

Testimony of:

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Chairman Pratt, Ranking Minority Member Kent, and Members of the E-12 Policy Committee, thank you for the opportunity to participate today while you consider the National Motto Display Act. Today I appear on behalf of the Congressional Prayer Caucus Foundation, which is an organization established to protect religious freedoms (including those related to America's Judeo-Christian heritage) and to promote prayer (including as it has traditionally been exercised in Congress and other public places). It is independent of, but traces its roots to, the Congressional Prayer Caucus that currently has over 100 representatives and senators associated with it. CPCF reaches across all denominational, socioeconomic, political, racial, and cultural dividing lines. It has an associated national network of citizens, legislators, pastors, business owners, and opinion leaders hailing from thirty-three states. I am also here today on behalf of The National Legal Foundation, which is a public interest law firm dedicated to the defense of First Amendment liberties, including our First Freedoms of speech, assembly, and religion.

Briefly concerning my credentials, after graduating from Duke Law School, I practiced law in Chicago for 25 years before joining the U.S. Department of Justice under President George W. Bush, where I helped guide the Department and several other federal departments on First Amendment issues arising under the Faith-Based Initiative. For the past 15 years, I have taught constitutional law at

Regent University in Virginia. I have authored several articles concerning the First Amendment, and have a Ph.D. in Higher Education Administration. Today, my remarks are limited to describing briefly the history of the national motto, its constitutionality, and a few reflections on Bill SF 3061.

History of the National Motto

The national motto “In God We Trust” was created by Act of Congress in 1956. Before it officially became our national motto, the phrase “In God We Trust” was placed on our nation’s coins as early as 1864. Congress affirmed the national motto in 2002, and in 2011, Congress overwhelmingly passed a Resolution reaffirming the national motto and encouraging the public display of the national motto in all public buildings and public schools.

Constitutionality of the National Motto

On seven occasions, opponents have challenged the constitutionality of our national motto, In God We Trust. Each time the courts have ruled that the national motto does not violate the Establishment Clause. The following briefly highlights each of these chronologically organized cases.

The first challenge was filed in the late 1960s in the federal court serving northern California. The plaintiff in the case argued that the inscription of the national motto on our currency violated the First Amendment provision that states that “Congress shall make no law respecting an establishment of religion . . .” The

plaintiff lost in the trial court, and proceeded to appeal the decision to the Ninth Circuit Court of Appeals, perhaps the most progressive federal appellate court in our country. In *Aronow v. United.States*,¹ the unanimous Ninth Circuit panel held that the national motto did not violate the First Amendment’s Establishment Clause. In its ruling, the court stated that “In God We Trust” had “nothing to do with the establishment of religion. Its use is of a patriotic or ceremonial character and bears no true resemblance to a governmental sponsorship of a religious exercise.”² The Ninth Circuit in *Aronow* relied on the U.S. Supreme Court’s decision in *Engel v. Vitale*,³ in which the U.S. Supreme Court struck down state-prescribed prayers in public schools, but said that the state can continue to encourage school children “to express love for our country by reciting historical documents such as the Declaration of Independence which contain references to the Deity . . .”⁴ The *Engel* Court distinguished a religious *practice* (prayer) that was state-mandated and unconstitutional, and *encounters* with religion (like the Declaration of Independence or the Pledge of Allegiance) that were patriotic and constitutional.

The second constitutional challenge to the national motto was in 1977 when Madalyn Murray O’Hair, the founder of American Atheists, brought suit claiming

¹ 432 F.2d 242 (9th Cir. 1970).

² *Id.* at 243.

³ 370 U.S. 421 (1962).

⁴ 432 F.2d at 243., *quoting* *Engel v. Vitale*, 370 U.S.

that the national motto, and its usage on U.S. coins and currency, violated the First Amendment to the Constitution. The federal district court dismissed Ms. O’Hair’s complaint, and the appellate court affirmed.⁵ In dismissing the complaint, the trial court quoted approvingly from *Aronow* that the “In God We Trust” slogan on coinage and currency has nothing whatsoever to do with the establishment of religion.⁶

The third constitutional challenge to the National motto was 15 years later, in 1992, when the Freedom From Religion Foundation and several of its employees filed an action alleging that the national motto, as well as its appearance on currency, violated the Establishment Clause.⁷ The federal district court in Denver dismissed the complaint, and FFRF appealed to the Tenth Circuit Court of Appeals. The Tenth Circuit reviewed whether the national motto violated the First Amendment’s Establishment Clause using two different tests, and found that under both tests, the national motto was constitutional.

With respect to the *Lemon* test, the Tenth Circuit stated as follows:

⁵ *O’Hair v. Blumenthal*, 462 F. Supp. 19 (W.D. Tex. 1978), *affd.* 588 F. 2d 1144 (5th Cir. 1979), *cert. denied*, 442 U.S. 930 (1979).

⁶ 462 F. Supp. at 19-20. The court in *O’Hair* also relied upon the U.S. Supreme Court case of *School District of Abington Township v. Schempp*, 374 U.S. 203 (1963), which considered compulsory reading of the Bible in public schools (something that the Court prohibited). In this opinion involving public schools, Justice Brennan, in a concurring opinion, stated that the National motto, “In God We Trust,” was “interwoven . . . 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.” *Id.* at 303.

⁷ *Gaylor v. United States*, 74 F.3d 214 (10th Cir. 1992), *cert. den.*, 517 U.S. 1211 (1996).

The *Lemon* test requires that, in order to be valid under the Establishment Clause, a statute must (1) have a secular legislative purpose, (2) have a primary effect that neither advances nor inhibits religion, and (3) avoid excessive government entanglement with religion. The statutes establishing the national motto and directing its reproduction on U.S. currency clearly have a secular purpose. The motto symbolizes the historical role of religion in our society, formalizes our medium of exchange, fosters patriotism, and expresses confidence in the future. The motto's primary effect is not to advance religion; instead, it is a form of “ceremonial deism” which through historical usage and ubiquity cannot be reasonably understood to convey government approval of religious belief. Finally, the motto does not create an intimate relationship of the type that suggests unconstitutional entanglement of church and state. Thus the statutes establishing the motto and requiring its reproduction on U.S. currency easily meet the requirements of the *Lemon* test.⁸ [Internal citations omitted].

The Tenth Circuit also considered whether the national motto violated the “endorsement test,” which looks to see whether a reasonable observer would view the government’s practice as an endorsement of religion.⁹ A “reasonable observer” for purposes of this test is not a particular individual, or one who is uncomfortable seeing symbols of faith. Rather, the “reasonable observer” is a collective person who is aware of the history and context of the community in which the religious display appears.¹⁰ The Tenth Circuit concluded its endorsement test analysis by saying, “After making that inquiry, we find that a reasonable observer, aware of the purpose, context, and history of the phrase “In God we trust,” would not consider its use or its reproduction on U.S. currency to be an endorsement of

⁸ *Id.* at 216.

⁹ *Id.* at 217.

¹⁰ *Id.*

religion.”¹¹

Less than ten years later, a County Treasurer in Kansas displayed 11 inch by 14 inch posters bearing the words “In God We Trust” in the Treasurer’s office.¹² These posters had the word “God” printed in red letters larger than the black printing used for the other words on the poster, and the posters had a “barely visible” reference to this phrase being the national motto.¹³ A person objected to the posters and, after an exchange of letters with the County Treasurer refusing to remove the national motto posters, the person filed suit alleging, among other things, that the posters violated the Establishment Clause.¹⁴

Since Kansas is in the Tenth Circuit, the federal district court found that the *Gaylor* case was binding precedent, and therefore the Kansas federal district court dismissed the complaint. The court, however, did not stop there. After finding that the plaintiff’s Establishment Clause challenge was “patently frivolous without any basis in law,” and was “in direct contravention of the controlling law,” the court awarded attorneys’ fees to the County Treasurer.¹⁵

Three years later, a parent of two elementary school children in Loudon County, Virginia, filed a lawsuit claiming that two Virginia statutes, one

¹¹ *Id.*

¹² *Schmidt v. Cline*, 127 F.Supp. 2d 1169 (D. Kan. 2000).

¹³ *Id.* at 1171.

¹⁴ *Id.* at 1177. Incidentally, after the plaintiff filed her complaint, the County Treasurer replaced the posters with other posters that did not emphasize by color or type the word “God,” and that prominently displayed the fact that the poster was the national motto. *Id.* at 1172.

¹⁵ *Id.* at 1181.

mandating that Virginia public school students say the Pledge of Allegiance each day and the other mandating that the schools prominently post in each school “In God We Trust” for all students to read, violated the Establishment Clause.¹⁶

Regarding the national motto issue, the court determined that the posters were secular and not religious. The court noted, “Indeed, aside from the inclusion of the word ‘God’ as a portion of the national motto, the posters are wholly devoid of any religious reference or symbolism. Furthermore, the national motto’s reference to God does not make the statement religious as opposed to secular.”¹⁷

Four years later, two attorneys in Davidson County, North Carolina (the home of Charlotte), filed a complaint against the county because it had placed “In God We Trust” in large letters, with no designation that it was the national motto, on the façade of the Davidson County Governmental Center.¹⁸ Again, the claim was that the national motto being placed by a governmental entity on a governmental building was a violation of the Establishment Clause, since it was done for a religious purpose, and it advanced religion. Again, the court reached the same conclusion as all other courts. The court concluded that the national motto had a secular purpose (“the phrase ‘In God We Trust’ is not inherently religious, particularly when considered in light of its history as this nation’s official motto, . .

¹⁶ Myers v. Loudoun County School Board, 251 F. Supp. 2d 1262 (E.D. Va. 2003), affd. 418 F.3d 395 (4th Cir. 2005).

¹⁷ *Id.* at 1274.

¹⁸ Lambeth v. Bd. of Com’rs of Davidson Co., N.C., 321 F. Supp. 2d 688 (M.D.N.C. 2004).

. [which] simply does not carry with it a clear endorsement of religious practice . . .),¹⁹ its primary effect did not advance religion because no reasonable observer could conclude that the national motto on a government building was an endorsement of religion,²⁰ and its appearance on a governmental building did not create an excessive entanglement with religion.²¹

Five years later, Michael Newdow (who also challenged the Pledge of Allegiance), filed suit again in California challenging the national motto and its use on currency. The Ninth Circuit in its second opportunity to decide this issue determined that it was bound to the result in *Aronow*, and it therefore affirmed the dismissal of Newdow's complaint.²²

In summary, on seven different occasions opponents have challenged the constitutionality of the national motto's use on currency, in and on government buildings, and in public schools. Each time the courts have ruled the national motto constitutional. These courts have included federal district courts in Kansas, North Carolina, and Virginia, and the courts for the 5th, 9th, and 10th Circuits. Although the Supreme Court has not ruled on the constitutionality of the national motto, in dicta a majority of the members of the Court have indicated that

¹⁹ *Id.* at 698.

²⁰ *Id.* at 699-704.

²¹ *Id.* at 704-707.

²² *Newdow v. Lefevre*, 598 F.3d 638 (9th Cir. 2010)

references to God do not constitute an endorsement of religion.²³

III. Reflections on Bill SF 3061

Placing a poster with our nation’s motto “In God We Trust” in a school where students recite the Pledge of Allegiance (which of course includes the phrase “under God”), study the Declaration of Independence (with references to “Nature’s God” and “Creator”), and learn to recite Lincoln’s Gettysburg Address (with references to the “Divine”) seems very appropriate. All three promote patriotism and honor our country’s history, and therefore are very important aspects of our children’s education. Moreover, all references to a divine power and religion in our historical documents do not force anyone to believe in a deity, and do not force anyone to engage in a religious *practice*.

Whether to mandate each school to display the “In God We Trust” poster, or whether to allow each school district to make this decision, is yours alone. I note that saying the Pledge of Allegiance is mandatory, although parents can opt out their children. Other mandates for schools include the following:

Subdivision 1. Age limitations; pupils.

Minn. Stat. Ann. § 120A.20 (West)

Subd. 10. Requirements for instructors.

Minn. Stat. Ann. § 120A.22 (West)

Subd. 11. Assessment of [student] performance.

Minn. Stat. Ann. § 120A.22 (West)

²³ See *Lambeth v. Bd. of Com’rs*, 321 F.Supp.2d at 701.

Subd. 12. Legitimate [attendance] exemptions.

Minn. Stat. Ann. § 120A.22 (West)

120A.32. Officers, teachers; neglect of duty; penalty

Minn. Stat. Ann. § 120A.32 (West)

120A.38. Classroom placement [“of twins or higher order multiples”]; parent discretion

Minn. Stat. Ann. § 120A.38 (West)

120A.40. School calendar [i.e., starting date]

Minn. Stat. Ann. § 120A.40 (West)

120A.41. Length of school year; hours of instruction

Minn. Stat. Ann. § 120A.41 (West)

120B.021. Required academic standards

Minn. Stat. Ann. § 120B.021 (West)

120B.023. Benchmarks

Minn. Stat. Ann. § 120B.023 (West)

120B.024. [Graduation]Credits

Minn. Stat. Ann. § 120B.024 (West)

120B.30. Statewide testing and reporting system

Minn. Stat. Ann. § 120B.30 (West)

120B.301. [Time] Limits on local testing

Minn. Stat. Ann. § 120B.301 (West)

121A.58. Corporal punishment [forbidden]

Minn. Stat. Ann. § 121A.58 (West)

121A.70. Secret fraternities and societies [forbidden]

Minn. Stat. Ann. § 121A.70 (West).

None of these mandates appear to contribute to the affection for state and

nation that is important for our present and future society. My hope is that this little gesture of displaying the national motto in schools will in some small way spark a curiosity about the motto and, again in some small way, an appreciation for our nation. Is not the display of an inexpensive poster reciting our national motto worthy of a mandate similar to those listed above?

Thank you for your time in considering my testimony.