



GOVERNOR GREG ABBOTT

October 12, 2015

The Honorable Ken Paxton
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Re: AG opinion request RQ-0059-KP

Dear Attorney General Paxton:

It has come to my attention that the Childress Police Department recently decided to display our national motto, "In God We Trust," on its patrol vehicles. And I understand that a well-known atheist organization, the Freedom From Religion Foundation (FFRF) subsequently threatened the Childress Police Department, which prompted the local members of the legislature to seek an attorney general opinion on the permissibility of the display. I write to offer a few comments on this issue and to commend you and your office for your efforts to preserve the religious liberties of all Texans.

1. "In God We Trust" was adopted as our official national motto in 1956, *see* 36 U.S.C. § 302; Pub. L. 84-851 (1956), but it traces its origins to Francis Scott Key and The Star-Spangled Banner: "And this be our motto: 'In God is our trust!'" The motto first appeared on U.S. coins in 1864. *See* S. Con. Res. 96, 109th Cong. (as passed by the Senate, July 12, 2006).

The phrase "In God We Trust" thus holds a distinguished pedigree as an official acknowledgement of the simple fact that, in the Supreme Court's words, "[w]e are a religious people whose institutions presuppose a Supreme Being." *Zorach v. Clauson*, 343 U.S. 306, 313 (1952). And as the Supreme Court has held time and again, the Constitution commands acknowledgement and accommodation of religion, rather than hostility towards religion; "[a]nything less would require the 'callous indifference' [that] was never intended by the Establishment Clause." *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984) (quoting *Zorach*, 343 U.S. at 314); *see also Van Orden v. Perry*, 545 U.S. 677, 699 (2005) (Breyer, J., concurring) (Requiring the government "to purge from the public sphere all that in any way partakes of the religious" would "promote the kind of social conflict the Establishment Clause seeks to avoid.").

Given these well-established principles, it is unsurprising that “In God We Trust” has survived every legal challenge. In 1970, the Ninth Circuit rejected a claim that the motto violated the Establishment Clause, explaining that “[i]t is quite obvious 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.” *Aronow v. United States*, 432 F.2d 242, 243 (9th Cir. 1970); *id.* at 244 (noting a congressional report describing the motto as having “spiritual and psychological value” and an “inspirational quality”); *see also Newdow v. Lefevre*, 598 F.3d 638 (9th Cir. 2010) (declining to overrule *Aronow*). In the ensuing years, the courts in four other circuits (including the Fifth Circuit) have upheld the motto. The Fifth Circuit upheld statutes requiring the placement of the motto on currency and criminalizing the defacement of the motto. *O’Hair v. Murray*, 588 F.2d 1144 (5th Cir. 1979) (*per curiam*). The Second, Tenth and D.C. Circuits have likewise held that the display of the motto does not violate the Establishment Clause. *Newdow v. Peterson*, 753 F.3d 105, 107-08 (2d Cir. 2014); *Kidd v. Obama*, 387 F. App’x 2 (D.C. Cir. 2010) (*per curiam*); *Gaylor v. United States*, 74 F.3d 214, 216-18 (10th Cir. 1996).

Moreover, although the Supreme Court has not been required to answer the question of the motto’s constitutionality, it has provided its answer in dicta. For example, in *County of Allegheny v. ACLU*, the Supreme Court explained that the motto is “consistent with the proposition that government may not communicate an endorsement of religious belief.” 492 U.S. 573, 602-03 (1989). And in *Lynch*, the Supreme Court described “the statutorily prescribed national motto ‘In God We Trust’” as a permissible “reference to our religious heritage.” 465 U.S. at 676. *See also Van Orden v. Perry*, 545 U.S. at 699 (Breyer, J., concurring) (noting that the Establishment Clause permits “public references to God on coins”).

There can be no doubt that courts in Texas would uphold the constitutionality of the Childress Police Department’s decision to place “In God We Trust” on the department’s patrol vehicles. If the Childress Police Department chooses to continue this patriotic display, it will have my full support.

2. Despite the obvious answer to the constitutional question that the FFRF raises against the patrol-vehicle stickers, it is not surprising that the FFRF has chosen to threaten the Childress Police Department. Misguided and malicious threats have become routine for groups like the FFRF. In December 2011, the FFRF sent a letter threatening to sue Henderson County, Texas, if the county refused to take down a nativity display on the courthouse grounds. In December 2014, the American Humanist Association sent a similar letter to the county judge in Cherokee County, Texas, demanding the removal of a courthouse nativity display. As attorney general, I offered my support to both counties in the event that the organizations followed through with the lawsuits. Neither organization

followed through with the threat. And in 2012, the FFRF threatened to sue the Kountze Independent School District after student cheerleaders decided to put Bible verses on banners at the football games. That threat led the district to prohibit the banners, but the district's decision was promptly blocked by a state judge, and the cheerleaders remain free to choose the messages displayed on the football banners.

The FFRF is similarly unsuccessful when it does resort to litigation. In 2011, the FFRF sued Governor Rick Perry seeking to enjoin Governor Perry's organization, promotion, and participation in a prayer rally in Houston. The federal court correctly held that the FFRF lacked standing to bring the lawsuit, the case was dismissed, and Governor Perry participated in the prayer rally. Also in 2011, the FFRF was unsuccessful in its attempt to prevent President Obama from declaring a National Day of Prayer. *FFRF v. Obama*, 641 F.3d 803 (7th Cir. 2011). In 2008, the FFRF unsuccessfully sued Chief Justice John Roberts and the Presidential Inaugural Committee seeking to enjoin the use of the phrase "so help me God" in the presidential oath and the inclusion of a prayer during the inaugural ceremony. *See Newdow v. Roberts*, 603 F.3d 1002 (D.C. Cir. 2010). In each of these cases, Texas fought to preserve the religious liberties attacked by the FFRF.

3. As you recently observed in a letter to the lieutenant governor, "attacks on religious liberty harm not only those of religious faith, but [they] are a threat to the freedom of conscience of all Americans." These attacks are becoming even more common. I am grateful that under your leadership, the Office of the Attorney General fights to vigorously defend rights that are so important to all Texans, including the right to live and work in accordance with their moral values and religious beliefs.

Respectfully,



Greg Abbott
Governor

GA:ktd

cc: The Honorable Charles Perry, Texas Senate
The Honorable Drew Springer, Texas House of Representatives
Chief Adrian Garcia, Chief of Police, Childress Police Department
Virginia K. Hoelscher, Chair, Opinion Committee, Office of the Texas Attorney General