose it on the minority? That is the fear that I have.

Sen. FERDINANDO: The language as it relates to the pupils is that it will be strictly voluntary for them to participate if they choose, if I understand the reading of the bill.

Sen. JACOBSON: What happens there is that you then get a divided group—those who want to pray and those who don't want to pray. I think that creates certain kinds of problems.

Sen. MONIER: Do you really feel that we are in radical confrontation with the Supreme Court by saying that the bill permits a recitation of the Lord's Prayer and Pledge of Allegiance in public elementary schools at the option of the school district and pupil participation in recitation shall be voluntary?

Sen. JACOBSON: I believe the court case of 1961 in the State of New York came to the United States Supreme Court, and that court case had been designed to completely conform to this matter of voluntarism and the question of sectarianism. Yet the Supreme Court said that that prayer in the state of New York could not be recited in the New York public schools.

Sen. DOWNING: I rise in opposition to the pending motion to amend the committee report, and in support of the committee report. I want to make it clear in the record that I fully understood Sen. Bradley and the reservations he made relative to comments that were made on the main report. I want the Senate to know that I can support the committee report without subscribing to or approving in any way many of the statements that were made relating to the Supreme Court and the original report of the committee. I do recognize that the court is made up of men, like the Legislature is, and we in fact ourselves have seen us make statutes to make legal things that have been in practice for some period of time, because people wanted this. I do not think this is any different. Many decisions are handed down by the Supreme Court, and you have a one vote difference. Well, but for one man, one member of that court, the decision could very well have been different. I think it is important that they realize what the people want. I urge you to defeat the amendment, and support the committee report.

Sen. S. Smith in Chair.

Discussion. Sen. Ferdinando moved the previous question.

Adopted.

Amendment lost.

Sen. Jacobson in Chair.

Roll Call requested by Sen. Monier, seconded by Sen. Saggiotes.

The following senators voted yes: Sen. Lamontagne, Poulsen, Gardner, Bergeron, Saggiotes, Monier, Blaisdell, Rock, McLaughlin, Claveau, Ferdinando, Sanborn, Provost, Brown, Bossie, Fennelly, Downing and Preston.

The following senators voted no: Stephen W. Smith, Bradley, Trowbridge, Roger A. Smith and Foley.

Result: 18 yeas; 5 nays.

Adopted. Ordered to third reading.

HB 544, relative to the appeals procedure of the state personnel commission. Inexpedient to legislate. Sen. Rock for the Committee on Executive Departments.

Sen. ROCK: HB 544 is relative to the appeals procedure of the state personnel commission and the determination of employment or elective office which conflicts with state employment. Our committee heard this bill, and lengthy testimony was delivered on it. It was the committee's recommendation that this bill be inexpedient to legislate for several reasons. On page 1, 98:21, Appeal of Dismissal. We had great concerns with the words, "laid off". As you know, in Fish and Game thirty people will be laid off on July 1. There is also the opportunity for those persons who have had five years or more in state service to bump other persons in positions in cases of lay-off. But to open the doors of a lay-off and appeals under these conditions is going to be a very very serious matter. Under 98:22, "Any employee who is aggrieved by any action . . ." and I ask for a definition of aggrieved. For any reason a person could be aggrieved if he didn't like the way his superior looked at him that morning. This bill is going to give serious problems to our state departments. It is going to give serious problems to this legislative body when we abolish positions, opening floodgates of appeals to persons who were either laid off or who were aggrieved. I think it is also interesting to note that testimony from Mr. Lang, whose budget now allows for \$1260, or about one hearing per month, and assume what kind of a flood of appeals you are going to have with this legislation, with thirty people being laid off from one department alone. The Deputy Commissioner of Public Works appeared before the committee and gave testimony to the effect that this is going to have a serious budget impact on their program in that department. There appeared to be no basis in fact or demand or stringent reason for passing this kind of legislation at this time, and the committee urges that it be inexpedient to legislate.

Sen. Bossie moved the bill be made a SPECIAL ORDER FOR 12:01 Tuesday next.

Adopted.

HB 687, establishing a four-year term of office for the commissioner of employment security and requiring annual reports from the advisory council. Inexpedient to legislate. Sen. Rock for the Committee on Executive Departments.

Sen. ROCK: This bill establishes a fixed term of five years for the Commissioner of Employment Security. There was no testimony given, in the eyes of those committee members present, which showed a serious need for this legislation. Any accusation that there is only one department at which the chairman serves in this manner was shown to be not true. I was very impressed with the persons who came before our committee as were the other members who spoke in opposition to them. One of them, Mr. Joseph Moriarity, head of the AFL-CIO, said there was absolutely no need for this legislation. Another, Mr. Burbank, Chairman of the Advisory Council, spoke before the committee and also said there was no need for legislation of this type. I think it is important to note that our Department of Employment Security fund is one of the few solvent funds in the United States today. It is the only one east of the Mississippi that is in the black by a substantial margin. We think the commissioners of this department in years past, as outlined one by one by persons who were there giving testimony, have done the job that needed to be done in a most exemplary fashion, and that this was a bill aimed at an individual, rather than an improvement, and therefore the bill was moved inexpedient to legislate.

Sen. FOLEY: How can you say that this was against a specific individual when this bill would not go into effect until after that person had retired?

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CHAPTER 224

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167: 26 Protective Payee. If the person receiving public assistance is, on the testimony of reliable witnesses who are not officials or employees of the division of welfare, department of health and welfare, found to be incapable of taking care of himself or his money, the director of the division of welfare, department of health and welfare, may make the payments of such assistance to a protective payee, as defined by federal regulations, for the benefit of such person.

223: 2 Effective Date. This act shall take effect sixty days after its passage.

[Approved June 3, 1975.]

[Effective date August 2, 1975.]

CHAPTER 224.

AN ACT TO PROHIBIT CERTAIN MOTOR BOATS AND MOTORS ON
LOUGEE POND IN BARNSTEAD.

*Be it Enacted by the Senate and House of Representatives in General
Court convened:*

224: 1 Lougee Pond. Amend RSA 486 by inserting after section 18 the following new section:

486: 19 Lougee Pond. No person may use or operate any boat equipped with a petroleum powered motor or any boat equipped with a motor of more than five horsepower upon the waters of Lougee pond in the town of Barnstead. Any person who violates this section shall be guilty of a violation.

224: 2 Effective Date. This act shall take effect sixty days after its passage.

[Approved June 3, 1975.]

[Effective date August 2, 1975.]

CHAPTER 225.

AN ACT PERMITTING THE VOLUNTARY RECITATION OF THE LORD'S
PRAYER AND THE PLEDGE OF ALLEGIANCE IN PUBLIC ELEMEN-
TARY SCHOOLS AT THE OPTION OF THE SCHOOL DISTRICT.

*Be it Enacted by the Senate and House of Representatives in General
Court convened:*

225: 1 Lord's Prayer and Pledge of Allegiance in Public Schools. Amend RSA 194 by inserting after section 15 the following new section:

194: 15-a Lord's Prayer and Pledge of Allegiance in Public Elementary Schools. As a continuation of the policy of teaching our country's history and as an affirmation of the freedom of religion in this country, a school district may authorize the recitation of the traditional Lord's prayer and the pledge of allegiance to the flag in public elementary schools. Pupil participation in the recitation of the prayer and pledge of allegiance shall be voluntary. Pupils shall be reminded that this Lord's prayer is the prayer

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our pilgrim fathers recited when they came to this country in their search for freedom. Pupils shall be informed that these exercises are not meant to influence an individual's personal religious beliefs in any manner. The exercises shall be conducted so that pupils shall learn of our great freedoms, which freedoms include the freedom of religion and are symbolized by the recitation of the Lord's prayer.

225: 2 Effective Date. This act shall take effect sixty days after its passage.

[Approved June 3, 1975.]

[Effective date August 2, 1975.]

CHAPTER 226.

AN ACT RELATIVE TO CHANGES IN TIMBER HARVESTING LAWS.

Be it Enacted by the Senate and House of Representatives in General Court convened:

226: 1 Cutting of Timber Near Public Waters and Highways. Amend RSA 224: 44-a, II (supp), as inserted by 1973, 81: 1, by inserting in line one after the word "thereof" the following (of frontage on the affected great pond, navigable river or public highway, or any other stream, river or brook which normally flows throughout the year from which trees are cut in excess of limits prescribed in this section) so that said paragraph as amended shall read as follows:

II. Each two hundred linear feet or fraction thereof of frontage on the affected great pond, navigable river or public highway, or any other stream, river or brook which normally flows throughout the year from which trees are cut in excess of limits prescribed in this section shall constitute a separate offense.

226: 2 Penalty. Amend RSA 224: 47, as amended, by striking out said section and inserting in place thereof the following:

224: 47 Penalty. Any person who pushes over, cuts, saws or operates or who causes to be pushed over, cut, sawed or operated any such timber, brush, lumber or wood, or any owner of land where cutting is done, shall be guilty of a violation for each one hundred linear feet or fraction thereof from which the slash and mill waste is not properly removed or disposed of under RSA 224: 44-b within thirty days after such cutting, or, in the case of material adjudged by the department of resources and economic development to be an unusual hazard under RSA 224: 46 within such reasonable time as the department of resources and economic development may determine not exceeding thirty days from the date of service of the removal notice. If the person refuses or neglects to properly remove or dispose of the slash, mill waste or hazardous material within the time prescribed, the person shall be guilty of a violation as provided in this section for each subsequent thirty-day period of refusal or neglect to so remove or dispose of such slash, mill waste or hazardous material.

226: 3 Repeal. RSA 224: 44 and 45 relative to care of lumber slash are hereby repealed.

000145

Johnson, Nancy
Musler, George
Smith, Marjorie
Wall, Janet

Kaen, Naida
Pelletier, Arthur
Snyder, Clair

Knowles, William
Proulx, Raymond
Spang, Judith

Lent, Donald
Rollo, Michael
Taylor, Kathleen

SULLIVAN

Allison, David
Flint, Gordon Sr
Jones, Constance
Robb, Amy

Burling, Peter
Franklin, Peter
Leone, Richard

Cloutier, John
Harris, Joseph
Odell, Bob

Ferland, Brenda
Harris, Sandra
Phinizy, James

and the motion to lay on the table failed.

The question now being Inexpedient to Legislate.

On a division vote, 211 members having voted in the affirmative and 137 members in the negative, Inexpedient to Legislate was adopted.

REGULAR CALENDAR (CONT'D.)

HB 1446, relative to the recitation of the pledge of allegiance in the public schools. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.**

Rep. Bruce L. Dearborn for the Majority of Education: This bill would require school districts to authorize a period of time during the day for the recitation of the pledge of allegiance and would require all pupils to stand during the recitation while retaining the voluntary nature of the recitation. The Committee thoroughly debated the merits and implications of the bill as well as possible amendments. The majority of the Committee continues to support the rationale stated in the original blurb on February 21st. The members of the Committee unanimously share the sense of pride and patriotism expressed by those who testified in favor of this legislation. But while the intent of the sponsors is clear, its practical impact is not. Some members were concerned that the bill, having no penalties for non-compliance, would have no binding effect. Other members were concerned that, if school districts were sued for non-compliance, court-imposed penalties could include fines or worse. Even schools that comply may face legal costs if they are sued on a Constitutional challenge to the mandate in the bill that all children must stand for the pledge. Some members were concerned that the bill amends existing statute that essentially codifies the Lord's Prayer and leaves it on the books as the prayer of "our pilgrim fathers" although New Hampshire is a state of many religious faiths. Many members believed that it is inconsistent to force children to honor freedom. The sense of the committee was that patriotism is best expressed freely from the heart, not mandated by government. Vote 9-8.

Rep. Stephen L'Heureux for the Minority of Education: Some members who voted with the minority feel that patriotism is borne from the heart and this legislation may not have the desired effect of the sponsor. However, those same members did recognize that daily recitation of the Pledge of Allegiance may lay the foundation for a lifetime of patriotism leading into adulthood and this solid foundation should begin in our elementary, formative years. The minority of the committee shares some of the concerns of the majority about the bill's workability and constitutional implications, but still believes that HB 1446 Ought To Pass.

Reps. Putnam, Rosen, Loren Jean, Pepino and Estabrook spoke against.

Reps. Cox, Judith Sullivan and Dearborn spoke in favor.

Reps. Guay, Jacobson and Sapareto spoke against and yielded to questions.

Rep. Estabrook requested a roll call; sufficiently seconded.

The question being adoption of the majority committee report.

YEAS 121 NAYS 234

YEAS 121

BELKNAP

Wood, Jane

CARROLL

Millham, Alida

Pilliod, James

None

000146

Allen, F
Espieles
Mitchel
Weed,

Bradley

Akins,
Eaton,
Scoville

Bragdon
Drabin
Furma
Goley,
Johns
LaFlair
Martin
Willard

Bouch
Davis
Greene
Moore
Seldin

Blanc
Cox,
Kelle
Pitts,
Splai

Bickel
Gilm
Hugl
Pelk
Spai

Allis
Frat

Bar
Hol
Ros

Bal
Lyn
Qu

Lent, Donald
 Rollo, Michael
 Taylor, Kathleen

Ferland, Brenda
 Harris, Sandra
 Phinizz, James

and 137 members in the negative,

(T.D.)

the public schools. **MAJORITY:**
TO PASS.

will would require school districts
 of the pledge of allegiance and
 the voluntary nature of the
 applications of the bill as well as
 to support the rationale stated in
 to unanimously share the sense
 of this legislation. But while
 members were concerned that
 binding effect. Other members
 nance, court-imposed penalties
 legal costs if they are sued on
 children must stand for the pledge.
 that essentially codifies the
 "pilgrim fathers" although New
 eved that it is inconsistent to
 al patriotism is best expressed

ers who voted with the minor-
 may not have the desired effect
 ly recitation of the Pledge of
 into adulthood and this solid
 y of the committee shares
 constitutional implications,

st.
 tions.

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545

CHESHIRE

Batchelder, Robert
 Hunt, John
 Pratt, Irene

Burnham, Daniel
 McGuirk, Paul
 Pratt, John

Dexter, Judson
 Meader, David
 Richardson, Barbara

COOS

Bradley, Paula

Davis, Perley

GRAFTON

Akins, Ralph
 Eaton, Stephanie
 Scovner, Nancy

Almy, Susan
 Marshall, Gene
 Sokol, Hilda

Benn, Bernard
 Nordgren, Sharon
 Solow, Martha

Cooney, Mary
 Pawlek, Marion

HILLSBOROUGH

Bragdon, Peter
 Drabinowicz, A Theresa
 Furman, Christine
 Goley, Jeffrey
 Johnson, Lionel
 LaFlamme, Paul
 Martin, Mary Ellen
 Williams, Carol

Clayton, William
 Drisko, Richard
 Gargas, Carolyn
 Gorman, Mary
 Keye, Harvey
 LaRose, Richard
 Sullivan, Peter

Clemons, Jane
 Eaton, Richard
 Ginsburg, Ruth
 Hall, Betty
 Konys, Christine
 Leishman, Peter
 Vaillancourt, Steve

Cote, David
 Foster, Linda
 Gleneck, David
 Jean, Claudette
 Kurk, Neal
 Lynde, Harold
 White, John

MERRIMACK

Bouchard, Candace
 Davis, Frank
 Greco, Vincent
 Moore, Carol
 Seldin, Gloria

Burney, Carol
 Feuerstein, Martin
 Hager, Elizabeth
 Potter, Frances
 Wailner, Mary Jane

Clarke, Claire
 Fraser, Leo Jr
 Lockwood, Priscilla
 Reardon, Tara
 Yeaton, Charles

Crosby, Toni
 French, Barbara
 Maxfield, Roy
 Rodd, Beth

ROCKINGHAM

Blanchard, MaryAnn
 Cox, Russell
 Kelley, Jane
 Pitts, Jacqueline
 Splaine, James

Bowles, Raimond
 Dalrymple, Janeen
 Norelli, Terie
 Robertson, Carl
 Stritch, C Donald

Case, Margaret
 Dearborn, Bruce
 O'Keefe, Patricia
 Shultis, Elizabeth
 Weatherspoon, Jacquelyne

Coes, Betsy
 Kane, Cecelia
 Pantelakos, Laura
 Sloan, Stephen

STRAFFORD

Bickford, David
 Gilmore, Gary
 Hughes, Christopher
 Pelletier, Arthur
 Spang, Judith

DeChane, Marlene
 Goodwin, Earle
 Johnson, Nancy
 Proulx, Raymond
 Taylor, Kathleen

Estabrook, Iris
 Grassie, Anne
 Kaen, Naida
 Smith, Marjorie
 Wall, Janet

Ferland, Paul
 Harrington, Michael
 Lent, Donald
 Snyder, Clair

SULLIVAN

Allison, David
 Franklin, Peter

Burling, Peter
 Robb, Amy

Cloutier, John

Ferland, Brenda

NAYS 234

BELKNAP

Bartlett, Gordon
 Holbrook, Robert
 Rosen, Ralph

Boyce, Laurie
 Johnson, William
 Russell, David

Czech, Stanley
 Nedeau, Stephen
 Thomas, John

Dewhirst, Glenn
 Rice, Thomas Jr
 Wendelboe, Fran

CARROLL

Babson, David Jr
 Lyman, L Randy
 Quimby, Lee

Bradley, Jeb
 Mock, Henry
 Sullivan, P Judith

Dickinson, Howard
 Patten, Betsey
 Torressen, Gary

Kenney, Joseph
 Philbrick, Donald

000147

CHESHIRE

Avery, Stephen
Liebl, George
Zerba, Roger

Edwards, Dana
Manning, Joseph

Emerson, Susan
Roberts, William

Fairbanks, Chandler
Smith, Edwin

Putnam, I
Reardon,
Stone, Jo
Weyler, K

COOS

Gallus, John
Pratt, Leighton

Guay, Lawrence
Stohl, Eric

Horton, Lynn
Tholl, John Jr

Landers, Dana

Albert, Ru
Cossette,
Musler, G

GRAFTON

Alger, John
Gabler, William
Mirski, Paul
Ward, Brien

Barker, Robert
Giuda, Robert
Scanlan, David
Williams, Burton

Cobb, John
Ham, Bonnie
Sova, Charles

Dudley, Terri
Lovett, Sid
Teschner, Douglass

Flint, Gorc
Leone, Ric
and the
Rep. Ro
Rep. Est

HILLSBOROUGH

Allan, Nelson
Balboni, Michael
Bergeron, Jean-Guy
Bruno, Pierre
Chabot, Robert
Cote, Peter
Dionne, David
Elliott, Larry
Ford, Nancy
Graham, John
Herman, Keith
Kacavas, John
Lessard, Rudy
McRae, Karen
Milligan, Robert
O'Connell, Timothy
Pepino, Leo
Salts, Greg
Souza, Kathleen
Tate, Joan

Alukonis, David
Baroody, Benjamin
Bergin, Peter
Buckley, Raymond
Christensen, D L Chris
Coughlin, Pamela
Dionne, Kimberley
Emerton, Lawrence Sr
Golding, William
Greenberg, Gary
Holden, Randolph
L'Heureux, Robert
Martel, Andre
Melcher, Harold
Moran, Edward
Palangas, Eric
Peterson, Andrew
Sargent, Maxwell
Spiess, Paul
Thulander, O Alan

Andosca, Mary
Batula, Peter
Bouchard, David
Calawa, Leon Jr
Christiansen, Lars
Daigle, Robert
Dokmo, Cynthia
Fields, Dennis
Gonzalez, Carlos
Guinta, Frank
Hopper, Gary
Leach, Edward
McDonough-Wallace, Alice
Mercer, Robert
Movsesian, Lori
Panagopoulos, Nicholas
Reeves, Sandra
Seibel, Christopher
Sweeney, Cynthia
Wheeler, Robert

Artz, Lawrence
Bellavance, Paul
Brundige, Robert
Carlson, Donald
Clegg, Robert Jr
Desrosiers, William
Dyer, Merton
Flora, Kathleen
Goulet, Maurice
Hall, Charles
Jean, Loren
Lefebvre, Roland
McHugh, Claire
Messier, Irene
Murphy, Robert
Pappas, Marc
Rowe, Robert
Shaw, Barbara
Tahir, Saghir
White, Donald

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Rep. Esta
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Rep. Scar
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MERRIMACK

Anderson, Eric
Daneault, Gabriel
Jacobson, Alf
Leber, William
Whalley, Michael

Brewster, Richard
Gile, Mary
Kennedy, Richard
MacKay, James
Winter, Steven

Colcord, J D
Hess, David
L'Heureux, Stephen
Rush, Deanna

Cummings, Raymond
Hutchinson, John
Langer, Ray
Swindlehurst, John

Dewhirst, G

ROCKINGHAM

Arndt, Janet
Bridle, Russell
Clark, Martha Fuller
DiFruscia, Anthony
Fesh, Bob
Giordano, Ronald
Henderson, Warren
Itse, Daniel
Kobel, Rudolph
Major, Norman
Moore, Benjamin
Packard, Sherman

Belanger, Ronald
Camm, Kevin
Clark, Vivian
Dowling, Patricia
Flanders, John Sr
Gleason, John
Hill, Jonathan
Johnson, Robert
Langley, Jane
McGuire, Robert
Morse, Charles
Palermo, Diane

Bishop, Franklin
Carson, Sharon
Cooney, Richard
Downing, Michael
Francoeur, Sheila
Griffin, Mary
Holland, James Jr
Katsakiores, George
Langone, John
McKinney, Betsy
Nowe, Ronald
Power, Lucille

Boynton, James
Chalbeck, Kevin
Corbin, Corey
Dumaine, Dudley
Gilbert, Karl
Hamel, Albert
Introne, Robert
Katsakiores, Phyllis
Letourneau, Robert
Micklon, Stephanie
O'Neil, Michael
Priestley, Anne

None

Allen, Peter
McGuirk, Pa
Richardson,

Bradley, Pat

Akins, Ralph
Lovett, Sid
Scovner, Na

000148

Putnam, Ed II
Reardon, Neil
Stone, Joseph
Weyler, Kenneth

Quandt, Marshall
Ruffner, Walter
Trueman, Raymond
Whittier, John

Quandt, Matthew
Saia, Pamela
Varrell, Thomas
Zolla, William

Rausch, James
Sapareto, Frank
Welch, David

STRAFFORD

Albert, Russell
Cossette, Larry
Musler, George

Berube, Roger
Dunlap, Patricia
Reid, Christopher

Brennan, William
Knowles, William
Rollo, Michael

Brown, Julie
McCarthy, Gerald
Woods, Phyllis

SULLIVAN

Flint, Gordon Sr
Leone, Richard

Harris, Joseph
Odell, Bob

Harris, Sandra
Phinizy, James

Jones, Constance
Rodeschin, Beverly

and the majority report failed.

Rep. Robert L'Heureux moved Ought to Pass and spoke in favor.

Rep. Estabrook offered floor amendment (2736h).

Floor Amendment (2736h)

Amend the bill by replacing all after the enacting clause with the following:

1 School Districts; Lord's Prayer and Pledge of Allegiance. RSA 194:15-a is repealed and reenacted to read as follows:

194:15-a New Hampshire School Patriot Act.

I. As a continuation of the policy of teaching our country's history to the elementary and secondary pupils of this state, this section shall be known as the New Hampshire School Patriot Act.

II. A school district shall authorize a period of time during the school day for the recitation of the pledge of allegiance. Pupil participation in the recitation of the pledge of allegiance shall be voluntary. Pupils shall be reminded that the pledge of allegiance is an affirmation of the freedoms we enjoy, and is recited in remembrance of all the people who have sacrificed their lives in defense of our country and in the service of freedom.

III. Pupils shall be required to stand during the recitation of the pledge of allegiance as a gesture of respect to our nation's flag just as the public is required to stand when addressing a judge in court as a gesture of respect to our judicial system. If this paragraph shall be declared to be unconstitutional or otherwise invalid, the remaining paragraphs in this section shall not be affected, and shall continue in full force and effect.

2 Effective Date. This act shall take effect 60 days after its passage.

Rep. Estabrook spoke in favor.

Rep. Henderson spoke against.

Rep. Scanlan requested a roll call; sufficiently seconded.

The question being adoption of floor amendment (2736h).

YEAS 107 NAYS 249

YEAS 107**BELKNAP**

Dewhurst, Glenn

Johnson, William

Wood, Jane

CARROLL

None

CHESHIRE

Allen, Peter
McGuirk, Paul
Richardson, Barbara

Batchelder, Robert
Mitchell, McKim
Weed, Charles

Burnham, Daniel
Pratt, Irene

Espieffs, Peter
Pratt, John

COOS

Bradley, Paula

GRAFTON

Akins, Ralph
Lovett, Sid
Scovner, Nancy

Almy, Susan
Mirski, Paul
Sokol, Hilda

Benn, Bernard
Nordgren, Sharon
Solow, Martha

Cooney, Mary
Pawlek, Marion

000149

HILLSBOROUGH

Clayton, William
 Ford, Nancy
 Goley, Jeffrey
 Johnson, Lionel
 Leishman, Peter
 Sweeney, Cynthia

Clemons, Jane
 Foster, Linda
 Gorman, Mary
 Keye, Harvey
 Panagopoulos, Nicholas
 Vaillancourt, Steve

Craig, James
 Furman, Christine
 Hall, Betty
 Konys, Christine
 Seibel, Christopher
 White, John

Eaton, Richard
 Ginsburg, Ruth
 Jean, Claudette
 LaFlamme, Paul
 Sullivan, Peter
 Williams, Carol

MERRIMACK

Bouchard, Candace
 Crosby, Toni
 Hager, Elizabeth
 Reardon, Tara
 Winter, Steven

Brewster, Richard
 Davis, Frank
 Maxfield, Roy
 Rodd, Beth
 Yeaton, Charles

Burney, Carol
 Feuerstein, Martin
 Moore, Carol
 Seldin, Gloria

Clarke, Claire
 French, Barbara
 Potter, Frances
 Wallner, Mary Jane

ROCKINGHAM

Blanchard, MaryAnn
 Kane, Cecelia
 O'Keefe, Patricia
 Shultis, Elizabeth

Bowles, Raimond
 Kelley, Jane
 Pantelakos, Laura
 Splaine, James

Coes, Betsy
 McGuire, Robert
 Pitts, Jacqueline
 Weatherspoon, Jacquelyne

Cox, Russell
 Norelli, Terie
 Robertson, Carl

STRAFFORD

DeChane, Marlene
 Grassie, Anne
 Lent, Donald
 Rollo, Michael
 Taylor, Kathleen

Estabrook, Iris
 Hughes, Christopher
 Pelletier, Arthur
 Smith, Marjorie
 Wall, Janet

Gilmore, Gary
 Johnson, Nancy
 Pelletier, Marsha
 Snyder, Clair

Goodwin, Earle
 Kaen, Naida
 Proulx, Raymond
 Spang, Judith

SULLIVAN

Allison, David
 Harris, Joseph

Burling, Peter
 Harris, Sandra

Cloutier, John
 Robb, Amy

Franklin, Peter

NAYS 249**BELKNAP**

Bartlett, Gordon
 Millham, Alida
 Rosen, Ralph

Boyce, Laurie
 Nedeau, Stephen
 Russell, David

Czech, Stanley
 Pilliod, James
 Thomas, John

Holbrook, Robert
 Rice, Thomas Jr
 Wendelboe, Fran

CARROLL

Babson, David Jr
 Lyman, L Randy
 Quimby, Lee

Bradley, Jeb
 Mock, Henry
 Sullivan, P Judith

Dickinson, Howard
 Patten, Betsey
 Torresen, Gary

Kenney, Joseph
 Philbrick, Donald

CHESHIRE

Avery, Stephen
 Fairbanks, Chandler
 Meader, David

Dexter, Judson
 Hunt, John
 Roberts, William

Edwards, Dana
 Liebl, George
 Smith, Edwin

Emerson, Susan
 Manning, Joseph
 Zerba, Roger

COOS

Davis, Perley
 Landers, Dana

Gallus, John
 Pratt, Leighton

Guay, Lawrence
 Stohl, Eric

Horton, Lynn
 Tholl, John Jr

GRAFTON

Alger, John
 Eaton, Stephanie
 Marshall, Gene
 Ward, Brien

Barker, Robert
 Gabler, William
 Scanlan, David
 Williams, Burton

Cobb, John
 Giuda, Robert
 Sova, Charles

Dudley, Terri
 Ham, Bonnie
 Teschner, Douglass

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HILLSBOROUGH

Allan, Nelson	Alukonis, David	Andosca, Mary	Artz, Lawrence
Balboni, Michael	Baroody, Benjamin	Batula, Peter	Bellavance, Paul
Bergeron, Jean-Guy	Bergin, Peter	Bouchard, David	Bragdon, Peter
Brundige, Robert	Bruno, Pierre	Buckley, Raymond	Calawa, Leon Jr
Carlson, Donald	Chabot, Robert	Christensen, D L Chris	Christiansen, Lars
Clegg, Robert Jr	Cote, David	Cote, Peter	Coughlin, Pamela
Daigle, Robert	Desrosiers, William	Dionne, David	Dionne, Kimberley
Dokmo, Cynthia	Drabinowicz, A Theresa	Drisko, Richard	Dyer, Merton
Elliott, Larry	Emerton, Lawrence Sr	Fields, Dennis	Flora, Kathleen
Gargas, Carolyn	Gleneck, David	Golding, William	Gonzalez, Carlos
Goulet, Maurice	Graham, John	Greenberg, Gary	Guinta, Frank
Hall, Charles	Herman, Keith	Holden, Randolph	Hopper, Gary
Jean, Loren	Kacavas, John	Kurk, Neal	L'Heureux, Robert
LaRose, Richard	Leach, Edward	Lefebvre, Roland	Lessard, Rudy
Lynde, Harold	Martel, Andre	Martin, Mary Ellen	McDonough-Wallace, Alice
McHugh, Claire	McRae, Karen	Melcher, Harold	Mercer, Robert
Messier, Irene	Milligan, Robert	Moran, Edward	Movsesian, Lori
Murphy, Robert	O'Connell, Timothy	Palangas, Eric	Pappas, Marc
Pepino, Leo	Peterson, Andrew	Reeves, Sandra	Rowe, Robert
Salts, Greg	Sargent, Maxwell	Shaw, Barbara	Souza, Kathleen
Spies, Paul	Tahir, Saghir	Tate, Joan	Thulander, O Alan
Wheeler, Robert	White, Donald		

MERRIMACK

Anderson, Eric	Colcord, J D	Cummings, Raymond	Daneault, Gabriel
Fraser, Leo Jr	Gile, Mary	Greco, Vincent	Hess, David
Hutchinson, John	Jacobson, Alf	Kennedy, Richard	L'Heureux, Stephen
Langer, Ray	Leber, William	Lockwood, Priscilla	MacKay, James
Rush, Deanna	Swindlehurst, John	Whalley, Michael	

ROCKINGHAM

Arndt, Janet	Belanger, Ronald	Bishop, Franklin	Boynton, James
Bridle, Russell	Camm, Kevin	Carson, Sharon	Case, Margaret
Chalbeck, Kevin	Clark, Martha Fuller	Clark, Vivian	Cooney, Richard
Corbin, Corey	Dalrymple, Janeen	Dearborn, Bruce	DiFrancia, Anthony
Dowling, Patricia	Downing, Michael	Dumaine, Dudley	Fesh, Bob
Flanders, John Sr	Francoeur, Sheila	Gilbert, Karl	Giordano, Ronald
Gleason, John	Griffin, Mary	Hamel, Albert	Henderson, Warren
Hill, Jonathan	Holland, James Jr	Introne, Robert	Itse, Daniel
Johnson, Robert	Katsakiores, George	Katsakiores, Phyllis	Kobel, Rudolph
Langley, Jane	Langone, John	Letourneau, Robert	Major, Norman
McKinney, Betsy	Micklon, Stephanie	Moore, Benjamin	Morse, Charles
Nowe, Ronald	O'Neil, Michael	Packard, Sherman	Palermo, Diane
Power, Lucille	Priestley, Anne	Putnam, Ed II	Quandt, Marshall
Quandt, Matthew	Rausch, James	Ruffner, Walter	Saia, Pamela
Sapareto, Frank	Sloan, Stephen	Stone, Joseph	Stritch, C Donald
Trueman, Raymond	Varrell, Thomas	Welch, David	Weyler, Kenneth
Whittier, John	Zolla, William		

STRAFFORD

Albert, Russell	Berube, Roger	Bickford, David	Brennan, William
Brown, Julie	Cossette, Larry	Dunlap, Patricia	Ferland, Paul
Harrington, Michael	Knowles, William	McCarthy, Gerald	Musler, George
Reid, Christopher	Woods, Phyllis		

SULLIVAN

Ferland, Brenda	Flint, Gordon Sr	Jones, Constance	Leone, Richard
Odell, Bob	Phinzy, James	Rodeschin, Beverly	
and the floor amendment failed.			

000151

The question now being adoption of the motion of Ought to Pass.
Rep. Vaillancourt spoke against.

Rep. Scanlan spoke in favor and yielded to questions.

Rep. Sapareto requested a roll call; sufficiently seconded.

The question now being adoption of the motion of Ought to Pass.

YEAS 253 NAYS 101**YEAS 253****BELKNAP**

Bartlett, Gordon
Holbrook, Robert
Pilliod, James
Thomas, John

Boyce, Laurie
Johnson, William
Rice, Thomas Jr
Wendelboe, Fran

Czech, Stanley
Millham, Alida
Rosen, Ralph

Dewhirst, Glenn
Nedeau, Stephen
Russell, David

CARROLL

Babson, David Jr
Lyman, L Randy
Quimby, Lee

Bradley, Jeb
Mock, Henry
Sullivan, P Judith

Dickinson, Howard
Patten, Betsey
Torressen, Gary

Kenney, Joseph
Philbrick, Donald

CHESHIRE

Avery, Stephen
Fairbanks, Chandler
Roberts, William

Dexter, Judson
Liebl, George
Smith, Edwin

Edwards, Dana
Manning, Joseph
Zerba, Roger

Emerson, Susan
Meador, David

COOS

Gallus, John
Pratt, Leighton

Guay, Lawrence
Stohl, Eric

Horton, Lynn
Tholl, John Jr

Landers, Dana

GRAFTON

Alger, John
Gabler, William
Marshall, Gene
Teschner, Douglass

Barker, Robert
Giuda, Robert
Mirski, Paul
Ward, Brien

Cobb, John
Ham, Bonnie
Scanlan, David
Williams, Burton

Dudley, Terri
Lovett, Sid
Sova, Charles

HILLSBOROUGH

Allan, Nelson
Balboni, Michael
Bergeron, Jean-Guy
Bruno, Pierre
Chabot, Robert
Cote, Peter
Dionne, David
Dyer, Merton
Flora, Kathleen
Ginsburg, Ruth
Goulet, Maurice
Hall, Charles
Jean, Loren
Lefebvre, Roland
McHugh, Claire
Messier, Irene
Murphy, Robert
Pepino, Leo
Salts, Greg
Souza, Kathleen
Tate, Joan

Alukonis, David
Baroody, Benjamin
Bergin, Peter
Buckley, Raymond
Christensen, D L Chris
Coughlin, Pamela
Dionne, Kimberley
Elliott, Larry
Ford, Nancy
Gleneck, David
Graham, John
Herman, Keith
Kacavas, John
Lessard, Rudy
McRae, Karen
Milligan, Robert
O'Connell, Timothy
Peterson, Andrew
Sargent, Maxwell
Spiess, Paul
Thulander, O Alan

Andosca, Mary
Batula, Peter
Bouchard, David
Calawa, Leon Jr
Christiansen, Lars
Daigle, Robert
Dokmo, Cynthia
Emerton, Lawrence Sr
Foster, Linda
Golding, William
Greenberg, Gary
Holden, Randolph
L'Heureux, Robert
Martel, Andre
Melcher, Harold
Moran, Edward
Palangas, Eric
Reeves, Sandra
Seibel, Christopher
Sweeney, Cynthia
Wheeler, Robert

Artz, Lawrence
Bellavance, Paul
Brundige, Robert
Carlson, Donald
Clegg, Robert Jr
Desrosiers, William
Drisko, Richard
Fields, Dennis
Gargas, Carolyn
Gonzalez, Carlos
Guinta, Frank
Hopper, Gary
Leach, Edward
McDonough-Wallace, Alice
Mercer, Robert
Movsesian, Lori
Panagopoulos, Nicholas
Rowe, Robert
Shaw, Barbara
Tahir, Saghir
White, Donald

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MERRIMACK

Anderson, Eric
Feuerstein, Martin
Hager, Elizabeth
Kennedy, Richard
MacKay, James
Winter, Steven

Colcord, J D
Fraser, Leo Jr
Hess, David
L'Heureux, Stephen
Rush, Deanna

Cummings, Raymond
Gile, Mary
Hutchinson, John
Langer, Ray
Swindlehurst, John

Daneault, Gabriel
Greco, Vincent
Jacobson, Alf
Leber, William
Whalley, Michael

ROCKINGHAM

Arndt, Janet
Boynnton, James
Case, Margaret
Cooney, Richard
DiFruscia, Anthony
Fesh, Bob
Giordano, Ronald
Henderson, Warren
Itse, Daniel
Kobel, Rudolph
Major, Norman
Moore, Benjamin
Packard, Sherman
Putnam, Ed II
Ruffner, Walter
Stone, Joseph
Welch, David

Belanger, Ronald
Bridle, Russell
Chalbeck, Kevin
Corbin, Corey
Dowling, Patricia
Flanders, John Sr
Gleason, John
Hill, Jonathan
Johnson, Robert
Langley, Jane
McGuire, Robert
Morse, Charles
Palermo, Diane
Quandt, Marshall
Saia, Pamela
Stritch, C Donald
Weyler, Kenneth

Bishop, Franklin
Camm, Kevin
Clark, Martha Fuller
Cox, Russell
Downing, Michael
Francoeur, Sheila
Griffin, Mary
Holland, James Jr
Katsakiores, George
Langone, John
McKinney, Betsy
Nowe, Ronald
Power, Lucille
Quandt, Matthew
Sapareto, Frank
Trueman, Raymond
Whittier, John

Bowles, Raimond
Carson, Sharon
Clark, Vivian
Dalrymple, Janeen
Dumaine, Dudley
Gilbert, Karl
Hamel, Albert
Introne, Robert
Katsakiores, Phyllis
Letourneau, Robert
Micklon, Stephanie
O'Neil, Michael
Priestley, Anne
Rausch, James
Sloan, Stephen
Varrell, Thomas
Zolla, William

STRAFFORD

Albert, Russell
Cossette, Larry
McCarthy, Gerald
Taylor, Kathleen

Berube, Roger
Dunlap, Patricia
Musler, George
Woods, Phyllis

Brennan, William
Ferland, Paul
Reid, Christopher

Brown, Julie
Knowles, William
Rollo, Michael

SULLIVAN

Flint, Gordon Sr
Leone, Richard

Harris, Joseph
Odell, Bob

Harris, Sandra
Phinzy, James

Jones, Constance
Rodeschin, Beverly

**NAYS 101
BELKNAP**

Wood, Jane

CARROLL

None

CHESHIRE

Allen, Peter
Hunt, John
Pratt, John

Batchelder, Robert
McGuirk, Paul
Richardson, Barbara

Burnham, Daniel
Mitchell, McKim
Weed, Charles

Espiefs, Peter
Pratt, Irene

COOS

Bradley, Paula

Davis, Perley

GRAFTON

Akins, Ralph
Eaton, Stephanie
Sokol, Hilda

Almy, Susan
Nordgren, Sharon
Solow, Martha

Benn, Bernard
Pawlek, Marion

Cooney, Mary
Scovner, Nancy

HILLSBOROUGH

Bragdon, Peter
Craig, James
Goley, Jeffrey

Clayton, William
Drabinowicz, A Theresa
Gorman, Mary

Clemons, Jane
Eaton, Richard
Hall, Betty

Cote, David
Furman, Christine
Jean, Claudette

Johnson, Lionel
LaFlamme, Paul
Martin, Mary Ellen
Williams, Carol

Keye, Harvey
LaRose, Richard
Sullivan, Peter

Konys, Christine
Leishman, Peter
Vaillancourt, Steve

Kurk, Neal
Lynde, Harold
White, John

MERRIMACK

Bouchard, Candace
Crosby, Toni
Maxfield, Roy
Rodd, Beth

Brewster, Richard
Davis, Frank
Moore, Carol
Seldin, Gloria

Burney, Carol
French, Barbara
Potter, Frances
Wallner, Mary Jane

Clarke, Claire
Lockwood, Priscilla
Reardon, Tara
Yeaton, Charles

ROCKINGHAM

Blanchard, MaryAnn
Kelley, Jane
Robertson, Carl

Coes, Betsy
Norelli, Terie
Shultis, Elizabeth

Dearborn, Bruce
O'Keefe, Patricia
Splaine, James

Kane, Cecelia
Pitts, Jacqueline
Weatherspoon, Jacquelyne

STRAFFORD

Bickford, David
Goodwin, Earle
Johnson, Nancy
Pelletier, Marsha
Spang, Judith

DeChane, Marlene
Grassie, Anne
Kaen, Naida
Proulx, Raymond
Wall, Janet

Estabrook, Iris
Harrington, Michael
Lent, Donald
Smith, Marjorie

Gilmore, Gary
Hughes, Christopher
Pelletier, Arthur
Snyder, Clair

SULLIVAN

Allison, David
Franklin, Peter

Burling, Peter
Robb, Amy

Cloutier, John

Ferland, Brenda

and the motion was adopted.

Ordered to third reading.

Rep. Pappas did not vote and wished to be recorded in favor.

PROTEST

Pursuant to Part 2, Article 24 of the New Hampshire Constitution, Rep. Pitts requested that her protest be entered in the Journal.

I, Jacqueline Pitts, wish to protest the passage of House Bill 1446 on the grounds that it is unconstitutional.

ENROLLED BILLS REPORT

The Committee on Enrolled Bills has examined and found correctly enrolled House Bills 285, 622, 681, 1110 1397 and Senate Bills 26 and 347.

Rep. Nowe, Sen. D'Allesandro for the Committee

REGULAR CALENDAR (CONT'D.)

HB 1461-FN, transferring the office of emergency management to the department of safety, division of fire safety. **OUGHT TO PASS WITH AMENDMENT**

Rep. Michael O'Neil for Executive Departments and Administration: This bill transfers the responsibility for state emergency management from the Office of Emergency Management to the Department of Safety. The function will be located in the Division of Fire Safety, which will become the Division of Fire Safety and Emergency Management under the Director (the Fire Marshal). The events of September 11, 2001 clarified that changes to the existing emergency management operation are imperative in order to protect the NH citizens. Streamlining and coordinating our state's response to disasters and emergency situations is the best way to accomplish this end. The Department of Safety is the center of law enforcement and fire safety enforcement for the state. It therefore makes practical and operational sense for the emergency management function to be under that state agency. This bill retains the Governor's powers relative to the declaration of a state of emergency as well as the Governor's general emergency management authority. It also creates a newly constituted council on emergency preparedness and security made up of the heads of most state agencies as well as representatives of the police and fire chiefs and the counties. This council advises

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SB 435-FN, requiring the supreme court to establish a mental health court pilot program in the Keene District Court.

SB 440, relative to rules for water conservation.

SB 453, relative to setbacks in the shoreland protection act.

SCR 3, a resolution expressing the fundamental importance of public health to the people of New Hampshire.

SCR 4, relative to prescription drug patient assistance programs.

SPECIAL ORDER

10:16 A.M.

HB 1446, relative to the recitation of the pledge of allegiance in the public schools. Education Committee. Vote 4-0. Ought to pass with amendment, Senator Johnson for the committee.

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Amendment to HB 1446

Amend RSA 194:15-b as inserted by section 2 of the bill by replacing it with the following:

194:15-b New Hampshire School Patriot Act.

I. As a continuation of the policy of teaching our country's history to the elementary and secondary pupils of this state, this section shall be known as the New Hampshire School Patriot Act.

II. A school district shall authorize a period of time during the school day for the recitation of the pledge of allegiance. Pupil participation in the recitation of the pledge of allegiance shall be voluntary.

III. Pupils not participating in the recitation of the pledge of allegiance may silently stand or remain seated but shall be required to respect the rights of those pupils electing to participate. If this paragraph shall be declared to be unconstitutional or otherwise invalid, the remaining paragraphs in this section shall not be affected, and shall continue in full force and effect.

SENATOR JOHNSON: I was hoping that HB 1446 would have come up last Tuesday around 6:30 when everyone was pretty well talked out, but that didn't happen, so we are bringing it out today. Today, under state law, schools 'may' but are not required to set aside time to recite the Pledge of Allegiance. In those schools that recite the pledge, participation is voluntary. House Bill 1446 as amended by the Education Committee requires schools to set aside time each day for the Pledge of Allegiance. Participation is still voluntary. Those students who chose not to participate may either stand or remain seated providing that they respect the rights of those students who do participate. The Education Committee requests your support of ought to pass. Thank you Mr. President.

SENATOR BARNES: Senator Johnson, could you show us where that amendment is? What page is it on in my calendar?

SENATOR JOHNSON: It may have been in...it is right below it.

SENATOR BARNES: I guess I have another question. How does this amendment differ, Senator Johnson, from the original version that came over from the House? Can you tell us what the differences are?

SENATOR JOHNSON: Thank you Senator Barnes. I think that Senator O'Hearn has the backup material on that. I wonder if I could have her address that issue.

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SENATOR BARNES: As long as I get the question answered I don't care who answers it, Senator.

SENATOR JOHNSON: Thank you.

SENATOR O'HEARN: In section two, if we are looking at the amendment, the sentence eliminated from section two of this piece of legislation is "pupils shall be reminded that the Pledge of Allegiance is an affirmation of the freedoms we enjoy and is recited in remembrance of all the people who have sacrificed their lives in defense of our country and in the service of freedom." That sentence was removed. In section three, we have pupils not participating in the recitation, that is what is in the amendment. The original language was "pupils shall be required to stand during the recitation of the Pledge of Allegiance as a gesture of respect to our nation's flag, just as the public is required to stand when addressing a judge in court as a gesture of respect to our judicial system." That sentence was removed.

SENATOR BARNES: Senator O'Hearn why did the committee delete the first thing that you talked about?

SENATOR O'HEARN: I don't believe that we need to have a civic lesson written in law such as this. I also don't believe that the recitation is for the remembrance of only those people that have sacrificed their lives, because I think that the rest of us in this nation also represent what our pledge is to this country, it is not just those people who have gone to war.

SENATOR BARNES: Thank you very much Senator, and I appreciate your answer although I don't agree with it, I accept it. I would like to speak on this issue now.

SENATOR BARNES: Talking about a civic lesson in class. A little while ago Senator McCarley had a piece of legislation in to require civics be taught in our schools. I probably voted against that, but I thought that this piece of legislation would help be a little bit of a civic class. I like the way that the House did it and I am going to vote against the amendment and I am going to...hopefully we can get the House version back on. That is what I am going to vote for. I am going to vote against this. All of you...all 23 of you, my colleagues, have marched in parades. As you have gone down the street, you don't see too many people taking their hats off for old glory. The older folks like myself, the old fossils, they do because they were brought up...apparently in school or at home we were taught to respect old glory. I just had a dim hope that perhaps this might help somehow, wake the younger generation up to the fact that when old glory goes by we stand. We all stood here this morning by golly and we had our hands over our hearts most of us, because we believe in that. I happened to have been luckily enough to be in the hearing or should I have said unlucky enough to have been in the hearing in Education when this came up. One of the big problems that some of the people had is the words "under God" in the Pledge of Allegiance. Well that was put in there in 1954 and I didn't know that until I sat in on the hearing. I got a little bit of a history lesson. That came in under Dwight David Eisenhower. The supreme commander during World War II that helped bring us to victory in Europe. You go to baseball games, you go sporting events, the Star Spangled Banner is played and as you look around, I want to throw up sometimes, not because of what is going on in there, but the people who don't take their hats off in respect for old glory. I figured that starting in the school system, perhaps might help some of

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these people that I have to reach over to, and some of them are a lot bigger than I am, and saying, "hey bud, do you mind taking your hat off?" Someday I am going to get cold-cocked and they will have to carry me out in a stretcher, but that is okay I will go for that. But getting back to the committee, I was told...the committee was told, it wasn't me, but I was there, that a certain ACLU individual who was against the whole situation, that her uncle, I forgot who he is... it wasn't Charlie, because I insulted her, I called him Charlie and it wasn't, it was uncle something else. I am sorry that I forgot this name. It was her favorite uncle and she loved visiting with her favorite uncle. She went on telling us what a great fella he was and I am sure that he was, hopefully he still is. He was a veteran I believe, of WWII. With her age bracket I figure that is probably where her uncle would have been. Her uncle told her as she sat at his knee, she has a great memory, that her uncle told her that he, when he was in the service and fighting in WWII, did not fight for the flag! Do you know what he fought for? He fought for the constitution. I am going to tell you something, when I was shooting Chinese people, and I was defending my comrades in the hills of Korea, I was fighting for my flag. When the caskets come back with the dead bodies in it, and a lot of them have come back over the years, down there in Delaware, Dover Airforce Base, I have never seen a picture of one being draped in the constitution. They are draped in the flag of the United States of America. I feel that this piece of legislation will at least give a little help to educating our kids that old glory is important. It is important enough to fight for, damn it all, it is important enough to stand up for and at least stand up for it. I rest my case.

SENATOR BOYCE: Senator Barnes, right below us in this building, there is a special room that we call the "Hall of Flags". As I understand it, every single one of those flags was carried in battle by soldiers. Would you believe that I believe that every one of those flags was carried by people who believed that they were fighting for that flag and that was the symbol of their country and that they were fighting for their country and the symbol, and the flag to them, was very, very important?

SENATOR BARNES: I certainly do believe that and I am glad that you brought it up because if anyone in this room comes into my office, you will see a guerdon with cross cannons. That was from the Yankee Division, the XXVII Yankee Division, 101 Field Artillery Battery A. My father had that flag outside of his Battery in France going through five battles in France, fighting the Germans in WWI. He brought that back home and it is now hanging proudly in my office. That is how I guess I got my little hang-up on the...it is called a "hang-up" by some people, for the flag because my mother and father brought me up that way. I will continue on the Memorial Day if I can, Mr. President.

SENATOR KLEMM (In the Chair): Senator Barnes, we are not on the Memorial Day. Thank you.

SENATOR MCCARLEY: I would like to make a couple of remarks. The first remarks have to do with the public hearing that was held in Senate Education on this bill. For those of you who were not able to be there, and Senator Barnes certainly was there for the entire hearing, I was a little concerned, and I think that it is just worth mentioning it, that is why we have these public hearings and have people come in and talk to us about the bills. That the sponsor on the bill, in the testimony that we received, there were certainly implications if not explicit statements, that schools in this state do not allow for the recitation of the Pledge of Alle-

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giance. I found that very troubling because I don't believe that is true. Matter of fact, I know... that I believe to my core, and I think that those of us who sit on school boards know, that isn't actually true. The representative in seeking research to put this legislation in called ten high schools and asked "did you say the Pledge of Allegiance before September 11 and are you saying it after September 11?" I asked a second time if that was actually what was asked and I was told that was the case. Now that is not a question about do you allow your students to say the Pledge of Allegiance? The answer that they got back was that six out of ten high schools in the first round said that they said it, and six out of ten in the second round said that they said it. Someone can correct me on the percentages, but I am fairly certain that is what we heard, which means that the assumption therefore, is that...and was sort of implied, is that 40 percent of our schools are not allowing it. I simply don't think that is the case. I think that it is important that people understand in terms of the genesis of this piece of legislation based on the research that was done that brought it to us. I think is a little bit questionable. Having said that, I didn't fight in any wars. I have an individual, and I have been as patriotic and as civic as I know how to be, but I have an individual in my community who has said on a regular basis to individuals, that if it were not against the law, that he would kill me because I am not patriotic, and that he killed better people than me in Korea. That has been very troubling to carry around since 1993. So I look at this piece of legislation and I say, what do I do? Do I believe that we should say the Pledge of Allegiance? Absolutely. Do I believe in our constitution? Absolutely. Do I wish that every single kid in every one of those high schools that isn't currently saying it, went to their school office building and said "we are going to say the Pledge of the Allegiance", that is what ought to be happening. I don't think that this is going to make those students do that because they are not going to know any more next September why they are saying it when they weren't saying it before. I think that is unfortunate. I think that what we need to do very seriously is to talk about that civics course. I didn't actually...it was not my legislation, Senator Barnes, it was a House Bill, but I think that it was a very good idea. It did not receive the support of this body last year. We didn't feel that it was important to mandate a half year of civics. I think that was a mistake in terms of what we should have been doing. I might add that was well before the horrific events of September 11. But I guess what I am saying fundamentally, to you, on a more personal level is that I think that it is problematic to mandate something like this because it is not what we ought to be doing. But I've got to tell you that I feel bullied into voting for something because I am not going to be standing, as unpatriotic.

SENATOR BARNES: I am going to address this to Senator McCarley, but it is just a question for the whole body I guess, when I direct it, I guess that is the way that I have to do it. Senator McCarley I understand your feelings and I understand everyone's feelings in this chamber. I, by golly, because I feel the way that I do, I don't intend and I hope that I didn't come across that way, to bully anybody because you all have minds of your own. That person who has said those things to Senator McCarley should be punched in the nose because that is a horrible thing to do to anybody. I went through that in the Vietnam War with protesters coming after me because I was on the other side of the issue and I know how she feels and it is not fair. By golly, the rest of you, you are not under the gun. If you don't feel it is right to do, you don't do it. If you feel like

I do, fine. Just you have to feel other pieces of President, no o piece of legislat doesn't make a never question SENATOR O'I on this issue. I offered is appr dent that we sh there is a letter of mine th to be printed i mission that I am going to re decision. It wa have been in V Memorial Day of veterans ar have a letter f jor in the Unit listed in 1983 years. I miss history where esis of a great touch with w Patriotism is believe in or r day and every est nation in : racy truly is a neighbor that for another's : that I could r of our democr right guarant to expression find desirable everyone mus stifle that ve When we tel build patriot can become l our flag. We good, respon Making ther ing our nati studied it cr son that it is That is our proudly. Eve cars, I use r affixed abov what Ameri

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I do, fine. Just because I feel that way doesn't mean that 23 others of you have to feel that way. You do what you have to do like we do on many other pieces of legislation. I am going to say this for the public, Mr. President, no one in this chamber is unpatriotic if they vote the way this piece of legislation is written now. Just because I vote the other way that doesn't make any of my colleagues unpatriotic. That was never... I have never questioned that of any of my colleagues. Would you believe?

SENATOR O'HEARN: It is really difficult to follow Senator McCarley on this issue. I do think that the amendment that the Senate Education offered is appropriate. It is not going to mandate anything of any student that we shouldn't be mandating in this particular issue. I think that there is a letter that I received, an email that I received from a constituent of mine that I asked if he would send the letter on to the *Telegraph* to be printed in the *Telegraph*. He did and it was printed. I asked permission that I could use it on the floor today. It is a little lengthy but I am going to read excerpts of it, trying to let you know how I made my decision. It was a tough day in that committee to hear those people that have been in WWII and have dealt with those issues and every time a Memorial Day type of service in the House, we always had remembrance of veterans and respecting what they have been through. But here, I have a letter from a resident of Brookline, New Hampshire and a major in the United States Airforce stationed in Anchorage, Alaska. "I enlisted in 1983 as an airman basic and have served in the Airforce for 19 years. I miss New Hampshire and New England. Rich in our nations history where the spark of patriotism and revolution served as a genesis of a great nation. I like to think that I am a patriot. We are losing touch with what patriotism means and focusing on superficial rights. Patriotism is not about pledges and flags and what religion that you believe in or not. Patriotism is the attitude that we carry with us every day and everywhere, that drives us to be the best citizens in the toughest nation in a world to be a citizen in. Being a member of this democracy truly is advanced citizenship. It means tolerating the beliefs of your neighbor that you might find intolerable. I have sworn to fight and die for another's right to express ideas that I may find objectionable. Ideas that I could never agree with. That right to free expression is the core of our democracy. So important to the founding fathers that it was the right guaranteed in the first amendment in the constitution. The right to expression must also include the right to not express ideas that I may find desirable and necessary. When we create an expression or law that everyone must express the same idea, we start down a path that we can stifle that very freedom of expression that makes us diverse and strong. When we tell people that everyone must think the same way, we don't build patriots, we build zealots. We don't need a patriot act were kids can become lawbreakers for not standing for the Pledge of Allegiance to our flag. We need to teach kids the knowledge, skills and ideals to be good, responsible and active citizens. Some will get it and some won't. Making them recite the pledge won't matter either way. I am not arguing our nation isn't the best in the world, I know it is because I have studied it critically and have seen so many others firsthand. The reason that it is so great and getting better every day is because of freedom. That is our strength. In New Hampshire we express that loudly and proudly. Even though I recently had to put Alaska plates on one of my cars, I use metal snips to cut out "Live Free or Die". It is very proudly affixed above my Alaska plates. I believe in those words. Freedom is what America is about. It distinguishes us from every other nation in

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the world because frankly, we are better at it than everyone else. The freedom to demonstrate against the government is perhaps our most fundamental freedom. It was at the root of the American Revolution." I will end, "I believe that the patriot act is an emotional response to a tragedy that had affected every American. We all need to get our emotions out, to stand with our fellow Americans against those who would do us harm. I have flags on my vehicles and a flag on my front door, but shows of emotion need to be voluntarily. The state has no business compelling emotion or demonstration for the government. We have proven that we are pretty good at that on our own. As Thomas Jefferson pointed out many years ago, "that government is best which governs itself." This is James Mullen, Anchorage, Alaska, resident of Brookline, New Hampshire.

SENATOR PIGNATELLI: I feel real badly for you, Senator McCarley. I feel badly for anyone who feels intimidated to have to vote for something that they don't want to vote...because there may be retribution in our communities. I think that it is a mistake for anyone to impugn the motives of those people who may choose to oppose this legislation or amendments that may come along. And paraphrasing from a Keene Centennial Copy of a *Valley News* editorial, "It mocks the intense feelings of patriotism that many feel without the slightest bit of training pledging or cohesion. Some of us believe that we feel patriotism in our heart and we don't need to wear a flag on our lapel and we don't need to wave a flag and we don't need to put a flag in the back of our windows of our car or on our antennas, it is there. It is there for whatever reason. I believe that my patriotism is there because of my life and my background and my experience. I don't believe that it is there that as a child I had to stand up and do the pledge in elementary. I used to teach nursery school and kindergarten elementary school, and we used to have the children stand up every morning and we used to read the Lords' Prayer and another prayer and then we used to pledge. I use to listen to what these children were saying. In no way was it like the words of the Pledge of Allegiance. When the word "indivisible" came along, it was "invisible" because that is what the word was that they knew. They didn't know what "indivisible" meant. No one bothered to tell them what they were saying or why they were saying it or what it meant or whether the idea was good. It was just something that you did by rote. I don't think that that kind of thing instills patriotism in our heart. I think that through our experiences and the way that we are brought up and through what happens to us in our life, I think that is how we come to believe what we believe about our country and our flag and the constitution, and what we ought to be doing or not doing for our country. There are some people who believe that it is wrong to take an oath and to pledge. Those people are no less patriotic than any of us. I would hope that when it comes to voting on this, and when we read about what we have done in the press, that we are not seen as not patriotic because we choose to oppose something that in our hearts we cannot support. Thank you Mr. President.

SENATOR LARSEN: Given little time to write speeches, I wanted to quote from the *Concord Monitor* editorial because they put in words much of what I was feeling and perhaps others in the room, when they said that "Patriotism is a virtue, but one that becomes a vice when it requires questioning allegiance or the silence of critics. The debate over the House did not turn so ugly as to vilify the brave lawmakers who spoke out against this school patriot act, but the implication was clear enough, vote against this and you will pay on election day. Yet first

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SENATOR BE cause I think t by the House. for all." Implic each member of this great n bill as passed people "shall" be required to to who is goin that flies in c ciples expres IV is the right are in their v or received fo ticle 22, free to the securi lably preserv right of free are inviolabl cannot take ter of conscie may have a ing. Do we w think that r is a time wh ing to prom spect. In doi age, often d mity, of tryi quired to st adolescents

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among the liberties, the pledge celebrates the right to disagree with one's government and its policies. That right cannot be suspended by patriotic fervor or war." They went on to cite a U.S. Supreme Court decision, a landmark ruling that made mandatory recitation of the pledge unconstitutional, nor could students be made to stand. Later rulings forbade harassment or punishment of those who abstained. They went on to talk about the period during the McCarthy era in 1943 and beyond. They cited someone who was one of the few people that I knew as a child growing up, who was a woman in government. They cited Senator Margaret Chase-Smith's statement when they said, and these are her words speaking in 1950 before the U.S. Senate in her declaration of conscience. "I speak as a Republican. I speak as a woman. I speak as a United States Senator. I speak as an American", Smith said. "Those of us who shout loudest about Americanism in making character assassinations are all too frequently those who, by our own words or acts, ignore some of the basic principles of Americanism. The right to criticize, the right to hold unpopular beliefs. The right to protest. The right of independent thought. The exercise of these rights should not cost one single American citizen his reputation or his right to a livelihood... otherwise thought control would have set in." They conclude saying, "true then, true in 1776, true now." I ask you to consider that and I ask you to respect the votes that occur in this room. I think that we all need to remember that patriotism is not gained merely by pledging allegiance.

SENATOR BELOW: I rise in support of the committee amendment because I think that it is an improvement compared with the bill as passed by the House. The Pledge ends in the phrase, "with liberty and justice for all." Implicit in that concept, I believe, is the notion of the dignity of each member of society and the ideal of respecting each other, citizens of this great nation. One of the problems that I think that arises in the bill as passed by the House, is the notion... the statement that says that people "shall" be required to stand during the recitation. Students "shall" be required to stand. That makes no exception. It makes it unclear as to who is going to compel that requirement that they stand. I think that that flies in direct conflict with two fundamental constitutional principles expressed in our Bill of Rights. Part I of our constitution. Article IV is the rights of conscience unalienable. Among the natural rights some are in their very nature, unalienable because no equivalent can be given or received for them, of this kind are the rights of conscience. Also Article 22, free speech. "Free speech and liberty of the press are essential to the security of freedom in a state: They ought, therefore, to be inviolably preserved." So we have this notion, the right of conscience, the right of free speech or something that we should not tamper with. They are inviolable and they are unalienable, something that we as a state, cannot take away from people. There may be individuals, who as a matter of conscience, who as a matter of speech, do not choose to stand. They may have a disability or simply feel ill or don't feel comfortable standing. Do we want to say in the law that they are required to stand? I don't think that makes sense. We also think about the notion that adolescence is a time when our youth are on the path to independence. We are trying to promote and encourage self governance, responsibility and respect. In doing so, students or young people, particularly the high school age, often develop a sense of rebelliousness and a desire of nonconformity, of trying different roles. By mandating that "students shall be required to stand", we are inviting a wave of civil disobedience among our adolescents that is completely unnecessary and flies in the face of the

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very liberty and justice for all that we seek to promote. Obviously we want to encourage that attitude of respect, but I do not believe that we can or should mandate it. Thank you Mr. President.

SENATOR COHEN: We have a very long day ahead and this is the first bill. It is not often that in this Chamber we delve into the realm of political philosophy, but that is obviously what we are doing here. I just wanted to say very briefly that patriotism is certainly not the exclusive domain of any one political point of view. That is something that is foreign. That is not something that is American. The flag is something that I have certainly grown up loving. It is not the colors and the pattern here. That is all very nice. It is beautiful, but it is about what it stands for, which is diversity for the right to dissent and to speak out as difficult as they may be sometimes. Certainly we are all patriots here. Everyone of us or we would not be here. We are acting on our patriotism. It has been our lives, what we are doing. I taught my daughter to love the flag and she does, but it is not just again, the colors and the patterns, it is about the freedom. She must understand what the flag stands for. I think that is what we are talking about here. It is about the principle that the flag stands for. Freedom. The common good. These are the things that we hold dear and need to be passed on. Thank you.

SENATOR GORDON: I am a lawyer and that is how I make my living. I make my living off of rules and regulations and laws and the constitution. The one thing that you learn when you are a lawyer is really when you come down to it, is that it is just paper, because there is no meaning to those rules and regulations and laws in the constitution unless it is in peoples hearts, unless it's in peoples conscience. It is a matter of what you believe. It is a matter of who you are. There was a judge by the name of **TAPE INAUDIBLE** who said that a very long time ago. He said, "this country will not long survive if we simply rely on rules, regulations, laws and a constitution. We have to rely on the fact that we are a people of common beliefs, that will work together to make this country work." I don't know how you can force patriotism. If you are a Russian and you are required to take a Pledge of Allegiance to the Russian flag, are you then a better Russian? Are you then a better person? If you are an Australian and you are forced to take a Pledge of Allegiance to the Austrian flag, are you a better Australian? Are you a better person? If you are an American and you are forced to take a pledge to the flag, are you then a better American? A better person? I don't know. I look at it...my father was a WWII Veteran. Frankly I would like to ask him for some guidance right now but he is dead, gone. But the one thing that I do know is that he had a tattoo on his left arm. It was an American Flag. He put it there as a matter of choice because he cared about the country. No one forced him to do it. He did it because he cared about his country. If you take the Pledge of Allegiance to the Flag, it ought to be because you care about the country, as a matter of choice, not because you are forced to do it.

SENATOR WHEELER: I happen to know that a floor amendment will be proposed and I am in favor of the floor amendment that will be coming; therefore, I am going to vote against this amendment although I think that it is a vast improvement over the original bill. I would like a few minutes to explain what my concern is. The amendment that was passed by the committee still says "A school district shall authorize". It is a "shall". I, too, wish to quote from the *Concord Monitor* editorial, but before I get there, I was born before the attack on Pearl Harbor. I grew

up with my father. I grew, when we always said Allegiance and say it here every day, but it is my time that we did it in 1943, our Supreme Court of the pledge of the pledge at that time, "Frederick much. The substance is the existing order. or to appear to said. That was saving aluminum the victory rible to win an of Allegiance." not be comma using the word you have been cannot be come love. Love, you feel it. Because I feel very strong I think that we ought to know ought to know floor amendment civics so that we use the words vital in the spirit to support the SENATOR GA chamber or an and what happy try. I think that become an American and you must this country, we much, for some are people even tell them, "you it." There must not because we but we ask the American citizen it is that important people that are be that important SENATOR DILL and the flag for just said. That

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up with my father and my uncles away, fighting in WWII. At that same time, I grew, when I went to elementary school, during and after the war, we always said the Pledge of Allegiance. I grew up with the Pledge of Allegiance and I love the Pledge of Allegiance and I am happy that we say it here every day. I am always happy to have the opportunity to say it, but it is my choice. It is one of my freedoms to say it. At that same time that we were at war, in one of the darkest years of the war, in 1943, our Supreme Court issued a decision that mandatory recitation of the pledge was unconstitutional. Justice Robert Jackson wrote at that time, "Freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom." "The test of its substance is the right to differ as to things that touch the heart of the existing order." They go on to say "no one can be compelled to share or to appear to share, any faith or opinion." That was what the court said. That was 1943. We were at war and we were patriotic. We were saving aluminum foil. We did everything. We did our very best to helping the victory against the forces that we felt would be incredibly terrible to win and yet we still said, we can't be forced to say the "Pledge of Allegiance." The *Concord Monitor* editorial says that "loyalty cannot be commanded saved by fear." We command in our statutes by using the word "shall". We feel loyalty you feel loyalty, but not because you have been told that you "shall" feel loyalty. They say that love cannot be commanded at all and that is true. **TAPE CHANGE** shall love. Love, you have to feel in your heart. You have to try very hard to feel it. Because there is a law, it can't necessarily happen. Therefore, I feel very strongly in the value of saying the Pledge of Allegiance, but I think that we ought to know why we are saying it. I think that we ought to know about the liberties that we care about. I think that we ought to know why we fight in wars and what we are protecting. The floor amendment that will be coming will talk about the importance of civics so that we understand why we are saying the pledge and we will use the words "are encouraged" rather than "shall". I feel that this is vital in the spirit of which we say the Pledge of Allegiance to wait and to support the floor amendment. Thank you.

SENATOR GATSAS: I don't for one second believe that anyone in this chamber or anybody in this country, when it comes down to patriotism, and what happened on September 11, wouldn't be there for this country. I think that everybody should remember one thing: before you can become an American citizen, you must recite the Pledge of Allegiance and you must memorize it. If it is that important to become a citizen of this country, with that to happen, then I don't think that we are asking much, for somebody to stand with the respect of the flag, because there are people everyday, that want to become part of this country and we tell them, "you must memorize it and you must stand when you recite it." There must be a reason why we do that. There must be a reason, and not because we want them any less patriotic than we are or any more, but we ask those people to do that. If they refuse, they can't become American citizens. We think that much of the pledge. So I say to you, if it is that important to become a citizen of this country, and there are people that are leaving other countries for citizenship here, then it should be that important to us. Thank you.

SENATOR DISNARD: I believe in the flag of the United States of America and the flag for which it stands. I second every word that Senator Gatsas just said. Thank you.

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SENATOR HOLLINGWORTH: I wasn't going to speak, but Senator Gatsas has triggered something that I feel that I need to kind of respond to. My first husband was a Canadian. He ended up becoming an American citizen because he wanted to be an American citizen. He wanted to be an American citizen because he came to love this country. It wasn't because of the flag, it was because of the people and the quality of life that we have, and the fact that I wouldn't have even considered not being an American citizen. I am just surprised that the idea that because there is a requirement for somebody who becomes an American citizen, to stand up and recite the words, somehow makes him qualified to be an American citizen. I can remember that I had just had a baby when my husband became an American citizen and I couldn't go with him. I remember looking out my kitchen window and seeing him marching up and down with this little flag that he had been given, and I thought that was just so unusual and out of character for him, but it meant something to him. It wasn't the flag, it was what he had done. That he become an American citizen. It just pauses for all of us to think...what does it mean to us? My brother served in the WWII and my father in the WWI. In many of the houses when I grew up, were stars on every door, we would know when someone had died in that war. It wasn't the flag that was draped over their casket, it was the loss of that individual who loved his country so much that he was willing to give up his life. I really ask you, let us not be dragged into that the flag is the meaning. It is the love that is the meaning.

SENATOR LARSEN: Senator McCarley, in your hearing on Education, did you hear in fact that most of the elementary schools in this state, if not perhaps 99.9 percent do in fact have the recitation of the Pledge of the Allegiance in the start of their day or at some point during their day?

SENATOR MCCARLEY: We didn't hear that explicitly, we did hear Senator Barnes say that all of the children that come from his community can all recite the pledge...in the fourth grade, when they come to visit the State House, can all recite the Pledge of Allegiance, which would lead me to believe that at least all of the elementary schools in Senator Barnes district, and I can speak to the elementary schools in my own district. What specifically the questions in the entire situation turned on was high schools.

SENATOR LARSEN: So that in the period during the learning, the early learning years, every child presumably, as they are going through New Hampshire's schools, learns the Pledge of Allegiance at some point during those first five or six years of school?

SENATOR MCCARLEY: I believe that to be absolutely true.

SENATOR LARSEN: Thank you very much.

Question is on the adoption of the committee amendment.

A roll call was requested by Senator Francoeur.

Seconded by Senator Pignatelli.

The following Senators voted Yes: Burns, Gordon, Johnson, Below, Flanders, Disnard, Roberge, Eaton, Fernald, O'Hearn, Pignatelli, O'Neil, D'Allesandro, Hollingworth, Cohen.

**The following
Larsen, Gatsas**

Amendment add

Senator Below c
Sen. Below, Dist
Sen. Wheeler, D

**April 18, 2002
2002-3596s
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Amend the title

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The following Senators voted No: Boyce, McCarley, Francoeur, Larsen, Gatsas, Barnes, Prescott, Wheeler, Klemm.

Yeas: 15 - Nays: 9

Amendment adopted.

Senator Below offered a floor amendment.

Sen. Below, Dist. 5

Sen. Wheeler, Dist. 21

April 18, 2002

2002-3596s

04/10

Floor Amendment to HB 1446

Amend the title of the bill by replacing it with the following:

AN ACT relative to the New Hampshire School Patriot Act in public schools and establishing a separate high school civics graduation requirement.

Amend the bill by replacing all after the enacting clause with the following:

1 School Boards, Teachers; Instruction in Civics. RSA 189:11 is repealed and reenacted to read as follows:

189:11 Instruction in National and State History and Government; Instruction in Civics.

I. In all public and private schools in the state there shall be given regular courses of instruction in the history, government, and constitutions of the United States and New Hampshire, including the organization and operation of New Hampshire municipal, county, and state government and of the federal government.

II. The instruction required under paragraph I shall begin not later than the opening of the eighth grade and shall continue in all high schools in the state which shall include a one-year course in the history of the United States and New Hampshire.

III. In all high schools in the state, there shall be given a course of instruction in civics. This course shall be a one-half unit of credit required for graduation, and shall replace one-half of the social studies elective unit of credit as set forth in the administrative rules of the department of education at Ed. 306.23(f). The civics course may be locally developed provided, at a minimum, the course provides exposure to current governmental affairs and covers the following areas:

(a) Duties and responsibilities of a citizen.

(b) Opportunities of citizen participation and involvement in the governmental process.

(c) The structure and operation of government.

(d) The constitutional basis of our government.

(e) The interaction between local, state, and federal governments.

2 New Hampshire School Patriot Act in Public Schools. Amend RSA 194:15-a to read as follows:

194:15-a ~~[Lord's Prayer and Pledge of Allegiance]~~ ***New Hampshire School Patriot Act*** in Public ~~[Elementary]~~ Schools. As a continuation of the policy of teaching our country's history ***and to foster patriotism,*** ~~[and as an affirmation of the freedom of religion in this country, a]~~ school ~~[district may authorize]~~ ***districts are encouraged to establish a period of time during the school day for*** the recitation of the ~~[traditional Lord's prayer and the]~~ pledge of allegiance to the flag ~~[in public]~~

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~~elementary schools]. Pupil participation in the [recitation of the prayer and] pledge of allegiance shall be voluntary. [Pupils shall be reminded that this Lord's prayer is the prayer our pilgrim fathers recited when they came to this country in their search for freedom. Pupils shall be informed that these exercises are not meant to influence an individual's personal religious beliefs in any manner. The exercises shall be conducted so that pupils shall learn of our great freedoms, which freedoms include the freedom of religion and are symbolized by the recitation of the Lord's prayer.]~~

3 Effective Date. This act shall take effect 60 days after its passage.

2002-3596s

AMENDED ANALYSIS

This bill provides that a one-half year course in civics shall be required for high school graduation.

This bill also establishes the New Hampshire School Patriot Act in which school districts are encouraged to establish a period of time during the school day for the recitation of the pledge of allegiance and that such recitation shall be voluntary.

SENATOR BELOW: This amendment does three things relative to the status of the bill as it stands before us now. First, and in many ways, the most significant, is it does add a requirement for instruction in civics for all of the students in this state. I think that if we want to encourage and foster patriotism and respect for what this nation stands for, we should be requiring education in civics, and the duties and responsibilities of a citizen, and the opportunities of citizen participation and involvement in government process, and the structure and operation of government, the constitutional basis for our government and the interaction between local, state and federal governments. That is what the first section of this amendment does, lines 8-27. The second section of the bill does two things: In effect, it replaces section one of the bill, the current bill as it stands before us, which is an amendment to the section that discusses the Lord's Prayer in public elementary schools. I think that we should all be aware that the government sponsorship of the Lord's Prayer in our schools has been found to be unconstitutional. It is an unenforceable, unconstitutional provision of our statutes. I do not believe that we should be reenacting and amending an unconstitutional statute. I believe that we should be repealing an unconstitutional statute instead of implicitly glossing over its unconstitutionality by reenacting it, by amending it in this legislation. Again, I would turn to our constitution of the state of New Hampshire, Part I, Article 5 religious freedom recognized. Which states that "every individual has a natural and unalienable right to worship God according to the dictates of his own conscience and reason and no subject should be hurt, molested or restrained in his person, liberty or state for worshipping God in the manner and season most agreeable to the dictates of his own conscience and for his religious profession, sentiments or persuasion, provided he doth not disturb the public peace or disturb others in their religious worship." While I would submit that by amending the statute that establishes the Lord's Prayer as a matter of our statutes and as something that is encouraged and sponsored by the states, that we are infringing on that freedom of religion. We take an oath of office when we take this office to uphold the constitution, to support the constitution of this nation and this state, and I do not believe in good conscience, that I can do that reenacting, amending a statute that in this way, recognizes one particu-

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lar religion. I say the Lord's Prayer. My whole family has always said it, but it doesn't mean that we should be sponsoring it as a matter of statute. The next part, the third thing that this bill does is it changes the language of the New Hampshire School Patriot Act, which would replace that current part of the statute concerning the Lord's Prayer and the Pledge of Allegiance to say that as a continuation of the policy of teaching our country's history and to foster patriotism, I don't think that this is something just about the past, it is about the here and now, school districts are encouraged to establish a period of time during the school day for recitation of the Pledge of Allegiance. Pupil participation in the Pledge of Allegiance shall be voluntary. I think this is what makes the most sense is for us to encourage this, to encourage districts to do this as a way to foster patriotism. We talk a lot about local control. In this instance, I do not see why the state needs to be creating this mandate. I think that it is appropriate for us to encourage it. I think that it is an appropriate issue for discussion at the appropriate school district level. It is not something that we need to be doing as a state. In further doing so, we may recognize that there are situations in which some school districts think that it is not prudent to require this period of time in every school day. There are alternative schools that sometimes place kids in a workplace where there isn't going to be an appropriate time during the course of the school day to set aside for the pledge, if they are working in a workplace in the community or other forms of alternative education where they are out on a field trip, and again, the time may not fit. Again, I think this is simply something that we can let local school districts decide while encouraging it through official policy. Thank you.

SENATOR BARNES: Senator Below, what are we doing to God in this in the prayer? What is your amendment doing with the reference to the Lord's Prayer?

SENATOR BELOW: It takes out the references to the Lord's Prayer in the statute, which is an unconstitutional provision of our current statutes.

SENATOR BARNES: Would you believe, Senator Below, once again, I am going to have to vote against your amendment. I have a dollar bill in my pocket. That is about all that I have at the present time, but on it, it says "In God we Trust". I bet that you use these every day and that is part of the Lord's Prayer, "In God we Trust". God is in our prayer. I don't think that we should be messing with it and we should leave it right where it is and the way that it is. Thank you Senator.

SENATOR O'HEARN: I first ask you to vote no on this amendment. First with the dealing with the civics, the mandatory civics program curriculum, due to the fact that we have just passed a study commission on what civics type of education should be introduced to our children because it isn't just a half semester course that will instill what patriotism is or what we should be feeling towards our country, it is more than one half semester course. It is also not the duty, in my opinion, it is not the duty of the legislature to dictate what curriculum should be by putting it into law. Right now in our curriculum frameworks and in our NEAP tests and in our rules, as I have testified before, that civics education is required and we do not need it in law. I am going to take just a couple of minutes and see if I can give a little bit of a history lesson trying to get to the root of the Pledge of Allegiance and "In God we Trust". The pledge tracks Lincoln's Gettysburg Address which ends with a wish "that this nation, under God, shall have a new birth of freedom and that the

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government of the people by the people, for the people shall not perish from the earth." Justice Brennan of the Supreme Court wrote, "we have simply interwoven the motto 'In God we Trust' so deeply into the fabric of our civil polity that its present use may well not present that type of involvement which the first amendment prohibits... The reference to divinity in the revised Pledge of Allegiance for example, may merely recognize the historical fact that our nation was believed to have been founded under God. Thus reciting the pledge may be no more of a religious exercise than the reading aloud of Lincoln's Gettysburg address which contains an allusion to the same historical fact." I ask that this Senate turn down this amendment and vote in the positive with the amendment that we have just passed. Thank you.

SENATOR WHEELER: I would just like to make three points: This floor amendment doesn't say anything negative about God. It says that we are going to clean up the statutes, which we don't do every time a decision comes down from the Supreme Court, we don't go to the expense of opening our statutes and taking out those parts of it which have been declared unconstitutional. But when we open our statutes for another purpose, it is our obligation to clean our statutes so that they are consistent with court decisions; therefore, eliminating the reference to the Lord's Prayer is something that has already happened in the Supreme Court Decision. We are simply saying that we are going to make our statutes consistent with that. We couldn't command that the children say the Lord's Prayer in the school right now, so there is no point in having it in our statutes. We are not touching the words in the Pledge of Allegiance. It still says "one nation under God". That has not been removed. We are not expressing anything at the state level about God, one way or the other, so just forget about that. That is our personal privilege and we can still believe what we want to believe and we are not changing that. I am interested that people who say we can't dictate curriculum, feel perfectly comfortable with dictating that the schools shall authorize time to say the Pledge of Allegiance. That is dictating something. That is dictating a small curriculum. Why would we be dictating that the schools be obligated to a recitation of the Pledge of Allegiance without feeling that we would also like to have the children understand why they were reciting the Pledge of Allegiance, what it means? This body turned down the teaching of civics a while ago. This is an opportunity to rectify that error. Clearly, with all of the concern that we have now about making sure that our children understand the respect, loyalty and allegiance to all that our flag symbolizes, that they are going to learn through a civics course, they are not going to learn it by memorizing something where the younger ones won't even understand the words. As we heard earlier, they think that "indivisible" is "invisible". We have all heard the terrible corruption's of the Pledge of Allegiance that children in all of their innocence and all of their earnestness make. I am not going to recite them now because I don't in any way want to belittle the value of the real words of the Pledge of Allegiance, but requiring that it be said is not the way to foster patriotism, to foster all of the things that we believe in, nor is it the way to foster respect for the flag; therefore, I support this floor amendment and will be unable to vote for the bill without this amendment. Thank you.

SENATOR BARNES: Senator Wheeler, would you believe that I never knew a three letter word was a bad word like a four letter word?

SENATOR WHEELER: Senator Barnes, I resent that! I said nothing that would indicate my lack of respect or love for God!

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SENATOR COHEN: I think the key words here are "foster patriotism". Isn't that what this exercise is all about? We have been talking about it for the last hour, fostering patriotism I am strongly in favor of fostering patriotism. It bothers me at Memorial Day and Fourth of July when people don't think about patriotism, it is just another day for a barbecue. It is a beautiful day, but to me, it has to be...I would prefer people to think about patriotism and what this country is about. To me, it is unquestionable that when children understand, when citizens understand the principles of this country, that patriotism can only increase. It doesn't matter what religion you are, Christian, Jewish, Muslim or whatever, teaching civics is very important. The love of our country can only deepen when we understand the principles that make this country great. This is a very positive amendment.

SENATOR FERNALD: When I was in high school, it was the mid-seventies. It was just after the Vietnam era, the Vietnam War era. An era of protest and an era of a lot of disrespect to the flag. In my high school, Conval High School in Peterborough, we had a period every day where we played the National Anthem and we said the Pledge of Allegiance. It was very common in my high school in those days that people would not stand and would not recite the pledge even though it happened every day. I was proud to stand every day. I remain proud to stand and say the pledge and salute the flag and to stand for the National Anthem. So I have voted for the committee amendment and I listened very carefully to what Senator McCarley said about "should" and "shall" and I thought about local control and I was a little conflicted, but I have concluded that "shall" makes some sense and I voted with Senator O'Hearn right next to me. There is another issue in mind which is our existing statute and its references to the Lord's Prayer. My children go to the elementary school in Peterborough and they say the Pledge...well my daughter goes to the elementary school and my son is in middle school, I shouldn't forget that...and they say the Pledge of Allegiance in school. Last Sunday we were in church and we said the Lord's Prayer, and that is exactly the way that it should be. The Lord's Prayer in church and the Pledge of Allegiance in school. We still have the Lord's Prayer in our books. In my school district and I am sure every school district in the state is ignoring what it is in the RSA, because although that may still be the statutory law of the state, there is a higher law, the constitution, which requires a separation of church and state. We have taken an oath as Senators, to uphold the constitution of this state and of this country, and I am going to vote for this amendment so that we take out those references that are unconstitutional, because it is the right thing to do. I will note that when we said the Lord's Prayer in church, I go to the United Church of Christ Church and we say **TAPE INAUDIBLE** in the Lord's Prayer, and during lent, we said sins, which we learned was the way that they do it in the Dutch Reform Church down in the Pennsylvania area, which is part of the United Church of Christ. Of course, in other churches they do "trespasses" and on and on it goes. There are newer versions of the Lord's Prayer that take out some of the gender references and on and on it goes. Religion belongs in church. Let's take it out of our statute books. Thank you.

Senator Francoeur moved to divide the question.

The Chair has ruled that the question is divisible.

SENATOR PIGNATELLI: When I first came to the Senate, I took an oath to uphold the Constitution of the United States and the New Hamp-

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shire Constitution. The inclusion of the Lord's Prayer has been deemed by our courts to be unconstitutional. Therefore, I am going to vote for this amendment. I don't think that this belongs in our statutes. I wouldn't introduce a bill to get rid of it, but now that we have it before us and I need to go with the oath that I took when I became a state Senator, so I am going to be voting for this. Now about prayer and God. I believe that people should pray, when they want, in their churches, in their homes, in the streets, in their cars, wherever they choose to pray. I, myself, pray most days. One of the things that I pray for is that people in government will get common sense, and people with common sense get into government, and that the rest of us have the tolerance and the fortitude to withstand those who would put their views on us. Thank you Mr. President.

SENATOR PRESCOTT: Senator Pignatelli, I did take an oath to the U.S. Constitution, and by voting against removing the Lord's Prayer from our books, can you say that...can you describe to me how I would be breaking my oath to upholding the United States Constitution?

SENATOR PIGNATELLI: Well I believe that the Supreme Court has said that having the Lord's Prayer...we have to separate the church and state, and having the Lord's Prayer does not go with our constitution, so when I vote for this, to keep the Lord's Prayer, I am in fact, voting for something that the Supreme Court has said is unconstitutional. I consider that a conflict.

SENATOR PRESCOTT: Do you know where in my oath of office, in the United States Constitution, where that is stated?

SENATOR PIGNATELLI: I do not.

SENATOR PRESCOTT: Then this may not be a true statement? I just want to know.

SENATOR PIGNATELLI: I believe that it is. You may believe that it isn't, we may have a difference in beliefs, but that doesn't make my belief any less valid or yours more valid. It is a Supreme Court decision. You may not...

SENATOR PRESCOTT: Right, but I did not make an oath to a Supreme Court decision, I made an oath of office to uphold the Constitution, I do not want to lie, that is why I am asking you these questions.

SENATOR PIGNATELLI: Well someone else can probably explain it better, but when the Supreme Court makes a decision, and it conflicts with my oath of office, I have a problem when I am taking an oath and the Supreme Court has said that something in that oath is unconstitutional.

SENATOR PRESCOTT: Thank you very much.

SENATOR PIGNATELLI: You're welcome.

SENATOR FERNALD: I don't have the exact lines in front of me, but I believe that our federal constitution says that "congress shall enact no law regarding the establishment of a religion". What we have learned is that there is indeed a separation of church and state, in our society, under our constitution. What the current RSA says is that school boards may bring the church into our government schools. That is what is prohibited by our constitution and why I urge adoption of this floor amendment.

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A roll call was

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SENATOR PRESCOTT: The term has been used many times here as a deceiving term. "Separation of church and state as part of our first amendment to our U. S. Constitution. That is a lie. It is not there. That term came about by a letter written by Thomas Jefferson to a church that was concerned that another sect of religion was going to be mandated by the U.S. Constitution. Thomas Jefferson wrote back and said that the Constitution has a high wall between church and state or a separation between church and state. That is, the state will not influence the church, but that the church may influence the state. Thank you very much.

SENATOR FERNALD: Just to speak one more time. The church that I go to in Peterborough traces itself back to the earlier church in town. In spite of the language of our federal constitution, New Hampshire law, in the early 1880's had state supported churches, which means in those days, you could be taxed, forced to pay taxes to my church. That is how we did it in New Hampshire. It took us a little while to figure out what we had really done in 1787, and I think that we are still figuring out what that constitution means to us today. We have made a lot of progress and we can thank Thomas Jefferson and a whole lot of other people for bringing us forward, day by day, to where we are today, the greatest and the freest country in the world.

SENATOR KLEMM (In the Chair): The chair has ruled that the amendment is divisible. The first vote will be taken from lines 1-27, is that correct Senator Francoeur?

SENATOR FRANCOEUR: Mr. President, I think that if you look at the amendment that is before us, it talks about the instruction of civics, which is lines 27 on up. I think that lines 28 on down deals with the Lord's Prayer and removing it from our statutes. I am a firm believer here today that we can remove God from our laws and we can remove them from our books, and we can remove them from our buildings, and we can try to remove him from our money, but we cannot deny that God exists. I think that this vote to divide the question so that those that feel separately on each issue can be heard.

SENATOR WHEELER: Mr. President, if we are voting from lines 1 - 27, it also says that it is amending the bill by replacing all after the enacting clause with the following. I just want to make sure that we understand that that is part of it also.

SENATOR KLEMM (In the Chair): That is correct Senator Wheeler.

Recess.

Out of Recess.

SENATOR KLEMM (In the Chair): Clarification on Senator Francoeur's division of the question: The first part that we will be voting on is section 1, which is lines 8-27. It also includes section 3. The second vote will be on section 2. Is the parliamentary situation clear?

Question is on the adoption of sections 1 and 3.

A roll call was requested by Senator Below.

Seconded by Senator Barnes.

The following Senators voted Yes: Below, McCarley, Disnard, Fernald, Pignatelli, Larsen, O'Neil, D'Allesandro, Wheeler, Hollingworth, Cohen.

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The following Senators voted No: Burns, Gordon, Johnson, Boyce, Flanders, Roberge, Eaton, O'Hearn, Francoeur, Gatsas, Barnes, Prescott, Klemm.

Yeas: 11 - Nays: 13

Motion failed.

Question is on the adoption of section 2.

A roll call was requested by Senator Fernald.

Seconded by Senator Barnes.

The following Senators voted Yes: Below, McCarley, Fernald, Pignatelli, Wheeler.

The following Senators voted No: Burns, Gordon, Johnson, Boyce, Flanders, Disnard, Roberge, Eaton, O'Hearn, Francoeur, Larsen, Gatsas, Barnes, O'Neil, Prescott, D'Allesandro, Klemm, Hollingworth, Cohen.

Yeas: 5 - Nays: 19

Motion failed.

Senator D'Allesandro offered a floor amendment.

2002-3516s

04/10

Floor Amendment to HB 1446

Amend the title of the bill by replacing it with the following:

AN ACT relative to the recitation of the pledge of allegiance in the public schools and establishing a separate high school civics graduation requirement.

Amend the bill by replacing all after the enacting clause with the following:

1 School Boards, Teachers; Instruction in Civics. RSA 189:11 is repealed and reenacted to read as follows:

189:11 Instruction in National and State History and Government; Instruction in Civics.

I. In all public and private schools in the state there shall be given regular courses of instruction in the history, government, and constitutions of the United States and New Hampshire, including the organization and operation of New Hampshire municipal, county and state government and of the federal government.

II. The instruction required under paragraph I shall begin not later than the opening of the eighth grade and shall continue in all high schools in the state which shall include a one year course in the history of the United States and New Hampshire.

III. In all high schools in the state, there shall be given a course of instruction in civics. This course shall be a one-half unit of credit required for graduation, and shall replace one-half of the social studies elective unit of credit as set forth in the administrative rules of the department of education at Ed. 306.23(f). The civics course may be locally developed provided, at a minimum, the course provides exposure to current governmental affairs and covers the following areas:

- (a) Duties and responsibilities of a citizen.
- (b) Opportunities of citizen participation and involvement in the governmental process.
- (c) The structure and operation of government.

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(d) The constitutional basis of our government.

(e) The interaction between local, state, and federal governments.

2 Lord's Prayer [~~and Pledge of Allegiance~~] in Public Elementary Schools. Amend RSA 194:15-a to read as follows:

194:15-a Lord's Prayer [~~and Pledge of Allegiance~~] in Public Elementary Schools. As [~~a continuation of the policy of teaching our country's history and as~~] an affirmation of the freedom of religion in this country, a school district may authorize the recitation of the traditional Lord's prayer [~~and the pledge of allegiance to the flag~~] in public elementary schools. Pupil participation in the recitation of the prayer [~~and pledge of allegiance~~] shall be voluntary. Pupils shall be reminded that this Lord's prayer is the prayer our pilgrim fathers recited when they came to this country in their search for freedom. Pupils shall be informed that these exercises are not meant to influence an individual's personal religious beliefs in any manner. The exercises shall be conducted so that pupils shall learn of our great freedoms, which freedoms include the freedom of religion and are symbolized by the recitation of the Lord's prayer.

3 New Section; School Districts; New Hampshire School Patriot Act. Amend RSA 194 by inserting after section 15-b the following new section:

194:15-c New Hampshire School Patriot Act.

I. As a continuation of the policy of teaching our country's history to the elementary and secondary pupils of this state, this section shall be known as the New Hampshire School Patriot Act.

II. A school district shall authorize a period of time during the school day for the recitation of the pledge of allegiance. Pupil participation in the recitation of the pledge of allegiance shall be voluntary. Pupils shall be reminded that the pledge of allegiance is an affirmation of the freedoms we enjoy, and is recited in remembrance of all the people who have sacrificed their lives in defense of our country and in the service of freedom.

III. Pupils shall be required to stand during the recitation of the pledge of allegiance as a gesture of respect to our nation's flag just as the public is required to stand when addressing a judge in court as a gesture of respect to our judicial system. If this paragraph shall be declared to be unconstitutional or otherwise invalid, the remaining paragraphs in this section shall not be affected, and shall continue in full force and effect.

4 Effective Date. This act shall take effect 60 days after its passage.

2002-3516s

AMENDED ANALYSIS

This bill provides that a one-half year course in civics shall be required for high school graduation.

This bill also provides that a school district may authorize the recitation of the pledge of allegiance and that such recitation shall be voluntary.

SENATOR D'ALLESANDRO: Amendment 3516 takes the current piece of legislation and adds to it, the implementation of civics as a mandatory course in schools. I think that given what's happened today, that it is evident that the mandatory introduction of civics is a very important item as we talk about our duties and responsibilities as citizens of the United States. Duties and responsibilities as citizens are something that should be engrained in all of us so that when we do salute our flag we know why? We know what constitutes allegiance to the United States of America. Everyone should have that educational experience. That will

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make people better citizens and when they do pledge, they will know why they are doing it. My grandparents, only one of whom ever became a citizen of the United States had a deep and abiding love of that nation. She came here as a sixteen-year-old, from a foreign land, all by herself. Built a life in this country. Had seven children. In her 80th year became a citizen of the United States. A citizen of the United States of America. Every citizen should learn what participation and the democratic process is. Participation in the democratic process carries with it, responsibility. That responsibility is to be an active participant in the process. Why don't people vote? Because they don't think that their vote makes a difference. Are they going to be better citizens if indeed they are educated? Absolutely. We have spent the last six years talking about education. Does the government work? It only works if people participate. If people participate they are part of the body politic, and as a result, take a vested interest in what is happening. The structure and operation of our government, when people say that it is going on up in Concord, do they really know what is going on up in Concord? Do they really know how a bill becomes a law? All of these things are essential parts of learning what the experience of participating in government is. I think that the debate today has proved without an iota of doubt, that civics as part of their basic education is an absolute fundamental if this process is to continue and to survive **TAPE CHANGE** replace one half of that social studies requirement.

SENATOR BARNES: I am not familiar with that social study curriculum in the state of New Hampshire, can you please enlighten me on what the social studies curriculum is and what this would add to it or subtract from it?

SENATOR D'ALLESANDRO: Thank you very much for that question Senator Barnes, I think that it was a very insightful one. In terms of preparing a curriculum, each individual community has input in the development of curriculum instruction. I used to be chairman of the Curriculum and Instruction Committee of the local School Board in Manchester. So when you develop a curriculum, what you do is you bring into that curriculum, items that you think are important in the educational process. So each community would have an opportunity to locally develop this program that talks about the basic responsibilities of government, but the underlying characteristics of that program would be the following: in that program, the duties and responsibilities of a citizen would be articulated. Opportunities for citizen participation and involvement in the government process. The structure and operation of government. The constitutional basis of our government and how government interacts at the local, state, county and federal level. So they would be the guidelines, but at the local level you create the program.

SENATOR BARNES: Thank you Senator D'Allesandro. If I vote for this amendment of yours, is there somewhere in that civic curriculum statewide, teaching our young children about the flag, that when Old Glory goes by that the hat should come off? Is there something there that would teach them that respect for our flag?

SENATOR D'ALLESANDRO: When you talk about the duties and the responsibilities of a citizen, I certainly think that all of that is encompassed in that statement. So the answer to your question is yes.

SENATOR BARNES: So it will be taught that when Old Glory goes by, the National Anthem is sung, that people should stand and the hats should come off?

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SENATOR D'ALLESANDRO: I would certainly hope that would be part of the curriculum.

SENATOR BARNES: You would hope, oh, okay. Thank you Senator.

SENATOR DISNARD: I noticed that we just passed 15-9 a bill. I noticed the last part of your bill, the wording is different. Does that mean that we will have two bills saying almost the same thing?

SENATOR D'ALLESANDRO: This would replace what we have just passed.

Senator Below moved to divide the question.

The Chair has ruled that the question is divisible.

SENATOR GATSAS: Senator D'Allesandro, can you tell me the difference between this amendment and the original amended version of the bill?

SENATOR D'ALLESANDRO: Yes Senator Gatsas. The structure of the original bill remains the same, it just adds the component with regard to civics.

SENATOR GATSAS: Didn't I just hear Senator Disnard say that there is something different in the next section?

SENATOR D'ALLESANDRO: He would have to articulate to you what the difference is. This bill, if you look at the bill as amended, what this does is just adds civics to that original piece of legislation.

SENATOR WHEELER: I am going to speak to try to respond to Senator Gatsas' question. The amendment that I understand, you can correct me if I am wrong, but I think that what passed earlier this morning was the amendment in the Calendar on page five to HB 1446. Am I correct about that Mr. President? So the wording in that took out the requirement for standing and took out the pupil participation...it says volunteer, but it took out that the pupils should be reminded that the pledge is an affirmation of the freedoms that we enjoy and as recited and remembered of all the people that have sacrificed their lives. That was in the original bill, but not in the amendment that we just passed. So it is my understanding, and the President can tell me if I am right, that if we pass what Senator D'Allesandro has proposed, we will be eliminating what we just voted for. It is replacing, but it is gone.

SENATOR GATSAS: So the portion that is in Senator D'Allesandro's version is really what was in the House's version?

SENATOR WHEELER: That is my understanding.

SENATOR GATSAS: Senator D'Allesandro, let me understand that this version is what the House version of the bill was?

SENATOR D'ALLESANDRO: That is correct.

SENATOR GATSAS: It must have come to light, as my grandmother would have done to me, what your grandmother probably would have done to you, even though may not have been U.S. citizens at the time, should we not have stood with the Pledge of Allegiance?

SENATOR D'ALLESANDRO: Yes.

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SENATOR GATSAS: Assuming that we probably got some of those as we were growing up from our grandmothers and God knows that we loved them both.

SENATOR D'ALLESANDRO: Right.

Recess.

Out of Recess.

Question is on the adoption of sections 1 and 4.

A division vote was requested.

Yeas: 8 - Nays: 14

Motion failed.

Question is on the adoption of sections 2 and 3.

Motion failed.

Senator Boyce is in favor of sections 2 and 3 on HB 1446.

Senator Fernald offered a floor amendment.

2002-3607s

04/10

Floor Amendment to HB 1446

Amend the bill by replacing all after the enacting clause with the following:

1 New Hampshire School Patriot Act. RSA 194:15-a is repealed and reenacted to read as follows:

194:15-a New Hampshire School Patriot Act.

I. As a continuation of the policy of teaching our country's history to the elementary and secondary pupils of this state, this section shall be known as the New Hampshire School Patriot Act.

II. A school district shall authorize a period of time during the school day for the recitation of the pledge of allegiance. Pupil participation in the recitation of the pledge of allegiance shall be voluntary.

III. Pupils not participating in the recitation of the pledge of allegiance may silently stand or remain seated but shall be required to respect the rights of those pupils electing to participate. If this paragraph shall be declared to be unconstitutional or otherwise invalid, the remaining paragraphs in this section shall not be affected, and shall continue in full force and effect.

2 Effective Date. This act shall take effect 60 days after its passage.

2002-3607s

AMENDED ANALYSIS

This bill establishes the New Hampshire School Patriot Act in which school districts shall authorize a period of time during the school day for the recitation of the pledge of allegiance and that such recitation shall be voluntary.

SENATOR FERNALD: Mr. President, in the interest of time, I will speak to my amendment right now. This amendment is the language of the committee amendment, but instead of making it a new section in the statute, it puts it right with the pledge language that is in our statute right now. What it takes out is the reference to the Lord's Prayer. We have a very odd thing that we have done with this bill. We have talked about separation of church and state today and we are actually doing it in our

statute book with this state Pledge of Allegiance. So if we pass this bill church and state by statute book and I don't think we do is we adopt that in 15-a where it has

Question is on the

A roll call was requested.

Seconded by Senator

The following Senators

The following Senators

McCarley, Flanders

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Floor amendment failed.

Recess.

Out of Recess.

Question is on order

Senator Fernald moved

The chair ruled that

SENATOR FERNALD

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SENATOR KLEMM

Recess.

Out of Recess.

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Out of Recess.

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statute book with this bill, as amended currently. We have separated the state Pledge of Allegiance section from the church Lord's Prayer section. So if we pass this bill as is currently amended, we have indeed separated church and state by putting it in two different paragraphs in our statute book and I don't think that we should be doing that. So instead what we do is we adopt the committee's language on the pledge and we put it in 15-a where it has been all along. Thank you.

Question is on the adoption of the floor amendment.

A roll call was requested by Senator Fernald.

Seconded by Senator Below.

The following Senators voted Yes: Below, Fernald, Pignatelli.

The following Senators voted No: Burns, Gordon, Johnson, Boyce, McCarley, Flanders, Disnard, Roberge, Eaton, O'Hearn, Francoeur, Larsen, Gatsas, Barnes, O'Neil, Prescott, D'Allesandro, Wheeler, Klemm, Hollingworth, Cohen.

Yeas: 3 - Nays: 21

Floor amendment failed.

Recess.

Out of Recess.

Question is on ordering to third reading.

Senator Fernald moved to divide the question.

The chair ruled that the question is not divisible.

SENATOR FERNALD: Mr. President, why is that? We have a bill with two parts. Why would we not be able to send one part to third reading?

SENATOR KLEMM (In the Chair): We have already adopted both parts.

Recess.

Out of Recess.

SENATOR BELOW: Mr. President, I have a parliamentary inquiry. Maybe I am numb or don't understand something...

SENATOR KLEMM (In the Chair): I doubt that.

SENATOR BELOW: I am looking at Senate Rule #10 that says, "Any member may call for a division of the question when the sense will admit it." What I don't understand is why we cannot chose to send one part of the bill to third reading and not another part to third reading. The motion is whether the bill should be sent to third reading. I don't understand why we can't vote separately on whether section one should be sent to third reading versus section two should be sent to third reading.

Recess.

Out of Recess.

SENATOR KLEMM (In the Chair): Senator Below, it says that "Any member shall call for a division of the question when the sense will admit it." Now my sense is that both parts of this bill have already been voted on. We have already voted on them when we passed it onto second reading and, going into third reading, we have already voted on the two parts, so I am ruling that it is not divisible.

Question is on ordering to third reading.

000177

A roll call was requested by Senator Gatsas.

Seconded by Senator Barnes.

The following Senators voted Yes: Burns, Gordon, Johnson, Boyce, Flanders, Disnard, Eaton, O'Hearn, Francoeur, Gatsas, O'Neil, Prescott, D'Allesandro, Klemm, Hollingworth, Cohen.

The following Senators voted No: Below, McCarley, Roberge, Fernald, Pignatelli, Larsen, Barnes, Wheeler.

Yeas: 16 - Nays: 8

Adopted.

Ordered to third reading.

HB 1437-FN-A, relative to increasing the staff in the consumer protection and antitrust bureau of the department of justice. Finance Committee. Vote 4-1. Inexpedient to legislate, Senator Barnes for the committee.

SENATOR BARNES: House Bill 1437 represents good legislative intent. A lot of people worked very hard on this piece of legislation, more consumer protection; however, given the state's current fiscal situation, the Finance Committee felt that it would not be wise to grow government anymore than we already have. The Finance Committee recommends that HB 1437 be inexpedient to legislate and ask for your support. Thank you.

SENATOR D'ALLESANDRO: I rise against the motion of inexpedient. We heard this bill and heard of the need for this bill. During the process of working on this bill, there was a methodology to fund it that was stripped by the House. That methodology was to take the monies that were recovered from cases and put that into a fund so that we could fund people to carry out their duties and responsibilities. We know now that 31,000 complaints are registered every year. Those complaints are handled by volunteers. There is a very small staff that works on written complaints. Those number between 5,000-7,000 a year. There is ample need to have this office upgraded in terms of staff. What we are asking for with this legislation was a policy vote that said that we need these people. If we are to properly service the people of the state of New Hampshire, we must have a way to deliver that service. This was a way of saying that in the next budget cycle, we encourage the addition of these people into that process. Thank you Mr. President.

SENATOR FLANDERS: I also rise for you to vote against the inexpedient to legislate motion. An awful lot of study went into this. As I presented this on the Senate floor before it went to Finance. As you recall, my testimony was that this would be self-funding. That the moneys that would be received in fees would cover the costs of the people in this bill. As you go further down the line you will see another bill that I am going to present that has to do with consumer affairs that has gone to interim study, so if we defeat this and we defeat the other bill, it is the big people 2 and the consumers 0. If you think that by passing this we give them a heads up on giving them people, that's exactly what we wanted to do. Exactly what we wanted to do. Give them a heads up so that the people in the budget will pay attention that these people are needed and are self-funding. We hear about we can't spend anymore money. This is self-funding. They are going to prove...they are going to come over and they are going to prove that the fees that they are going to get by getting involved in cases that they can't get involved now because they do not have the manpower, is going to fund these. The consumer protection people...the consumers are

going to be protected. don't seem to care. We support us and need to pay attention that a general fund. The themselves. So please

Senator Wheeler
dient to legislate

SENATOR WHEELER: which we will be a study committee. Health and Human Services from the Department of Hospital Planning. question that some hospital trust law. The issues of more was not enough on these more simply were increased for this year. say that people that the citizens of the state. tion. Thank

Question raised

A roll call was requested

Seconded by Senator

The following Senators

Flanders, Disnard,

Hollingworth, Cohen,

The following Senators

Eaton, O'Hearn,

Adopted.

Ordered to third reading.

HB 1437-FN-A

department of justice

Finance Committee

Vote 4-1

2002-11-11

01:09

Amended

the following

11

000178

Sen. Pignatelli, Dist 13; Sen. Francoeur, Dist 14; Sen. Larsen, Dist 15; Sen. Gatsas, Dist 16; Sen. O'Neil, Dist 18; Sen. Prescott, Dist 19; Sen. D'Allesandro, Dist 20; Sen. Wheeler, Dist 21; Sen. Klemm, Dist 22; Sen. Hollingworth, Dist 23; Sen. Cohen, Dist 24).

SENATOR BARNES: **TAPE INAUDIBLE** all of my colleagues, I would love to see a 24-0 vote on that resolution.

Adopted.

SR 2, a resolution supporting the retention of the phrase "under God" in the pledge of allegiance.

SENATOR BARNES: You have the Senate Resolution 2 in front of you. We had an original one and a couple of my colleagues on the other side of the aisle came to me with a couple of changes. I thought that their changes were better than what I had. A number of folks on the other side of the aisle, my side of the aisle, saw it and agreed with it, and that is what you have in front of you, an agreement between both the Democratic and republican colleagues, that this is something that we would like to pass, unanimously, all signed on to and send down to Washington, so that they will know that the state of New Hampshire is still alive and well under God.

Question is on the adoption of SR 2.

A roll call was requested by Senator Barnes.

Seconded by Senator Gordon.

The following Senators voted Yes: Burns, Gordon, Johnson, Boyce, Below, McCarley, Flanders, Disnard, Roberge, Eaton, Fernald, O'Hearn, Pignatelli, Francoeur, Larsen, Gatsas, Barnes, O'Neil, Prescott, D'Allesandro, Klemm, Hollingworth, Cohen.

The following Senators voted No:

Yeas: 23 - Nays: 0

Adopted.

Recess.

Senator Gordon in the Chair.

INTRODUCTION OF SENATE RESOLUTION

Senator Klemm moved introduction of **SR 1**, a resolution urging the passage of legislation regarding the rights of voters in Manchester and Nashua. (Sen. Klemm, Dist 22; Sen. Burns, Dist 1; Sen. Gordon, Dist 2; Sen. Johnson, Dist 3; Sen. Boyce, Dist 4; Sen. Flanders, Dist 7; Sen. Roberge, Dist 9; Sen. Eaton, Dist 10; Sen. O'Hearn, Dist 12; Sen. Francoeur, Dist 14; Sen. Gatsas, Dist 15; Sen. Barnes, Dist 17; Sen. Prescott, Dist 19).

Recess.

Out of Recess.

Adopted.

SR 1, a resolution urging the passage of legislation regarding the rights of voters in Manchester and Nashua.

SENATOR O'HEARN: I believe that it was our duty to act to correct the concerns that the court gave us in their opinion concerning the city of Nashua and the city of Manchester. Since we failed to act this morning