

# ***OPINION BRIEF: NATIONAL MOTTO DISPLAYS IN GOVERNMENT FACILITIES ARE CONSTITUTIONAL***

## **FACTUAL CONTEXT**

“In God We Trust” has been the national motto of the United States since 1956. It has appeared on U.S. coins since 1864 and on paper currency since 1957.

## **QUESTION PRESENTED**

Is the display of the national motto in public facilities owned or operated by governmental entities constitutional under the Establishment Clause of the U.S. Constitution?

## **SHORT ANSWER**

Yes. Every federal court of appeals that has considered the issue of government adoption or display of the national motto has upheld its constitutionality.

## **HISTORY**

During the War of 1812 Francis Scott Key penned the fourth stanza of *The Star-Spangled Banner*. That stanza reads: “*Then conquer we must, when our cause it is just; And this be our motto ‘In God Is Our Trust.’*” The motto “In God We Trust” appeared on a regimental banner for Benjamin Franklin’s Pennsylvania volunteer militia of 1747-1748. The 125th Pennsylvania Infantry adopted “In God We Trust” as that regiment’s motto in 1862 and shouted it as their battle cry at Antietam. After being added to the newly-minted two-cent coin in 1864, the federal government gradually added the motto to newly minted U.S. federal coins over the following decades until it became ubiquitous throughout U.S. coinage. As early as 1870, the *San Francisco Chronicle* referred to it as “our nation’s motto.”

## **PREVALENCE**

The motto appears above the speaker’s podium in the U.S. House of Representatives and over the south entrance to the U.S. Senate Chamber. It adorns classrooms in at least 25 states, license plates in 21 states, and police cars and other government vehicles in many municipalities. According to an advocacy group that tracks, lists, and collects photos of the displays, 759 states, cities, counties, school boards, and similar public bodies have erected “In God We Trust” displays. By non-binding resolution the House of Representatives in 2000 explicitly encouraged the national motto’s display in public buildings. By overwhelming votes, the adoption of the national motto was reaffirmed by the House in 2002, by both the Senate and House in 2006, and by the House again in 2011.

## **PRE-KENNEDY FEDERAL APPELLATE CASES**

All federal circuit courts that have considered constitutional challenges to the use or display of the national motto on governmental facilities, coins, or currency have rejected all such challenges. Most of those cases upheld the display of the national motto during an era when First Amendment Establishment Clause rulings were generally hostile toward any government action that hinted at

government “entanglement” with, or endorsement of, religion (pursuant to a line of cases named for *Lemon v. Kurtzman* (1971). If Establishment Clause challenges to the national motto were doomed even in the era of *Lemon*, any such challenge became even more hopeless in the years that followed.

After five decades of flawed Establishment Clause rulings, a major change occurred in the legal landscape through the U.S. Supreme Court’s decisions in *American Legion v. American Humanist Association* and *Kennedy v. Bremerton Sch. District*. [1]

### **ABANDONING LEMON IN FAVOR OF “HISTORY AND TRADITION”**

In 2019, the Supreme Court in *American Legion* held that a one-hundred-year-old veterans memorial, shaped like a Latin cross and displayed on government land, was constitutional. The Court overruled *Lemon*, not just in the context of longstanding monuments, but also in the context of “symbols and practices,” opting to measure the constitutionality of such items by assessing their consistency with America’s history and tradition.

In the 2022 *Kennedy* case, a high school football coach was fired for kneeling and offering a brief, silent prayer after football games. The U.S. Supreme Court not only upheld the coach’s constitutional right to pray but also overturned the longstanding *Lemon* test in its entirety. In *Kennedy*, the Court held that courts must measure the constitutionality of government activity under the Establishment Clause through a history and traditions test.

Under *American Legion* and *Kennedy*, federal courts now must look to historical practices and understandings - not the *Lemon* line of cases - when assessing the constitutionality of public displays with religious content.

### **CONCLUSION**

Public displays of the national motto have been uniformly held constitutional by all federal appellate courts that have considered the issue, even during the era when the *Lemon* test was removing public religious displays in many other settings. Recent U.S. Supreme Court decisions, such as *Kennedy* and *American Legion*, however, have significantly shifted the legal framework in favor of public religious displays. In sum, we expect that any state or federal court considering a constitutional challenge to the display of the national motto in a publicly owned or operated facility will reject the challenge and affirm the constitutionality of the display.

1. First Liberty Institute represented both the *American Legion* and Coach *Kennedy* in those two historic U.S. Supreme Court victories.



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