

2002 WL 399647 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 4, 2002

*1 The Honorable Daniel L. Tripp
Member
House of Representatives
312C Blatt Building
Columbia, South Carolina 29211

Dear Representative Tripp:

You have asked whether the display of the words “In God We Trust” in the public schools violates the federal Constitution’s Establishment of Religion Clause. See, *Lemon v. Kurtzman*, 403 U.S. 603 (1973); *Lynch v. Donnelly*, 465 U.S. 668 (1984). It is our opinion that the placement in the schools of a display with the words “In God We Trust” thereupon is constitutional.

Law / Analysis

The words “In God We Trust” were first placed upon the United States coins during the War Between the States. In November, 1861, Secretary of the Treasury Salmon P. Chase ordered the Director of the Mint to place a suitable motto upon United States currency, one which succinctly emphasized America’s trust in God as a people. The phrase “In God We Trust” was the result.

Subsequently, in 1873, this policy of placing “In God We Trust” on United States currency was enacted into law in the form of the Coinage Act of that year. The Secretary of Treasury was authorized to “cause the motto ‘In God We Trust’ to be inscribed on such coins as shall admit of such motto.” From 1909 onward, those words have continuously appeared on one cent coins and on ten cent coins, since 1916. All gold coins, silver dollars, half dollars and quarter dollars have employed this motto continuously from July 1, 1908 forward. In 1956, President Eisenhower approved a Joint Resolution of Congress making the words “In God We Trust” the National Motto.

This historical significance of the phrase “In God We Trust” has often been recognized by the United States Supreme Court. In *Lynch v. Donnelly*, *supra*, the Court, in upholding the creche display of the City of Pawtucket against a constitutional challenge under the Establishment Clause, recognized that “[t]here is an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789.” In *Lynch*, the Court noted that “[o]ur history is replete with official references to the value and invocation of Divine guidance in deliberations of the Founding Fathers and contemporary leaders.” 465 U.S. at 674. Numerous examples of the Government’s “official acknowledgment” of our religious heritage in this country were enumerated. Among these are the declaration of Thanksgiving and Christmas as national holidays, the service and compensation of chaplains in both the House and Senate, the declarations by the President of a National Day of Prayer, and the phrase “One Nation Under God” in the Pledge of Allegiance. Also listed by the Court among these acknowledgments of America’s religious heritage was the National Motto “In God We Trust.” 465 U.S. at 676.

In her concurring opinion in *Lynch*, Justice O’Connor, voting to uphold the City’s creche display, found that Pawtucket had no more “endorsed” religion than had such governmental “acknowledgments” of religion as legislative prayers or printing “In God We Trust” on the Nation’s currency. Such acknowledgments of our religious heritage serve, in the view of Justice O’Connor, “the legitimate secular purpose of solemnizing public occasions, expressing confidence

in the future and encouraging recognition of what is worthy in our society. For that reason,... these practices are not understood as conveying government approval of particular religious beliefs.” 465 U.S. at 693. Justice O'Connor's concurring opinion in *Lynch* is often seen as the formulation of her “endorsement” test to determine whether a measure violates the Establishment Clause and is an alternative to the test set forth by the Court in *Lemon v. Kurtzman, supra*,

*2 For many of these same reasons, federal circuit courts have upheld the use of “In God We Trust” as the National Motto against an Establishment Clause challenge. See, *Aronow v. U.S.*, 432 F.2d 242 (9th Cir. 1970); *Gaylor v. U.S.*, 74 F.3d 214 (10th Cir. 1996); *O'Hair v. Blumenthal*, 462 F.Supp. 19 (W.D. Tex. 1978), *aff'd. sub. nom.*, *O'Hair v. Murray*, 588 F.2d 1144 (5th Cir. 1978), *cert. den.*, 442 U.S. 930 (1979). In *Gaylor*, the Court cited *Allegheny v. ACLU*, 492 U.S. 573, 602-603 (1989), wherein the Supreme Court had observed that “[o]ur previous opinions have considered in *dicta* the motto [In God We Trust] and pledge [of allegiance], characterizing them as consistent with the proposition that government may not communicate an endorsement of religious belief.”

In *O'Hair*, the Court likewise analyzed the National Motto under the three-pronged test of *Lemon v. Kurtzman*, requiring that for a challenged law to be valid under the Establishment Clause, it must (1) reflect a clearly secular purpose, (2) having a primary effect that neither advances nor inhibits religion, and (3) avoid excessive governmental entanglement in religion. The *O'Hair* Court held that the primary purpose of the phrase “In God We Trust” is ceremonial and neither advances nor inhibits religion and that “it would be ludicrous to argue that the use of the national motto fosters any excessive entanglement with religion.” Thus, the Court agreed with the 9th Circuit in *Aronow* that the Motto “has no theological or ritualistic impact.” 462 F.Supp. at 20.

Finally, in *Opinion of the Justices*, 108 N.H. 97, 228 A.2d 161 (1967), the Supreme Court of New Hampshire upheld a Bill requiring every public school to have a plaque bearing the words “In God We Trust.” The Court noted that [t]he words “In God We Trust” as a national motto appear on all coins and currency, on public buildings, and in our national anthem, and the appearance of these words as a motto on plaques in public schools need not offend the Establishment Clause of the First Amendment.

228 A.2d at 164.

Conclusion

The words “In God We Trust” may constitutionally be placed in our public schools. These words comprise the National Motto of the United States of America. The phrase “In God We Trust” is found on coins and currency and on our buildings and landmarks without constitutional violation. These same words can be constitutionally placed in our schools as well.

The United States Supreme Court has repeatedly noted that the words “In God We Trust” are not an endorsement of religion. Instead, the Court has often referred to our National Motto as an acknowledgment by government of the fundamental role of religion in America's everyday life since the founding of this Country. The words “In God We Trust” serve the nonreligious purpose of solemnizing public occasions, expressing confidence in American society and recognizing the attributes of America. Three circuit courts have upheld the words “In God We Trust” as the National Motto and the Supreme Court of New Hampshire has ruled that these words can be placed in all the public schools.

*3 Rather than an endorsement of religion, the words “In God We Trust” are a symbol of patriotic pride and an acknowledgment of America's religious heritage. Nothing in the Constitution prohibits using the National Motto “In God We Trust” to teach our children to honor and hold high the values and ideals of our Country and our love for God and country.

Sincerely,

Charlie Condon
Attorney General

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