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10 UNITED STATES DISTRICT COURT  
11 EASTERN DISTRICT OF CALIFORNIA  
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14 THE REV. DR. MICHAEL A.  
15 NEWDOW, IN PRO PER,

16 Plaintiff,

NO. CIV. S-05-2339 FCD PAN

17 v.

18 THE CONGRESS OF THE UNITED  
19 STATES OF AMERICA, et al.,

20 Defendants.  
21 \_\_\_\_\_/

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23 This matter is before the court on defendants' motions to  
24 dismiss.<sup>1</sup> Plaintiff, the Rev. Dr. Michael A. Newdow, opposes the  
25 motions. For the reasons set forth below,<sup>2</sup> defendants' motions  
26 to dismiss are GRANTED.

27 \_\_\_\_\_  
28 <sup>1</sup> Federal government defendants and defendant Pacific  
Justice Institute ("PJI") filed separate motions to dismiss.

<sup>2</sup> Because oral argument will not be of material  
assistance, the court orders this matter submitted on the briefs.  
See E.D. Cal. L.R. 78-230(h).

# BACKGROUND

On November 18, 2005, plaintiff filed a complaint in this court, seeking declaratory and injunctive relief regarding the use of the phrase "In God We Trust" as the national motto and its inscription on United States coins and currency. (Compl., filed Nov. 18, 2005). The complaint names as defendants the Congress of the United States of America, Peter Lefevre as Law Revision Counsel, the United States of America, John William Snow as Secretary of the Treasury, Henrietta Holsman Fore as Director of the United States Mint, and Thomas A. Ferguson as Director of the Bureau of Engraving and Printing. (1<sup>st</sup> Am. Compl. ("FAC"), filed May 10, 2006, ¶¶ 8-13). On January 29, 2005, the court granted Pacific Justice Institute's ("PJI") motion to intervene as a defendant in the action. In this litigation, plaintiff seeks to scrub out the reference to "God" in the motto of the nation.

Plaintiff Michael A. Newdow "is an ordained minister and the founder of the Atheistic church, the First Amendmism Church of True Science ("FACTS")." (Id. ¶ 7). Plaintiff "is an Atheist whose religious beliefs are specifically and explicitly based on the idea that there is no god." (Id. ¶ 157). His church, FACTS, "holds as a fundamental truth that there is no god or supernatural being." (Id. ¶ 161). Plaintiff alleges that "he finds it deeply offensive to have his government and its agents advocating for a religious view he specifically decries." (Id. ¶ 157). In particular, plaintiff takes issue with the legislation set forth in 36 U.S.C. § 302,<sup>3</sup> which provides that "In God We

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<sup>3</sup> This legislation was enacted in 1956, and is referred to by plaintiff as the "Act of 1956." (FAC ¶ 138).

Trust" is the national motto, and in 31 U.S.C. §§ 5112 and 5114,<sup>4</sup> which provide that United States coins and currency shall have the inscription "In God We Trust." (*Id.* ¶¶ 177, 179).

Plaintiff asserts that, as a result, defendants have violated his rights under the Establishment Clause, the Free Exercise Clause, the Religious Freedom Restoration Act ("RFRA"), the Equal Protection Clause, and the Free Speech Clause.<sup>5</sup>

Defendants move to dismiss plaintiff's claims on the grounds of (1) lack of standing; (2) immunity; and (3) failure to state a claim upon which relief can be granted.

#### STANDARD

A complaint will not be dismissed under Fed. R. Civ. P. 12(b)(6) "unless it appears beyond doubt that plaintiff can prove no set of facts in support of his [or her] claim that would entitle him [or her] to relief." *Yamaguchi v. Dep't of the Air Force*, 109 F.3d 1475, 1480 (9th Cir. 1997) (quoting *Lewis v. Tel. Employees Credit Union*, 87 F.3d 1537, 1545 (9th Cir. 1996)). "All allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party." *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996).

Given that the complaint is construed favorably to the pleader, the court may not dismiss the complaint for failure to

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<sup>4</sup> This legislation was enacted in 1955 and is referred to by plaintiff as the "Act of 1955." (FAC ¶ 115).

<sup>5</sup> In his opposition, plaintiff does not address defendants' motions to dismiss his claims under the Equal Protection Clause and the Free Speech Clause or the arguments in support thereof. The court interprets plaintiff's silence as a non-opposition to defendants' motions on these claims. Therefore, defendants' motions to dismiss plaintiff's Equal Protection and Free Speech claims are GRANTED.

1 state a claim unless it appears beyond a doubt that the plaintiff  
2 can prove no set of facts in support of the claim which would  
3 entitle him or her to relief. Conley v. Gibson, 355 U.S. 41, 45  
4 (1957); NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir.  
5 1986).

6 Nevertheless, it is inappropriate to assume that plaintiff  
7 "can prove facts which it has not alleged or that the defendants  
8 have violated the . . . laws in ways that have not been alleged."  
9 Associated Gen. Contractors of Cal., Inc. v. California State  
10 Council of Carpenters, 459 U.S. 519, 526 (1983). Moreover, the  
11 court "need not assume the truth of legal conclusions cast in the  
12 form of factual allegations." United States ex rel. Chunie v.  
13 Ringrose, 788 F.2d 638, 643 n.2 (9th Cir. 1986).

#### 14 ANALYSIS

##### 15 I. Standing

16 The issue of standing is a threshold determination of  
17 "whether the litigant is entitled to have the court decide the  
18 merits of the dispute or of particular issues." Warth v. Seldin,  
19 422 U.S. 490, 498 (1975); Steel Co. v. Citizens For A Better  
20 Env't, 523 U.S. 83 (1998). "The judicial power of the United  
21 States defined by Art[icle] III is not an unconditioned authority  
22 to determine the constitutionality of legislative or executive  
23 acts." Valley Forge Christian Coll. v. Americans United For  
24 Separation of Church and State, Inc., 454 U.S. 464, 471 (1982).  
25 Rather, Article III limits "the federal judicial power 'to those  
26 disputes which confine federal courts to a role consistent with a  
27 system of separated powers and which are traditionally thought to  
28 be capable of resolution through the judicial process.'" Id. at

1 472 (quoting Flast v. Cohen, 392 U.S. 83, 97 (1968)); Steele, 523  
2 U.S. at 102. "Those who do not possess Article III standing may  
3 not litigate as suitors in the Courts of the United States." Id.  
4 at 476.

5 The Supreme Court has set forth that "[t]he 'irreducible  
6 constitutional minimum of standing' contains three requirements."  
7 Steele, 523 U.S. at 102-03 (quoting Lujan v. Defenders of  
8 Wildlife, 504 U.S. 555, 560 (1992)). First, plaintiff must  
9 allege an "injury in fact - a harm suffered by the plaintiff that  
10 is concrete and actual or imminent, not conjectural, or  
11 hypothetical." Id. at 103 (internal quotations and citations  
12 omitted). "[W]here large numbers of Americans suffer alike, the  
13 political process, rather than the judicial process, may provide  
14 the more appropriate remedy for a widely shared grievance." FEC  
15 v. Akins, 524 U.S. 11, 23 (1998). However, it is possible for a  
16 plaintiff to allege an injury that, although shared by many, is  
17 particularized and concrete. Id. at 24. Second, plaintiff must  
18 allege causation - "a fairly traceable connection between the  
19 plaintiff's injury and the complained-of conduct of the  
20 defendant." Steele, 523 U.S. at 103. (citing Simon v. E. Ky.  
21 Welfare Rights Org., 426 U.S. 26, 41-42 (1976)). The injury must  
22 not be the result of some third party not before the court.  
23 Lujan, 504 U.S. at 560 (citing Simon, 426 U.S. at 41-42). Third,  
24 the injury must be redressable - there must be "a likelihood that  
25 the requested relief will redress the alleged injury. Steele,  
26 523 U.S. at 103 (citing Simon, 426 U.S. at 45-46). Defendants  
27 argue that plaintiff fails each of these three standing  
28 requirements.

1 Plaintiff alleges a multitude of injuries caused by his  
2 encounters with the national motto. He asserts that, as an  
3 Atheist, he is a member of a "small minority" (according to  
4 plaintiff, 5% of all Americans). (FAC, App. K, at 5). Plaintiff  
5 argues that, as a member of such a minority, he is affected by  
6 the national motto in a different and more particularized manner  
7 than the majority. Generally, he contends that he is deeply  
8 offended "to have his government and its agents advocating for a  
9 religious view" and that he suffers injury "when his government  
10 and its agents . . . engage in such advocacy." (FAC ¶¶ 157-58).

11 Specifically, plaintiff asserts that he has been personally  
12 injured by the national motto and its inscription on coins and  
13 currency because: (1) the national motto degrades him and other  
14 Atheists from the "equal rank" of citizens and turns Atheists  
15 into "political outsiders" (FAC ¶ 178); (2) he was recently  
16 denied a job because of the mis-perception of his activism and  
17 because of the government's endorsement that "belief in God is  
18 'good' and disbelief in God is 'bad'" - a notion reinforced by  
19 the national motto (Id. ¶¶ 188, 190); (3) he has given up hope of  
20 attaining elective office because of the anti-Atheistic bias that  
21 the government has perpetuated by the national motto (Id. ¶ 214);  
22 (4) he is repeatedly forced to confront a "religious belief" (the  
23 national motto) which he finds offensive both when he inspects  
24 coins during his normal purchasing activities and when he  
25 inspects his coin collection<sup>6</sup> (Id. ¶¶ 223-24); (5) he has been  
26 and is forced to "proselytize" and "evangelize" on behalf of  
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28 <sup>6</sup> The court finds it ironic that plaintiff collects and  
inspects that which he finds so offensive.

1 monotheism when he spends coins and currency (Id. ¶¶ 230, 261-  
2 62); (6) he was and is not able to raise funds for his ministry  
3 because of the offensive religious dogma on "the nation's  
4 monetary instruments" (Id. ¶¶ 240-41); (7) religious garb worn  
5 during FACTS church services and "FACTS libation - known as 'The  
6 Freethink Drink'" - cannot be purchased at times because of the  
7 offensive "religious dogma" on coins and currency (Id. ¶ 247-48);  
8 and (8) FACTS-related "research trips" have been cancelled due to  
9 the need to use United States currency to pay for such trips  
10 (Id. ¶¶ 252-54, 257).

11 Plaintiff alleges that all of the above described injuries  
12 were caused by the government defendants named in this action.  
13 The court finds that this is not the case. Some of the injuries  
14 alleged by plaintiff are not fairly traceable to defendants, but  
15 rather to third parties not before this court. For example,  
16 plaintiff alleges that he was denied employment because of mis-  
17 perceptions of his Atheistic activism and because of the  
18 governmental endorsement, reinforced by the national motto, that  
19 "belief in God is 'good' and disbelief in God is 'bad.'" <sup>7</sup> In  
20 other words, plaintiff argues that the national motto reinforces  
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22 <sup>7</sup> Plaintiff's allegations involving the refusal to be  
23 hired, the relinquishment of plaintiff's aspirations to hold  
24 elected office, derogatory remarks based upon plaintiff's  
Atheism, and a social environment where prejudice is perpetuated  
against Atheists share the same causation deficiencies.

25 Additionally, plaintiff has attached considerable  
26 documentation to his complaint, and, in his opposition, engages  
27 in extensive discussion of personal experiences and encounters to  
demonstrate that American culture and the national motto are  
often identified with belief in Christianity or monotheism.  
28 However, this documentation and discussion is wholly irrelevant  
to the claims against *these defendants* because plaintiff does not  
allege the requisite causal connection.

1 social bias against Atheism, which in turn, creates antagonism  
2 against his perceived activism. According to plaintiff, this  
3 antagonism caused a potential employer not to hire him as a  
4 result of his activism. The causal link between the national  
5 motto and plaintiff's alleged loss of employment opportunity  
6 appears to be the result of a personal fixation derived from  
7 plaintiff's ardent beliefs, but hardly meets the requirements of  
8 Article III standing. See Simon, 426 U.S. at 41-43 (holding that  
9 causation requirement was not met where plaintiffs asserted that  
10 the challenged federal regulations "encouraged" the actions of  
11 private entities that resulted in the injury complained of).

12 To the extent that plaintiff's injuries are traceable to  
13 defendants, such alleged injuries seem to stem from the perceived  
14 rank offensiveness of the national motto, itself. For example,  
15 plaintiff asserts that because of the offensive nature of the  
16 motto, he is unable to, *inter alia*, raise funds for his ministry,  
17 buy "libations" and "religious garb," and take "research trips."

18 Generally, a plaintiff does not sufficiently allege injury-  
19 in-fact for the purposes of Article III standing where the only  
20 harm is psychological injury "produced by observation of conduct  
21 with which one disagrees." See Valley Forge, 454 U.S. at 485.  
22 In Valley Forge, plaintiffs brought suit based upon the  
23 conveyance of government land in Pennsylvania to a non-profit  
24 educational institution operating under the supervision of a  
25 religious order. Valley Forge, 454 U.S. at 468. Plaintiffs, who  
26 resided in Maryland and Virginia and had their organizational  
27 headquarters in Washington, D.C., learned about the transfer  
28 through a news release. Id. at 486-87. The Supreme Court held



1 that the injuries alleged amounted to generalized grievances  
2 about the conduct of government, which do not satisfy the  
3 requirements of Article III.

4 However, federal courts addressing allegations of  
5 Establishment Clause violations after Valley Forge have  
6 recognized that the concept of injury in these types of cases is  
7 particularly elusive because the Establishment Clause plaintiff  
8 is not likely to suffer physical injury or pecuniary loss. See  
9 Surhe v. Haywood County, 131 F.3d 1083, 1086 (4th Cir. 1997);  
10 Washegesic v. Bloomington Pub. Sch., 33 F.3d 679, 682 (6th Cir.  
11 1994); Saladin v. City of Milledgeville, 812 F.2d 687, 691 (11th  
12 Cir. 1987); Newdow v. Bush, 355 F. Supp. 2d 265, 277-78 (D.D.C.  
13 2005). Therefore, various Circuits have found sufficient injury-  
14 in-fact based upon the observation of offensive religious  
15 materials where plaintiffs have alleged a "personal connection"  
16 with the challenged conduct. See Newdow, 355 F. Supp. 2d at 278  
17 (citing Suhre, 131 F.3d at 1087 (county resident had standing to  
18 challenge Ten Commandment display in county courthouse);  
19 Washegesic, 33 F.3d at 681-83 (former student had standing to  
20 challenge religious portrait displayed at public school);  
21 Saladin, 812 F.2d at 692-93 (residents in and around city had  
22 standing to challenge religious symbols on city seal)). Such  
23 cases distinguish the Supreme Court's rejection of plaintiffs'  
24 psychological injuries in Valley Forge on the basis of the  
25 proximity of the plaintiffs to the conduct they challenged,  
26 examining circumstances such as the frequent contact between the  
27 plaintiff and the offensive conduct or display. Newdow, 355 F.  
28 Supp. 2d at 278 n.11 (citing, Suhre, 131 F.3d at 1090).

1 In this case, plaintiff has alleged that he is deeply  
2 offended by the national motto, "In God We Trust," and the  
3 inscription of that motto on national coinage and currency.  
4 Because of the ubiquity of coins and currency in everyday life,  
5 plaintiff is necessarily and continuously confronted with the  
6 alleged endorsement of religion by the federal government.  
7 Further, plaintiff alleges that, as a member of a small minority  
8 of Americans, he is particularly affected by the use of "In God  
9 We Trust" as the national motto inscribed on coins and currency.  
10 Therefore, to the extent that plaintiff's injuries are purely  
11 psychological in nature, such confrontation with the national  
12 motto on coins and currency demonstrates a personal connection  
13 sufficient to establish Article III standing.

14 Finally, plaintiff alleges that his injuries are redressable  
15 by the court. Plaintiff seeks both declaratory and injunctive  
16 relief. As to declaratory relief, plaintiff requests the court  
17 to declare (1) that Congress violated the Establishment Clause  
18 and the Free Exercise Clause in passing the Acts of 1955 and  
19 1956;<sup>8</sup> (2) that the inscription "In God We Trust" on coins and  
20 currency violates the Establishment Clause, the Free Exercise  
21 Clause, and RFRA; and (3) that the national motto violates the  
22 Establishment Clause, the Free Exercise Clause, and RFRA.  
23 Defendants argue that the relief requested by plaintiff would not  
24 meaningfully redress plaintiff's alleged injuries. In their  
25 opposition, defendants address only plaintiff's requests for  
26 injunctive relief, *not* his requests for declaratory relief.

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28 <sup>8</sup> The court addresses the jurisdictional problems with  
plaintiff's claims against the Legislative Branch defendants,  
*infra*, in Section II.

1 The Supreme Court instructs that declaratory relief can  
2 usually provide a preferable alternative remedy to injunctive  
3 relief in cases such as this. Wooley v. Maynard, 430 U.S. 705,  
4 711 (1977). "[A] district court can generally protect the  
5 interests of a federal plaintiff by entering a declaratory  
6 judgment, and therefore the stronger injunctive medicine will be  
7 unnecessary." Id. (internal quotations omitted). A judicial  
8 declaration that the national motto is unconstitutional because  
9 it violates the First Amendment would redress plaintiff's claimed  
10 injury that the national motto offends him as an Atheist. As  
11 such, and for the reasons set forth below, the court does not  
12 reach the issues of whether the injunctive relief requested by  
13 plaintiff could be ordered by this court or whether such  
14 injunctive relief would adequately redress his injuries.

15 Because plaintiff has alleged injury-in-fact, causation, and  
16 redressability, plaintiff has sufficiently alleged standing in  
17 the current litigation.<sup>9</sup>

## 18 **II. Immunity**

19 Defendants argue that the Legislative Branch defendants,  
20 namely Congress and the Law Revision Counsel, must be dismissed  
21 because these defendants are entitled to immunity. The Speech  
22 and Debate Clause of Article I of the Constitution provides that  
23 "[t]he Senators and Representatives . . . shall not be questioned  
24 in any other Place" for "any Speech or Debate in either House."  
25 U.S. Const. Art. I, § 6, cl. 1. The Supreme Court has  
26 interpreted the scope of the Speech and Debate Clause broadly to

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28 <sup>9</sup> Plaintiff also alleges that he has taxpayer standing. Because the court has determined that plaintiff has sufficiently alleged citizen standing, the court does not reach this issue.

1 effectuate its purpose of protecting "the integrity of the  
2 legislative process by insuring the independence of individual  
3 legislators." Eastland v. United States Servicemen's Fund, 421  
4 U.S. 491, 501 (1975). In Eastland, the Court held that in  
5 determining whether the acts of members of Congress are protected  
6 by immunity, the court looks solely to whether or not the conduct  
7 falls within the "sphere of legitimate legislative activity."

8 Id. If the conduct falls within this sphere, Congress is  
9 absolutely immune from being "questioned in any other Place."

10 Id. Further, the Clause applies equally to officers and other  
11 employees of the Congress when they are engaged in legislative  
12 activity. See, e.g., id., Gravel v. United States, 408 U.S. 606,  
13 618 (1972).

14 In determining whether conduct falls within the "sphere of  
15 legitimate legislative activity," the court "must determine  
16 whether the activities are 'an integral part of the deliberative  
17 and communicative processes by which Members participate in . . .  
18 proceedings with respect to the consideration and passage . . .  
19 of proposed legislation.'" Eastland, 421 U.S. at 504 (quoting  
20 Gravel, 408 U.S. at 625). In this case, plaintiff brings suit  
21 against Congress for the adoption of legislation that he alleges  
22 violates the Constitution and federal statutes. Plaintiff also  
23 brings suit against the Law Revision Counsel for preparing and  
24 publishing the United States Code which includes such  
25 legislation.

26 Plaintiff argues that defendants are not immune from  
27 plaintiff's claims because "performing a clearly unconstitutional  
28 act cannot, in any way, be considered part of the legislative

process.” (Opp’n at 42). This argument runs counter to the Supreme Court’s broad interpretation of Congress’ immunity under the Clause. “If the mere allegation that a valid legislative act was undertaken for an unworthy purpose would lift the protection of the Clause, then the Clause simply would not provide the protection historically undergirding it.” Eastland, 421 U.S. at 508-09; see also Newdow v. U.S. Congress, 328 F.3d 466, 484 (9th Cir. 2003), rev’d on other grounds sub nom., Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1 (2004).

The enactment of legislation and its subsequent publication is squarely within the sphere of legitimate legislative activity because plaintiff seeks to sue Congress for enacting laws and Law Revisions Counsel for accurately publishing those laws. Therefore, the Legislative Branch defendants are entitled to Speech and Debate Clause immunity and accordingly, plaintiff’s claims against these defendants are DISMISSED.<sup>10</sup>

### III. Establishment Clause

Plaintiff claims that the national motto violates the Establishment Clause of the First Amendment. The Ninth Circuit explicitly addressed this issue in Aronow v. United States, 432 F.2d 242 (9th Cir. 1970). In Aronow, the court held that

[i]t is quite obvious that the national motto and the slogan on coinage and currency “In God We Trust” has nothing whatsoever to do with the establishment of religion. Its use is of a patriotic or ceremonial character and bears no true resemblance to a governmental sponsorship of a religious exercise.

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<sup>10</sup> Because the Legislative Branch defendants are dismissed based upon Speech and Debate Clause immunity, the court need not reach the issue of sovereign immunity.

1 Id. at 243. The court could not easily discern "any religious  
2 significance attendant the payment of a bill with coin or  
3 currency on which has been imprinted 'In God We Trust' or the  
4 study of a government publication or document bearing that  
5 slogan."<sup>11</sup> Id. The Ninth Circuit further explained that "the  
6 motto has no theological or ritualistic impact," but rather, as  
7 stated by Congress, "has 'spiritual and psychological value' and  
8 'inspirational quality.'" Id. at 243-44. Therefore, the Ninth  
9 Circuit held that the national motto "In God We Trust" and its  
10 printing on coins and currency does not violate the Establishment  
11 Clause. Id. at 242-44.

12 Plaintiff concedes that the Ninth Circuit's decision in  
13 Aronow is directly on point and is binding precedent on this  
14 court. However, plaintiff contends that Aronow is "wrongly  
15 decided." "Wrongly decided" or not, this court must and does,  
16 here, follow Ninth Circuit precedent. See United States v.  
17 Johnson, 256 F.3d 895, 916 (9th Cir. 2001) (holding that where "a  
18 majority of the panel has focused on the legal issue presented by  
19 the case before it and made a deliberate decision to resolve the  
20 issue, that ruling . . . can only be overturned by an en banc  
21 court or by the Supreme Court"). Therefore, defendants' motions  
22 to dismiss plaintiff's Establishment Clause claim are GRANTED.

#### 23 **IV. Free Exercise Clause and Religious Freedom Restoration Act**

24 Plaintiff also asserts that the national motto and its  
25 printing on coins and currency violates his rights under the Free  
26 Exercise Clause of the First Amendment and under the Religious

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27  
28 <sup>11</sup> Further, the court noted that "such secular uses of the  
motto was viewed as sacrilegious and irreverent by President  
Theodore Roosevelt." Id.

1 Freedom Restoration Act ("RFRA"). Plaintiff alleges that the  
2 inscription of the words "In God We Trust" on money repeatedly  
3 forces him to confront a religious belief he finds offensive and  
4 which substantially burdens his right to exercise his Atheistic  
5 beliefs. (FAC ¶ 223). Plaintiff also asserts that he is  
6 effectively compelled to carry "religious dogma" on his person  
7 and to proselytize on behalf of the purely religious claim, "In  
8 God We Trust," when exchanging currency for goods. (*Id.* ¶¶ 230-  
9 31). As a result, plaintiff asserts, *inter alia*, that he cannot  
10 raise money in his church meetings and at times, cannot purchase  
11 religious garb, nor "formulate" "the FACTS libations . . . in its  
12 recommended manner." (*Id.* ¶¶ 239, 241, 247-48).

13       Essentially, plaintiff claims that the alleged governmental  
14 endorsement of monotheism on coins and currency burdens his right  
15 to exercise his Atheistic beliefs. Government attempts to  
16 disfavor a religion are generally analyzed under the Free  
17 Exercise Clause, while allegations of governmental efforts to  
18 benefit religion are generally addressed under the Establishment  
19 Clause. Harper v. Poway Unified Sch. Dist., 445 F.3d 1166, 1190  
20 (9th Cir. 2006); Church of Lukumi Babalu Aye, Inc. v. City of  
21 Hialeh, 508 U.S. 520, 531 (1993). Here, the gravamen of  
22 plaintiff's alleged injuries stem from the government's  
23 "endorsement" of monotheism, not the government's "disfavor" of  
24 Atheism. Therefore, plaintiff's Free Exercise and RFRA claims  
25 appear to simply restate his Establishment Clause claim in an  
26 effort to elude Ninth Circuit binding precedent. However, in the  
27 interest of completeness, the court briefly addresses plaintiff's  
28

1 claims that the national motto "substantially burdens" the  
2 exercise of his religion.

3 As stated above, the Ninth Circuit in Aronow held that the  
4 national motto is excluded from First Amendment significance  
5 because the motto "has no theological or ritualistic impact" and  
6 is of a purely secular, "patriotic," and "ceremonial character."  
7 432 F.2d at 243-44. The court also stated that the purpose of  
8 the national motto is not to use the State's coercive power to  
9 aid religion, "either in Congressional intent or practical impact  
10 on society." Id. at 244 (citing McGowan v. Maryland, 366 U.S.  
11 420 (1961)). Therefore, despite plaintiff's strenuous  
12 protestations of errancy, Ninth Circuit authority has found the  
13 national motto "In God We Trust" to be secular in nature and use.  
14 Id.

15 The law is clear [] that governmental programs that  
16 "may make it more difficult to practice certain  
17 religions but which have no tendency to coerce  
18 individuals into acting contrary to their religious  
19 beliefs" do not infringe on free exercise rights  
20 protected by the First Amendment (and therefore RFRA).

19 Newdow v. Bush, 355 F. Supp. 2d at 290 (quoting Lyng v. Northwest  
20 Indian Cemetary Protective Ass'n, 485 U.S. 439, 450-51 (1988)).  
21 In light of Aronow, plaintiff's use of currency does not, as a  
22 matter of law, demonstrate government coercion to proselytize or  
23 evangelize on behalf of monotheism.

24 Undaunted by Circuit authority, plaintiff argues that the  
25 Supreme Court's decision in Wooley v. Maynard supports his Free  
26 Exercise claim. 430 U.S. 705 (1977). In Wooley, the Court held  
27 that the State of New Hampshire could not require citizens to  
28 display the state motto, "Live Free or Die," upon their vehicle



1 license plates. 430 U.S. at 717. The Court specifically  
2 acknowledged that the New Hampshire law required individuals "to  
3 participate in the dissemination of an ideological message by  
4 displaying it on [] private property in a manner and for the  
5 express purpose that it may be observed and read by the public."  
6 Id. at 713. Because the First Amendment protects the right of  
7 individuals to hold a viewpoint different from the majority and  
8 to refuse to foster an idea they find objectionable, the  
9 plaintiffs in Wooley were protected by the First Amendment. Id.  
10 at 715.

11 However, the Supreme Court made clear in Wooley that it did  
12 not intend that this analysis be read as sanctioning the  
13 obliteration of the national motto from United States coins and  
14 currency. Id. at 717 n.15. While the Court recognized that this  
15 issue was not before it, it distinguished its analysis of New  
16 Hampshire's requirement of placing the state motto on license  
17 plates from the placement of the national motto on currency.

18 [C]urrency which is passed from hand to hand, differs  
19 in significant respects from an automobile, which is  
20 readily associated with its operator. Currency is  
21 generally carried in a purse or pocket and need not be  
22 displayed to the public. The bearer of currency is  
23 thus not required to publicly advertise the national  
24 motto.

25 Id.

26 Plaintiff's Free Exercise and RFRA claims arise from his  
27 assertion that the motto is blatantly religious. Because the  
28 national motto has been held to be secular in nature, there is no  
proper allegation that the government compelled plaintiff to

1 affirm a repugnant belief in monotheism.<sup>12</sup> See Sherbert v.  
2 Verner, 374 U.S. 398, 402 (1963). Plaintiff has not sufficiently  
3 alleged that the government "penalized or discriminated" against  
4 him because of his religious views or that it "conditioned the  
5 availability of benefits upon [his] willingness to violate a  
6 cardinal principle of his religious faith." See Harper, 445 F.3d  
7 at 1188 (quoting Sherbert, 374 U.S. at 402, 406). Nor has  
8 plaintiff sufficiently alleged that the government lent "its  
9 power to one or the other side in controversies over religious  
10 authority or dogma, or punish[ed] the expression of religious  
11 doctrines it believes to be false." Id. (quoting Employment Div.  
12 Dep't of Human Res. of Oregon v. Smith, 494 U.S. 872, 877  
13 (1990)). As such, plaintiff has not set forth a claim that the  
14 government's conduct in the continuing use of "In God We Trust"  
15 as the national motto and its inscription on coins and currency  
16 constitutes a substantial burden on the exercise of his religious  
17 beliefs. Accordingly, defendants' motions to dismiss plaintiff's  
18 Free Exercise and RFRA claims are GRANTED.

#### 19 CONCLUSION

20 For the reasons stated above, defendants' motions to dismiss  
21 are GRANTED.

22 IT IS SO ORDERED.

23 DATED: June 12, 2006.

24 /s/ Frank C. Damrell Jr.  
25 FRANK C. DAMRELL, JR.  
26 United States District Judge

27 \_\_\_\_\_  
28 <sup>12</sup> Further, as the Supreme Court noted in Wooley,  
individuals are not personally associated with the currency they  
spend as they are with their automobiles. See id.