

Brad W. Dacus, State Bar No. 159690  
Kevin T. Snider, State Bar No. 170988  
*Counsel of Record*  
Matthew B. McReynolds, 234797  
PACIFIC JUSTICE INSTITUTE  
Post Office Box 276600  
Sacramento, CA 95827  
Tel. (916) 857-6900  
Fax: (916) 857-6902  
Email: [kevinsnider@pacificjustice.org](mailto:kevinsnider@pacificjustice.org)

Attorneys for Intervenor/Defendant

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

**THE REV. DR. MICHAEL A.  
NEWDOW, IN PRO PER,**

**Plaintiff,**

**v.**

**THE CONGRESS OF THE UNITED  
STATES OF AMERICA, et al.,**

**Defendants,**

**AND**

**PACIFIC JUSTICE INSTITUTE,  
Proposed Intervenor/Defendant.**

Case No. 2:05-cv-02339-FCD-PAN

**PACIFIC JUSTICE INSTITUTE'S  
MEMORANDUM OF LAW IN  
REPLY TO PLAINTIFF'S  
OPPOSITION TO MOTION TO  
DISMISS PURSUANT TO FRCP  
12(b)(6)**

Date: May 19, 2006  
Time: 10:00 a.m.  
Judge: Hon. Frank C. Damrell, Jr.  
Courtroom: 2

## INTRODUCTION

Dr. Newdow wishes to eradicate the national motto by excoriating this nation's history. However, in order to use the courts as a means to deconstruct society, the Plaintiff goes to lengths to first deconstruct the English language. He does this by redefining words such as "religion" and "sect" with the goal of expunging any scintilla of religion from government. This Court should not entertain Plaintiff's attempts to build a new legal theory by dismantling the meanings of words. To accommodate Dr. Newdow would result in eroding the foundations of law itself. "[T]he concept of 'law' ordinarily signifies that particular words have a fixed meaning." *Roper v. Simmons*, 543 U.S. 551, 629, 125 S.Ct. 1183 (2005) (Scalia, dissenting). Thus, the arguments in Plaintiff's Opposition should be deemed as lacking merit.

## SUMMARY OF THE ARGUMENT

In order to prevent unnecessarily burdening the Court with a lengthy reply, Intervenor/Defendant, Pacific Justice Institute ("PJI"), will succinctly and narrowly focus on Plaintiff's arguments in response to PJI's motion to dismiss. For the Court's convenience, a summary of PJI's arguments in the motion to dismiss are provided as follows: (1) the three pronged test of *Lemon v. Kurtzman*, 403 U.S. 602, 91 S.Ct. 2105 (1971), is not applicable to the law and facts in this

1 controversy;<sup>1</sup> (2), “In God We Trust” is not, on its face, sectarian; and, (3)  
 2 historically based solemnizing or ceremonial conduct is not sectarian.  
 3

## 4 ARGUMENT

### 5 I. Plaintiff’s redefinition of “sectarian” has no legal basis.

6 In an attempt to present a viable legal theory for his case, the Plaintiff has  
 7 redefined key terms. This is not a matter of mere semantics. It cuts to the heart of  
 8 whether Dr. Newdow can state a cause of action upon which relief can be granted.  
 9

10 Thus, in his Complaint, Dr. Newdow states that “sectarianism... – in  
 11 constitutional terms – refers not only to beliefs held by any one religious sect, but to  
 12 all religious beliefs that are not universal. (“IN GOD WE TRUST,”  
 13 CONSTITUTIONALLY, IS SECTARIAN, Complaint, ¶ 285). In contrast, the  
 14 dictionary definition of “sectarian” is “adhering or confined to the dogmatic limits of  
 15 a sect or denomination; partisan; of, relating to, or characteristic of a sect”<sup>2</sup> (PJI  
 16 Memorandum of Law in Support of Motion to Dismiss, pg. 6, lines 1-3).  
 17  
 18  
 19  
 20

---

21  
 22 <sup>1</sup> Plaintiff asserts that the national motto will “[f]ail [e]very Establishment Clause  
 23 [t]est.” Plaintiff’s Response to Federal Defendant’s Motion to Dismiss, pp. 60-62.  
 24 Since Plaintiff does not directly address PJI’s discussion relative to the  
 25 inapplicability of *Lemon* to the facts and law of this case, PJI will not burden the  
 26 Court with additional discussion on this point.

27 <sup>2</sup> Dictionary.com © (<http://dictionary.reference.com/search?q=sectarian>).  
 28 Accessed March 29, 2006.

1           Apparently in response to PJI's pointing out that "sectarian" has a specific  
2 meaning, and that it is further impossible to find any view on any subject which is  
3 "universal", as Plaintiff has proposed, Dr. Newdow has abandoned the language  
4 found in his Complaint and is now presenting a new definition of "sect." Namely,  
5 "[t]he constitutional definition of a sect must be any group of individuals united by  
6 any common religious belief." Plaintiff's Response to Federal Defendant's Motion  
7 to Dismiss, pg. 52, lines 19-20. It is important to note that Dr. Newdow provides no  
8 citation to authority for this definition. Perhaps that is why he refers to it as the  
9 "constitutional definition." *Id.*

13           The Plaintiff is doing this with the hope that this Court will view  
14 "monotheism" as a sectarian belief. If the Court were to accept this position, the  
15 Establishment Clause line of cases which speak to the prohibitions on the  
16 government taking sides in sectarian disputes would apply. "The clearest command  
17 of the Establishment Clause is that one religious denomination cannot be preferred  
18 over another." *Larson v. Valente*, 456 U.S. 228, 244, 102 S.Ct. 1673 (1982). (*See*  
19 *also, West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642, 63 S.Ct. 1178  
20 (1943); *Watson v. Jones*, 80 U.S. 679, 728 (1871)). But as PJI has pointed out in its  
21 motion, monotheism and the generalized view in the existence of God is so  
22 expansive that it falls outside of this line of cases. In the simplest of terms,  
23 Plaintiff's bald assertion that the nation's motto is sectarian does not make it so.

Dr. Newdow protests that “Christianity is surely a ‘sect’ under PJI’s definition.” Plaintiff’s Response to Federal Defendant’s Motion to Dismiss, pg. 52, lines 21-22. To the contrary, on its face, it is self-evident that Christianity is a religion rather than a sect. Second, unlike the fictional definitions that Dr. Newdow is offering to the Court, the definition that PJI relies on has not been manufactured for purposes of this litigation. It is the definition found in the dictionary. Dictionary.com © (<http://dictionary.reference.com/search?q=sectarian>), accessed March 29, 2006. That is not to say that a legislative or administrative body cannot define this term for purposes of a law or regulation. For example, the U.S. Department of Commerce has defined “sectarian” for purposes of a specific regulatory scheme relative to qualifications for funding. (*See*, 15 C.F.R. § 2301.1). However, unless Plaintiff can point to authority for the meanings of key terms that are at the heart of this litigation, it is the ordinary usages that govern.

**II. Use of “In God We Trust” poses no Establishment Clause violation when used for solemnization and ceremony because of its historical basis.**

Dr. Newdow gratuitously raises examples of evil and otherwise unseemly practices in this nation’s history. For example, he discusses slavery (Plaintiff’s Response to Federal Defendant’s Motion to Dismiss, pp. 46, 53), the conquest of Native Americans and the taking of their land (*Id.*, 19, 66), segregation (*Id.*, 20, 32, 35, 37) and the subjugation of women (*Id.*, 46, 53). His position is that an historical

1 basis for the national motto is inappropriate because, by so doing, it would open the  
2 door to have mottos which attack suspect classes. Coupled with this, it is not  
3 surprising that Dr. Newdow asserts that atheists are a repressed minority in need of  
4 this Court's protection. Of course, it is self-evident that the immutable  
5 characteristics of race and gender are much different than that class of persons who  
6 are atheists.  
7

8  
9 But as to the more important issue of why the government could not adopt a  
10 racist national motto based on past history, it should be observed that this country  
11 was not founded on the despicable conduct perpetrated against the politically  
12 powerless. Slavery and segregation is an historic reality but it is clearly not a  
13 founding ideal. Our forbearers were, like most of us, flawed people whose behavior  
14 often did not measure up to our best principles. In contrast, "In God We Trust" is a  
15 reflection of a fundamental tenet.  
16  
17

18  
19 The Declaration of Independence explains the nation's core precepts when it  
20 states: "We hold these truths to be self-evident, that all men are created equal, that  
21 they are endowed by their Creator with certain unalienable Rights, that among these  
22 are Life, Liberty and the pursuit of Happiness." It should be noted that the document  
23 sees people as "*created* equal" (emphasis added). The nation was established upon a  
24 founding notion that equality is not something given by human discretion (i.e., the  
25 government) but by Divine choice. Likewise, the other rights listed ("Life, Liberty  
26  
27  
28

1 and the pursuit of Happiness”) are also based upon a God-given gift, i.e., they have  
2 been “endowed.”

3  
4 That was the political philosophy of the time. Indeed, it was an idea which  
5 was not original with the Founding Fathers, having come from writings of political  
6 philosophers such as John Locke’s Second Treatise on Government, e.g., “Jefferson  
7 copied Locke.” *ACLU of Kentucky v. McCreary County*, 354 F.3d. 438, footnote 7  
8 (6<sup>th</sup> Cir. 2003) (citing Carl Becker, *The Declaration of Independence: A Study in the*  
9 *History of Ideas* 79 (1922), David McCullough, *John Adams* 121 (2001). Moreover,  
10 other philosophers had an influence on the Founding Fathers, such as, Henry St. John  
11 Bolingbroke, David Hume, and Francis Hutcheson. *Id.*

12  
13 For purposes of this litigation, the truth of whether human rights are ultimately  
14 given by God is not important. What is crucial to this case is that this was a  
15 presupposition of those who started this country. As such, it is entirely appropriate  
16 that Congress recognized this when it chose “In God We Trust” as the national  
17 motto. The solemnizing or ceremonial use of the inscription (“In God We Trust”) on  
18 currency reflects the historical reality that there was a theological basis for having  
19 certain unalienable rights.

20  
21 Because “In God We Trust” reflects a core historical ideal upon which this  
22 country was founded, there is no violation of the Establishment Clause when it is  
23 used for ceremonial or solemnizing purposes. This is markedly different from

1 Plaintiff's hypothetical examples of a motto based on egregious activities (e.g., Jim  
2 Crow laws) taken from our history. Simply put, conditions such as slavery and  
3 segregation demonstrate a failure of not living in accordance to founding ideals. In  
4 contrast, the national motto is a reflection of an original precept.  
5

6  
7 It may well be argued that the national motto provides an ethereal benefit to  
8 those who are religious and, among that large category, those who embrace a  
9 monotheistic theology. However, "not every law that confers an 'indirect,' 'remote,'  
10 or 'incidental' benefit upon [religion] is, for that reason alone, constitutionally  
11 invalid." *Committee for Public Education & Religious Liberty v. Nyquist*, 413 U.S.  
12 756, 760, 771, S. Ct. 2955 (1973). As such, even allowing for a minimal boon that  
13 religion or people of faith receive from the inscription on coins, that benefit is not so  
14 great as to constitute a violation of the Establishment Clause.  
15  
16

17  
18 **III. Use of "In God We Trust" with other foundational documents**  
19 **demonstrates no Establishment Clause violation.**  
20

21 Dr. Newdow has brought to the Court's attention that coins are engraved with  
22 "Liberty" and "*E Pluribus Unum*" in addition to "In God We Trust." Plaintiff's  
23 Response to Federal Defendant's Motion to Dismiss, pg. 68, lines 6-10. "Liberty"  
24 and "*E Pluribus Unum*" are, of course, secular terms. The inclusion of these secular  
25 phrases on coins can be analogized to Christmas displays by a local government.  
26  
27  
28



1 When there is a mixture of religious and secular items in a holiday display, there is  
2 generally no Establishment Clause violation. *Lynch v. Donnelly*, 465 U.S. 668, 104  
3 S.Ct. 1355 (1984). In sum, the Supreme Court has determined that the secular items  
4 allowed the displays to survive Establishment Clause scrutiny because of the overall  
5 context. *Id.*, 690-694. In the same manner, the national motto engraved on coins  
6 does not violate the Establishment Clause because “In God We Trust” must not be  
7 viewed in isolation but in its context with other terms which reflect foundational  
8 tenets, i.e., “Liberty” and “*E Pluribus Unum*” (out of one many).  
9  
10  
11

## 12 CONCLUSION

13 For the foregoing reasons PJI requests that the Complaint be dismissed with  
14 prejudice for failure to state a cause of action upon which relief can be provided. As  
15 a matter of law, there are no set of facts that Plaintiff can allege which demonstrate  
16 that the nation’s motto violates the Establishment Clause.  
17  
18  
19

20 Date: April 27, 2006.

PACIFIC JUSTICE INSTITUTE

21  
22 By: /s/ Kevin T. Snider  
23 Kevin T. Snider  
24 Attorney for Intervenor/Defendant  
25  
26  
27  
28