

Model Illinois
Government Moot Court
Competition

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offered pro bono representation to defendants in matters pending in the Municipal Division of the Cook County Circuit Court; worked as an associate attorney for O'Brien & Wolf, LLP, in Rochester, Minnesota; and previously operated his own practice, R. A. Smith, Ltd. He has drafted Model Illinois Moot Court problem for previous competitions from 2006 to 2018. Mr. Smith is also the author of the problem for the 2009 Chicago Bar Association Moot Court Competition. In addition, he is the author of *Breaking the Stalemate: the Judiciary's Constitutional Role in Disputes Over the War Powers*, 41 Val. U. L. Rev. 1517 (2007), and an avid legal technologist that presents continuing legal education seminars on a variety of law practice management and technology topics. Mr. Smith received his Juris Doctorate from the Valparaiso University School of Law in 2006, where he also was a semifinalist for the Swygert Memorial Intraschool Moot Court Competition in 2004 and 2005, and competed at the Vanderbilt First Amendment Moot Court Competition in 2005 and 2006. Mr. Smith received his Bachelor of Arts in Philosophy from Western Illinois University in 2003, was a recipient of the Model Illinois Government Best Moot Court Team award in 2002 and was a Model Illinois Government Moot Court semifinalist in 2003.

**IN THE SIXTEENTH JUDICIAL CIRCUIT COURT
OF KANE COUNTY, ILLINOIS**

) ANGELA BLAINE, as next friend and guardian of) SUSAN BLAINE, a minor,))
Plaintiff,)) v.) Case No.: 16 MIG-CH 55

) BURLINGTON TOWNSHIP SCHOOL DISTRICT,
) EAST HILL VALLEY HIGH SCHOOL,)
 JONATHAN ROBERTSON, as principle of Hill)
 Valley High School, and JAMES DENITHOR,) as
 Superintendent of Burlington Township School)
 District,)) Defendants.))

**MEMORANDUM AND
ORDER**

Plaintiff filed this action seeking a mandatory permanent injunction against the Hill Valley High

School to remove the words "In God We Trust" from over the archway entrance to the school

gymnasium, asserting essentially that the words in a conspicuous location violate the Establishment

Clause of Article I, Section 3 of the Illinois Constitution and the First Amendment to the United States

Constitution. After considerable early motion practice and subsequently written and oral discovery, the

Defendant School and School District sought summary judgment pursuant to 735 ILCS 5/2-1005. After briefing and consideration of the entire record in this case before the Court, Plaintiff's case is dismissed with prejudice for the reasons outlined below.

Facts

Plaintiff Susan Blaine is currently a sophomore at Hill Valley High School, which is located in

Burlington Township, Illinois, which sits in Kane County. When Susan enrolled in the high school, she

had the opportunity to tour the school as an incoming freshman. At that time, the school had a standard appearance with murals of the school mascot, a bobcat, adorning the archway over the main entrance to

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the school gymnasium. For two years prior, two student organized groups with operating sanctions and school staff supervision, lobbied the school administration and school board to change the mural to include the words "In God We Trust" prominently over the archway of the door along with American

Flags on either side of the doorway, surrounded by the school mascot, the bobcat.

The "Hill Valley High School Student Republicans" and "Hill Valley Students For Christ"

secured the permission to renovate the mural but were not provided a budget to do so. Rather, the students raised funds through various means, including a public GoFundMe page, raffles at school sporting events, and seeking out local sponsorships. The Students raised 85% of the funds necessary for

the mural, and, after a plea to the school principle, Jonathan Robertson, the High School contributed the remaining 15% from the School's budget designated toward maintenance and renovation. Over the summer before the start of Susan's freshman year at the school, students from the two organizations hired a local artist to render and paint the archway.

The archway is in a main thoroughfare of the school. In order for anyone to enter the gymnasium for any hosted sporting or other event, students or visitors must walk through the archway. The words over the archway can also be seen from down the hall. Moreover, they are painted on both sides of the archway, meaning "In God We Trust" is visible to roughly 60% of the occupants inside the gymnasium as it would be to anyone walking down the hallway toward the gymnasium.

Plaintiff filed a three-count Complaint seeking declaratory relief that the painting of the mural violated Article I, Section 3, of the Illinois Constitution and the Establishment Clause of the First Amendment of the United States of America; a preliminary injunction seeking to cover the mural during the pendency of the litigation, and a mandatory injunction requesting the Court order the school to remove the mural or alter it to remove the words "In God We Trust."

After filing of this suit, I denied a motion to dismiss. Defendants could not assert a basis to dismiss the case while being required to admit all the allegations in the Complaint. At the same time, Plaintiff filed a petition for a temporary restraining order to require the school to immediately cover the mural pending the outcome of the preliminary and mandatory injunctions. I denied the temporary

restraining order based upon a lack of evidence that demonstrated a strong likelihood of success on the

merits of the underlying claim when balanced against the burden that would be imposed upon the school. As a result, the parties participated in expedited discovery in advance of evidentiary hearing on the preliminary injunction. Defendants, at the close of the expedited fact discovery, filed a motion for summary judgment asserting that the case should be dismissed before preliminary injunction hearing.

Defendants assert that all of the evidence from discovery in advance of preliminary hearing demonstrated

no material question of fact concerning whether there was a violation of the Illinois and United States Constitutions, and sought dismissal of the entire suit as a result. Plaintiff filed a cross-motion for summary judgment requesting the Court enter the mandatory injunction on the basis of the same discovery and requesting judgment on Counts I and III of her Complaint, effectively requesting judgment in the case in her favor.

Discovery involved Defendants considerable document production from the entirety of the process for setting up and completing the project to repaint the mural over the gymnasium archway. This included all the materials for fundraising, the resolutions, petitions, and documents signed and prepared for the board decision. The production also includes all the documentation from the renovation, including the design information, contractor agreement, and invoices for the work.

The students that advocated for the mural are a mix of approximately 17 students that range in ages between 14 and 17. Of the 17 students, 14 of them are members of both student organizations. The

Principle of the School sponsors the “Students for Christ” and the “Student Republicans.” He did not vote in the faculty decision regarding the mural and did not advocate before the school board for the project, but did help prepare students for the presentation, something he referred to in his deposition as a collateral education experience.

The student president is not the same for both student organizations, but their deposition testimony does note that the idea originated in the “Student Republicans” who subsequently

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enlisted the assistance of the “Students for Christ.” Malcolm Warner, one of the three students not

jointly affiliated and the only “Student Republican” that is not a “Student for Christ” testified that he objected to the mural on free exercise grounds. He stated that, as the organizations Secretary, his vote was not decisive in the process to pursue the project.

Jordan Finn, the student Treasurer for the “Student Republicans” and member of the “Students for Christ” proposed the idea that was then adopted by a vote of the membership of the “Students for Christ.” The “Students Republicans” also adopted a similar resolution in support after the idea was raised in a meeting that post-dated the vote by the “Students for Christ.” Every student that was a member of both organizations agreed to support the resolution for renovation of the mural. Mr. Warner

is the only student between the two organizations that voted against the idea. Shortly after the “Student Republicans” set to work on advocating for the project, Mr. Warner left the organization and started the

“Student Libertarians.” That organization did not advocate against the mural renovation.

Plaintiff, for her part, testified that, upon entering the school for the first time the summer after the mural renovation was completed, she was mortified at the closed-minded nature of the presentation and how it clearly advocated to all entrants the specific notions of theism that she found distasteful as

an atheist. She stated specifically that she did not feel the mural was meant to be independent from the nature of the design as the T in “Trust” was notably cross shaped. Further, she testified that there were no other religious symbols and that the bobcat and American flags were minor features compared to the other elements in the mural, relegated to small portions of the arch at the bottom of the arch’s sides.

Graham Lindsey, the President of the “Student Republicans” during work on the mural, testified after graduating from the high school as the suit was filed when he was a senior and the mural was completed over the summer between his junior and senior years. He testified that the idea was proposed while he was a student member of the “Student Republicans” and a member of the “Students for Christ.” He also testified that he was not on the executive board when the original resolution passed but did vote in favor of the project when the resolution was brought for a vote in the “Students for

Christ.” He testified that the organization’s bylaws required a supermajority vote to endorse any action outside of the organization. He further testified that the same vote occurred within the “Students Republicans” and that the people who voted in favor of the resolution were unanimous between the two organizations. Further, he testified that many of the “Students for Christ” agreed that lobbying the idea would likely be more successful if more than one student organization supported the proposal. Since a strong majority of the “Student Republicans” were also members of “Students for Christ,” the

executive teams for each organization decided to use both organizations to advocate for the project.

Deposition testimony shows that a vast majority of the lobbying work for the project was carried out under the banner of the “Student Republicans” with effective rubbery stamping of actions by the “Students for Christ.” While the “Student Republicans” did the work to move resolutions through various committees and administrative bodies, the “Students for Christ” worked to develop the design of the mural.

Ultimately, the final design was presented to the principle who referred the final decision to the faculty board. A faculty vote resulted in 7 votes in favor of the mural and 6 votes against. Notably, the civics teacher, James Rudder, testified that he advocated against the mural in the faculty meeting based on the Christian-centric nature of the mural that he believed failed to accommodate the concerns of non-Christian students and faculty. When pressed on the point concerning the non-Christian faculty, Mr. Rudder testified that he was not aware of any other religious affiliation within the faculty, but he still felt that the school should be welcoming and not display favoritism toward one religion without considering others.

Karen Moore, a social studies and art teacher, testified at deposition that she supported the mural because the other mural was old, fading, and did not represent the school well to visitors. Further, she testified that she believed the use of the words “In God We Trust” had a historical

connotation and was not problematic from the perspective of religious endorsement because the phrase appears on currency and references to God are included in the Pledge of Allegiance.

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Document production included the mock drawings of the mural. Only one proposed design was presented to the faculty for vote and ultimately presented to the School Board for ratification. The image was generally as described above. The divisive aspect of the mural, aside from the language used, was the fact that the last T in “Trust” was notably shaped like a Christian Cross and extended below the text line for the remainder of the letters in the mural. Testimony from the students involved in the design indicate that this was a purposeful portion of the design, but that this was based upon the font chosen for the words in the mural. The extension of the T below the text line was consider a design consideration by the artist. The chosen artist was a professed Christian whose body of work was notably religiously oriented.

After the faculty vote, the proposal was forwarded to the school board. At a school board meeting in the spring of 2014, testimony from the parties indicates there was lively debate for, and against the mural. Ultimately, a vote was deferred to a following meeting due to equal support for and against the mural based upon the chosen language and only an even number of school board members present for the meeting. The following meeting in the fall of 2014 had a quorum and an odd number of potential board members to vote on the resolution. The proposal was presented without discussion and voted 5 in favor and 4 against. After the vote, discovery indicates that

the project was bid to the artist, the contracts for the installation of the mural were drafted and executed, the project funded, and, during the summer of 2015, the mural was installed in the school.

After the first day of school, Plaintiff filed this action seeking injunctive relief. As noted above,

this matter is now pending on summary judgment with all parties seeking final resolution of the lawsuit on the record before the Court. For the following reasons, I find there is no material question of fact

Concerning the mural at issue and find that it does not violate Article I, Section 3 of the Illinois

Constitution or the Establishment Clause of the First Amendment to the United States of America.

DISCUSSION

Plaintiff's legal challenge to the installation of the mural essentially amounts to a subsidy to a

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religious affiliation and an endorsement of the Christianity in the public school. The test for whether a government subsidy or funding of any action that benefits a religious affiliation was first announced by the United States Supreme Court in *Lemon v. Kurtzman*, 403 U.S. 602 (1972). The United States

Supreme Court stated that the test for determining whether a government act implicates the establishment clause requires there be a secular purpose, a primary effect that neither advances nor inhibits religion, and must not give rise to an excessive entanglement between government and religion. *See Ceerle v. Education Facilities Auth.*, 52 Ill. 2d 312, 318 (1972). In *Ceerle*, the Illinois Supreme Court determined that a government program to fund construction of an aviation education

facility at a private college did not violate the *Lemon* test. The primary issue was the “excessive entanglement” portion of the test. The Court determined that entanglement was not an issue as the statute prohibited the use of the State-funded structure for religious purposes. Since the school in the case would not benefit from violating the statute, the Court determined that there was no risk of entanglement.

Plaintiff argues in this case that the expenditure for the mural was, indirectly, an appropriation

of public funds for a religious purpose. However, in applying *Lemon*, it is not clear that the facts of this case support Plaintiff’s position. First, Plaintiff maintains that there is no secular purpose to the mural.

Plaintiff overlooks the history and the use of the phrase in presently government sanctioned ways. For example, “In God We Trust” is stamped on every piece of legal tender. Moreover, the emblazoning of

the American Flag on the mural further supports the patriotic nature of the display, clearly

demonstrating a sufficiently secular purpose.

Second, there is nothing in the record that suggests that the mural is specifically intended to advance a specific religious belief. The references to specific religion that can be gleaned from the mural are narrow. The phrase itself references a theistic perspective but does not specifically quantify “God.” Plaintiff argues that the reference to a god of any kind is averse to atheists whose religion is, effectively, the non-existence of any religion. This argument, though, is illogical in the face of the

general and popularized use of the word and the phrase. Plaintiff, herself, uttered the word “god” on more than one occasion in the record. This supports the Defendants’ position that the use of the word “god” on its own does not favor theism over atheism and, therefore, survives the second prong of the *Lemon* test.

Finally, Plaintiff alleges that the use of the phrase indoctrinates students as to religion,

regardless of the form that religion takes. In her mind, the fact that “God” is referenced in an educational institution is a sufficient basis to assert that there is a government endorsement of religion. Plaintiff also notes that there are clearly Christian themes, that the impetus for the mural came from a Christian student group, that the Principal of the school is a professed Christian, and that the mural caused considerable public debate on the School Board prior to the vote in its favor. The language, alone, though, is not offensive from a Constitutional perspective. This Country has a rich history using the phrase and the United States Supreme Court has noted the use of the phrase has historical reference that passes the requirements of the *Lemon* test. *See Elk Grove Unified School Dist. v. Newdow*, 542

U.S. 1, 29 (2004).

Since the mural passes the *Lemon* test, I must grant the Defendants’ motion. While it is not clear if the intention or the motivation behind the creation of the mural was meant to skirt Constitutional concerns, the record supports that there is no material question of fact in this case.

CONCLUSIO N

Based on the foregoing, I find in favor of the Defendants, and deny Plaintiff's request for an injunction, dismissing the case with prejudice as a result.

It is so Ordered.

Judge Ryan
Brown

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**IN THE ILLINOIS APPELLATE
COURT, SECOND DISTRICT**

Case No. 18-0112

)

ANGELA BLAINE, as next friend and guardian of)
SUSAN BLAINE, a minor,)

) Opinion and Order, July 25, 2017 Plaintiff/Appellant,)) v.)

) On appeal from the decision by Judge

BURLINGTON TOWNSHIP SCHOOL DISTRICT,) Ryan Brown of Sixteenth Judicial EAST
HILL VALLEY HIGH SCHOOL,) Circuit Court, Kane County JONATHAN ROBERTSON,
as principle of Hill) Valley High School, and JAMES DENITHOR,) as Superintendent of
Burlington Township School) District,) Case No. Below: 16 MIG-CH 55

) Defendant/Appellee.

))

**MEMORANDUM AND
ORDER**

Opinion by Justice Jonathan Hurt Joined by Justice
Margaret Ortega and Joseph Long

Plaintiff's case presents interesting questions for this Court's review regarding whether the

placement of a mural in a high school that states “In God We Trust” and seems to suggest some kind of

Christian oriented message violates Article I, Section 3, of the Illinois Constitution and the

Establishment Clause of the United States Constitution. What concerns the Court in this instance is the

subtext of the purpose of the mural and its origins. As a result, we reverse the Trial Court’s ruling and

remand for further discovery concerning the impetus for the changes to the mural. We adopt the

recitation of the facts below, and incorporate the same in our ruling. Also, as a prefatory note, the issues

presented on review are wholly legal in nature, meaning we review the decision of the Trial Court de novo.

DISCUSSION

In reviewing this matter, we are faced with two issues as outlined by the Trial Court. First, we

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must determine whether the reference to “god” in the mural is a sufficient basis for Plaintiff to succeed

on the record of the proceedings below. Second, we must determine whether the context of the mural

and its origins indicate the mural’s intention and result in its violation of the Establishment Clause.

I. Referencing “God” Alone Is Insufficient To Raise A Constitutional Question.

The Trial Court properly notes that the history of references to God are not, per se,

objectionable pursuant to the Establishment Clause. *See e.g. Elk Grove Unified School Dist. v.*

Newdow, 542 U.S. 1 (2004). Indeed, the historical nature of the use of the phrase is telling. The Trial Court also noted Plaintiff's use of the term "god" colloquially in her deposition. This indicates that, as a matter of social acceptance, the term "god" can have multifaceted meanings, even for an espoused atheist. Plaintiff's claim on this point fails the *Lemon* test because there is nothing that can be construed from the use of the phrase "In God We Trust" that is meant to indoctrinate those who see it. *Newdow* is a good example of the history of the phrase. It has appeared on US Currency in some way since the Civil War. The singular nature of the word "god" also does not connote something specific nor does it demand someone believe in a theistic view of spirituality. The general nature and history of the language is sufficient here. It is not as though the school is commanding action to participate in a religious practice, which clearly violates the Establishment Clause. *See Abington School Dist. v. Schempp*, 374 U.S. 203 (1963).

Since the situation is clearly distinct from an edict that students worship a certain way or participate in religious practices, the use of the phrase "In God We Trust" denotes a history in this Country as well as an innocuous level of religious reference that it does not offend the Establishment Clause. Of more concern, though, is the sole representation of religion beyond the disputed phrase being Christian in

nature.

II. The Sole Representation Of One Religion Over Any Other Is A Sufficient Basis To Enjoin The Defendants From Continuing To Display The Mural At Issue.

As it relates to the mural in its totality, the fact that only a Christian symbol is incorporated raises Constitutional concerns. While the United States Supreme Court has long held that the objective use of religious texts could be used for the purpose of education, the context in which the religious information was used dictated whether the official conduct was Constitutionally offensive. *See Lynch v.*

Donnelly, 465 U.S. 668 (1984). Context matters.

Ultimately, this all matters because the School contributed State funds to the mural and the mural hangs, ever present, in a main area of the school, visible to almost all visitors. As a result, the Mural represents, to some degree, the school and how the school wishes to be portrayed. The notion, then, that the last T in the word “trust” bears a resemblance to the Christian Cross cannot be taken lightly. Rather, the inquiry turns on what the intent of the communication was in designing and presenting the mural. If we find that the point of the inclusion of the Cross was meant to specifically evoke Christianity, then the mural violates Article I, Section 3 of the Illinois Constitution. On the facts presented by the record, it does.

The State can fund projects for religious institutions if there are safeguards in place to clearly delineate the public nature of a structure or program versus a religious affiliation. *See Ceerle v.*

Educational Facilities Auth., 52 Ill. 2d 312 (1972). Further, the State can fund transportation for students at non-public schools so long as the intent is to promote education generally and not favor a religious practice of religious sect for some special benefit. *Board of Education v. Bakalis*, 54 Ill. 2d

448
(1973).

Of particular concern in this case are the facts that show only the Christian viewpoint was considered in the creation of the mural. It was proposed by Christian students, designed by a Christian artist, supported by a Christian faculty member, and ultimately only displays the symbol for Christianity. As a result, this appears to be an endorsement, which fails the last prong of the *Lemon* test.

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Therefore, we reverse the Trial Court's decision and remand for further discovery on this issue to better

ascertain the specific motivation of the parties involved in designing the mural so that a more accurate decision can be made at trial on the merits.

CONCLUSIO N

While facially innocuous, "In God We Trust" imbued with only one representative religious

icon outside the context of any holiday raises Constitutional problems. As a result, this Court reverses the Trial Court and remands for further proceedings and trial.

It is so ordered. SS// Jonathan Hurt SS// Margaret Ortega SS//
Joseph Long

Case No.: 19-MIG-012

) BURLINGTON TOWNSHIP SCHOOL
DISTRICT,) EAST HILL VALLEY HIGH
SCHOOL,) JONATHAN ROBERTSON, as
principle of Hill) Valley High School, and JAMES
DENITHOR,) as Superintendent of Burlington
Township School) District,)) Petitioner.)) v.))
ANGELA BLAINE, as next friend and guardian of)
SUSAN BLAINE, a minor,)) Respondent,))

**ORDER GRANTING PETITION FOR LEAVE TO
APPEAL**

The Supreme Court of the Model Illinois Government hereby grants the petition for leave to appeal brought by the People of the State of Illinois from the decision of the Court of Appeals of Illinois, First District. The Supreme Court certifies the following two issues for argument, rejecting all other issues submitted for appeal:

1. Whether the use of the words “In God We Trust” alone violates Article I, Section 3 of the Illinois Constitution as an endorsement of religion.
2. Whether, the relative display of apparent Christian symbols along with patriotic displays violates Article I, Section 3 of the Illinois Constitution as an endorsement of religion.

AUTHORITY

Constitutional Provisions:

United States Constitution

Amendment 1 - Freedom of Religion, Press, Expression

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Illinois Constitution:

ARTICLE I, SECTION 3. RELIGIOUS FREEDOM

The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed, and no person shall be denied any civil or political right, privilege or capacity, on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State. No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship.

Decision(s) of the United States Supreme Court

Abington School Dist. v. Schempp, 374 U.S. 203 (1963)
Lynch v. Donnelly, 465 U.S. 668 (1984) *Elk Grove Unified
School Dist. v. Newdow*, 542 U.S. 1 (2004)

Decision(s) of Illinois Courts:

Cecrle v. Illinois Educational Facilities Authority, 52 Ill. 2d 312 (1972)
Board of Education v. Bakalis, 54 Ill. 2d 448 (1973) *Heckmann v.
Cemeteries Association*, 127 Ill. App. 3d 451 (1st Dist. 1984) *Toney v.
Bower*, 744 N.E.2d 351 (4th Dist. 2001)

