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HOUSE COMMITTEE REPORT

(9)

Date Referred: January 10, 1994

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 2/16/94

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 339

HOUSE BILL NO. 339

NO CENSORSHIP: AMERICAN HISTORY DOCUMENTS

"An Act relating to the use in public schools of historical documents without alteration or removal of religious or secular references when the references are a part of the text of the document; providing that the use of historical documents does not constitute the advocacy of partisan, sectarian, or denominational doctrine; and providing that public school teachers and administrators may not be disciplined or otherwise acted against for using historical documents; requiring the Department of Education to distribute copies of the law; and providing for an effective date."

RECOMMENDATIONS:

[] the same title

be replaced with _____

[] a new title

[] have attached amendments(s)

[] do pass

[] do not pass

[X] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

[] fiscal impact _____

[] fiscal note(s) _____

[X] zero fiscal note DOE

[] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>		<i>[Signature]</i>	X		
<i>[Signature]</i>		<i>[Signature]</i>		✓	
		<i>[Signature]</i>		✓	
		<i>[Signature]</i>		✓	

[Signature]
CHAIRMAN'S SIGNATURE

BILL HB 339 DATE 2/16/94
 TAPE 94-16, SIDE A NUMBER 053
 SUBJECT OF VOTE PASS HB 339 OUT OF COMMITTEE

MEMBER	YEA	NAY	ABS
Rep. Pete Kott	X	—	—
Rep. Harley Olberg	—	—	—
Rep. Bettye Davis	—	—	—
Rep. Irene Nicholia	—	—	—
Rep. Tom Brice	X	—	—
Rep. Cynthia Toohey	—	X	—
Rep. Con Bunde	X	—	—
Rep. Gary Davis	X	—	—
Rep. Al Vezey	X	—	—
TOTAL	5	1	—

+++++

BILL _____ DATE _____
 TAPE 94- _____ NUMBER _____
 SUBJECT OF VOTE _____

MEMBER	YEA	NAY	ABS
Rep. Harley Olberg	—	—	—
Rep. Bettye Davis	—	—	—
Rep. Irene Nicholia	—	—	—
Rep. Tom Brice	—	—	—
Rep. Cynthia Toohey	—	—	—
Rep. Con Bunde	—	—	—
Rep. Gary Davis	—	—	—
Rep. Al Vezey	—	—	—
Rep. Pete Kott	—	—	—
TOTAL	—	—	—

FISCAL NOTE

STATE OF ALASKA

BILL NO. HB 339

1994 LEGISLATIVE SESSION

Revision Date: January 13, 1994

Department Affected: Department of Education

Title: An Act relating to the use in public schools of historical documents

BRU: Education Program Support

Sponsor: Representative Kott

Component: Basic Education and Instructional Improvement

Requestor: Representative Kott

COMPONENT SERIAL NO. 171

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary.)

The required distribution of this Act can be accomplished through the department's regular mailings to school district superintendents.

Prepared by: Sheila Peterson

Phone: 465-2803

Division: Commissioner's Office

Date: January 13, 1994

Approved by Commissioner: *Paul Mahan*

Jerry Covey

Agency: Education

Date: January 13, 1994

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Representative Pete Kott

SPONSOR STATEMENT

HB 339 – Relating to the Use of Historical Documents

The proposed bill relating to the use of historical documents in public schools is enabling legislation. It is best described as an academic freedom measure. It clarifies that original source documents of American history may be used to teach children about American history in our schools regardless of their content—even though that content may, at times, be explicitly religious.

The establishment clause in both the federal and Alaska constitutions was not intended to hinder children's knowledge of the role of religion in the life of our state and nation. The Supreme Court of the United States affirmed this in *Abington v. Schempp* and other decisions. Yet the history textbooks now used in our schools often omit religious references in relating the history of our country. Also, teachers and administrators are sometimes hesitant to use documents such as the Mayflower Compact for fear of violating the constitutional and statutory prohibitions against advocating religious belief.

The legislature has a duty to ensure that an atmosphere of academic freedom prevails in our public schools and that an anti-religious bias does not develop to hinder school children's understanding of their regional and national heritage. HB 339 will protect teachers who supplement their history classes with primary source documents. HB 339 will allow students to be exposed more broadly to the primary source material for United States history.



HB 339
SECTIONAL ANALYSIS

"An Act relating to the use in public schools of historical documents without alteration or removal of religious or secular references when the references are a part of the text of the document; providing that the use of historical documents does not constitute the advocacy of partisan, sectarian, or denominational doctrine; and providing that public school teachers and administrators may not be disciplined or otherwise acted against for using historical documents; requiring the Department of Education to distribute copies of the law; and providing for an effective date."

Section 1.

Adds new section to AS 14.03 as follows:

AS 14.03.095

(a) Affirms that a school teacher or administrator may use a historical document of a state or the United States as a part of the school curriculum. Further provides that such a document may not be altered to censure the religious or secular content of the document.

(b) Provides that the use of a historical document may not be grounds for an alleged violation of AS 14.03.090 which prohibits the advocacy of a partisan, sectarian, or denominational doctrine.

(c) Prohibits disciplinary action against a teacher or administrator who uses a historical document as provided in subsection (a).

(d) Provides a partial, exemplary listing of historical documents.

Section 2.

Provides that the Department of Education shall distribute copies of the law to schools, school districts and REAAs.

Section 3.

Provides that the Act takes effect on July 4, 1994.

Sec. 14.03.090. Sectarian or denominational doctrines prohibited. Partisan, sectarian, or denominational doctrines may not be advocated in a public school during the hours the school is in session. A teacher or school board violating this section may not receive public money. (§ 1 ch 98 SLA 1966)

Opinions of attorney general. — Although public school teachers may teach about various religions as part of the curriculum in public schools, they may not advocate a particular religious view or teach that a particular religious view is true or false. The Professional Training Practices Commission has jurisdiction to hear complaints about the inappropriate advocacy of personal religious views in

the classroom, and to take appropriate disciplinary action if the complaints are justified. Sept. 15, 1988 Op. Att'y Gen.

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

Constitutionality of teaching or otherwise promoting secular humanism in public schools. 103 ALR Fed 538.

Background Paper
HB 339 NO CENSORSHIP:
AMERICAN HISTORY DOCUMENTS

The establishment clause in the First Amendment to the United States constitution which provided the model for Article I, section 4 of Alaska's constitution, was not intended to hinder children's knowledge of the role of religion in the life of our state and nation. The Supreme Court of the United States affirmed this in *Abington v. Schempp*, 374 US 203.

Justice Clark, in the opinion of the Court, wrote:

We agree of course that the State may not establish a "religion of secularism" in the sense of affirmatively opposing or showing hostility to religion, thus "preferring those who believe in no religion over those who do believe" (374 US at 225).

The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church and the inviolable citadel of the individual heart and mind. We have come to recognize through bitter experience that it is not within the power of government to invade that citadel, whether its purpose or effect is to oppose, to advance or retard. In the relationship between man and religion, the State is firmly committed to a position of neutrality. Though the application of that rule requires interpretation of a delicate sort, the rule itself is clearly and concisely stated in the words of the First Amendment (374 US at 226).

Justice Brennan, in a separate concurring opinion, wrote:

The holding of the Court today plainly does not foreclose teaching *about* the Holy Scriptures or about the differences between religious sects in classes in literature or history. Indeed, whether or not the Bible is involved, it would be impossible to teach meaningfully many subjects in the social sciences or the humanities without some mention of religion. . . . Any attempt to impose rigid limits upon the mention of God or references to the Bible in the classroom would be fraught with dangers (374 US at 300).

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THE MAYFLOWER COMPACT

(1620)

[From the History of Plymouth Plantation by William Bradford (1590-1657),
second governor of Plymouth.]

IN the name of God, Amen. We, whose names are underwritten, the loyal subjects of our dread sovereign Lord, King James, by the grace of God, of Great Britaine, France, and Ireland king, defender of the faith, etc., having undertaken, for the glory of God, and advancement of the Christian faith, and honour of our king and country, a voyage to plant the first colony in the Northerne parts of Virginia, doe, by these presents, solemnly and mutually in the presence of God, and one of another, covenant and combine ourselves together into a civill body politick, for our better ordering and preservation and furtherance of the ends aforesaid; and by virtue hereof to enacte, constitute, and frame such just and equall laws, ordinances, acts, constitutions, and offices, from time to time, as shall be thought most meete and convenient for the generall good of the Colonie unto which we promise all due submission and obedience. In witness whereof we have hereunder subscribed our names at Cap-Codd the 11. of November, in the year of the raigne of our sovereigne lord, King James, of England, France, and Ireland, the eighteenth, and of Scotland the fiftie-fourth. Anno. Dom. 1620.

THIS, THEN, is the condition of the world and the nation the last two weeks of April, 1789. Imagine yourself, if you will, as a thoughtful Washington, sitting down in your quiet study at Mount Vernon to prepare an address you must deliver April 30th in New York City. Although you have been almost as adept with the pen as with the sword, still it comes hard, this address, and during the trip from Mount Vernon to New York with wildly cheering crowds along the way you cannot help but feel uneasy over its reception. Indeed, when you reach New York you discard your original address, and with the aid of James Madison prepare a much shorter message. After the oath of office has been administered to you by Chancellor Robert R. Livingston of New York on the balcony of Federal Hall you listen to the thirteen-gun salute from the harbor as the Stars and Stripes are raised, acknowledge the adulation of the crowd, and retire to the Senate Chamber, where you take your seat until the Chamber has settled down. Now the entire Chamber looks toward you as you stand, settle your dark brown coat on your shoulders, adjust your spectacles nervously, and begin to speak in a low voice the words you have so painstakingly rewritten . . .

George Washington

[1789-1793]

FIRST INAUGURAL ADDRESS, APRIL 30, 1789

Federal Hall, New York, N.Y.

Fellow-Citizens of the Senate and of the House of Representatives:

Among the vicissitudes incident to life no event could have filled me with greater anxieties than that of which the notification was transmitted by your order, and received on the 14th day of the present month. On the one hand, I was summoned by my country, whose voice I can never hear but with veneration and love, from a retreat which I had chosen with the fondest predilection, and, in my flattering hopes, with an immutable decision, as the asylum of my declining years—a retreat which was rendered every day more necessary as well as more dear to me by the addition of habit to inclination, and of frequent interruptions in my health to the gradual waste committed on it by time. On the other hand, the magnitude and difficulty of the trust to which the voice of my country called me, being sufficient to awaken in the wisest and most experienced of her citizens a distrustful scrutiny into his qualifications, could not but overwhelm with despondence one who (inheriting inferior endowments from nature and unpracticed in the duties of civil administration) ought to be peculiarly conscious of his own deficiencies. In this conflict of emotions all I dare aver is that it has been my faithful study to collect my duty from a just appreciation of every circumstance by which it might be affected. All I dare hope is that if, in executing this task, I have been too much swayed by a grateful remembrance of former instances, or by an affectionate sensibility to this transcendent proof of the confidence of my fellow-citizens, and have thence too little consulted my incapacity as well as disinclination for the weighty and untried cares before me, my error will be palliated by the motives which mislead me, and its consequences be judged by my country with some share of the partiality in which they originated.

Such being the impressions under which I have, in obedience to the public summons, repaired to the present station, it would be peculiarly improper to omit in this first official act my fervent supplications to that Almighty Being who rules over the universe,

Washington was 6'2" tall and weighed 200 pounds. Now, however, at 57 the strain of long years at war was beginning to tell on him—as he briefly mentioned in his opening remarks.

Washington foresaw the young nation's difficulties. He didn't feel quite so much at home in a statesman's role as president. He felt better as commander in chief. But he evidently believed that by appealing to his colleagues, he could eliminate a good deal of the internal friction that was even then becoming evident. This friction was eventually to cause the dissolution of the Federalist party, of which Washington was a member.

The thought in this passage would occur repeatedly throughout the addresses of Washington's successors, but would seldom be expressed with the eloquence commanded by Washington.

The "future blessings" to which Washington referred were soon lost sight of in the storm of party bickering that began as the new government was seated—a development of which Washington was evidently not insensible, judging by the appeal in the next segment of his address.

Washington here reverted the meat of his message: "party animosities." His was a blunt request to the members of Congress who would be directing affairs of government under his leadership. But this appeal was soon to be forgotten, as it became plain that the young government was stronger than even its creators suspected. Political office was found to offer unforeseen rewards besides those of "public prospect and felicity"—rewards for which no sacrifice was apparently too great for the ambitious.

In this passage, which begins with the words "the sacred fire of liberty," Washington's eloquence reached its peak.

who presides in the councils of nations, and whose providential aids can supply every human defect, that His benediction may consecrate to the liberties and happiness of the people of the United States a Government instituted by themselves for these essential purposes, and may enable every instrument employed in its administration to execute with success the functions allotted to his charge. In tendering this homage to the Great Author of every public and private good, I assure myself that it expresses your sentiments not less than my own, nor those of my fellow-citizens at large less than either. No people can be bound to acknowledge and adore the Invisible Hand which conducts the affairs of men more than those of the United States. Every step by which they have advanced to the character of an independent nation seems to have been distinguished by some token of providential agency; and in the important revolution just accomplished in the system of their united government the tranquil deliberations and voluntary consent of so many distinct communities from which the event has resulted can not be compared with the means by which most governments have been established without some return of pious gratitude, along with an humble anticipation of the future blessings which the past seem to presage. These reflections, arising out of the present crisis, have forced themselves too strongly on my mind to be suppressed. You will join with me, I trust, in thinking that there are none under the influence of which the proceedings of a new and free government can more auspiciously commence.

By the article establishing the executive department it is made the duty of the President "to recommend to your consideration such measures as he shall judge necessary and expedient." The circumstances under which I now meet you will acquit me from entering into that subject further than to refer to the great constitutional charter under which you are assembled, and which, in defining your powers, designates the objects to which your attention is to be given. It will be more consistent with those circumstances, and far more congenial with the feelings which actuate me, to substitute, in place of a recommendation of particular measures, the tribute that is due to the talents, the rectitude, and the patriotism which adorn the characters selected to devise and adopt them. In these honorable qualifications I behold the surest pledges that as on one side no local prejudices or attachments, no separate views nor party animosities, will misdirect the comprehensive and equal eye which ought to watch over this great assemblage of communities and interests, so, on another, that the foundation of our national policy will be laid in the pure and immutable principles of private morality, and the preeminence of free government be exemplified by all the attributes which can win the affections of its citizens and command the respect of the world. I dwell on this prospect with every satisfaction which an ardent love for my country can inspire, since there is no truth more thoroughly established than that there exists in the economy and course of nature an indissoluble union between virtue and happiness; between duty and advantage; between the genuine maxims of an honest and magnanimous policy and the solid rewards of public prosperity and felicity; since we ought to be no less persuaded that the propitious smiles of Heaven can never be expected on a nation that disregards the eternal rules of order and right which Heaven itself has ordained; and since the preservation of the sacred fire of liberty and the destiny of the republican model of government are justly considered, perhaps, as

deeply, as finally, staked on the experiment intrusted to the hands of the American people.

Besides the ordinary objects submitted to your care, it will remain with your judgment to decide how far an exercise of the occasional power delegated by the fifth article of the Constitution is rendered expedient at the present juncture by the nature of objections which have been urged against the system, or by the degree of inquietude which has given birth to them. Instead of undertaking particular recommendations on this subject, in which I could be guided by no lights derived from official opportunities, I shall again give way to my entire confidence in your discernment and pursuit of the public good; for I assure myself that whilst you carefully avoid every alteration which might endanger the benefits of an united and effective government, or which ought to await the future lessons of experience, a reverence for the characteristic rights of freemen and a regard for the public harmony will sufficiently influence your deliberations on the question how far the former can be impregably fortified or the latter be safely and advantageously promoted.

To the foregoing observations I have one to add, which will be most properly addressed to the House of Representatives. It concerns myself, and will therefore be as brief as possible. When I was first honored with a call into the service of my country, then on the eve of an arduous struggle for its liberties, the light in which I contemplated my duty required that I should renounce every pecuniary compensation. From this resolution I have in no instance departed; and being still under the impressions which produced it, I must decline as inapplicable to myself any share in the personal emoluments which may be indispensably included in a permanent provision for the executive department, and must accordingly pray that the pecuniary estimates for the station in which I am placed may during my continuance in it be limited to such actual expenditures as the public good may be thought to require.

Having thus imparted to you my sentiments as they have been awakened by the occasion which brings us together, I shall take my present leave; but not without resorting once more to the benign Parent of the Human Race in humble supplication that, since He has been pleased to favor the American people with opportunities for deliberating in perfect tranquillity, and dispositions for deciding with unparalleled unanimity on a form of government for the security of their union and the advancement of their happiness, so His divine blessing may be equally conspicuous in the enlarged views, the temperate consultations, and the wise measures on which the success of this Government must depend.

In his reference to the fifth article of the Constitution, which provides for proposal of Constitutional amendments, Washington was attempting to divert rash action on the part of party hateras, to whom the Constitution was still an imperfect instrument. Federalist party leaders had stated their desire for Constitutional changes, and Washington was plainly displeased.

Here again Washington made an indirect yet nonetheless frank appeal to those who would make political office a means of excessive "personal emoluments."

At the close of his address Washington once more stressed a desire for "enlarged views . . . temperate consultations, and . . . wise measures" instead of acts of personal aggrandizement. A noble appeal, it fell on deaf ears—as Washington was soon to discover when ideals run headlong into reality.

ALASKA CONSTITUTIONAL CONVENTION

November 8, 1955

FIRST DAY

Processional

Presentation of the Colors

GOVERNOR B. FRANK HEINTZLEMAN: The hour appointed by the Alaska Territorial Legislature having arrived for the convening of the Alaska Constitutional Convention, I do accordingly, as Governor of this Territory, call the Convention to order. It is appropriate that those to whom so much has been entrusted by our voters call upon God for the guidance at the outset of their task. It is my privilege at this time to present the Reverend Roy Ahmoagak of Wainwright, Alaska, who will offer an invocatory prayer.

THE REVEREND ROY AHMOAGAK: Let us unite in prayer. Almighty and Everlasting God, who by Thy providence didst lead our forefathers to this good land wherein they found liberty and freedom to worship Thee, we beseech Thee ever to guide our nation in the way of Thy truth and peace so that we may never fail in the blessing which Thou has promised to that people whose God is the Lord. Grant, we beseech Thee, unto our Governor, and to those men who sit with him in authority, Thy gracious presence and blessing. Enlighten them with wisdom from above and especially in establishing our Constitution. May we ever seek to comply with Thy requirements, and what does the Lord require of you but "to do justice, and to love kindness, and to walk humbly with Thy God." Deliver us, our Father from error, pride and prejudice, and so order all these doings here that Thy kingdom may be advanced. Hear this our prayer, O God, and may what is accomplished in these meetings be in accordance with Thy Holy will. For we ask these things in the name of our Lord and Saviour Jesus Christ.

MCNEALY: I move, "RESOLVED that the reading of the certificate of election of the respective delegates be dispensed with and that the certificate of the Secretary of Alaska as to their election be accepted in lieu thereof.

FURTHER RESOLVED, that each delegate who has answered the roll call and whose name appears on the certificate of the Secretary of Alaska take and subscribe an oath or affirmation of office to be administered by the Honorable Vernon D. Forbes, Judge of the United States District Court of Alaska, Fourth Division, and that each delegate so sworn shall be deemed to have been duly seated." I ask unanimous consent.

GOVERNOR HEINTZLEMAN: I thank you. Without objection it is so ordered. Pursuant to the authority invested to me as Governor of the Territory, I would now like to appoint Mr. John B. Hall, Clerk of the Court, Fourth Division, to act as the

ALASKA CONSTITUTIONAL CONVENTION

November 9, 1955

SECOND DAY

PRESIDENT PRO-TEM, MILDRED HERMANN: The second session of the Alaska Constitutional Convention will come to order. We will have the roll call by the Secretary.

(Mr. John Hall called the roll.)

MR. HALL: Madam President, all fifty-five delegates are present excepting Frank Peratrovich who did not answer to his name.

MRS. HERMANN: This is the time and place set for a special order of business to hear an address by the keynote speaker for the Convention. I would like to appoint Mr. Hellenthal, Mr. Sundborg and Mrs. Nordale who will escort the speaker to the rostrum.

(Dr. Gruening was escorted to the rostrum at this time.) (applause)

MRS. HERMANN: Before we proceed with the address, I shall ask the Reverend Londborg to give the invocation.

LONDBORG: Let us pray. Almighty God, for whom we move and have our being, we stand before you this moment with bowed heads and humble hearts, realizing the responsibility that is ours as citizens and servants of this great potential State of Alaska. As Delegates to this Constitutional Convention we are aware of the need for divine guidance and wisdom. It is our prayer that this document we have been delegated to prepare will be one that will provide for equal liberty and justice for all peoples of Alaska, one that will stand the test of time and posterity and above all one that will bring honor to Thy holy name. We pray for Thy guidance in all of our business, that it may be conducted in a true spirit of brotherly love as taught by Christ, in order that we may make the most of the opportunity and challenge that is ours. We would pray as Solomon of old, "O Lord God, give us now wisdom and knowledge to do the task we have been called to do, for who can do this task that is so great." In Thy Holy Name we pray. Amen.

MRS. HERMANN: Yesterday when I was elected to be your temporary president, I felt both proud and humble. I am a little bit afraid I might not know how to say the right thing at the right time, but very proud that the Convention itself had thought that I could. It was not until later in the afternoon that it penetrated my befuddled intelligence, which had been jolted into something of a coma by my unexpected election, that I had still another reason to be proud to be your temporary chairman. It gave me the opportunity to introduce the keynote

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ALASKA CONSTITUTIONAL CONVENTION

November 10, 1955

THIRD DAY

PRESIDENT EGAN: The Convention will come to order and the Secretary will call the roll. (10 a.m.)

(Mr. John Hall called the roll at this time.)

MR. JOHN HALL: Mr. President, I find that all delegates are present excepting Frank Peratrovich who has not yet appeared, sir.

PRESIDENT EGAN: A quorum is present. The Convention will please stand while Reverend Armstrong comes forward to give the daily invocation.

ARMSTRONG: Let us bow in prayer. Almighty Father, who hath placed in our hands the lives of our fellow Alaskans, bring us to this Convention as delegates in their behalf. Continue to bring Thy spirit of wisdom upon us. Thou dost know that we will differ from one another as we search for true precepts for the great land. Thou dost know how our voices will rise as champions of ideals we hold eternal. Father, keep the good pace of brotherhood within us as we have started on this journey, and impose Thy will when we fail to surrender. Depose wrong when it is bred in selfishness, anger and sectionalism, and O God, our Father, we pray Thee of all to be our constant guide. In Jesus' holy name, amen.

PRESIDENT EGAN: The Secretary will read the minutes of yesterday's meeting. Mr. Johnson?

JOHNSON: Mr. President, in order to expedite the proceedings, I move the reading of minutes of yesterday's session be dispensed with. I ask unanimous consent.

PRESIDENT EGAN: Mr. Johnson moves and asks unanimous consent that the minutes of yesterday's meeting be dispensed with. Is there objection? Hearing no objection, it is so ordered. Mr. McNealy?

MCNEALY: In view of the developments since yesterday's nominations for Secretary of this Convention, and at the request of Mrs. Alexander, I wish to withdraw her name which was placed in nomination by me.

PRESIDENT EGAN: Do you put that in the form of a motion, Mr. McNealy?

MCNEALY: I so move Mr. President and ask unanimous consent of the body.

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Juneau, Alaska 99801-2105

MEMORANDUM

February 3, 1994

SUBJECT: Freedom of religion - (HB 339)

TO: Representative Cynthia Toohey

FROM: Michael F. Ford *M.F.*
Legislative Counsel

You have asked if HB 339 presents any constitutional problems. As explained in this memo, HB 339 does not appear to violate either the state or federal constitutions.

The constitution of the State of Alaska, in Article 1, section 4, and the United States constitution under the first amendment both prohibit the "establishment of religion" or the prohibition of the "free exercise" of religion by the government. The application of these two provisions is often difficult, partly because the two concepts are in conflict. Sometimes a command not to establish religion cannot be met without inhibiting religion in some manner. The general result that the courts have attempted to achieve is one of neutrality. Whether a particular law is neutral to the extent required by the state and federal constitutions requires that the law meet a three part test. First, the law must have a secular purpose, second, the principle effect of the law must not advance or inhibit religion, and third, the law must not give rise to excessive entanglement between the government and religion. Lemon v. Kurtzman, 403 U.S. 602 (1971).

Applying this test to HB 339, it appears that the first or second parts of the test are satisfied. The bill is limited to american historical documents, and requires only that documents not be altered to remove religious or secular references that are a part of the historical document. The last part of the test is not as easily met by HB 339, but given that the bill only applies to a public school curriculum there should not be government entanglement of the degree that would cause constitutional problems.

The primary effect of HB 339 appears to be that a school district could not modify a curriculum for religious purposes. Assuming this is the purpose of the bill, then there is a court decision that directly addresses this issue. The United States supreme court has ruled that a state may not eliminate the teaching of certain ideas related to normal classroom subjects because they conflict with religious beliefs. Epperson

Representative Cynthia Toohey

February 3, 1994

Page 2

v. Arkansas, 393 U.S. 97 (1968). In Epperson the court struck down a statute that made it unlawful to teach a theory of human biological evolution. The statute had a religious purpose, therefore it violated the establishment clause of the U.S. constitution. Again, the primary requirement of the courts has been to achieve neutrality. Prohibiting alteration of historical documents would seem a clear expression of this neutrality requirement.

Please contact me if you have further questions.

MFF:gc:mi

94-087.glc