

REAFFIRMING “IN GOD WE TRUST” AS THE OFFICIAL MOTTO OF THE UNITED STATES AND SUPPORTING AND ENCOURAGING THE PUBLIC DISPLAY OF THE NATIONAL MOTTO IN ALL PUBLIC BUILDINGS, PUBLIC SCHOOLS, AND OTHER GOVERNMENT INSTITUTIONS

MARCH 31, 2011.—Referred to the House Calendar and ordered to be printed

Mr. SMITH of Texas, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H. Con. Res. 13]

The Committee on the Judiciary, to whom was referred the concurrent resolution (H. Con. Res. 13) reaffirming “In God We Trust” as the official motto of the United States and supporting and encouraging the public display of the national motto in all public buildings, public schools, and other government institutions, having considered the same, reports favorably thereon without amendment and recommends that the concurrent resolution be agreed to.

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Purpose and Summary

H. Con. Res 13’s resolution clause provides that:

Resolved by the House of Representatives (the Senate concurring), That Congress reaffirms “In God We Trust” as the official motto of the United States and supports and encourages the public display of the national motto in all public buildings, public schools, and other government institutions.

Background and Need for the Legislation

H. Con. Res. 13 was introduced by Rep. Randy Forbes on January 26, 2011. It has 64 cosponsors. It was referred to the Constitution Subcommittee on February 7, 2011.

The national motto “In God We Trust” was officially adopted as the United States’ national motto by a law passed by the 84th Congress. Public Law 84–851 (36 U.S.C. § 302) provides that “‘In God we trust’ is the national motto.”

The history of “In God We Trust” is described as follows by the U.S. Department of the Treasury:

The motto IN GOD WE TRUST was placed on United States coins largely because of the increased religious sentiment existing during the Civil War. Secretary of the Treasury Salmon P. Chase received many appeals from devout persons throughout the country, urging that the United States recognize the Deity on United States coins. From Treasury Department records, it appears that the first such appeal came in a letter dated November 13, 1861. It was written to Secretary Chase by Rev. M. R. Watkinson, Minister of the Gospel from Ridleyville, Pennsylvania. . . .

As a result, Secretary Chase instructed James Pollock, Director of the Mint at Philadelphia, to prepare a motto, in a letter dated November 20, 1861:

Dear Sir: No nation can be strong except in the strength of God, or safe except in His defense. The trust of our people in God should be declared on our national coins.

You will cause a device to be prepared without unnecessary delay with a motto expressing in the fewest and tersest words possible this national recognition.

It was found that the Act of Congress dated January 18, 1837, prescribed the mottoes and devices that should be placed upon the coins of the United States. This meant that the mint could make no changes without the enactment of additional legislation by the Congress. In December 1863, the Director of the Mint submitted designs for new one-cent coin, two-cent coin, and three-cent coin to Secretary Chase for approval. He proposed that upon the designs either OUR COUNTRY; OUR GOD or GOD, OUR TRUST should appear as a motto on the coins. In a letter to the Mint Director on December 9, 1863, Secretary Chase stated:

I approve your mottoes, only suggesting that on that with the Washington obverse the motto should begin

with the word OUR, so as to read OUR GOD AND OUR COUNTRY. And on that with the shield, it should be changed so as to read: IN GOD WE TRUST.

The Congress passed the Act of April 22, 1864. This legislation changed the composition of the one-cent coin and authorized the minting of the two-cent coin. The Mint Director was directed to develop the designs for these coins for final approval of the Secretary. IN GOD WE TRUST first appeared on the 1864 two-cent coin.

Another Act of Congress passed on March 3, 1865. It allowed the Mint Director, with the Secretary's approval, to place the motto on all gold and silver coins that "shall admit the inscription thereon." Under the Act, the motto was placed on the gold double-eagle coin, the gold eagle coin, and the gold half-eagle coin. It was also placed on the silver dollar coin, the half-dollar coin and the quarter-dollar coin, and on the nickel three-cent coin beginning in 1866. Later, Congress passed the Coinage Act of February 12, 1873. It also said that the Secretary may cause the motto IN GOD WE TRUST to be inscribed on such coins as shall admit of such motto. . . ."

The motto has been in continuous use on the one-cent coin since 1909, and on the ten-cent coin since 1916. It also has appeared on all gold coins and silver dollar coins, half-dollar coins, and quarter-dollar coins struck since July 1, 1908.

A law passed by the 84th Congress (P.L. 84-851) and approved by the President on July 30, 1956, the President approved a Joint Resolution of the 84th Congress, declaring IN GOD WE TRUST the national motto of the United States. IN GOD WE TRUST was first used on paper money in 1957, when it appeared on the one-dollar silver certificate. The first paper currency bearing the motto entered circulation on October 1, 1957. The Bureau of Engraving and Printing was converting to the dry intaglio printing process. During this conversion, it gradually included IN GOD WE TRUST in the back design of all classes and denominations of currency.¹

The Senate Chamber in the U.S. Capitol is inscribed with the words "In God We Trust," and the same motto also appears directly behind the Speaker's chair in the House Chamber.

H. Con. Res. 13 reaffirms "In God We Trust" as the official motto of the United States and provides Congress with the opportunity to renew its support of a principle that was venerated by the Founders of this country, and by its Presidents, on a bipartisan basis.

In our Declaration of Independence, the Founders declared, "We . . . the Representatives of the United States of America . . . appealing to the Supreme Judge of the World . . . do . . . with a firm

¹See U.S. Department of the Treasury, "History of 'In God We Trust,'" available at <http://www.treasury.gov/about/education/Pages/in-god-we-trust.aspx>.

Reliance on the Protection of divine Providence . . . pledge to each other our Lives, our Fortunes, and our sacred Honor.”²

George Washington, as President of the Constitutional Convention, declared, “Let us raise a standard to which the wise and the honest can repair; [this] event is in the hand of God!”³ Moreover, after Washington became President of the United States, he issued the first Thanksgiving Proclamation calling on “Americans to acknowledge God’s role in bringing them through the Revolution to the founding of their free government.”⁴

James Madison, the Father of the Constitution, declared while he was president “a day of thanksgiving and of . . . acknowledgments to Almighty God.” Madison said in his declaration that “No people ought to feel greater obligations to celebrate the goodness of the Great Disposer of Events and of the Destiny of Nations than the people of the United States.”⁵ Madison issued at least four Thanksgiving Proclamations while he was president.⁶

During the Civil War, Abraham Lincoln counseled Americans to have “a firm reliance on [God] who has never yet forsaken this favored land” and recognized that it is God’s pleasure to “give us to see the right.”⁷

More recently, America’s Presidents have reaffirmed these same principles.

President Franklin D. Roosevelt said, “In teaching this democratic faith to American children, we need the sustaining, buttressing aid of those great ethical religious teachings which are the heritage of our modern civilization. For not upon strength nor upon power, but upon the spirit of God shall our democracy be founded.”⁸

President Kennedy said, “The world is very different now . . . And yet the same revolutionary beliefs for which our forebears fought are still at issue around the globe—the belief that the rights of man come not from the generosity of the state but from the hand of God.”⁹

And Ronald Reagan told the American people “We are a nation under God, and I believe God intended for us to be free.”¹⁰

This Congress can now show that it still believes and recognizes those same eternal truths by approving a resolution that will allow today’s Congress, as representatives of the American people, to reaffirm to the public and the world our Nation’s national motto, “In God We Trust.”

Hearings

The Committee on the Judiciary held no hearings on H. Con. Res. 13.

²The Declaration of Independence (1776).

³4 U.S.C.A. § 4 (historical notes).

⁴Bruce Frohnen, *The American Republic* 69 (2002).

⁵2 James D. Richardson, *A Compilation of the Messages and Papers of the Presidents* 546 (Bureau of National Literature, Inc.).

⁶Robert Cord, *Separation of Church and State* 53 (1982).

⁷*Speeches of the American Presidents* 181 (Steven Anzovin & Janet Podell eds., The H.W. Wilson Co. 1988).

⁸*Public Papers of the Presidents, F.D. Roosevelt, 1940*, Item 149, Office of Fed. Reg. (2003).

⁹*Engel v. Vitale*, 370 U.S. 421, 448 (1962) (dissenting opinion) (discussing quotes from Presidents Washington, Adams, Jefferson, Madison, Lincoln, Cleveland, Wilson, Roosevelt, Eisenhower and Kennedy).

¹⁰*Speeches of the American Presidents* 749 (Steven Anzovin & Janet Podell eds., The H.W. Wilson Co. 1988).

Committee Consideration

On March 17, 2011, the Committee met in open session and ordered the resolution H. Con. Res. 13 favorably reported without amendment, by voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H. Con. Res. 13.

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee advises that the resolution contains no measure that authorizes funding, so no cost estimate nor comparison for any measure that authorizes funding is required.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H. Con. Res. 13, will reaffirm "In God We Trust" as the official motto of the United States and support and encourage the public display of the national motto in all public buildings, public schools, and other government institutions.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H. Con. Res. 13 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Section-by-Section Analysis

H. Con. Res. 13 reaffirms "In God We Trust" as the official motto of the United States and supports and encourages the public display of the national motto in all public buildings, public schools, and other government institutions.

Dissenting Views

Today we face the highest budget deficit in our Nation's history, a national unemployment rate of nearly 9%, and an ongoing mortgage foreclosure crisis. American forces are deployed in combat on several fronts, while our children who—by the very circumstances of their birth—are placed into a cradle-to-prison pipeline. We are also in the midst of reacting to a natural disaster of unimaginable proportions that recently occurred in Japan and the resulting nuclear disaster, which may have worldwide import. Yet, instead of addressing any of these critical issues, and instead of working to help American families keep a roof over their heads and food on their tables, we are debating whether or not to affirm and proliferate a motto that was adopted in 1956 and that is not imperiled in any respect.

Without question, the Judiciary Committee has many important and time-sensitive matters within its purview. The Majority, however, seems intent on diverting the Committee's time, resources, and attention to a measure that has no force of law, only reaffirms existing law, and further injects the hand of government into the private religious lives of the American people.

By aggressively pursuing a vehicle that places the government in the position of making an affirmatively religious statement, the Majority has transgressed the clear line between government and religion in violation of the Establishment Clause of the First Amendment. We regret that the Judiciary Committee has needlessly wandered into these dangerous waters, and we respectfully dissent.

I. H. CON. RES. 13 IS UNNECESSARY.

H. Con. Res. 13 addresses a problem that does not exist. For more than 50 years, the National Motto has been the law of the land.¹ While some have questioned its constitutionality, none of these challenges has succeeded.² We wonder, therefore, why the Majority believes this precatory intervention by Congress is so necessary.³

II. H. CON. RES. 13 VIOLATES THE FIRST AMENDMENT'S PROHIBITION AGAINST THE ESTABLISHMENT OF RELIGION.

We are concerned that H. Con. Res. 13, its apparent purpose, and the manner in which it has been put forward, raises serious constitutional issues. The Religion Clauses of the First Amendment⁴ exist to protect religious liberty. They are not in conflict

¹ Act of July 30, 1956, ch. 795; 70 Stat. 732, codified at 36 U.S.C. § 302.

² See, e.g., *Kidd v. Obama*, No. 10-5006, 387 Fed.Appx. 2, 2010 WL 2930162 (D.C. Cir. July 21, 2010) ("Appellant has not demonstrated that appellees violated the First Amendment by printing the national motto, 'In God We Trust,' on United States currency.")

³ The 107th Congress, in another enterprise with no apparent legal effect, passed a bill that *inter alia* reaffirmed that "In God we trust" is the national motto." Pub. L. No. 107-293, § 3(a), 116 Stat. 2061 (2002). To clarify that this provision was not intended to be a substantive amendment, but merely an attempt to ratify current law, the Act specifically directed the Office of the Law Revision Counsel to "make no change in section 302, title 36, United States Code, but shall show in the historical and statutory notes that the 107th Congress reaffirmed the exact language that has appeared in the Motto for decades." *Id.* at § 3(b).

⁴ "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." U.S. Const. amend. I.

with each other, but rather reinforce religious liberty in different ways.

The Establishment Clause not only prohibits the government from establishing an official religion, but also prohibits government actions that favor one religion over another. It also prohibits the government from preferring religion over non-religion, or non-religion over religion. The Establishment Clause protects the private rights of conscience of all Americans from governmental interference or involvement in religious affairs.

Thomas Jefferson maintained that this prohibition extended far beyond the establishment of an official religion, as was the case under the British Crown. He wrote, “I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should ‘make no law respecting an establishment of religion, or prohibiting the free exercise thereof,’ thus building a wall of separation between Church and State.”⁵ He further clarified, in a letter to Attorney General Levi Lincoln, his view:

The Baptist address, now enclosed, admits of a condemnation of the alliance between Church and State, under the authority of the Constitution. It furnishes an occasion, too, which I have long wished to find, of saying why I do not proclaim fastings and thanksgivings, as my predecessors did.⁶

The Supreme Court has devised a three part test, the so-called “Lemon Test,” to determine whether a governmental action violates the Establishment Clause.⁷ In *Lemon*, the Court held that “[f]irst, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster ‘an excessive government entanglement with religion.’”⁸

Where the governmental act is coercive, the Supreme Court has also held that it violates the Establishment Clause. For example, with respect to an invocation offered at a graduation exercise, the Court explained:

As we have observed before, there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools. Our decisions . . . recognize, among other things, that prayer exercises in public schools carry a particular risk of indirect coercion. The concern may not be limited to the context of schools, but it is most pronounced there. What to most believers may seem nothing more than a reasonable request that the nonbeliever respect their religious practices, in a school context may appear to the nonbeliever or dissenter to be an attempt to employ the machinery of the State to enforce a religious orthodoxy.⁹

⁵Letter from Thomas Jefferson to the Danbury Baptist Association (Jan. 1, 1802), reprinted in *Jefferson & Madison on the Separation of Church and State*, at 163 (Lenni Brenner ed., 2004).

⁶Letter from Thomas Jefferson to Attorney General Levi Lincoln (Jan. 1, 1802), *id.* at 164.

⁷*Lemon v. Kurtzman*, 403 U.S. 602 (1971).

⁸*Id.* at 612-13 (citations omitted).

⁹*Lee v. Weisman*, 505 U.S. 577, 592 (1992).

While the Supreme Court has found that certain religious acts by government, such as the appointment by the legislature of a chaplain,¹⁰ or the placement of the Ten Commandments on public property under certain narrowly confined circumstances,¹¹ not to violate the Constitution under the rubric of “ceremonial deism,”¹² the contours of this exception are not unlimited. As Justice O’Connor explained:

The constitutional value of ceremonial deism turns on a shared understanding of its legitimate nonreligious purposes. That sort of understanding can exist only when a given practice has been in place for a significant portion of the Nation’s history, and when it is observed by enough persons that it can fairly be called ubiquitous. By contrast, novel or uncommon references to religion can more easily be perceived as government endorsements because the reasonable observer cannot be presumed to be fully familiar with their origins. As a result, in examining whether a given practice constitutes an instance of ceremonial deism, its ‘history and ubiquity’ will be of great importance.¹³

Under the endorsement test, we must ask whether the resolution is an unconstitutional endorsement of one view of religion over another. In fact, H. Con. Res. 13 does prefer religion over non-religion, which violates the Constitution. Second, it endorses a specific type of religion, monotheism, over other religions, which likewise is unconstitutional. When the government endorses a religion, as Justice O’Connor observed, it “sends a message to non-adherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.”¹⁴

We must remember that the United States is comprised of people of many faiths, as well as those who do not hold any religious beliefs, as is their right. The passage of this Resolution would, as Justice O’Connor warned, send a message to the American people that our government favors religion, and specifically one type of religion over another, in violation of the endorsement test.

It is precisely the distinction that the Supreme Court has drawn between permissible ceremonial deism, in which the religious nature of the statement is de minimis, and prohibited endorsements of religion that creates the constitutional infirmities in this Resolution, notwithstanding the fact the National Motto has withstood constitutional challenge. As Rep. Scott observed during the markup:

[T]he importance that we have fixed to this resolution by holding this markup and having the debate increases the magnitude of the attention we give to the issue and subverts the argument that the resolution might be considered de minimis and in fact increases the constitutional

¹⁰ *Marsh v. Chambers*, 463 U.S. 783 (1983).

¹¹ *McCreary County v. American Civil Liberties Union of Kentucky*, 545 U.S. 844 (2005); cf. *Van Orden v. Perry*, 545 U.S. 677 (2005).

¹² *Lynch v. Donnelly*, 465 U.S. 668, 716 (1984) (O’Connor, J. concurring).

¹³ *Elk Grove Unified School Dist. v. Newdow*, 542 U.S. 1, 37 (2004) (O’Connor, J. concurring) (2004) (citations omitted).

¹⁴ *Newdow v. U.S. Congress*, 292 U.S. 597, 606 (1992) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 687–688 (1984) (O’Connor, J., concurring)).

vulnerability of the resolution. . . . The motto that has been around for 50 or 60 years can be in the same category as the Ten Commandments displays that have been there for decades and have been therefore approved. It is this resolution that is problematic.¹⁵

Statements by some of the proponents of this Resolution further reinforce this observation. For example, Rep. Trent Franks (R-AZ), Chairman of the Constitution Subcommittee, argued:

Now, it may happen some day that an American generation will completely reject the notion that our ultimate trust is in the God who made us and gave this Nation as a gift to the world. But by passing the Forbes resolution today, we can proclaim to the world that that day has not yet come and there is still hope that it never will.¹⁶

Similarly, Rep. Mike Pence (R-IN) stated, “We are engaged in a national debate between the deep religious heritage and tradition the overwhelming majority of Americans practice to this day and in a rising tide of secularism, driving its way deeper and deeper into the public square, deeper into the laws of the land that tell us that we cannot make certain displays in public.¹⁷ The conclusion we must draw from the Court’s precedents, and from the flagrant appeals made by the sponsors to a more robust religious purpose, is that the resolution, while unnecessary, may itself call into question the claim that the National Motto is a permissible form of ceremonial deism.

H. Con. Res. 13 also fails the coercion test, which examines whether individuals are coerced into being exposed to a religious message. The Resolution clearly supports and encourages the public display of the National Motto in all public buildings, public schools, and other government institutions, which conflicts with concerns expressed by the Supreme Court:

[T]he Court has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools. Families entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family. Students in such institutions are impressionable and their attendance is involuntary.¹⁸

Similarly, the Resolution forcibly subjects individuals who must visit a government building to transact official business, such as acquiring a passport or social security card, to particular religious messages. It also, in effect, forces Americans to subsidize—through their hard-earned taxpayer dollars—the display of particular religious messages.

¹⁵Tr. of markup of H. Con. Res 13, Reaffirming “In God We Trust” as the official Motto of the United States and Supporting and Encouraging the Public Display of the National Motto in All Public Buildings, Public Schools, and Other Government Institutions by the H. Comm. on the Judiciary, 112th Cong. at 22-23, 31 (2011) (remarks of Rep. Robert C. “Bobby” Scott (D-VA)) (unedited transcript).

¹⁶Id. at 35 (Statement of Rep. Trent Franks (R-AZ)).

¹⁷Id. at 40 (Statement of Rep. Mike Pence (R-IN)).

¹⁸Edwards v. Aguillard, 482 U.S. 578, 583–84 (1987).

H. Con. Res. 13 on its face lacks any secular or nonreligious purpose. In fact, the very language of the Resolution makes clear that it is intended to promote religious sentiment: it advances religion by preferring religion over non-religion and endorses a specific type of religion, monotheism, over other religions. By actively seeking to promote displays of the motto in public buildings, public schools and other government institutions, the Resolution creates unnecessary and excessive government entanglement with religion.

III. CONCLUSION.

While the proponents of H. Con. Res. 13 are correct when they observe that the vast majority of Americans are religious, and that many prominent figures in our history have spoken eloquently of the importance of faith, they fail to understand that the Establishment Clause does not protect government from religion, but religion from government. It is precisely because we place such a high value on religious freedom—our first freedom—that we must keep the heavy hand of government away from that precious liberty. H. Con. Res. 13, by interjecting Congress into the private right of conscience, threatens that important constitutional bulwark of our freedoms in violation of the Establishment Clause of the First Amendment.

For these reasons, we respectfully dissent.

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