

STATE OF TENNESSEE

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Opinion No. 04-052

Legislative Resolution on Religion

QUESTION

Under House Joint Resolution 815, the House and Senate would resolve that “the acknowledgement of God and the exercise of religious freedom are the foundation of our national and state heritage.” If approved, would this resolution violate the Establishment Clause of the First Amendment to the United States Constitution?

OPINION

No.

ANALYSIS

This opinion concerns whether House Joint Resolution 815, if enacted, would violate the Establishment Clause of the First Amendment of the United States Constitution. The preamble to the resolution refers to the role of religious freedom in United States history and to various references to God in, among other places, the Declaration of Independence, the national motto, and the Pledge of Allegiance. The resolution then provides:

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE ONE HUNDRED AND THIRD GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, THE SENATE CONCURRING, that the acknowledgement of God and the exercise of religious freedom are the foundation of our national and state heritage.

BE IT FURTHER RESOLVED, that appropriate copies of this resolution be prepared for presentation, with this final clause omitted from such copies.

The Establishment Clause of the First Amendment of the United States Constitution states: “Congress shall make no law respecting an establishment of religion . . .” This provision is applicable to states and their political subdivisions through the Fourteenth Amendment. *School District of Abington Township v. Schempp*, 374 U.S. 203, 83 S.Ct. 1560, 10 L.Ed.2d 844 (1963). We think that, under the reasoning of *American Civil Liberties Union of Ohio v. Capitol Square*

Review and Advisory Board, 243 F.3d 289 (6th Cir. 2001), House Joint Resolution 815 does not violate the Establishment Clause. In that case, the United States Court of Appeals for the Sixth Circuit, sitting *en banc*, found that Ohio's official state motto, "With God All Things are Possible," did not violate the Establishment Clause. The Court found that the use of the motto survived scrutiny under three different tests used by the United States Supreme Court in various cases to determine whether a state action violates the Establishment Clause. First, the Court found that use of the motto was not even a first step toward state establishment of religion. 243 F.3d at 295-300. Second, the Court found that a reasonable observer would not take use of the motto to be an official endorsement of any particular religion. *Id.* at 301-305.

Finally, the Court found that use of the motto survived analysis under the three-part test enunciated by the United States Supreme Court in *Lemon v. Kurtzman*, 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971). In order for a statute to be valid under the *Lemon* test, it must have a secular purpose, its principal or primary effect must be one that neither advances nor inhibits religion, and it must not create excessive government entanglement. The Court found that use of the motto had a legitimate secular purpose of boosting morale, instilling confidence and optimism, and exhorting the listener or reader not to give up and to continue to strive. *Id.* at 307. Second, the Court found that use of the motto did not impermissibly advance religion. The Court stated, "[w]e do not believe that a state advances religion impermissibly by adopting a motto that provides no financial relief to any church but pays lip service to the puissance of God." *Id.* at 308. Finally, the Court noted that the entanglement prong of the *Lemon* test refers to institutional entanglement. *Id.* The Court found no evidence of such entanglement from the use of the motto.

An analysis of House Joint Resolution 815 leads to similar results. First, the resolution does not establish any religion. Second, the resolution does not endorse any particular religion. Finally, the resolution survives analysis under the *Lemon* test. The stated purpose of the resolution is to commend an aspect of American history and culture, with particular emphasis on the coexistence of the nation's enduring commitment to values of religious liberty, on the one hand, with its frequent use throughout history of religious references and symbols in many aspects of its public and ceremonial life. This is a legitimate secular purpose in our view. Moreover, the resolution does not advance religion in any material way. It does not provide support to religion, financial or otherwise, nor does it even endorse religion but, instead, merely acknowledges the importance of both religious tolerance and religious observance in American history. Finally, passage of the resolution would not promote any state entanglement with religious institutions. For all these reasons, therefore, passage of House Joint Resolution 815 would not violate the Establishment Clause of the First Amendment to the United States Constitution.

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