



# CONGRESSIONAL PRAYER CAUCUS FOUNDATION

## CONGRESSIONAL ADVISORY MEMBERS

Congressman Randy Forbes  
Senator James Lankford  
Congressman Mark Walker  
Congressman Rick Crawford  
Congressman Randy Hultgren  
Senator John Boozman  
Congressman Robert Aderholt  
Congressman Brian Babin  
Congressman Marsha Blackburn  
Congressman John Carter  
Congressman Mike Conaway  
Congressman Kevin Cramer  
Congressman Jeff Fortenberry  
Congressman Gregg Harper  
Congressman Vicky Hartzler  
Congressman Jody Hice  
Congressman Richard Hudson  
Congressman Bill Huizenga  
Congressman Doug Lamborn  
Congressman Steve Pearce  
Congressman Robert Pittenger  
Congressman Paul Ryan  
Congressman Chris Smith  
Congressman Glenn Thompson  
Congressman Tim Walberg  
Congressman Joe Wilson  
Congressman Robert Wittman

June 27, 2018

***Via Email and U.S. Mail***

Ms. Jodi Miller  
Mayor, City of Freeport  
314 W. Stephenson Street, Suite 200  
Freeport, IL 61032

Re: National Motto

Dear Mayor Miller:

I understand that you talked with Mrs. Delbra Pratt, the State Director of the Illinois Legislative Prayer Caucus Network, and some questions were raised as to the constitutionality of the National Motto. More specifically, the question raised was whether “In God We Trust” violates the Establishment Clause of the First Amendment since a government (in this instance the City of Freeport) is presumably endorsing religion when it hangs National Motto posters in public buildings. Mrs. Pratt, and the National Director of Prayer and Mobilization for the Congressional Prayer Caucus Foundation, asked me to address this question. I am the Chief Legal Counsel of the Foundation, a constitutional law professor and, perhaps most importantly, a native of Illinois.

First, let me provide a little background. 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 this motto in all public buildings and public schools.

The Congressional Prayer Caucus Foundation has joined Congress in encouraging the display of the National Motto by helping advance The National Motto, “In God We Trust,” Display Acts in legislatures nationwide. We firmly

believe that this little gesture of displaying the National Motto and our flags in schools and public buildings will in some small way spark a curiosity about the Motto and, again in some small way, an appreciation for our nation.

Regarding constitutionality of the National Motto, more than 40 years ago, Madalyn Murray O’Hair, the founder of American Atheists, brought suit claiming that the National Motto and its use on U.S. coins and currency violated the First Amendment to the Constitution. The federal district court dismissed Ms. O’Hair’s complaint, the appellate court affirmed, and the Supreme Court denied review. *O’Hair v. Blumenthal*, 462 F. Supp. 19 (W.D. Tex. 1978), *affd.* 588 F.2d 1144 (5<sup>th</sup> Cir. 1979), *cert. denied*, 442 U.S. 930 (1979). In dismissing the complaint, the trial court quoted approvingly from a previous circuit court decision (*Aronow v. United States*, 432 F.2d 242, 243 (9<sup>th</sup> Cir. 1970)) that held that the “national motto and the slogan on coinage and currency ‘In God We Trust’ has nothing whatsoever 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.” 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.

More recently, in *Gaylor v. United States*, 74 F.3d 214 (10th Cir. 1992), *cert. den.*, 517 U.S. 1211 (1996), the Freedom From Religion Foundation (“FFRF”) and several of its employees again challenged the constitutionality of the National Motto, and this lawsuit suffered the same fate as the others. In its decision, the Tenth Circuit Court of Appeals considered FFRF’s claim using two different tests, the *Lemon* test and the “endorsement test.” With respect to the *Lemon* test, the Tenth Circuit stated as follows:

The *Lemon* test requires that, in order to be valid under 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. [*Lemon v. Kurtzman*], 403 U.S. 602, 612–13, 91 S.Ct. at 2110–11. The statutes establishing the national motto and directing its reproduction on U.S. currency clearly have a secular purpose. *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 625, 109 S.Ct. 3086, 3117, 106 L.Ed.2d 472 (1989) (O’Connor, J., concurring); *Lynch*

*v. Donnelly*, 465 U.S. 668, 692–93, 104 S.Ct. 1355, 1369–70, 79 L.Ed.2d 604 (1984) (O'Connor, J., concurring); *id.* at 716–17, 104 S.Ct. at 1381–82 (Brennan, J., dissenting). The motto symbolizes the historical role of religion in our society, *Lynch*, 465 U.S. at 676, 104 S.Ct. at 1360, formalizes our medium of exchange, see *O'Hair v. Blumenthal*, 462 F.Supp. 19, 20 (W.D.Tex.), *aff'd sub nom. O'Hair v. Murray*, 588 F.2d 1144 (5th Cir.1978) (per curiam), and *cert. denied*, 442 U.S. 930, 99 S.Ct. 2862, 61 L.Ed.2d 298 (1979), fosters patriotism, see *Aronow v. United States*, 432 F.2d 242, 243 (9th Cir.1970), and expresses confidence in the future, *Lynch*, 465 U.S. at 692–93, 104 S.Ct. at 1369–70 (O'Connor, J., concurring). 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. *Allegheny*, 492 U.S. at 625, 109 S.Ct. at 3117 (O'Connor, J., concurring); *Lynch*, 465 U.S. at 693, 104 S.Ct. at 1370 (O'Connor, J., concurring); *id.* at 716, 104 S.Ct. at 1381 (Brennan, J., dissenting). Finally, the motto does not create an intimate relationship of the type that suggests unconstitutional entanglement of church and state. *O'Hair*, 462 F.Supp. at 20. Thus the statutes establishing the motto and requiring its reproduction on U.S. currency easily meet the requirements of the *Lemon* test. 73 F. 3d at 216.

The Tenth Circuit also considered whether the National Motto violated the “endorsement test,” which considers whether a “reasonable observer would view the government’s practice as an endorsement. *Id.* at 217. The court noted that the “endorsement test” does not consider the views of particular individuals or isolated people who may be discomforted by seeing symbols of faith which these individuals find offensive. Rather, the “reasonable observer” test is a collective person who is aware of the history and context of the community in which the religious display appears. *Id.* Using this standard, the Tenth Circuit concluded: “[W]e 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 religion.” *Id.* In short, each time someone has challenged the constitutionality of the Motto, the Motto has won.

For twenty-five years, I practiced law on either LaSalle Street or Michigan Avenue in Downtown Chicago. Since my practice was largely litigation, I spent much time in the Richard J. Daley Center. In each Daley Center courtroom, there was prominently displayed along one wall, in the full view of the jury and any witness, the words “In God We Trust.” I often thought how important that phrase was to the solemnity of the proceeding, and hoped that this phrase would remind both witness and jury of the need to tell, and find, the truth in the case.

Since my mother and brother still reside in Illinois, I often return to the state. Each time I travel through Illinois I see, prominently displayed on government property, "In God We Trust." From my travels, it certainly appears that the most popular license plate in Illinois is our National Motto.

I would be honored to speak with you on this subject if you or others so desire. I, and the attorneys in the National Legal Foundation (<http://www.nlf.net/>) also are willing to help defend the City, at no cost, if the City is challenged for displaying the National Motto. In fact, since I remain an attorney licensed to practice law in Illinois, I would likely be the primary co-counsel in the case with the City Attorney.

In conclusion, thank you for your continued service on behalf of the citizens of Freeport. We look forward to seeing many National Motto posters the next time we visit your City (which may be as soon as August!).

Sincerely,



James A. Davids, J.D., Ph.D.

Chief Legal Counsel

Congressional Prayer Caucus Foundation

cc: Mrs. Delbra Pratt