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107TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
107–659

TO REAFFIRM THE REFERENCE TO ONE NATION UNDER GOD IN THE PLEDGE OF ALLEGIANCE

SEPTEMBER 17, 2002.—Referred to the House Calendar and ordered to be printed

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Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany S. 2690]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (S. 2690) to reaffirm the reference to one Nation under God in the Pledge of Allegiance, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. FINDINGS.

Congress finds the following:

(1) On November 11, 1620, prior to embarking for the shores of America, the Pilgrims signed the Mayflower Compact that declared: "Having undertaken, for the Glory of God and the advancement of the Christian Faith and honor of

our King and country, a voyage to plant the first colony in the northern parts of Virginia,".

(2) On July 4, 1776, America's Founding Fathers, after appealing to the "Laws of Nature, and of Nature's God" to justify their separation from Great Britain, then declared: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness".

(3) In 1781, Thomas Jefferson, the author of the Declaration of Independence and later the Nation's third President, in his work titled "Notes on the State of Virginia" wrote: "God who gave us life gave us liberty. And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the Gift of God. That they are not to be violated but with His wrath? Indeed, I tremble for my country when I reflect that God is just; that his justice cannot sleep forever.".

(4) On May 14, 1787, George Washington, as President of the Constitutional Convention, rose to admonish and exhort the delegates and declared: "If to please the people we offer what we ourselves disapprove, how can we afterward defend our work? Let us raise a standard to which the wise and the honest can repair; the event is in the hand of God!".

(5) On July 21, 1789, on the same day that it approved the Establishment Clause concerning religion, the First Congress of the United States also passed the Northwest Ordinance, providing for a territorial government for lands northwest of the Ohio River, which declared: "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.".

(6) On September 25, 1789, the First Congress unanimously approved a resolution calling on President George Washington to proclaim a National Day of Thanksgiving for the people of the United States by declaring, "a day of public thanksgiving and prayer, to be observed by acknowledging, with grateful hearts, the many signal favors of Almighty God, especially by affording them an opportunity peaceably to establish a constitution of government for their safety and happiness.".

(7) On November 19, 1863, President Abraham Lincoln delivered his Gettysburg Address on the site of the battle and declared: "It is rather for us to be here dedicated to the great task remaining before us—that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion—that we here highly resolve that these dead shall not have died in vain—that this Nation, under God, shall have a new birth of freedom—and that Government of the people, by the people, for the people, shall not perish from the earth.".

(8) On April 28, 1952, in the decision of the Supreme Court of the United States in Zorach v. Clauson, 343 U.S. 306 (1952), in which school children were allowed to be excused from public schools for religious observances and education, Justice William O. Douglas, in writing for the Court stated: "The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concern or union or dependency one on the other. That is the common sense of the matter. Otherwise the State and religion would be aliens to each other—hostile, suspicious, and even unfriendly. Churches could not be required to pay even property taxes. Municipalities would not be permitted to render police or fire protection to religious groups. Policemen who helped parishioners into their places of worship would violate the Constitution. Prayers in our legislative halls; the appeals to the Almighty in the messages of the Chief Executive; the proclamations making Thanksgiving Day a holiday; 'so help me God' in our courtroom oaths—these and all other references to the Almighty that run through our laws, our public rituals, our ceremonies would be flouting the First Amendment. A fastidious atheist or agnostic could even object to the supplication with which the Court opens each session: 'God save the United States and this Honorable Court.'".

(9) On June 15, 1954, Congress passed and President Eisenhower signed into law a statute that was clearly consistent with the text and intent of the Constitution of the united States, that amended the Pledge of Allegiance to read: "I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.";

(10) On July 20, 1956, Congress proclaimed that the national motto of the United States is "In God We Trust", and that motto is inscribed above the main

door of the Senate, behind the Chair of the Speaker of the House of Representatives, and on the currency of the United States.

(11) On June 17, 1963, in the decision of the Supreme Court of the United States in Abington School District v. Schempp, 374 U.S. 203 (1963), in which compulsory school prayer was held unconstitutional, Justices Goldberg and Harlan, concurring in the decision, stated: "But untutored devotion to the concept of neutrality can lead to invocation or approval of results which partake not simply of that noninterference and noninvolvement with the religious which the Constitution commands, but of a brooding and pervasive devotion to the secular and a passive, or even active, hostility to the religious. Such results are not only not compelled by the Constitution, but, it seems to me, are prohibited by it. Neither government nor this Court can or should ignore the significance of the fact that a vast portion of our people believe in and worship God and that many of our legal, political, and personal values derive historically from religious teachings. Government must inevitably take cognizance of the existence of religion and, indeed, under certain circumstances the First Amendment may require that it do so.".

(12) On March 5, 1984, in the decision of the Supreme Court of the United States in Lynch v. Donelly, 465 U.S. 668 (1984), in which a city government's display of a nativity scene was held to be constitutional, Chief Justice Burger, writing for the Court, stated: "There is an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789 . . . [E]xamples of reference to our religious heritage are found in the statutorily prescribed national motto 'In God We Trust' (36 U.S.C. 186), which Congress and the President mandated for our currency, see (31 U.S.C. 5112(d)(1) (1982 ed.)), and in the language 'One Nation under God', as part of the Pledge of Allegiance to the American flag. That pledge is recited by many thousands of public school children—and adults—every year . . . Art galleries supported by public revenues display religious paintings of the 15th and 16th centuries, predominantly inspired by one religious faith. The National Gallery in Washington, maintained with Government support, for example, has long exhibited masterpieces with religious messages, notably the Last Supper, and paintings depicting the Birth of Christ, the Crucifixion, and the Resurrection, among many others with explicit Christian themes and messages. The very chamber in which oral arguments on this case were heard is decorated with a notable and permanent—not seasonal—symbol of religion: Moses with the Ten Commandments. Congress has long provided chapels in the Capitol for religious worship and meditation.".

(13) On June 4, 1985, in the decision of the Supreme Court of the United States in Wallace v. Jaffree, 472 U.S. 38 (1985), in which a mandatory moment of silence to be used for meditation or voluntary prayer was held unconstitutional, Justice O'Connor, concurring in the judgment and addressing the contention that the Court's holding would render the Pledge of Allegiance unconstitutional because Congress amended it in 1954 to add the words "under God," stated "In my view, the words 'under God' in the Pledge, as codified at (36 U.S.C. 172), serve as an acknowledgment of religion with 'the legitimate secular purposes of solemnizing public occasions, [and] expressing confidence in the future.'".

(14) On November 20, 1992, the United States Court of Appeals for the 7th Circuit, in Sherman v. Community Consolidated School District 21, 980 F.2d 437 (7th Cir. 1992), held that a school district's policy for voluntary recitation of the Pledge of Allegiance including the words "under God" was constitutional.

(15) The 9th Circuit Court of Appeals erroneously held, in Newdow v. U.S. Congress, (9th Cir. June 26, 2002) that the Pledge of Allegiance's use of the express religious reference "under God" violates the First Amendment to the Constitution, and that, therefore, a school district's policy and practice of teacher-led voluntary recitations of the Pledge of Allegiance is unconstitutional.

(16) The erroneous rationale of the 9th Circuit Court of Appeals in Newdow would lead to the absurd result that the Constitution's use of the express religious reference "Year of our Lord" in Article VII violates the First Amendment to the Constitution, and that, therefore, a school district's policy and practice of teacher-led voluntary recitations of the Constitution itself would be unconstitutional.

SEC. 2. ONE NATION UNDER GOD.

(a) REAFFIRMATION.—Section 4 of title 4, United States Code, is amended to read as follows:

"§ 4. Pledge of allegiance to the flag; manner of delivery

"The Pledge of Allegiance to the Flag: 'I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.', should be rendered by standing at attention facing the flag with the right hand over the heart. When not in uniform men should remove any non-religious headdress with their right hand and hold it at the left shoulder, the hand being over the heart. Persons in uniform should remain silent, face the flag, and render the military salute.".

(b) CODIFICATION.—In codifying this subsection, the Office of the Law Revision Counsel shall show in the historical and statutory notes that the 107th Congress reaffirmed the exact language that has appeared in the Pledge for decades.

SEC. 3. REAFFIRMING THAT GOD REMAINS IN OUR MOTTO.

(a) REAFFIRMATION.—Section 302 of title 36, United States Code, is amended to read as follows:

"§ 302. National motto

"'In God we trust' is the national motto.".

(b) CODIFICATION.—In codifying this subsection, the Office of the Law Revision Counsel shall make no change in section 302, title 36, United States Code, but shall show in the historical and statutory notes that the 107th Congress reaffirmed the exact language that has appeared in the Motto for decades.

PURPOSE AND SUMMARY

The purpose of S. 2690, introduced and passed by the Senate on June 27, 2002, by a vote of 99–0, is to reaffirm Congress' commitment to the Pledge of Allegiance and our national motto, "In God we trust."

BACKGROUND AND NEED FOR THE LEGISLATION

It is an accepted legal principle that government acknowledgment of the religious heritage of the United States of America is consistent with the meaning of the Establishment Clause of the First Amendment to the U.S. Constitution. Indeed, although there has been much legal uncertainty throughout the last half century regarding the parameters of the Establishment Clause, the United States Supreme Court has repeatedly affirmed that government acknowledgment of our Nation's religious heritage is entirely consistent with, and in fact may in some circumstances be required by, the Establishment Clause. Yet, on June 26, 2002, a three member panel of the United States Court of Appeals for the Ninth Circuit held unconstitutional, in *Newdow* v. *U.S. Congress*, a California school district's policy and practice of teacher-led voluntary recitation of the Pledge of Allegiance, concluding that the use of the phrase "one Nation under God" violates the Establishment Clause of the First Amendment.[1]

Writing for the 2–1 majority, Circuit Judge Alfred T. Goodwin stated that the Pledge of Allegiance is an unconstitutional endorsement of religion, that "impermissibly takes a position with respect to the purely religious question of the existence and identity of God," and places children in the "untenable position of choosing between participating in an exercise with religious content or protesting."[2]

Yet, this conclusion is contrary to the vast weight of U.S. Supreme Court authority recognizing that the mere mention of God in a public setting is entirely consistent with the First Amend-

[1] 292 F.3d 597 (9th Cir. 2002).
[2] *See id.* at 609.

ment's Establishment Clause. The Pledge of Allegiance is not a religious service or prayer, but is a statement of historical beliefs. It is a recognition of the fact that many Americans believe in God, and it acknowledges the value that our culture has traditionally placed on the role of religion in our founding and our culture. Thus, the Supreme Court has recognized that governmental entities may, consistent with the First Amendment, recognize the religious heritage of America. Although the United States Congress recognizes the right of those who do not share the beliefs expressed in the Pledge to refrain from its recitation, the *Newdow* ruling is troubling from a jurisprudential standpoint because its analysis appears to reflect the belief that any religious reference presents an inherent danger to individuals who hear it, the result of which would be the banishment of all such references from the public arena. Clearly, this is inconsistent with any reasonable interpretation of the Establishment Clause of the First Amendment.

Immediately following the *Newdow* ruling on June 27, 2002, the House of Representatives passed H. Res. 459, introduced by Judiciary Committee Chairman F. James Sensenbrenner, Jr. expressing the sense of the House of Representatives that the *Newdow* case was erroneously decided by the Ninth Circuit and that the court should agree to hear the ruling en banc. H. Res. 459 passed the House of Representatives by a 416–3 vote. By passing S. 2690, the House of Representatives will join the Senate in reaffirming its commitment to our Nation's pledge of allegiance as "one Nation under God" and our Nation's motto, "In God we trust."

Historical References to and Acknowledgment of America's Religious Heritage

Our Nation's history of civic and political discourse is sprinkled with extensive references to God. On November 11, 1620, prior to embarking for the shores of America, the Pilgrims signed the Mayflower Compact that declared, "Having undertaken, for the Glory of God and the advancement of the Christian Faith and honor of our King and country, a voyage to plant the first colony in the northern parts of Virginia." On July 4, 1776, America's Founding Fathers, after appealing to the "Laws of Nature, and of Nature's God" to justify their separation from Great Britain, then declared, "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness."

In 1781, Thomas Jefferson, the author of the Declaration of Independence and later the Nation's third President, in his work titled "Notes on the State of Virginia" wrote, "God who gave us life gave us liberty. And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the Gift of God. That they are not to be violated but with His wrath? Indeed, I tremble for my country when I reflect that God is just; that his justice cannot sleep forever." On May 14, 1787, George Washington, as President of the Constitutional Convention, rose to admonish and exhort the delegates and declared, "If to please the people we offer what we ourselves disapprove, how can we afterward defend our work? Let us

raise a standard to which the wise and the honest can repair; the event is in the hand of God!"

On July 21, 1789, on the same day that it approved the Establishment Clause concerning religion, the First Congress of the United States also passed the Northwest Ordinance, providing for a territorial government for lands northwest of the Ohio River, which declared, "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." On September 25, 1789, the First Congress unanimously approved a resolution calling on President George Washington to proclaim a National Day of Thanksgiving for the people of the United States by declaring, "a day of public thanksgiving and prayer, to be observed by acknowledging, with grateful hearts, the many favors of Almighty God, especially by affording them an opportunity peaceably to establish a constitution of government for their safety and happiness."

On November 19, 1863, President Abraham Lincoln delivered his Gettysburg Address on the site of the battle and declared, "It is rather for us to be here dedicated to the great task remaining before us—that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion—that we here highly resolve that these dead shall not have died in vain—that this Nation, under God, shall have a new birth of freedom—and that Government of the people, by the people, for the people, shall not perish from the earth."

On April 28, 1952, in the decision of the Supreme Court of the United States in *Zorach* v. *Clauson*,[3] in which school children were allowed to be excused from public schools for religious observances and education, Justice William O. Douglas, in writing for the Court, stated:

> The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concern or union or dependency one on the other. That is the common sense of the matter. Otherwise the State and religion would be aliens to each other—hostile, suspicious, and even unfriendly. Churches could not be required to pay even property taxes. Municipalities would not be permitted to render police or fire protection to religious groups. Policemen who helped parishioners into their places of worship would violate the Constitution. Prayers in our legislative halls; the appeals to the Almighty in the messages of the Chief Executive; the proclamations making Thanksgiving Day a holiday; "so help me God" in our courtroom oaths—these and all other references to the Almighty that run through our laws, our public rituals, our ceremonies would be flouting the First Amendment. A fastidious atheist or agnostic could even object to the supplication with which the Court opens each session: "God save the United States and this Honorable Court."[4]

On June 15, 1954, Congress passed, and President Eisenhower signed into law a statute, that was clearly consistent with the text

[3] 343 U.S. 306 (1952).
[4] *Id.* at 312.

and intent of the Constitution of the United States, that amended the Pledge of Allegiance to read, "I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all." On July 20, 1956, Congress proclaimed that the national motto of the United States is "In God We Trust," and that motto is inscribed above the main door of the Senate, behind the Chair of the Speaker of the House of Representatives, and on the currency of the United States.

On June 17, 1963, in the decision of the Supreme Court of the United States in *Abington School District* v. *Schempp*,[5] in which compulsory school prayer was held unconstitutional, Justices Goldberg and Harlan, concurring in the decision, stated:

> But untutored devotion to the concept of neutrality can lead to invocation or approval of results which partake not simply of that noninterference and noninvolvement with the religious which the Constitution commands, but of a brooding and pervasive devotion to the secular and a passive, or even active, hostility to the religious. Such results are not only not compelled by the Constitution, but, it seems to me, are prohibited by it. Neither government nor this Court can or should ignore the significance of the fact that a vast portion of our people believe in and worship God and that many of our legal, political, and personal values derive historically from religious teachings. Government must inevitably take cognizance of the existence of religion and, indeed, under certain circumstances the First Amendment may require that it do so.[6]

On March 5, 1984, in the decision of the Supreme Court of the United States in *Lynch* v. *Donelly*,[7] in which a city government's display of a nativity scene was held to be constitutional, Chief Justice Burger, writing for the Court, stated:

> There is an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789. . . . [E]xamples of reference to our religious heritage are found in the statutorily prescribed national motto "In God We Trust," which Congress and the President mandated for our currency,[8] and in the language "One Nation under God," as part of the Pledge of Allegiance to the American flag. That pledge is recited by many thousands of public school children—and adults—every year. . . . Art galleries supported by public revenues display religious paintings of the 15th and 16th centuries, predominantly inspired by one religious faith. The National Gallery in Washington, maintained with Government support, for example, has long exhibited masterpieces with religious messages, notably the Last Supper, and paintings depicting the Birth of Christ, the Crucifixion, and the Resurrection, among many others with explicit Christian themes and messages. The very chamber in which oral arguments on this case were heard is decorated with a notable and permanent—not seasonal—symbol of reli-

[5] 374 U.S. 203 (1963).
[6] *Id.* at 306 (Goldberg, J., concurring).
[7] 465 U.S. 668 (1984).
[8] *See* 31 U.S.C. 5112(d)(1) (1982).

gion: Moses with the Ten Commandments. Congress has long provided chapels in the Capitol for religious worship and meditation.[9]

On June 4, 1985, in the decision of the Supreme Court of the United States in *Wallace* v. *Jaffree*,[10] in which a mandatory moment of silence to be used for meditation or voluntary prayer was held unconstitutional, Justice O'Connor, concurring in the judgment and addressing the contention that the Court's holding would render the Pledge of Allegiance unconstitutional because Congress amended it in 1954 to add the words "under God," stated, "In my view, the words 'under God' in the Pledge, as codified at 36 U.S.C. 172, serve as an acknowledgment of religion with the legitimate secular purposes of solemnizing public occasions, [and] expressing confidence in the future."[11] On November 20, 1992, the United States Court of Appeals for the 7th Circuit, in *Sherman* v. *Community Consolidated School District 21*,[12] held that a school district's policy for voluntary recitation of the Pledge of Allegiance including the words "under God" was constitutional.

Clearly, America has a rich history of referring to God in its political and civic discourse and acknowledging the important role faith and religion have played throughout our Nation's history. Thus the Ninth Circuit's analysis in the *Newdow* ruling cannot be supported by any reasonable interpretation of the Establishment Clause as their holding is inconsistent with the meaning given the Establishment Clause since America's founding. It is important to note that under *Pierce* v. *Underwood*, 487 U.S. 552 (1988), Congress, by approving S. 2690 which calls for the re-codification of section 4 of title 4 of the United States Code, could be presumed to have adopted previous interpretations of this provision, including the Ninth Circuit Court of Appeals' interpretation of section 4 of title 4 of the Unites States Code in *Newdow* v. *U.S. Congress*, 292 F.3d 597 (9th Cir. 2002). The Committee wishes to make clear that it is not the intent of Congress to adopt any previous judicial interpretations of this provision, particularly that given to it by the Ninth Circuit in the *Newdow* ruling.

HEARINGS

No hearings were held on S. 2690.

COMMITTEE CONSIDERATION

On September, 10, 2002, the Committee met in open session and ordered favorably reported the bill S. 2690, with amendment, by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

1. Mr. Nadler and Mr. Scott offered an amendment to S. 2690 to clarify that section 4 of title 4's requirement that men, who are not in uniform, "remove their headdress with their right hand and hold it at the left shoulder, the hand being over the heart" prior to recit-

[9] 465 U.S. at 674.
[10] 472 U.S. 38 (1985).
[11] *Id.* at 78 n.15 (O'Connor, J., concurring).
[12] 980 F.2d 437 (7th Cir. 1992).

ing the pledge only applies to a "non-religious" headdress. The amendment was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

S. 2690 does not authorize funding. Therefore, clause 3(c) of rule XII of the Rules of the House of Representatives is inapplicable.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, S. 2690, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 12, 2002.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2690, an act to reaffirm the reference to one Nation under God in the Pledge of Allegiance.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford, who can be reached at 226–2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

S. 2690—An act to reaffirm the reference to one Nation under God in the Pledge of Allegiance.

S. 2690 would reaffirm the current language of the Pledge of Allegiance to the Flag and the national motto. CBO estimates that enacting this legislation would result in no cost to the Federal Government. Because S. 2690 would not affect direct spending or receipts, pay-as-you-go procedures would not apply. The act contains no intergovernmental or private-sector mandates as defined in the

Unfunded Mandates Reform Act and would not affect the budgets of State, local, or tribal governments.

The CBO staff contact is Matthew Pickford, who can be reached at 226–2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 8, clause 18 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

S. 2690 reaffirms the reference to one Nation under God in the Pledge of Allegiance.

Section 1. Findings. In paragraph (1) Congress finds that on November 11, 1620, prior to embarking for the shores of America, the Pilgrims signed the Mayflower Compact that declared, "Having undertaken, for the Glory of God and the advancement of the Christian Faith and honor of our King and country, a voyage to plant the first colony in the northern parts of Virginia."

In paragraph (2) Congress finds that on July 4, 1776, America's Founding Fathers, after appealing to the "Laws of Nature, and of Nature's God" to justify their separation from Great Britain, then declared, "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness."

In paragraph (3) Congress finds that in 1781, Thomas Jefferson, the author of the Declaration of Independence and later the Nation's third President, in his work titled "Notes on the State of Virginia" wrote, "God who gave us life gave us liberty. And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the Gift of God. That they are not to be violated but with His wrath? Indeed, I tremble for my country when I reflect that God is just; that his justice cannot sleep forever."

In paragraph (4) Congress finds that on May 14, 1787, George Washington, as President of the Constitutional Convention, rose to admonish and exhort the delegates and declared, "If to please the people we offer what we ourselves disapprove, how can we afterward defend our work? Let us raise a standard to which the wise and the honest can repair; the event is in the hand of God!"

In paragraph (5) Congress finds that on July 21, 1789, on the same day that it approved the Establishment Clause concerning religion, the First Congress of the United States also passed the Northwest Ordinance, providing for a territorial government for lands northwest of the Ohio River, which declared, "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

In paragraph (6) Congress finds that on September 25, 1789, the First Congress unanimously approved a resolution calling on President George Washington to proclaim a National Day of Thanksgiving for the people of the United States by declaring, "a day of

public thanksgiving and prayer, to be observed by acknowledging, with grateful hearts, the many favors of Almighty God, especially by affording them an opportunity peaceably to establish a constitution of government for their safety and happiness."

In paragraph (7) Congress finds that on November 19, 1863, President Abraham Lincoln delivered his Gettysburg Address on the site of the battle and declared, "It is rather for us to be here dedicated to the great task remaining before us—that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion—that we here highly resolve that these dead shall not have died in vain—that this Nation, under God, shall have a new birth of freedom—and that Government of the people, by the people, for the people, shall not perish from the earth."

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In paragraph (9) Congress finds that on June 15, 1954, Congress passed, and President Eisenhower signed into law a statute, that was clearly consistent with the text and intent of the Constitution of the United States, that amended the Pledge of Allegiance to read, "I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all."

In paragraph (10) Congress finds that on July 20, 1956, Congress proclaimed that the national motto of the United States is "In God We Trust," and that motto is inscribed above the main door of the Senate, behind the Chair of the Speaker of the House of Representatives, and on the currency of the United States.

In paragraph (11) Congress finds that on June 17, 1963, in the decision of the Supreme Court of the United States in *Abington*

[13] 343 U.S. 306 (1952).
[14] *Id.* at 312.

School District v. *Schempp*,[15] in which compulsory school prayer was held unconstitutional, Justices Goldberg and Harlan, concurring in the decision, stated: "But untutored devotion to the concept of neutrality can lead to invocation or approval of results which partake not simply of that noninterference and noninvolvement with the religious which the Constitution commands, but of a brooding and pervasive devotion to the secular and a passive, or even active, hostility to the religious. Such results are not only not compelled by the Constitution, but, it seems to me, are prohibited by it. Neither government nor this Court can or should ignore the significance of the fact that a vast portion of our people believe in and worship God and that many of our legal, political, and personal values derive historically from religious teachings. Government must inevitably take cognizance of the existence of religion and, indeed, under certain circumstances the First Amendment may require that it do so." [16]

In paragraph (12) Congress finds that on March 5, 1984, in the decision of the Supreme Court of the United States in *Lynch* v. *Donelly*,[17] in which a city government's display of a nativity scene was held to be constitutional, Chief Justice Burger, writing for the Court, stated: "There is an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789. . . . [E]xamples of reference to our religious heritage are found in the statutorily prescribed national motto 'In God We Trust,' which Congress and the President mandated for our currency,[18] and in the language 'One Nation under God,' as part of the Pledge of Allegiance to the American flag. That pledge is recited by many thousands of public school children—and adults—every year. . . . Art galleries supported by public revenues display religious paintings of the 15th and 16th centuries, predominantly inspired by one religious faith. The National Gallery in Washington, maintained with Government support, for example, has long exhibited masterpieces with religious messages, notably the Last Supper, and paintings depicting the Birth of Christ, the Crucifixion, and the Resurrection, among many others with explicit Christian themes and messages. The very chamber in which oral arguments on this case were heard is decorated with a notable and permanent—not seasonal—symbol of religion: Moses with the Ten Commandments. Congress has long provided chapels in the Capitol for religious worship and meditation." [19]

In paragraph (13) Congress finds that on June 4, 1985, in the decision of the Supreme Court of the United States in *Wallace* v. *Jaffree*,[20] in which a mandatory moment of silence to be used for meditation or voluntary prayer was held unconstitutional, Justice O'Connor, concurring in the judgment and addressing the contention that the Court's holding would render the Pledge of Allegiance unconstitutional because Congress amended it in 1954 to add the words "under God," stated, "In my view, the words 'under God' in the Pledge, as codified at 36 U.S.C. 172, serve as an acknowledgment of religion with the legitimate secular purposes of solem-

[15] 374 U.S. 203 (1963).
[16] *Id.* at 306 (Goldberg, J., concurring).
[17] 465 U.S. 668 (1984).
[18] *See* 31 U.S.C. 5112(d)(1) (1982).
[19] 465 U.S. at 674.
[20] 472 U.S. 38 (1985).

nizing public occasions, [and] expressing confidence in the future."[21]

In paragraph (14) Congress finds that on November 20, 1992, the United States Court of Appeals for the 7th Circuit, in *Sherman* v. *Community Consolidated School District 21*,[22] held that a school district's policy for voluntary recitation of the Pledge of Allegiance including the words "under God" was constitutional.

In paragraph (15) Congress finds that the 9th Circuit Court of Appeals erroneously held, in *Newdow* v. *U.S. Congress*,[23] that the Pledge of Allegiance's use of the express religious reference "under God" violates the First Amendment to the Constitution, and that, therefore, a school district's policy and practice of teacher-led voluntary recitations of the Pledge of Allegiance is unconstitutional.

In paragraph (16) Congress finds that the erroneous rationale of the 9th Circuit Court of Appeals in *Newdow* would lead to the absurg result that the Constitution's use of the express religious reference "Year of our Lord" in Article VII violates the First Amendment to the Constitution, and that, therefore, a school district's policy and practice of teacher-led voluntary recitations of the Constitution itself would be unconstitutional.

Section 2. One Nation Under God.

Subsection (a) amends section 4 of title 4, United States Code, to read as follows: "§ 4. Pledge of allegiance to the flag; manner of delivery

'The Pledge of Allegiance to the Flag: "I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.", should be rendered by standing at attention facing the flag with the right hand over the heart. When not in uniform men should remove any non-religious headdress with their right hand and hold it at the left shoulder, the hand being over the heart. Persons in uniform should remain silent, face the flag, and renders the military salute.'".

Subsection (b) directs that in codifying this subsection, the Office of the Law Revision Councel shall make no change in section 4, title 4, United States Code, but shall show in the historical and statutory notes that the 107th Congress reaffirmed the exact language that has appeared in the Pledge for decades.

Section 3. Reaffirming That God Remains in our Motto.

Subsection (a) amends section 302 of title 36, United States Code, to read as follows: "§ 302. National motto

'In God we trust' is the national motto.".

Subsection (b) provides that in codifying this subsection, the Office of Law Revision Councel shall make no change in section 302, title 36, United States Code, but shall show in the historical and statutory notes that the 107th Congress reaffirmed the exact language that has appeared in the Motto for decades.

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[21] *Id.* at 78 n.15 (O'Connor, J., concurring).
[22] 980 F.2d 437 (7th Cir. 1992).
[23] 292 F.3d 597 (9th Cir. 2002).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 4 OF TITLE 4, UNITED STATES CODE

§ [4. Pledge of allegiance to the flag; manner of delivery

[The Pledge of Allegiance to the Flag, "I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.", should be rendered by standing at attention facing the flag with the right hand over the heart. When not in uniform men should remove their headdress with their right hand and hold it at the left shoulder, the hand being over the heart. Persons in uniform should remain silent, face the flag, and render the military salute.**]**

§ 4. Pledge of allegiance to the flag; manner of delivery

The Pledge of Allegiance to the Flag: "I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.", should be rendered by standing at attention facing the flag with the right hand over the heart. When not in uniform men should remove any non-religious headdress with their right hand and hold it at the left shoulder, the hand being over the heart. Persons in uniform should remain silent, face the flag, and render the military salute.

SECTION 302 OF TITLE 36, UNITED STATES CODE

[§ 302. National motto

["In God we trust" is the national motto.**]**

§ 302. National motto

"In God we trust" is the national motto.

MARKUP TRANSCRIPT

BUSINESS MEETING

TUESDAY, SEPTEMBER 10, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:00 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee will be in order, and a working quorum is present.

[Intervening business.]

Finally, pursuant to notice, I now call up the bill, S. 2690, a bill to reaffirm the reference to "One nation under God" in the Pledge of Allegiance for purposes of markup and move its favorable recommendation to the House.

Without objection the bill will be considered as read, open for amendment at any point. My lengthy statement talking about what a great bill this is will be put in the record, without objection. All Members statements may be put in the record at this point without objection.

[The bill, S. 2690, follows:]

I

107TH CONGRESS
2D SESSION

S. 2690

IN THE HOUSE OF REPRESENTATIVES

JUNE 27, 2002
Referred to the Committee on the Judiciary

AN ACT

To reaffirm the reference to one Nation under God in the Pledge of Allegiance.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

Congress finds the following:

(1) On November 11, 1620, prior to embarking for the shores of America, the Pilgrims signed the Mayflower Compact that declared: "Having undertaken, for the Glory of God and the advancement of the Christian Faith and honor of our King and country, a voyage to plant the first colony in the northern parts of Virginia,".

(2) On July 4, 1776, America's Founding Fathers, after appealing to the "Laws of Nature, and of Nature's God" to justify their separation from Great Britain, then declared: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness".

(3) In 1781, Thomas Jefferson, the author of the Declaration of Independence and later the Nation's third President, in his work titled "Notes on the State of Virginia" wrote: "God who gave us life gave us liberty. And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the Gift of God. That they are not to be violated but with His wrath? Indeed,

I tremble for my country when I reflect that God is just; that his justice cannot sleep forever.".

(4) On May 14, 1787, George Washington, as President of the Constitutional Convention, rose to admonish and exhort the delegates and declared: "If to please the people we offer what we ourselves disapprove, how can we afterward defend our work? Let us raise a standard to which the wise and the honest can repair; the event is in the hand of God!".

(5) On July 21, 1789, on the same day that it approved the Establishment Clause concerning religion, the First Congress of the United States also passed the Northwest Ordinance, providing for a territorial government for lands northwest of the Ohio River, which declared: "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.".

(6) On September 25, 1789, the First Congress unanimously approved a resolution calling on President George Washington to proclaim a National Day of Thanksgiving for the people of the United States by declaring, "a day of public thanksgiving and prayer, to be observed by acknowledging, with grateful hearts, the many signal favors of Almighty God,

especially by affording them an opportunity peaceably to establish a constitution of government for their safety and happiness.".

(7) On November 19, 1863, President Abraham Lincoln delivered his Gettysburg Address on the site of the battle and declared: "It is rather for us to be here dedicated to the great task remaining before us—that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion—that we here highly resolve that these dead shall not have died in vain—that this Nation, under God, shall have a new birth of freedom—and that Government of the people, by the people, for the people, shall not perish from the earth.".

(8) On April 28, 1952, in the decision of the Supreme Court of the United States in Zorach v. Clauson, 343 U.S. 306 (1952), in which school children were allowed to be excused from public schools for religious observances and education, Justice William O. Douglas, in writing for the Court stated: "The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall

be no concern or union or dependency one on the other. That is the common sense of the matter. Otherwise the State and religion would be aliens to each other—hostile, suspicious, and even unfriendly. Churches could not be required to pay even property taxes. Municipalities would not be permitted to render police or fire protection to religious groups. Policemen who helped parishioners into their places of worship would violate the Constitution. Prayers in our legislative halls; the appeals to the Almighty in the messages of the Chief Executive; the proclamations making Thanksgiving Day a holiday; 'so help me God' in our courtroom oaths—these and all other references to the Almighty that run through our laws, our public rituals, our ceremonies would be flouting the First Amendment. A fastidious atheist or agnostic could even object to the supplication with which the Court opens each session: 'God save the United States and this Honorable Court.'.".

(9) On June 15, 1954, Congress passed, and President Eisenhower signed into law a statute, that was clearly consistent with the text and intent of the Constitution of the United States, that amended the Pledge of Allegiance to read: "I pledge allegiance to the Flag of the United States of America and to the

Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.".

(10) On July 20, 1956, Congress proclaimed that the national motto of the United States is "In God We Trust", and that motto is inscribed above the main door of the Senate, behind the Chair of the Speaker of the House of Representatives, and on the currency of the United States.

(11) On June 17, 1963, in the decision of the Supreme Court of the United States in Abington School District v. Schempp, 374 U.S. 203 (1963), in which compulsory school prayer was held unconstitutional, Justices Goldberg and Harlan, concurring in the decision, stated: "But untutored devotion to the concept of neutrality can lead to invocation or approval of results which partake not simply of that noninterference and noninvolvement with the religious which the Constitution commands, but of a brooding and pervasive devotion to the secular and a passive, or even active, hostility to the religious. Such results are not only not compelled by the Constitution, but, it seems to me, are prohibited by it. Neither government nor this Court can or should ignore the significance of the fact that a vast portion of our people believe in and worship God and that

many of our legal, political, and personal values derive historically from religious teachings. Government must inevitably take cognizance of the existence of religion and, indeed, under certain circumstances the First Amendment may require that it do so.".

(12) On March 5, 1984, in the decision of the Supreme Court of the United States in Lynch v. Donelly, 465 U.S. 668 (1984), in which a city government's display of a nativity scene was held to be constitutional, Chief Justice Burger, writing for the Court, stated: "There is an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789. . . . [E]xamples of reference to our religious heritage are found in the statutorily prescribed national motto 'In God We Trust' (36 U.S.C. 186), which Congress and the President mandated for our currency, see (31 U.S.C. 5112(d)(1) (1982 ed.)), and in the language 'One Nation under God', as part of the Pledge of Allegiance to the American flag. That pledge is recited by many thousands of public school children—and adults—every year. . . . Art galleries supported by public revenues display religious paintings of the 15th and 16th centuries,

predominantly inspired by one religious faith. The National Gallery in Washington, maintained with Government support, for example, has long exhibited masterpieces with religious messages, notably the Last Supper, and paintings depicting the Birth of Christ, the Crucifixion, and the Resurrection, among many others with explicit Christian themes and messages. The very chamber in which oral arguments on this case were heard is decorated with a notable and permanent—not seasonal—symbol of religion: Moses with the Ten Commandments. Congress has long provided chapels in the Capitol for religious worship and meditation.''.

(13) On June 4, 1985, in the decision of the Supreme Court of the United States in Wallace v. Jaffree, 472 U.S. 38 (1985), in which a mandatory moment of silence to be used for meditation or voluntary prayer was held unconstitutional, Justice O'Connor, concurring in the judgment and addressing the contention that the Court's holding would render the Pledge of Allegiance unconstitutional because Congress amended it in 1954 to add the words ''under God,'' stated ''In my view, the words 'under God' in the Pledge, as codified at (36 U.S.C. 172), serve as an acknowledgment of religion with 'the le-

gitimate secular purposes of solemnizing public occasions, [and] expressing confidence in the future.' ".

(14) On November 20, 1992, the United States Court of Appeals for the 7th Circuit, in Sherman v. Community Consolidated School District 21, 980 F.2d 437 (7th Cir. 1992), held that a school district's policy for voluntary recitation of the Pledge of Allegiance including the words "under God" was constitutional.

(15) The 9th Circuit Court of Appeals erroneously held, in Newdow v. U.S. Congress, (9th Cir. June 26, 2002) that the Pledge of Allegiance's use of the express religious reference "under God" violates the First Amendment to the Constitution, and that, therefore, a school district's policy and practice of teacher-led voluntary recitations of the Pledge of Allegiance is unconstitutional.

(16) The erroneous rationale of the 9th Circuit Court of Appeals in Newdow would lead to the absurd result that the Constitution's use of the express religious reference "Year of our Lord" in Article VII violates the First Amendment to the Constitution, and that, therefore, a school district's policy and practice of teacher-led voluntary recitations of the Constitution itself would be unconstitutional.

SEC. 2. ONE NATION UNDER GOD.

(a) REAFFIRMATION.—Section 4 of title 4, United States Code, is amended to read as follows:

"§ 4. Pledge of allegiance to the flag; manner of delivery

"The Pledge of Allegiance to the Flag: 'I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.', should be rendered by standing at attention facing the flag with the right hand over the heart. When not in uniform men should remove their headdress with their right hand and hold it at the left shoulder, the hand being over the heart. Persons in uniform should remain silent, face the flag, and render the military salute.".

(b) CODIFICATION.—In codifying this subsection, the Office of the Law Revision Council shall make no change in section 4, title 4, United States Code, but shall show in the historical and statutory notes that the 107th Congress reaffirmed the exact language that has appeared in the Pledge for decades.

SEC. 3. REAFFIRMING THAT GOD REMAINS IN OUR MOTTO.

(a) REAFFIRMATION.—Section 302 of title 36, United States Code, is amended to read as follows:

"§ 302. National motto

"'In God we trust' is the national motto.".

(b) CODIFICATION.—In codifying this subsection, the Office of the Law Revision Council shall make no change in section 302, title 36, United States Code, but shall show in the historical and statutory notes that the 107th Congress reaffirmed the exact language that has appeared in the Motto for decades.

Passed the Senate June 27, 2002.

Attest: JERI THOMSON,

Secretary.

Chairman SENSENBRENNER. Are there amendments? The gentlemen from New York.

Mr. NADLER. Thank you, Mr. Chairman. My lengthy statement about how superfluous a bill this will also be placed in the record. I have two amendments. I would like to offer them one after the other. One is by me and one is by myself and Representative Scott. Take up the one by me first.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to S. 2690 offered by Mr. Nadler. On Page 9, line 9, omit "erroneously." On Page 9, line 16, omit "erroneous."

[The amendment follows:]

Amendment to S. 2690
Offered by Mr. Nadler

On Page 9, line 9, omit "erroneously"

On Page 9, line 16, omit "erroneous"

Mr. NADLER. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Mr. Chairman, I will take less; probably half a minute.

Mr. Chairman, I don't believe it is the business or the proper role of Congress to say that a decision of a court is erroneous. If we don't like the decision of a court, we can pass a bill, we can initiate a constitutional amendment. But I don't think it is the business of one branch of Government to say that another branch of Government, to say officially—as individuals we can say anything we want—but we don't pass resolutions saying the President is wrong or the courts are wrong.

Now, the points that are made on Page 9 in findings 15 and 16 flow just as well if you omit the words "erroneously" and "erroneous."

The 9th Circuit Court of Appeals made the decision saying this and the rationale of the court, if followed, would lead to the following conclusion. I just don't think we should label a court decision erroneous. I don't think it is the business of the Congress to characterize a court decision officially as a coordinate branch of Government.

Therefore, the amendment would simply remove the words, "erroneously" and "erroneous." The same points will be made in the findings as is made with those words.

Chairman SENSENBRENNER. The question is on the amendment. Those in favor will say aye.

Opposed, no.

The noes appear to have it. The noes have it. The amendment is not agreed to.

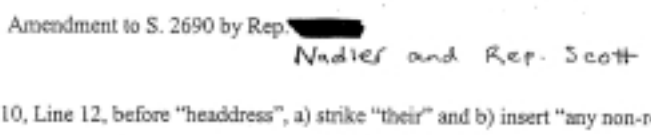
The second amendment?

Mr. NADLER. I call up the amendment.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to S. 2690 offered by Mr. Nadler and Mr. Scott: On Page 10, Line 12, before "headdress" a, strike "their" and b——

[The amendment follows:]


Amendment to S. 2690 by Rep. [redacted]
Nadler and Rep. Scott

On Page 10, Line 12, before "headdress", a) strike "their" and b) insert "any non-religious"

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Mr. Chairman, this amendment deals with the provision of existing law that says on how to deal with the flag "When not in uniform, men should remove their headdress with their right hand and hold it at their left shoulder, the hand being over the heart."

This was passed, I think, in a less sensitive era. The fact is there are religions which demand that people wear headdress. Orthodox Judaism says people have to wear something on their heads, whether a hat or a yarmulke. Sikhs have to wear turbans. Certain Muslims have to wear other things. So, I just think it should say when not in uniform men should remove their non-religious head dress.

Chairman SENSENBRENNER. Would the gentleman yield?

Mr. NADLER. Yes.

Chairman SENSENBRENNER. I think the gentleman makes a good point on this one. I am prepared to accept the amendment.

Mr. NADLER. I thank the Chairman.

Mr. SCOTT. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Virginia.

Mr. SCOTT. Mr. Chairman, have you called the question on this amendment?

Chairman SENSENBRENNER. Question? Without objection, the amendment is agreed to.

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia.

Mr. SCOTT. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, I come from a State that has a long tradition of supporting religious freedom. In fact, it was Thomas Jefferson of Virginia who wrote the Virginia Statute of Religious Freedom which preceded the First Amendment to the Constitution.

Today's exercise is certainly gratuitous in that if this is a constitutional issue, when the courts have finished with it, nothing we can do can change that.

The court in its dissent said that the Pledge of Allegiance should be constitutional because the "under God" in the Pledge of Allegiance was de minimus. The danger the phrase represents to our First Amendment freedoms is picayune at best. Our actions today,

however, may cause the court to review that sentiment because if the Court looks at the importance that we have affixed to that phrase because of this legislation, the idea that they may consider it de minimus will be less and unconstitutional, more.

Today's action may also cause them to take another look because under the Lemon Test the law violates Establishment Clause if it has no secular purpose. For example, in cases involving a moment of silence in public schools, laws have been upheld if the law allows silent prayer as one of many activities which can be done in silence, but have stricken laws in which a moment of silent prayer is added to an existing moment of silence because that law has no secular purpose.

Because this legislation's sole purpose is religious, not secular, the bill is vulnerable to that same constitutional attack.

Mr. Chairman, I want to quote finally the editorial from the Christian Century, a nondenominational Protestant weekly which said, "To the extent 'under God' has real religious meaning, then it is unconstitutional. The phrase is constitutional to the extent that it is religiously innocuous. Given that choice, we side with the 9th Circuit. We see no need, especially for Christians, to defend hollow references to innocuous God."

Mr. Chairman, I ask unanimous consent to include for the record the entire editorial and the Virginia Statute for Religious Freedom.

Chairman SENSENBRENNER. Without objection.

[The information follows:]

THE Christian Century

July 17-30, 2002

Taking on the pledge

A MASSIVE PUBLIC OUTCRY greeted the ruling last month by the Ninth Circuit Court of Appeals declaring that the words "under God" in public school recitations of the Pledge of Allegiance violate the "no establishment of religion" clause of the First Amendment. Congress rushed to condemn the decision. President Bush termed it ridiculous and Senate Majority Leader Tom Daschle called it "just nuts." Some columnists questioned the judges' sanity.

But the ruling makes sense. Imagine hearing a public school teacher leading students in pledging devotion to a nation "under Vishnu." It would be obvious in such a case that the government was endorsing and advancing a particular religion—a clear violation of the Constitution. This was Circuit Judge Alfred Goodwin's point: "A profession that we are a nation 'under God' is identical, for Establishment Clause purposes, to a profession that we are a nation 'under Jesus,' a nation 'under Vishnu,' a nation 'under Zeus' or a nation 'under no god,' because none of these professions can be neutral with respect to religion."

The only way "under God" can be construed as constitutional is by arguing that the words do not really carry the kind of theological weight Goodwin ascribes to them. Probably for many Americans the phrase "under God" in the pledge is not loaded with much religious meaning; it merely lends a pleasant aura of sanctity to the nation and its ideals.

There are religious grounds for siding with the Ninth Circuit Court.

The late Supreme Court Justice William Brennan and some of his colleagues argued in this vein in the 1980s, suggesting that ritual phrases like "under God" in the pledge or "In God we trust" on coins have been drained of specific religious content and are more of a cultural tradition than a theological assertion. Because these phrases are religiously empty, they said, they can be accommodated under the "no establishment" clause. (The dissenting judge on the Ninth Circuit, Ferdinand Fernandez, seemed to follow Brennan's reasoning, arguing that the recital of "under God" in public schools presents only a "picayune" threat to religious liberty.)

To the extent "under God" has real religious meaning, then, it is unconstitutional. And the phrase is constitutional to the extent that it is religiously innocuous.

Given that choice, we side with the Ninth Circuit. And we see no need—especially not for Christians—to defend hollow references to an innocuous God. ■

Background On The Virginia Statute For Religious Freedom

In Virginia, the American Revolution led to the disestablishment of the Anglican Church, which had been tied closely to the royal government. Then the question arose as to whether the new state should continue to impose taxes to be used for the support of all recognized churches. The proposal had a number of supporters who, even if they no longer accepted an established church, still believed that religion should be supported by the public purse.

For some Virginians, however, imposing religion on people smacked of tyranny. Thomas Jefferson and James Madison, both of whom would later be president of the United States, argued that religious beliefs should be solely matters of individual conscience and completely immune from any interference by the state. Moreover, religious activity of any sort should be wholly voluntary. Not only did they oppose taxing people to support an established church, but they also objected to forcing people to pay taxes even for their own church. To Jefferson, a high wall of separation should always keep church and state apart.

Jefferson drafted the following measure, but it was Madison who skillfully secured its adoption by the Virginia legislature in 1786. It is still part of modern Virginia's constitution, and it has not only been copied by other states but was also the basis for the Religion Clauses in the Constitution's Bill of Rights. Both men considered this bill one of the great achievements of their lives, and Jefferson directed that on his tombstone he should not be remembered as president of the United States or for any of the other high offices he held, but as the author of the Declaration of Independence and the Virginia Statute for Religious Freedom, and as the founder of the University of Virginia.

For further reading: William Lee Miller, *The First Liberty: Religion and the American Republic* (1985); Leonard W. Levy, *The Establishment Clause and the First Amendment* (1986); Merrill D. Peterson and Robert C. Vaughn, eds., *The Virginia Statute for Religious Freedom: Its Evolution and Consequences in American History* (1988).

Virginia Statute For Religious Freedom

Whereas Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy author of our religion, who being Lord both of body and mind, yet chose not to propagate it by coercions on either, as it was in his Almighty power to do; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavouring to impose them on others, hath established and maintained false religions over the greatest part of the world, and through all time; that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor, whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness, and is withdrawing from the ministry those temporary rewards, which proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labours for the instruction of mankind; that our civil rights have no dependence on our religious opinions, any more than our opinions in physics or geometry; that therefore the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which in common with his fellow-citizens he has a natural right; that it tends only to corrupt the principles of that religion it is meant to encourage, by bribing with a monopoly of worldly honours and emoluments, those who will externally profess and conform to it; that though indeed these are criminal who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy, which at once destroys all religious liberty, because he being of course judge of that tendency will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of civil government, for its officers to interfere when principles break out into overt acts against peace and good order; and finally, that truth is great and will prevail if left to herself, that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons, free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict

them:

Be it enacted by the General Assembly, That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinion in matters of religion, and that the same shall in no wise diminish enlarge, or affect their civil capacities.

And though we well know that this assembly elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding assemblies, constituted with powers equal to our own, and that therefore to declare this act to be irrevocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present, or to narrow its operation, such act shall be an infringement of natural right.

Source: W.W. Hening, ed., *Statutes at Large of Virginia*, vol. 12 (1823): 84-86.

Ms. JACKSON LEE. Mr. Chairman.

Chairman SENSENBRENNER. The gentlewoman from Texas.

Ms. JACKSON LEE. Mr. Chairman, I strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. JACKSON LEE. Mr. Chairman, I rise to support S. 2690. I will briefly state my conclusions on this legislation. My understanding of the First Amendment argues against and prohibits the establishment of religion by this nation.

I would argue that the re-inclusion of the language or the re-emphasis of the language "One nation under God" is in fact not an establishment of religion and as well still allows those who find offense or find that it offends their religious practices or their nonreligious practices the ability and discretion to make the choice of reciting the Pledge of Allegiance in its totality, of not reciting it and reciting it without such words in it.

I believe what this legislation simply does is restate statutory language and provides the opportunity for choice to be made and not in establishment of religion by the nation as the First Amendment prohibits.

I yield back and ask my colleagues to support it, as I know they might be doing.

Chairman SENSENBRENNER. The chair notes the presence of a reporting quorum. The question is on reporting the bill, S. 2690 favorably as amended.

All those in favor will say aye.

Opposed, no.

Chairman SENSENBRENNER. The ayes appear to have it. The ayes have it. The motion to report favorably is adopted. Without objection the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute incorporating the amendment adopted here today.

Without objection the Chairman is authorized to move to go to conference pursuant to House rules.

Without objection the staff is directed to make any technical and conforming changes.

All Members will be given 2 days as provided by House rules in which to submit additional dissenting supplemental or minority views.

The chair thanks the Members for their patience and their indulgence. A lot of people didn't think we would get through the agenda. We did and the Committee is adjourned.

[Whereupon, at 2:52 p.m. the Committee was adjourned.]

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