



AMERICAN ATHEISTS

Via Electronic Mail

September 7, 2017

Dear Superintendent,

On April 5, 2017, Governor Hutchinson signed Act 911 into law. Also known as “The National Motto, ‘In God We Trust,’ Display Act,” the law mandates the display of the phrase in every elementary and secondary school classroom in the state. A.C.A. § 1-4-133(a). The religious content of the phrase, the effect such a display would have of dividing school communities, and the inevitable advancement of a religious position that would result from its display in every public school classroom strongly suggests that the implementation of § 1-4-133 would result in numerous violations of the Establishment Clause of the First Amendment to the U.S. Constitution. In order to avoid such a violation, American Atheists respectfully requests that you reject any offer of private funds intended to support the installation of displays under this statute.

Be aware that the American Atheists Legal Center (AALC) has already been contacted by parents from across Arkansas who are willing to file suit to protect the constitutional rights of their children. If, instead of rejecting private funding, you choose to accept such a donation and install the displays, you will likely face litigation.

The AALC is part of American Atheists, Inc., a national nonprofit organization dedicated to the separation of religion and government and the equality of atheists. American Atheists is based in Cranford, New Jersey, and has more than 350,000 members and supporters across the country, including throughout the state of Arkansas.

The Establishment Clause of the First Amendment of the U.S. Constitution requires that government make no law respecting an establishment of religion, a prohibition which extends to state governments via the Fourteenth Amendment. *School District of Abington Twp. v. Schempp*, 374 U.S. 203, 205 (1963). When it comes to the education of our children, the government should be “particularly vigilant” in ensuring schools do not promote religious views that may conflict with the religious beliefs of students and their families. *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987); see also *Widmar v. Vincent*, 454 U.S. 263, 274, n.14 (1981). “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.” *Edwards*, 482 U.S. at 584.

Public school systems run afoul of the Establishment Clause not only through overt endorsement of a particular religious perspective, but in more indirect and passive ways

as well, by conveying the message that students who are members of minority faiths, or who lack faith, are disfavored. “For the government may no more use social pressure to enforce orthodoxy than it may use more direct means.” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 312 (2000)(internal quotations omitted). Whether in graduation ceremonies, *Lee v. Weisman*, 505 U.S. 577, 593, at sporting events, *Santa Fe*, 530 U.S. at 310, or at school board meetings, *Doe v. Indian River Sch. Dist.*, 653 F.3d 256, 290 (3d Cir. 2011); *Coles by Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369, 385-86 (6th Cir. 1999), the courts have repeatedly determined that religious endorsements, even in the symbolic form of ceremonial deism, have no place in our public schools systems.

For these reasons, the courts have never upheld a statute demanding the display of “In God We Trust” in a public school setting. In fact, at least one federal appellate court has concluded that such a display could violate the Establishment Clause. *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 972-73 (9th Cir. 2011). The question of whether a particular display is constitutional depends significantly “on whether particular acts in question are intended to establish or interfere with religious beliefs and practices or have the effect of doing so.” *Walz v. Tax Com. of New York*, 397 U.S. 664, 671 (1970). While “the government’s characterization is, of course, entitled to some deference . . . it is nonetheless the duty of the courts to distinguish a sham secular purpose from a sincere one.” *Santa Fe*, 530 U.S. at 308. Moreover, the Supreme Court has stated that the government cannot mandate patriotism:

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 641-42 (1943).

Act 911 requires school districts to display the phrase, “In God We Trust,” in “each . . . public elementary and secondary school library and classroom in this state,” A.C.A. § 1-4-133(a)(2), and it does so for religious, rather than secular, reasons and advances a religious point of view. Rep. Jim Dotson, who sponsored the legislation in the Arkansas House of Representatives earlier this year, stated that the new law is intended as an “acknowledgement of god in public life.”¹ The law’s religious motive is further revealed by the fact that the law requires the funds for the displays to come from private sources,² a requirement which has resulted in houses of worship and other religious organizations donating funds to support the installation of the displays.³ This attempt to use the public

¹<https://www.facebook.com/dotson4staterep/videos/pcb.1625068580901931/1625067487568707>

²The private financing provision, A.C.A. § 1-4-133(b), amounts to nothing more than a ham-handed attempt to prevent Arkansas residents from being able to challenge the new law in court.

³<http://www.arkansasmatters.com/news/local-news/benton-schools-to-become-first-in-ar-to-display-in-god-we-trust/801609201>

schools of the State of Arkansas to promote a religious point of view, while novel, is nonetheless precisely the type of religious indoctrination of children which the Supreme Court has repeatedly found to be unconstitutional.

Fully a quarter of all Americans—plus almost 40% of young people—are atheists, agnostics, or nonreligious. Requiring a phrase that implies uniform belief and trust in a god to be displayed in every Arkansas public school classroom sends the unmistakable message that those of us who don't trust in gods are outside the mainstream and not full members of the community, the precise sort of "social pressure to enforce orthodoxy" that the Supreme Court has ruled unconstitutional. *Santa Fe*, 530 U.S. at 312. Put simply, our public schools must be a place where all students are welcome and where adherence to a minority view, particularly a minority religious view, does not engender animus, distrust, or opprobrium from the majority.

As stated above, the AALC has already received numerous complaints about this new law, and we are prepared to assist these concerned parents in enforcing the constitutional rights of them and their children, through litigation if necessary. Thankfully, the violation which would occur if your school district installed the displays described in A.C.A. § 1-4-133(a)(1) can be easily avoided. Your district is not required to install these displays if it has not received any donated funds or materials earmarked for that purpose. Therefore, American Atheists urges you to reject any offer from a private individual or entity to donate materials or funds intended for use in such displays. By doing so you will be abiding by the terms of § 1-4-133 as well as upholding your school district's constitutional obligations.

Thank you for your time and attention to this vital issue. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



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