

STORAGE NAME: h0915.llc.doc
DATE: February 6, 2002

HOUSE OF REPRESENTATIVES
COUNCIL FOR LIFELONG LEARNING
ANALYSIS

BILL #: HB 915
RELATING TO: Public Schools/Display of the Motto "IN GOD WE TRUST"
SPONSOR(S): Representative Hogan and others
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) STATE ADMINISTRATION YEAS 5 NAYS 0
 - (2) COUNCIL FOR LIFELONG LEARNING
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

HB 915 directs the superintendent of schools in each school district to:

Provide for the display of the motto "IN GOD WE TRUST" on an appropriately framed background; with minimum dimensions of 11 inches by 14 inches; in each classroom, school auditorium, and school cafeteria.

The bill defines "classroom" as any room in a public school where instruction takes place.

"IN GOD WE TRUST" became the national motto of the United States in 1956 by an act of Congress. All United States currency bears the motto. The motto is inscribed directly above and behind the Speaker's Chair in the United States, House of Representatives Chamber. "IN GOD WE TRUST" is also the state motto of Florida, and it is inscribed on the state seal of Florida.

Proponents support this bill as a way to increase patriotism and national unity. Opponents assert that the bill is a mandate on teachers and attempts to interject religion into the classroom.

This bill does not appear to have a fiscal impact on state or local governments; however, school districts will be impacted. The Department of Education estimates that the cost to implement this bill is approximately \$616,110. See the "Fiscal Comments" section.

The Committee on State Administration adopted an amendment that eliminated the requirement that the motto be displayed in every classroom. The amendment requires the motto to be displayed in a prominent location within each school in the state. This amendment will substantially reduce the fiscal impact of this bill. There are two other amendments traveling with this bill. See "Amendments" section.

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

This bill does not appear to support the principle of “less government” because it requires school districts to produce, mount, and display the motto “IN GOD WE TRUST” as well as maintain its display, in each school in its district.

B. PRESENT SITUATION:

Currently there is no law requiring the display of the national motto “IN GOD WE TRUST” in Florida’s public schools. Congress adopted the motto “IN GOD WE TRUST” as the national motto of the United States.¹ The motto has been held constitutional in Federal Court.² The motto is displayed on all US currency. The motto is inscribed directly above and behind the Speaker’s Chair in the United States, House of Representatives Chamber. It is also the motto of the state of Florida and is inscribed on the seal of Florida.

The Commonwealth of Virginia currently is considering a bill that would require the display of the motto “IN GOD WE TRUST” in a conspicuous place in each of its schools. Virginia’s HB 108 has passed the House of Delegates and is currently in the Senate Committee on Education and Health.

This bill is modeled after Mississippi HB 51, which became law in 2001.³

Proponents of this bill support this bill as a way to increase patriotism and national unity.⁴ Opponents of this bill assert that the bill is a mandate on teachers and interferes with their individual classrooms. Opponents also assert that this bill is an attempt to interject religion into the classroom.⁵

C. EFFECT OF PROPOSED CHANGES:

HB 915 directs the superintendent of schools in each school district to provide for the display of the motto “IN GOD WE TRUST” on an appropriately framed background; with minimum dimensions of 11 inches by 14 inches; in each classroom, school auditorium, and school cafeteria of each school in the district.

¹ 36 U.S.C. § 302.

² See “Constitutional Issues” section of this analysis.

³ Phone conversation, sponsor’s office, 1/24/02 and 1/28/02; phone conversation, Representative Fillingane, sponsor of the Mississippi HB 51, 1/24/02.

⁴ Phone conversation, sponsor’s office, 1/28/02.

⁵ Phone conversation, lobbyist for the ACLU, 1/28/02. Opponents do not contend that the bill is unconstitutional.

“Classroom” is defined as any room in a public school where instruction takes place.

This bill takes effect upon becoming a law.

D. SECTION-BY-SECTION ANALYSIS:

Please see above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

This bill requires superintendents (therefore the school districts) to provide a suitably framed display of the “IN GOD WE TRUST” motto, in 117,222 classrooms, and 6,000 cafeterias and auditoriums, or approximately 123,222 spaces. The Department of Education estimates a material cost of \$5.00 per unit. Accordingly the total cost to all school districts is approximately \$616,110.⁶

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

⁶ Department of Education, Program Analysis, HB 915, 1/17/02, House Fiscal Analysis, at 2.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Applicable Case Law

The First Amendment of the Constitution of the United States provides that Congress shall make no law respecting the establishment of religion.⁷

The national motto has been upheld as constitutional in four circuits of the United States Court of Appeals. The Supreme Court has never questioned the proposition that the motto can survive scrutiny under the Establishment Clause.⁸

The United States Supreme Court has held that other state sponsored activities such as a legislature opening each session with prayer by a chaplain, do not violate the Establishment clause. In *Marsh v. Chambers*, the Supreme Court held that the Nebraska legislature did not violate the Establishment Clause by using state funds to sponsor a clergyman, notwithstanding the fact that a clergyman of only one denomination had been selected for 16 years or that prayers were in the Judeo-Christian tradition.⁹ The Court stated that, "To invoke Divine guidance on a public body entrusted with making the laws is not, in these circumstances, an 'establishment' of religion or a step toward establishment; it is simply a tolerable acknowledgment of beliefs widely held among the people of this country."¹⁰

There are two relevant lines of case law with respect to this bill: (1) cases regarding the motto "IN GOD WE TRUST" and whether this violates the First Amendment's establishment clause, and (2) cases regarding establishment of religion within public schools.

This first line of cases includes *Aronow v. United States*. In that case, Aronow challenged the constitutionality of the motto "IN GOD WE TRUST" and the placement of the motto on U.S. currency and coinage.¹¹ The United States Court of Appeals, Ninth Circuit, held that the motto and its placement on currency "has nothing whatsoever to do with the establishment of religion."¹² In *O'hair v. Blumenthal*, Madeline Murray O'hair challenged the constitutionality of the national motto "IN GOD WE TRUST" and its placement on all U.S. currency and coinage.¹³ The District Court of Texas for the Western District held that the national motto and its placement on U.S. currency did not violate the Constitution.¹⁴ In *O'hair v. Murray*, the United States Court of Appeals, Fifth Circuit, upheld the District Court's decision.¹⁵ In *Gaylor v. United States*, the Freedom from Religion Foundation sued the United States and others

⁷ U.S. CONST. amend. 1.

⁸ *American Civil Liberties Union of Ohio v. Capitol Square Review and Advisory Board*, 243 F.3d 289 (6th Cir. 2001).

⁹ 463 U.S. 783, 783 (1983).

¹⁰ *Id.* at 792.

¹¹ *Aronow v. United States*, 432 F.2d 242, 243 (9th Cir. 1970).

¹² *Id.*

¹³ *O'hair v. Blumenthal*, 462 F. Supp. 19 (D. Tex. 1978).

¹⁴ *Id.*

¹⁵ *O'hair v. Murray*, 588 F.2d 1144 (5th Cir. 1979).

seeking declaratory and injunctive relief against further use of the national motto "IN GOD WE TRUST," and its reproduction on U.S. currency.¹⁶ The United States Court of Appeals, Tenth Circuit, held that the motto "IN GOD WE TRUST" did not violate the establishment clause.¹⁷ In *Schmidt v. Cline*, Schmidt and Stearns filed suit against the county treasurer, challenging the placement of "IN GOD WE TRUST" posters in the office of the County Treasurer.¹⁸ The posters measured 11 by 14 inches, had the word "God" printed in red letters larger than the black printing used for the other words, and made a reference to that phrase as being the national motto.¹⁹ Citing *Gaylor v. United States*, the District Court of Kansas held that the use of the posters were not an establishment of religion in violation of the establishment clause.²⁰

The United States Court of Appeals, Sixth Circuit, in *American Civil Liberties Union of Ohio v. Capitol Square Review and Advisory Board*, affirmed the constitutionality of the motto, "IN GOD WE TRUST" and went so far as to uphold the constitutionality of the Ohio state motto, "WITH GOD ALL THINGS ARE POSSIBLE," and allow its placement in the Ohio Capitol. Judge David A. Nelson stated in the majority opinion:

Like the national motto, and the national anthem, and the pledge of allegiance, the Ohio motto is a symbol of a common identity. Such symbols unquestionably serve an important secular purpose—reinforcing the citizen's sense of membership in an identifiable state or union—and the fact that this and the other purposes mentioned are not exclusively secular hardly means that the motto fails the test. "Were the test that the government must have 'exclusively secular' objectives," as the Supreme Court noted in *Lynch v. Donnelly*, 465 U.S. at 681 n. 6, 104 S.Ct.1355, "much of the conduct and legislation this Court has approved in the past would have been invalidated."²¹

The second line of cases includes *Stone v. Graham*. In that case, the U.S. Supreme Court invalidated a Kentucky statute that required the display of the Ten Commandments on the walls of each public classroom in the state.²² The Supreme Court held that the pre-eminent purpose for posting the Ten Commandments on schoolroom walls was plainly religious in nature even though the Kentucky Legislature purported an avowedly secular purpose for the display. In *Wallace v. Jaffree*, the U.S. Supreme Court struck down an Alabama statute that provided for a period of meditation or voluntary prayer in public schools, as an endorsement of religion, which violated the First Amendment.²³ The Supreme Court held that the Establishment Clause did not preclude states from providing an opportunity for school prayer, but that Alabama had affirmatively endorsed the particular religious practice of prayer.²⁴

Requiring the motto "IN GOD WE TRUST" to be posted in schools does not appear to be sufficiently similar to the activities successfully challenged in the *Graham* and *Jaffree* cases. "IN GOD WE TRUST" is used in many secular ways namely on all US money and has been consistently held not to be a government endorsement of religion outside the classroom context.

¹⁶ *Gaylor v. United States*, 74 F.3d 214, 216 (10th Cir. 1996).

¹⁷ *Id.*

¹⁸ *Schmidt v. Cline*, 127 F.Supp.2d 1169, 1171 (D. Kan. 2000).

¹⁹ *Id.*

²⁰ *Id.* at 1179.

²¹ *ACLU of Ohio*, 243 F.3d 289, 307-308.

²² *Stone v. Graham*, 449 U.S. 39, 43 (1980).

²³ *Wallace v. Jaffree*, 472 U.S. 38, 84 (1984).

²⁴ *Id.*

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on State Administration adopted three amendments:

- Amendment one eliminates the requirement that the motto "IN GOD WE TRUST" be displayed in every classroom, school auditorium, and school cafeteria, and instead requires the motto to be displayed in a prominent location within each school.
- Amendments two and three were conforming.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Josh White

Staff Director:

J. Marleen Ahearn, Ph.D., J.D.

AS REVISED BY THE COUNCIL FOR LIFELONG LEARNING:

Prepared by:

Ryan Visco

Staff Director:

Patricia Levesque