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16 **UNITED STATES DISTRICT COURT**  
17 **EASTERN DISTRICT OF CALIFORNIA**

18 REV. DR. MICHAEL A. NEWDOW,  
Plaintiff,

CASE NO. 2:05-CV-2339-FCD-PAN

19 v.

20 THE CONGRESS OF THE UNITED  
21 STATES OF AMERICA, et al.,  
Defendants, and

**BRIEF OF THE THOMAS MORE LAW  
CENTER, AMICUS CURIAE, IN  
SUPPORT OF THE DISMISSAL OF  
THIS ACTION**

22  
23 PACIFIC JUSTICE INSTITUTE,  
Intervenor-Defendant.  
24  
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1 The Thomas More Law Center, amicus curiae, submits this brief in support of the  
 2 dismissal of this action. The parties have consented to the filing of this brief, as noted in the  
 3 Law Center's unopposed motion for leave to file this brief.

4  
 5 **I.**  
**INTRODUCTION**

6 Plaintiff Michael Newdow has filed this action to have the national motto, "In God We  
 7 Trust," declared unconstitutional. (Doc. 1.) The amicus curiae points out that Newdow has not  
 8 acknowledged in his 162-page complaint that the United States Court of Appeals for the Ninth  
 9 Circuit, the governing court in this jurisdiction, has already ruled that the national motto is  
 10 constitutional. *Aronow v. United States*, 432 F.2d 242, 243 (9<sup>th</sup> Cir. 1970) ("It is quite obvious  
 11 that the national motto and the slogan on coinage and currency "In God We Trust" has nothing  
 12 whatsoever to do with the establishment of religion. Its use is of a patriotic or ceremonial  
 13 character and bears no true resemblance to a governmental sponsorship of a religious  
 14 exercise.")<sup>1/</sup> For that reason alone, Newdow's claim should be dismissed.

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21 <sup>1/</sup> The Ninth Circuit is not alone in this conclusion. To date, all other circuit courts that  
 22 have considered the question have ruled the national motto constitutional. *Gaylor v. United*  
 23 *States*, 74 F.3d 214 (10<sup>th</sup> Cir. 1996); *North Carolina Civil Liberties Union Legal Found. v.*  
*Constangy*, 947 F.2d 1145, 1151 (4<sup>th</sup> Cir. 1991); *O'Hair v. Murray*, 588 F.2d 1144 (5<sup>th</sup> Cir.  
 1979); *see also Schmidt v. Cline*, 127 F. Supp. 2d 1169, 1177-80 (D. Kan. 2000).

24 And, the Supreme Court has so indicated, albeit in dicta. *E.g.*, *County of Allegheny v.*  
 25 *ACLU*, 492 U.S. 573, 602-03 (1989) ("[O]ur previous opinions have considered in dicta the  
 national motto . . . , characterizing [it] as consistent with the proposition that government may  
 not communicate an endorsement of religious beliefs.").

**II.**  
**SUMMARY OF THE ARGUMENT**

The phrase “In God We Trust” does not have the constitutionally impermissible effect of establishing a religion. Rather, it acknowledges our nation’s rich religious heritage, that is, the undeniably religious belief regarding God-given freedom, which informed the founding of our independent nation and the establishment of our limited form of government.

Moreover, the phrase provides an ongoing acknowledgment of our unifying religious heritage, serves a beneficial secular purpose, and is completely compatible with the Establishment Clause.

**III.**  
**ARGUMENT**

**A.**  
**OUR HISTORIC RELIGIOUS HERITAGE  
OF GOD-GIVEN FREEDOM**

This nation and its form of government were founded upon an essential idea: individuals have God-given rights that the government may neither bestow nor deny.<sup>2/</sup> That idea is crystallized in the most famous passage of the Declaration of Independence—the document that marked us as a separate people: “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,

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<sup>2/</sup> [Our Founders] believed that man was created in God’s image and likeness, as stated in Genesis 1:26-27. This is extraordinarily significant. The concept that man was created in the image and likeness of God means that man has intrinsic worth and dignity. As such, man is endowed with inalienable rights that no men can rightfully take away; he is entitled to freedom. So the Biblical affirmation of man’s inherent worth is fundamental, indeed indispensable, to political liberty. David Limbaugh, *Persecution: How Liberals Are Waging War Against Christianity* 316 (2003). This concept was well known to our Founders through the works of John Locke, who wrote that all men are “equal and independent” because they are “all the workmanship of one omnipotent and infinitely wise maker. . . .” John Locke, *Two Treatises of Government*, Part II, Sec. 6 (1690).

1 that among these are Life, Liberty and the pursuit of Happiness.” The Declaration of  
2 Independence para. 2 (U.S. 1776).

3 Unlike the citizens of most other nations, Americans are not a people because we simply  
4 share a common tract of land or a language or a bloodline. Rather, we are a people because we  
5 subscribe to a central, unifying idea, a principle, a creed—our God-given rights, including, most  
6 essentially, our liberty. Therefore, patriotic Americans have a dual loyalty: both to their  
7 country and to the ideas it embodies. *See, e.g.,* John Parker, *A Nation Apart: A Survey of*  
8 *America*, The Economist, Nov. 8-14, 2003, at center section 14. The idea of God-given  
9 freedom is our heritage, historic and yes, religious. Public recognition of that heritage should  
10 never be prevented. It should be reinforced among the citizenry at every opportunity. The  
11 phrase “In God We Trust” serves to remind us, as citizens, of our own gift of freedom, as well  
12 as the foundation of our nation and of our government in that God-given freedom. *Gaylor v.*  
13 *United States*, 74 F.3d 214, 216 (10<sup>th</sup> Cir. 1996) (explaining that the national motto, “In God We  
14 Trust,” “symbolizes the historical role of religion in our society, formalizes our medium of  
15 exchange, fosters patriotism, and expresses confidence in the future”) (citations omitted).  
16

17 **B.**  
18 **THE IRRATIONALITY OF ERADICATING THE PUBLIC**  
19 **ACKNOWLEDGEMENT OF GOD AND RELIGION**

20 The movement to halt the public acknowledgement of God is irrational because it  
21 attacks mere acknowledgements of our religious heritage, which plainly do not rise to the level  
22 of an establishment of religion.

23 The Establishment Clause must be interpreted “with what history reveals was the  
24 contemporaneous understanding of its guarantees.” *Lynch v. Donnelly*, 465 U.S. 668, 673  
25

(1984). As the United States Court of Appeals for the Seventh Circuit observed in *Sherman v. Community Consol. Sch. Dist.*, 980 F.2d 437, 445 (7<sup>th</sup> Cir. 1992) (citations omitted),

You can't understand a phrase such as "Congress shall make no law respecting an establishment of religion" by syllogistic reasoning. Words take their meaning from social as well as textual contexts, which is why "a page of history is worth a volume of logic." Unless we are to treat the founders of the United States as unable to understand their handiwork (or worse, hypocrites about it), we must ask whether those present at the creation deemed ceremonial invocations of God as "establishment." They did not.

Our Founders believed in and acknowledged the impact of Divine Providence on men and nations. They relied on that belief in founding this nation and its form of government. Indisputably, as the following examples show, they frequently acknowledged that belief in the course of their civic life:

- In an address to the Continental Army in 1776, General Washington stated that "[t]he fate of unborn millions will now depend, under God, on the courage of this army."<sup>3/</sup>
- Beginning in 1774, the Continental Congress adopted the procedure of opening its sessions with a prayer offered by a paid chaplain.<sup>4/</sup>
- In his preamble to Virginia's Act for Establishing Religious Freedom, Thomas Jefferson invoked the support of "Almighty God," "Lord both of body and mind."<sup>5/</sup>
- In 1798, John Adams said, "We have no government armed with power capable of contending with human passions unbridled by morality and religion. . . . Our Constitution was made only for a moral and religious people. It is wholly inadequate for the government of any other."<sup>6/</sup>

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<sup>3/</sup> 3 Jared Sparks, ed., *The Writings of George Washington* 449 (1837).

<sup>4/</sup> *Marsh v. Chambers*, 463 U.S. 783, 787 (1983).

<sup>5/</sup> *Sherman*, 980 F.2d at 446 n.5.

<sup>6/</sup> 9 Charles F. Adams, ed., *The Works of John Adams, The Second President of the United States* 401 (1854).

Moreover, the Founders' practice of public invocations of God and religion has continued throughout the 200-plus year history of our nation. As Chief Justice Warren Burger stated in *Lynch*, 465 U.S. at 674-75:

There is an unbroken history of official acknowledgement by all three branches of government of the role of religion in American life from at least 1789. . . . Our history is replete with official references to the value and invocation of Divine guidance in deliberations and pronouncements of the Founding Fathers and contemporary leaders.

Chief Justice Burger went on to list many examples of official references to Divine guidance, including National Days of Prayer, Presidential and Congressional proclamations of Christmas and Thanksgiving, paid National Holidays, compensation for military and Congressional Chaplains, and our national motto, "In God We Trust." *Id.* at 676.

Indeed, the use of the phrase "In God We Trust" is long-standing in this country, and the federal government has used the phrase extensively for decades. For instance, in 1865, Congress first authorized the National Mint to include the phrase "In God We Trust" on our coinage, and in 1908, Congress made the inclusion of the phrase mandatory on gold and silver coins. In 1955, the phrase was placed on our currency, and one year later, in 1956, the phrase became our national motto. The phrase appears above the Speaker's Chair in the United States House of Representatives and above the main door of the United States Senate Chamber.<sup>7/</sup> *Lambeth v. Board of Commissions of Davidson County*, 407 F.3d 266, 270-71 (4<sup>th</sup> Cir. 2005).

Certainly the phrase "In God We Trust" has religious connotations as it acknowledges the existence of a Supreme Being. Yet, in light of the purpose of that phrase—that is, nurturing a remembrance of and respect for our heritage of God-given freedom—its reference to God also

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<sup>7/</sup> "In God We Trust" also appears on the Great Seal of the State of Florida, Fla. Stat. § 15.03, and on the flag of the State of Georgia, Ga. Code Ann. § 50-3-1.

has an appropriate, patriotic purpose. *Gaylor*, 74 F.3d at 216; *Aronow*, 432 F.2d at 243. The phrase “In God We Trust” poses no danger of establishing a state religion.

**C.**  
**THE DANGER OF DIVORCING**  
**ALL PUBLIC REFERENCE TO GOD AND RELIGION**

The movement to divorce all public reference to God, including our historic religious heritage, is dangerous because it has the effect of undermining our nation’s unifying principle, our belief in our God-given freedom.

A failure to publicly acknowledge God and the role of religion in our nation completely ignores what the majority of Americans have always believed. Almost 200 years ago, Alexis de Toqueville, that great observer of America and its people, commented in his two-part work, *Democracy in America*:

Religion in America . . . must be regarded as the foremost of the political institutions of that country; for if it does not impart a taste for freedom, it facilitates the use of it. . . . I do not know whether all Americans have a sincere faith in their religion—for who can search the human heart?—But I am certain that they hold it to be indispensable to the maintenance of republican institutions.

1 Alexis de Toqueville, *Democracy in America* 316 (1955).

That belief in the indispensability of faith and God to the success of our form of government continues to this day. Over eighty percent of Americans say they believe in God. See John Parker, *A Nation Apart: A Survey of America*, *The Economist*, Nov. 8-14, 2003, at center section 12.

And, as demonstrated by the very furor with which the public received the Ninth Circuit’s previous attempt to remove the phrase “under God” from the Pledge of Allegiance, Americans still want to publicly acknowledge God’s influence on our nation. *Newdow v.*

1 *Congress*, 328 F.3d 466, 471-72 (9<sup>th</sup> Cir. 2003) (O’Scannlain, J., dissenting), *rev’d*, 542 U.S. 1  
2 (2004).

3 In fact, the Supreme Court has recognized the religious nature of the American citizenry  
4 and the impact of their beliefs on our government: “We are a religious people whose  
5 institutions presuppose a Supreme Being.” *Zorach v. Clauson*, 343 U.S. 306, 313 (1952).

6 Failing to continue that recognition and respect for the impact of religious belief on our  
7 government will have consequences far beyond simple neutrality (or even hostility) toward  
8 religion. Rather, it will effectively impose an official atheism on an essentially religious people.  
9 *See Newdow*, 328 F.3d at 481-82 (O’Scannlain, J., dissenting) (explaining that the absolute  
10 prohibition of any mention of God in public necessarily leads to atheism becoming the default  
11 religion protected by the Establishment Clause).

12 The amicus curiae submits that it is not a coincidence that the societies that have  
13 officially eschewed God and embraced atheism (for example, the Soviet Union and its Eastern  
14 European satellite nations, the People’s Republic of China, North Korea, and Cuba) have been  
15 among the most totalitarian and oppressive in the modern history of the world. Absent the  
16 protective effect of a belief in God-given freedom that is above and beyond governments, the  
17 dictators of those nations were able to rob their people of their liberty.

18 Our inspired Founding Fathers were brilliant but humble men. They knew that our  
19 fledgling nation could not hope to defeat the most powerful nation on Earth without God’s  
20 guidance and protection. Their synergistic religious belief and patriotic fervor gave birth to a  
21 great new nation. In the more than two centuries that followed, the “unborn millions” of whom  
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1 George Washington spoke<sup>8</sup>/ have since lived as free men and women—in glorious testament to  
 2 the wisdom and righteousness of the ideal of a nation in which we trust in God.

3 As Thomas Jefferson said in 1781, “God who gave us life gave us liberty. And can the  
 4 liberties of a nation be thought secure when we have removed their only firm basis, a conviction  
 5 in the minds of the people that these liberties are the gift of God?” Thomas Jefferson, *Notes on*  
 6 *the State of Virginia*, Query XVIII (1781). Undoubtedly, if we are to maintain our freedom and  
 7 our unity, the conviction to which Thomas Jefferson referred must be continually reasserted and  
 8 reaffirmed in the minds of the American citizenry. Our national motto is one method by which  
 9 we accomplish this noble purpose.  
 10

11 **D.**  
 12 **THE NATIONAL MOTTO DOES NOT**  
 13 **COERCE RELIGIOUS BELIEF OR PRACTICE**

14 Finally, it is critical to remember that no one—including plaintiff Newdow—is forced to  
 15 recite, hear, display, or view the national motto, notwithstanding the fact that the vast majority  
 16 of Americans would be happy to do so.

17 The truth of our God-given freedom continues to be self-evident, and we, as a people,  
 18 should not separate ourselves from the principle that unites us, a principle summed up in our  
 19 national motto, “In God We Trust.”  
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<sup>8</sup>/ See p. 5 & n.3, *supra*.

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**IV.**  
**CONCLUSION**

This Court should dismiss this action and not declare the national motto unconstitutional.

Dated: March 29, 2006

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certified that a true and correct copy of the foregoing was caused to be served on the following on March 29, 2006, by this court's electronic case filing system and by United States Mail, first-class postage prepaid:

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