

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

B. EFFECT OF PROPOSED CHANGES:

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. 36 U.S.C. § 186. The motto is displayed on all U.S. 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 state seal of Florida.

The bill amends section 1003.45, F.S. to require each school district superintendent to provide for the display, in a prominent location in each school under his/her supervision, of the motto of the United States of America, "In God We Trust," on an appropriately framed background with minimum dimensions of 11 inches by 14 inches.

C. SECTION DIRECTORY:

Section 1. Amends s. 1003.45, F.S.

Section 2. Effectiveness date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: In its 2002 review of this bill, the Department of Education estimated that it would cost \$18,500 to place displays required by the bill in all 3,669 public schools in Florida, assuming a per unit cost of \$5.00. These funds would come from school district budgets.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

2. Other: First Amendment/Establishment Clause Issue.

The First Amendment of the Constitution of the United States provides that Congress shall make no law respecting the establishment of religion. U.S. Const. amend. 1.

The standard test enunciated by the United States Supreme Court in determining whether a state action advances religion is found in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). According to what is known as the "*Lemon test*," an act is valid under the Establishment Clause if it (1) has a secular purpose; (2) has a primary effect that neither advances nor inhibits religion; and (3) avoids excessive government entanglement with religion. 403 U.S. at 612-613.

The 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 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. 463 U.S. 783 (1983). The Court stated that "[T]o 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." *Id.* at 792.

There are two relevant lines of case law with respect to this bill: (1) cases addressing whether the motto "In God We Trust" violates the First Amendment's establishment clause; and (2) cases addressing the establishment of religion in public schools.

Cases Addressing a State Motto

In *Aronow v. United States*, the plaintiff challenged the constitutionality of the motto "In God We Trust" and the placement of the motto on U.S. currency and coinage. 432 F.2d 242 (9th Cir. 1970). 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." *Id.* at 243.

In *O'hair v. Blumenthal*, the plaintiff challenged the constitutionality of the national motto "In God We Trust" and its placement on all U.S. currency and coinage. 462 F. Supp. 19 (W. D. Tex. 1978). The District Court for the Western District of Texas held that the national motto and its placement on U.S. currency did not violate the Constitution. *Id.* The United States Court of Appeals, Fifth Circuit, upheld the District Court's decision. *O'hair v. Murray*, 588 F.2d 1144 (5th Cir. 1979).

In *Gaylor v. United States*, the Freedom from Religion Foundation sued the United States and others seeking declaratory and injunctive relief against further use of the national motto “In God We Trust,” and its reproduction on U.S. currency. *Gaylor v. United States*, 74 F.3d 214 (10th Cir. 1996). The United States Court of Appeals, Tenth Circuit, held that the motto “In God We Trust” did not violate the establishment clause. *Id.*

In *Schmidt v. Cline*, the plaintiff challenged the placement of “In God We Trust” posters in a county building. *Schmidt v. Cline*, 127 F.Supp.2d 1169 (D. Kan. 2000). 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. *Id.* at 1171. Citing *Gaylor v. United States*, the district court held that the use of the posters were not an establishment of religion in violation of the establishment clause. *Id.* at 1179.

The United States Court of Appeals for the Sixth Circuit affirmed the constitutionality of the motto “In God We Trust” and upheld the constitutionality of the Ohio state motto, “With God All Things Are Possible,” allowing its placement in the Ohio Capitol. *American Civil Liberties Union of Ohio v. Capitol Square Review and Advisory Board*, 243 F.3d 289 (6th Cir. 2001). The court stated in part that:

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 nation—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 ... much of the conduct and legislation this Court has approved in the past would have been invalidated.

243 F.3d 289, 307-308.

Cases Addressing the Establishment of Religion in Schools

In *Stone v. Graham*, the Supreme Court invalidated a Kentucky statute that required the display of the Ten Commandments on the walls of each public classroom in the state. 449 U.S. 39 (1980). The 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 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, in violation of the First Amendment. 472 U.S. 38 (1985).

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. This motto does not appear to violate the *Lemon* test and should not raise a constitutional issue as such.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.