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Bill Analysis

Legislative Service Commission

H.B. 184

126th General Assembly
(As Introduced)

Reps. Faber, Taylor, Willamowski, Wagner, Seaver, Fessler, Hoops, Webster, Flowers, Reinhard, Collier, Gibbs, Martin, Hagan, Seitz

BILL SUMMARY

- Requires that every school district, educational service center, and community school accept the donation of a "reasonably sized copy" of the national and state mottoes or accept the donation of money for the purchase of copies of the mottoes, if a donation is made.
- Requires that every school district, educational service center, and community school display the national and state mottoes in an appropriate manner in a classroom, auditorium, or cafeteria in a school building, if copies of the mottoes or money to purchase copies of the mottoes are donated.

CONTENT AND OPERATION

(R.C. 3313.801 and 3314.03(A)(11)(d))

The bill requires the board of education of each school district and the governing authority of each community school (charter school) to display the mottoes of the United States of America ("In God We Trust") and the State of Ohio ("With God, All Things Are Possible") in an appropriate manner in a classroom, auditorium, or cafeteria of a school building under its control, if copies of the mottoes or money to purchase copies of the mottoes are donated. The bill further requires each district board or community school governing authority to accept the donation of a "reasonably sized copy" of the mottoes or accept the donation of money for the purchase of copies of the mottoes, if a donation is made.¹

¹ The current state motto, enacted in 1959, is codified at R.C. 5.06 (not in the bill). The national motto, enacted in 1956, is codified at 36 U.S.C. 302.

By operation of existing law (not in the bill), it appears that the governing board of each educational service center also is required to accept the donation of and to display the mottoes in the manner provided in the bill if it operates any classrooms, auditoriums, or cafeterias that are not under the control of a school district board.²

COMMENT

In 2001, the full panel of the U.S. Court of Appeals for the 6th Circuit rejected a challenge to the constitutionality of the motto of the State of Ohio. The plaintiffs in that case claimed (among other things) that the motto violates the principle of separation of church and state, as required under the Establishment Clause of the First Amendment of the U.S. Constitution, because it is derived from the New Testament of the Christian Bible. They contended that the motto tends to endorse one religion over another. The court held that the motto does not violate the Establishment Clause because its words do not coerce respect for any particular religion. Rather, the court characterized the motto as "merely a broadly worded expression of a religious philosophical sentiment that happens to be widely shared by the citizens of Ohio." Further, according to the court, it does not compel belief, acquiescence, or participation in any form of religious exercise or assert a preference for one denomination or sect over another. The appeals court upheld the district court decision not to declare the motto unconstitutional but also to enjoin the state from attributing the words of the motto to the Christian New Testament.³

Several federal appeals courts have upheld the constitutionality of the national motto.⁴ In 1996, the U.S. Court of Appeals for the 10th Circuit held that

² *Under R.C. 3311.055 (not in the bill) "[w]herever in Title [33] the term 'school board' or 'board of education' is used without expressly referring to boards governing city, local, exempted village, or joint vocational school districts, or some specific combination [of those boards], the term [includes] the governing boards of educational service centers." Likewise, that section also specifies that "[w]herever in Title [33] the term 'school district' is used without expressly referring to city, local, exempted village, or joint vocational school districts, or some specific combination [of such districts], the term [includes] educational service centers."*

³ *American Civil Liberties Union v. Capitol Square Review and Advisory Board*, 243 F.3d 289 (6th Cir. 2001) (*reh'g en banc*). The quoted language is found at 243 F.3d, at 299-300.

⁴ For example, *Gaylor v. United States*, 74 F.3d 214 (10th Cir.), *cert. denied*, 517 U.S. 1211 (1996); *O'Hair v. Murray*, 588 F.2d 1144 (5th Cir.) (*per curiam*), *cert. denied*, 442

the national motto itself and its reproduction on U.S. currency clearly have secular purposes in symbolizing the historical role of religion in American society. Further, the court held that the motto's primary effect is a form of "ceremonial deism" and that it cannot be reasonably understood to convey government endorsement of religious belief.⁵

It is not known, however, whether courts would uphold the required display of the mottoes in public schools where they would be seen regularly by young children. In the past, the Supreme Court of the United States has distinguished between religious expression involving impressionable children as opposed to adults.⁶ For example, in *Lee v. Weisman*, the U.S. Supreme Court held in 1992 that a state-sponsored and state-directed prayer at a public high school graduation was unconstitutional in that it carries "a particular risk of indirect coercion," no matter how neutral or all-inclusive that prayer is.⁷ Nevertheless, the Court also stated that "[a] relentless and all-pervasive attempt to exclude religion from every aspect of public life could itself become inconsistent with the Constitution," and that "there will be instances when religious values, religious practices, and religious persons will have some interaction with the public schools and their students."⁸

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-06-05	p. 367

h0184-i-126.doc/kl

U.S. 930, 99 S.Ct. 862 (1979); and Aronow v. United States, 432 F.2d 242 (9th Cir. 1970).

⁵ *Gaylor*, 74 F.3d, at 216-217.

⁶ *See for example, Lee v. Weisman*, 505 U.S. 577, 592 (1992); and *Widmar v. Vincent*, 454 U.S. 263, 273-274 n. 14 (1981).

⁷ *Lee*, 505 U.S., at 592.

⁸ *Id.*, at 598-599. *But the Court also cautioned that "these matters, often questions of accommodation of religion, are not before us" (Id., at 599).*

