

CASE NO. 06-16344
IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

THE REV. DR. MICHAEL A. NEWDOW,

Plaintiff-Appellant, pro se,

v.

**THE CONGRESS OF THE UNITED STATES OF AMERICA; PETER
LEFEVRE, Law Revision Counsel; UNITED STATES OF AMERICA; JOHN
W. SNOW, Secretary of the Treasury; HENRIETTA HOLSMAN FORE,
Director, United States Mint; THOMAS A. FERGUSON, Director, Bureau of
Engraving and Printing,**

Defendants-Appellees,

PACIFIC JUSTICE INSTITUTE,

Defendant-Intervenor-Appellee

**On Appeal from the United States District Court
for the Eastern District of California
(District Court #2:05-cv-02339)**

EXCERPTS OF RECORD

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† Pacific Justice Institute.

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916-427-6669

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Civil Action No.

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

Plaintiff,

v.

THE CONGRESS OF THE UNITED STATES OF AMERICA;
PETER LEFEVRE, LAW REVISION COUNSEL;
THE UNITED STATES OF AMERICA;
JOHN WILLIAM SNOW, SECRETARY OF THE TREASURY;
HENRIETTA HOLSMAN FORE, DIRECTOR, UNITED STATES MINT;
THOMAS A. FERGUSON, DIRECTOR, BUREAU OF ENGRAVING AND PRINTING;

Defendants.

ORIGINAL COMPLAINT

Plaintiff alleges as follows:

Brad W. Dacus, State Bar No. 159690
Kevin T. Snider, State Bar No. 170988
PACIFIC JUSTICE INSTITUTE
Post Office Box 276600
Sacramento, CA 95827
Tel. (916) 857-6900
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Attorneys for Plaintiffs

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

AFFIDAVIT OF BRAD W. DACUS IN
SUPPORT OF MOTION TO INTERVENE
BY PACIFIC JUSTICE INSTITUTE

DATE: Jan. 13, 2005
TIME: 10:00 a.m.
COURTROOM: 2
TRIAL DATE: none set

AFFIDAVIT OF BRAD W. DACUS

I, Brad W. Dacus, do hereby declare as follows:

1. That if called upon, I could and would testify truthfully, as to my own personal knowledge as follows:

2. I am the founder and president of Pacific Justice Institute ("PJI"), a Sacramento-based non-profit legal organization dedicated to the preservation of religious and civil liberties.

3. Since its inception in 1997, PJI has represented numerous individuals, houses of worship, and religious organizations which have been treated unjustly due to their religious preferences.

4. We are well-versed in our nation's religious heritage, as well as more recent trends in Establishment Clause jurisprudence and federal laws protecting religious expression.

5. PJI also assists in defending governmental entities which are attacked for public acknowledgments of America's religious heritage.

6. PJI, along with our thousands of individual supporters, is gravely concerned about the onslaught of recent attacks against the Ten Commandments, the Pledge of Allegiance, and now our national motto.

7. PJI believes it is our solemn duty to defend our nation's religious heritage against overly-restrictive interpretations of the Establishment Clause.

8. Michael Newdow's efforts to eliminate the national motto, "In God We Trust," from our nation's money would have a significantly deleterious effect on our work.

9. Any requirement to forbid the phrase "In God We Trust" from United States currency based only upon its inclusion of the word "God" will be perceived as state hostility to religion by the millions of Americans with a religious back-ground in general and in particular the thousands of people that PJI serves.

1 10. The United States Justice Department, as a neutral actor on religious matters
2 and/or beliefs, cannot be expected to accurately measure or represent the impact of such hostility
3 upon such Americans.

4 11. In contrast, it has been the mission and function of PJI to represent such interests of
5 people of faith.

6 12. Furthermore, if successful, the present lawsuit would greatly restrict PJI's ability to
7 defend governmental actors who regularly seek our advice and representation when they attempt
8 to objectively acknowledge our nation's religious heritage.

9 13. PJI believes that our national motto is an invaluable and unique expression of our
10 nation's history and heritage, having been adopted during the Civil War as a reminder of
11 America's dependence on God.

12 14. It is PJI's position that the removal of our national motto from the public square
13 will have a serious, detrimental effect on Americans' awareness and appreciation of our nation's
14 religious heritage.

15 15. Moreover, were the national motto declared unconstitutional or illegal, many
16 similar public expressions of our religious heritage would be placed in jeopardy, as evidenced by
17 Plaintiffs' concurrent efforts to have recitation of the Pledge of Allegiance declared
18 unconstitutional.

19 16. Plaintiff Newdow's efforts to eliminate "In God We Trust" as our national motto,
20 and by extension, similar expressions of America's religious heritage, could have a catastrophic
21 effect not only on our nation, but also on the efforts of Pacific Justice Institute.

22 17. In summation, Plaintiff's lawsuit would seriously undermine Pacific Justice
23 Institute's organizational mission to protect religious liberty, including public expression of
24 religious heritage.

25 18. Should this motion for intervention be granted, PJI will file a motion to dismiss for
26 failure to comply with the short and plain statement rule [FRCP 8(a)] or, in the alternative, for a
27

1 more definite statement pursuant to FRCP 12(e). As such, a copy of a proposed motion (“Exhibit
2 1”) accompanies this motion as per the requirements of FRCP 24(c).

3 I declare, under penalty of perjury under the laws of the State of California and the United
4 States of America, that the foregoing is true and correct and is of my own personal knowledge,
5 and indicate such below by my signature executed on this 29th day of November, 2005, in the
6 County of Sacramento, State of California.

7
8 /s/ Brad Dacus
9 Brad W. Dacus, Declarant

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Kevin T. Snider, State Bar No. 170988
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

THE REV. DR. MICHAEL A. NEWDOW,
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AND

PACIFIC JUSTICE INSTITUTE, Proposed
Intervenor-Defendant.

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

MEMORANDUM OF LAW IN SUPPORT
OF MOTION TO INTERVENE BY
PACIFIC JUSTICE INSTITUTE

DATE: Jan. 13, 2005
TIME: 10:00 a.m.
COURTROOM: 2
TRIAL DATE: none set

INTRODUCTION

Applicant for Intervention, Pacific Justice Institute (sometimes hereinafter “PJI” or “Applicant”), is a Sacramento-based, non-profit organization dedicated to defending religious and civil liberties. See accompanying Affidavit of Brad W. Dacus (hereinafter, “Dacus Aff.”), at ¶4. Mr. Dacus is the founder and president of Pacific Justice Institute. *Id.* PJI actively advises and

1 represents numerous individuals, groups and organizations which have been treated unjustly due
 2 to their religious preferences. Dacus Aff. ¶5. PJI also assists in defending governmental entities
 3 which are attacked for public acknowledgments of America's religious heritage. Dacus Aff. ¶8.

4 Applicant seeks to intervene in this litigation because Plaintiff claims that the national
 5 motto, "In God We Trust," violates the Establishment and Free Exercise Clauses of the First
 6 Amendment as well as the Religious Freedom Restoration Act (42 U.S.C. 2000bb). This litigation
 7 would have a substantial impact on PJI's efforts and ability to defend and protect public
 8 expression of America's religious history and heritage.

9
 10 Pacific Justice Institute is entitled to intervention both as of right and permissively under
 11 Rule 24. In the alternative, should the court deny these requests for any reason, Pacific Justice
 12 Institute requests that it be granted amicus status in the pending litigation.

13 14 ARGUMENT

15 I. Pacific Justice Institute Is Entitled to Intervention as of Right in this Action

16
 17 Applications for intervention as of right in federal court actions are governed by Federal
 18 Rule of Civil Procedure 24(a), which provides in relevant part that:

19 [u]pon timely application anyone shall be permitted to intervene in an action...when the
 20 applicant claims an interest relating to the property or transaction which is the subject of
 21 the action and the applicant is so situated that the disposition of the action may as a
 22 practical matter impair or impede the applicant's ability to protect that interest, unless that
 23 interest is adequately represented by existing parties.

24 The Ninth Circuit has broken down Rule 24(a)(2) into four basic elements:

25 (1) [T]he application must be timely; (2) the applicant must have a 'significantly
 26 protectable interest' relating to the transaction that is the subject of the litigation;
 27 (3) the applicant must be so situated that the disposition of the action may, as a
 28 practical matter, impair or impeded the applicant's ability to protect its interest; and
 (4) the applicant's interest must be inadequately represented by the parties before
 the court.

1 *League of United Latin American Citizens (“LULAC”) v. Wilson*, 131 F.3d 1297 (9th Cir.
2 1997).

3 It is well-established that Rule 24 “is construed broadly in favor of the applicants.” *Idaho*
4 *Farm Bureau Feder’n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995) (citing *United States v.*
5 *Oregon*, 913 F.2d 576, 587 (9th Cir. 1990), cert. denied, *Makah Indian Tribe v. United States*, 501
6 U.S. 1250 (1991)). Applicant, as will be discussed *infra*, meets each of the Ninth Circuit’s four
7 elements for obtaining intervention as of right. In short, its application is first of all timely, having
8 been filed within days of the initiation of the lawsuit challenging “In God We Trust.” Second,
9 Applicant has significantly protectable interests in the subject of the litigation, including its ability
10 to continue defending and preserving American symbols and heritage. Third, it is uniquely
11 situated as an organization which has devoted substantial time, resources and education to
12 promoting the rights of Americans to publicly display well-known national symbols without
13 discrimination toward those symbols which have religious connotations. Fourth, and finally,
14 Applicant’s interests are inadequately represented before the court in that defendants, the United
15 States Treasury and United States Congress, are large, cumbersome bureaucracies that have
16 complex economic and political interests which differ from those possessed by Pacific Justice
17 Institute, an organization dedicated to defending religious liberty.

20
21 **A. Applicants’ Motion is Timely**

22 “Timeliness is ‘the threshold inquiry’ for intervention as of right.” *LULAC*, 131 F.3d at
23 1302. It is also easily met in the present case. The timeliness inquiry focuses on whether
24 intervention is too late as determined by the stage of the proceeding, prejudice to the parties, and
25 reasons for the length of the delay. *Id.* The *LULAC* court, for instance, denied intervention due to
26 untimeliness of applicants who sought it more than two years after the lawsuits were filed. At the
27

1 same time, the court indicated that other parties had been granted intervention nine months after
 2 the original lawsuits commenced. By stark contrast, the present Applicant is filing its motion for
 3 intervention within days of the announcement that a lawsuit had been filed by Plaintiff. Thus, it
 4 should not be seriously disputed that Applicant's motion is untimely. *See, e.g., Sierra Club v. U.S.*
 5 *E.P.A.*, 995 F.2d 1478, 1481 (9th Cir. 1993) (timeliness not at issue when motion to intervene was
 6 filed at outset of litigation, before answer to complaint was even filed).
 7

8 **B. Pacific Justice Institute Has Significantly Protectable Interests Relating to the**
 9 **Subject of this Litigation**

10 By attacking the national motto, Plaintiff has attacked the core mission and values of
 11 Pacific Justice Institute—preserving religious liberty, including public expressions of our nation's
 12 religious history and heritage. In particular, PJI has recently been active in defending city seals in
 13 Los Angeles and Redlands, California, from charges that they are too religious and
 14 unconstitutional. The ability of Pacific Justice Institute to defend these and similar expressions of
 15 religious heritage against misuse of the Establishment Clause will be severely hindered if this
 16 Court declares that "In God We Trust"—and by logical extension, untold similar expressions of
 17 our nation's religious heritage—are illegal.
 18

19 The federal courts have found that a broad variety of interests satisfy the "significantly
 20 protectable interests" inquiry. For example, in *Idaho Farm Bureau Federation*, environmental
 21 groups were granted intervention in a lawsuit which clarified the Endangered Species Act as it
 22 related to procedures for listing species (there, the Bureau Hot Springs Snail) as endangered. The
 23 *Idaho Farm Bureau Federation* court reviewed previous Ninth Circuit decisions such as
 24 *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525 (9th Cir. 1983) and *Washington State Bldg. and*
 25 *Constr. Trades Council v. Spellman*, 684 F.2d 627 (9th Cir. 1982), cert. denied, *Don't Waste*
 26 *Washington Legal Defense Foundation v. Washington*, 461 U.S. 913 (1983), finding broad
 27
 28

1 interpretation of what constitutes a “significantly protectable interest.” In view of the
2 environmental groups’ active efforts to protect the snail at issue, the Ninth Circuit ruled,

3 [W]e conclude that disposition in the present action would impair ICL/CIHD’s
4 ability to protect their interest in the Springs Snail and its habitat. The action could,
5 and did, lead to a decision to remove the Springs Snail from the list of endangered
6 species. *Cf. Sagebrush Rebellion*, 713 F.2d at 528 (granting intervention and
7 stating that a decision to set aside agency action creating conservation area for birds
of prey would impair Audobon Society’s interest in preservation of birds and their
habitat).

8 58 F.3d at 1398.

9 Other circuit courts have joined the Ninth Circuit in favoring intervenors. For instance, in
10 *Utah Association of Counties v. Clinton*, 255 F.3d 1246 (10th Cir. 2001), the Tenth Circuit
11 reviewed decisions from several circuits (including the Ninth Circuit’s *Sagebrush Rebellion*
12 decision) involving environmental activists and concluded, “[W]e find persuasive those opinions
13 holding that organizations whose purpose is the protection and conservation of wildlife and its
14 habitat have a protectable interest in litigation that threatens those goals.” *Id.* at 1252. And, while
15 wildlife and conservation groups have been among the most prodigious intervenors in federal
16 courts over the last two decades, producing a flood of court opinions on the subject, Rule 24 by no
17 means limits protectable interests to them.

18
19 In like manner, people of faith should be given the same concessions as environmentalists.
20 As the United States is a constitutionally neutral entity relative to religious issues, the motion to
21 intervene should be granted so that an advocate for persons of faith will have a voice in the court.
22 This is necessary in that religious persons are confronted with a lawsuit which is facially hostile to
23 their interests. A plain reading of the complaint reveals that the Plaintiff’s purpose is to eradicate
24 all remnants of religion from public life. Because of this, religious people should not be forced to
25 stand idly with their “hands in their pockets” to see what fate will await them at the end of this
26
27
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lawsuit. Applicants therefore fall well within the bounds of the “significantly protectable interest” as articulated in *LULAC*.

C. Applicants Are So Situated that the Disposition of the Action May, as a Practical Matter, Impair or Impede the Applicants’ Ability to Protect Their Interest

The federal courts have been careful to note that, under the third element articulated by *LULAC*, prospective intervenors need not show that an unfavorable disposition in the case would necessarily impair their right, only that it “may ... impair or impede [their] ability to protect [their] interest.” *Purnell*, 925 F.2d at 948 (quoting Rule 24(a)(2) and adding emphasis), that is, that impairment is “possible.” *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997). See also *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983).

Other federal courts have considered this requirement from the previous one, declaring that “the question of impairment is not separate from the question of the existence of an interest.” *Utah Association of Counties*, 255 F.3d at 1253 (quoting *Natural Res. Def. Council v. United States Regulatory Comm’n*, 578 F.2d 1341, 1345 (10th Cir. 1978).

As a practical matter, the disposition of this action in favor of the plaintiff would directly impede Applicant’s interest and ability to defend and promote American history and heritage. Pacific Justice Institute should therefore be granted intervention as of right in the litigation to defend against the significant negative impact Plaintiff’s demands would have on it.

D. Applicant’s Interests Are Inadequately Represented by the Parties Before the Court.

With respect to the final requirement under Rule 24, inadequate representation, the federal courts have noted, “The burden of making this showing is minimal.” *Pacific Gas and Elec. Co. v. Lynch*, 216 F.Supp.2d 1016, 1025 (N.D. Cal. 2002). See also, e.g., *Utah Assn. of Counties v. Clinton*, 255 F.3d 1246, 1255 (10th Cir. 2001) (“burden is the “minimal” one of showing that representation “may” be inadequate”) (quoting *Sanguine, Ltd. v. United States Dept. of Interior*,

1 736 F.2d 1416, 1419 (10th Cir. 1984) and *Trbovich v. United Mine Workers*, 404 U.S. 528, 538
 2 n.10 (1972).

3
 4 Moreover, “The possibility that the interests of the applicant and the parties may diverge
 5 ‘need not be great’ in order to satisfy this minimal burden.” *Id.* (quoting *Natural Res. Def.*
 6 *Council v. United States Nuclear Reg. Comm’n*, 578 F.2d 1341, 1346 (10th Cir. 1978). *Accord*,
 7 *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240 (6th Cir. 1997). This rule has been interpreted
 8 to mean simply that an existing party may fail to make all the prospective intervenor's arguments.
 9 *See Michigan State AFL-CIO*, 103 F.3d at 1247. The importance of this approach becomes
 10 evident in view of the fact that governmental agencies may choose not to appeal adverse decisions,
 11 in view of the complex and competing interests which they must balance. Such decisions would
 12 have a seriously detrimental effect on advocacy groups and their members if they were denied
 13 intervention in the litigation. *See, e.g. Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1104
 14 (9th Cir. 2002) (intervenors, environmental groups, appealed decision invalidating U.S. Forest
 15 Service’s “Roadless Rule” restricting potential environmental impact after federal government
 16 chose not to appeal); *State of California Dept. of Social Svcs. v. Thompson*, 321 F.3d 835 (9th Cir.
 17 2003) (allowing intervenor to appeal decision even though state chose not to do so).

20 Pacific Justice Institute is a non-profit organization committed to the preservation of
 21 religious liberty, including public expression of America’s religious history and heritage. *Dacus*
 22 *Aff.* ¶4. By contrast, the United States Congress, named as defendant in the instant litigation, has
 23 myriad complex and competing interests which may be implicated in the litigation. For all of their
 24 beneficial and perhaps even noble attributes, the United States Congress, and for that matter, the
 25 United States Government, are at bottom politically-motivated bodies. As such, they can be
 26
 27
 28

1 expected to support the national motto in such manner and to the extent that it is politically
 2 expedient to do so—and no more. It is therefore imperative that Pacific Justice Institute, which
 3 wholeheartedly supports and is committed to defending “In God We Trust” regardless of public
 4 opinion polls or votes, be granted intervention to defend and, if necessary, appeal on behalf of the
 5 national motto. *See, e.g., State of California Dept. of Social Svcs. v. Thompson*, 321 F.3d 835 (9th
 6 Cir. 2003) (allowing intervenor to appeal decision even though state chose not to do so)

8 The potentially divergent interests of Applicant and the present Defendants thus presented
 9 are more than sufficient to meet the “minimal” burden of showing inadequate representation.
 10 *Pacific Gas and Elec. Co.*, 216 F.Supp.2d at 1025. Applicant therefore meets the fourth and final
 11 requirement for intervention as of right.
 12

13 **II. Applicants Should, in the Alternative, be Granted Permissive Intervention**

14 **Under Rule 24(b)**

15 The considerations outlined above which soundly support Applicant’s Motion for
 16 Intervention as of right also suffice, *a fortiori*, to grant Applicant permissive intervention under
 17 Rule 24(b). Rule 24(b) states in relevant part:
 18

19 Upon timely application anyone may be permitted to intervene in an action . . . (2)
 20 when an applicant's claim or defense and the main action have a question of law or
 21 fact in common. . . . In exercising its discretion the court shall consider whether the
 22 intervention will unduly delay or prejudice the adjudication of the rights of the
 23 original parties.

24 Rule 24(b) grants a district court the discretion to allow intervention if the application is
 25 timely, *see Purnell*, 925 F.2d at 950, and if the "applicant's claim or defense and the main action
 26 have a question of law or fact in common." Fed R. Civ. P. 24(b)(2). In exercising its discretion,
 27 the district court should also consider whether "intervention will unduly delay or prejudice the
 28 adjudication of the rights of the original parties." *Purnell*, 925 F.2d at 951. Unlike intervention

1 under Rule 24(a), the court need not determine the significance of the interests of the proposed
2 intervenors, nor the adequacy of representation. Overall, the courts have deftly avoided rigidity in
3 granting or denying intervention, opting instead to craft creative, case-specific solutions which
4 will ensure the most complete representation of all parties and disposition of the issues.

5
6 Courts have, for example, granted intervention as of right and, in the alternative,
7 permissive intervention. *See, e.g., Pacific Gas & Electric v. Lynch*, 216 F.Supp. 2d 1016, 1025
8 (N.D. Cal. 2002). Even in cases where the court has determined that federal law precludes
9 intervention as of right, intervention has been allowed on a more limited basis. For instance, in
10 *Wetlands Action Network v. U.S. Army Corps of Engineers*, 222 F.3d 1105 (9th Cir. 2000) the
11 court held that the unique structure of the National Environmental Policy Act (NEPA) prevented
12 environmental groups from intervening as of right, because only the government could enforce or
13 be liable as a defendant under NEPA. Nevertheless, the Ninth Circuit still allowed the
14 environmental groups to intervene in the remedial phase of the litigation. *Id.* at 1114. *See also,*
15 *Purnell v. City of Akron*, 925 F.2d 941 (6th Cir. 1991) (even where intervention as of right was not
16 warranted, permissive intervention should have been granted). Similarly, Applicant represents
17 religious persons and organizations and thus has an interest in defending people of faith against a
18 lawsuit which is aimed at promoting government hostility toward religion.

19
20
21 As demonstrated above, proposed intervenor seeks to interpose defenses that share
22 common factual and legal questions with those raised in the main action. Proposed intervenors
23 seek to protect not merely a generalized, ethereal interest in preserving the national motto; rather,
24 they are actively involved in promoting its important role in society, and they have invested
25 countless amounts of time, energy and resources to preserving and defending this and similar
26 guideposts of American history. Further, as explained above, there is no tenable basis upon which
27
28

1 either party could claim that proposed intervenors' participation will cause prejudice or delay:
2 Applicants have sought intervention promptly after the filing of Plaintiffs' Complaint, and well
3 before any significant progression of this suit. Thus, even if this Court should determine that not
4 all of the requirements of Rule 24(a) have been met, it should permit the requested intervention
5 under Rule 24(b).
6

7 CONCLUSION

8 For the foregoing reasons, Applicant Pacific Justice Institute is entitled to participate in
9 this action as Intervenor-Defendant, either as a matter of right. *see* Fed. R. Civ. P. 24(a), or with
10 the Court's permission, *id.* R. 24(b). In the alternative, Applicant requests that, at the very least,
11 the Court allow it to participate in the litigation as amicus.

12 Date: November 29, 2005.
13
14
15
16

17 By: /s/ Kevin T. Snider
18 Kevin T. Snider
19 PACIFIC JUSTICE INSTITUTE
20 P.O. Box 276600
21 Sacramento, CA 95864
22 Proposed Defendant-Intervenor
23
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2 PO Box 233345
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6
7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA
9

10
11 Civil Action No. **2:05-CV-02339-FCD-PAN**
12

13
14 THE REV. DR. MICHAEL A. NEWDOW, IN PRO PER;
15

16 Plaintiff,
17

18 v.
19

20 THE CONGRESS OF THE UNITED STATES OF AMERICA;
21 PETER LEFEVRE, LAW REVISION COUNSEL;
22 THE UNITED STATES OF AMERICA;
23 JOHN WILLIAM SNOW, SECRETARY OF THE TREASURY;
24 HENRIETTA HOLSMAN FORE, DIRECTOR, UNITED STATES MINT;
25 THOMAS A. FERGUSON, DIRECTOR, BUREAU OF ENGRAVING AND PRINTING;
26

27 Defendants.
28
29

30
31 PLAINTIFF'S RESPONSE TO
32 PACIFIC JUSTICE INSTITUTE'S MOTION TO INTERVENE
33

34
35
36
37 The Pacific Justice Institute ("PJI") – which "represents **religious** persons and
38 organizations"¹ – has moved to intervene in this case.

¹ PJI Memorandum of Law in Support of Motion to Intervene at 9:17-18. (Emphasis added.)

1 Plaintiff is concerned about the PJI’s ability to maintain accuracy and truthfulness. For
2 instance, in its Motion, PJI characterizes Plaintiff’s Complaint in a completely unwarranted
3 and inaccurate manner, writing:

4 A plain reading of the complaint reveals that the Plaintiff’s purpose is to eradicate all
5 remnants of religion from public life.²

6
7 This is not only untrue, but the total opposite of what Plaintiff is trying to accomplish. One of
8 Plaintiff’s most fervent desires is to have a robust and uninhibited public display of religion,³
9 and nothing in the Complaint indicates otherwise. The rights of Christians and other
10 Monotheists to freely exercise their religious desires is supported by Newdow as strongly as
11 are the rights of those in his own Atheistic church.⁴ This lawsuit in no way interferes with
12 those rights. This lawsuit targets only “the government,” which – in terms of religion – is the
13 antithesis of “the public.”

14 PJI also falsely references this lawsuit as one “aimed at promoting government hostility
15 toward religion.”⁵ This lawsuit is aimed at nothing of the sort. Governmental neutrality –
16 which is all that Newdow is requesting – is not hostility, and is construed as such only by
17 those who demand governmental favoritism for the religious philosophy under which they
18 wish to live. Mr. Dacus needs to understand that “America’s dependence on God”⁶ is a purely
19 religious notion, with which millions of Americans strongly disagree. His desire to see
20 government reflect his (or any) religious view is precisely what the Establishment Clause
21 exists to prevent.

² PJI Memorandum at 5:24-25.

³ Declaration of Michael Newdow (accompanying this Response) at 1:36-37 (¶ 1).

⁴ *Id.* at 1:38-39 (¶ 2).

⁵ PJI Memorandum at 9:20 (¶ 13).

⁶ Affidavit of Brad W. Dacus at 3:12.

The principle of neutrality that underlies the Establishment Clause is the linchpin of our nation's religious liberty, and it has enabled our nation to become the most religiously diverse in the world. Governmental favoritism towards any religious view – such as the favoritism towards Monotheism sought by PJI – is the gravest danger to that liberty.

Assuming that PJI will immediately put an end to its mischaracterizations, Plaintiff has no objection to the Motion to Intervene, and warmly welcomes its contributions to the Court.

Respectfully submitted,

/s/ - Michael Newdow

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6
7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA
9

10
11 Civil Action No. **2:05-CV-02339-FCD-PAN**
12

13
14 THE REV. DR. MICHAEL A. NEWDOW, IN PRO PER;
15

16 Plaintiff,

17 v.
18

19 THE CONGRESS OF THE UNITED STATES OF AMERICA;
20 PETER LEFEVRE, LAW REVISION COUNSEL;
21 THE UNITED STATES OF AMERICA;
22 JOHN WILLIAM SNOW, SECRETARY OF THE TREASURY;
23 HENRIETTA HOLSMAN FORE, DIRECTOR, UNITED STATES MINT;
24 THOMAS A. FERGUSON, DIRECTOR, BUREAU OF ENGRAVING AND PRINTING;
25

26 Defendants.
27
28
29

30
31 PLAINTIFF'S DECLARATION IN RESPONSE TO
32 PACIFIC JUSTICE INSTITUTE'S MOTION TO INTERVENE
33

34
35 I, Michael Newdow, declare as follows:

36 (1) One of my most fervent desires is to have a robust and uninhibited public display of
37 religion.

38 (2) I deplore government hostility towards religion as much as I deplore government
39 favoritism towards religion.

1 (3) I support the rights of Christians and other Monotheists to freely exercise their
2 religious desires as strongly as I support the rights of those in my own Atheistic
3 church.

4
5
6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct.

8
9 Executed on December 5, 2005 in Sacramento, California.

10
11
12 /s/ - Michael Newdow

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9
10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA
12

13 -----oo0oo-----

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 _____/

22 -----oo0oo-----

23 This matter is before the court on a motion to
24 intervene filed by applicant Pacific Justice Institute ("PJI" or
25 "applicant"). Plaintiff, the Rev. Dr. Michael A. Newdow,
26 ("plaintiff") does not oppose applicant's intervention.¹ For the
27
28

¹ Defendants have not filed a response to applicant's motion to intervene.

1 reason's set forth below,² applicant's motion to intervene as a
2 defendant is GRANTED.

3 **BACKGROUND**³

4 On November 18, 2005, plaintiff filed a complaint in this
5 court, seeking declaratory and injunctive relief regarding the
6 use of the phrase "In God We Trust" as the national motto that is
7 also printed on United States currency. (Compl., filed Nov. 18
8 2005). The complaint names as defendants the Congress of the
9 United States of America, Peter Lefevre as Law Revision Counsel,
10 the United States of America, John William Snow as Secretary of
11 the Treasury, Henrietta Holsman Fore as Director of the United
12 States Mint, and Thomas A. Ferguson as Director of the Bureau of
13 Engraving and Printing. (Id.) On November 29, 2005, applicant
14 PJI filed a motion to intervene as a defendant in the action.
15 (Applicant's Mot. to Intervene, filed Nov. 29, 2005 ("Mot. to
16 Intervene")).

17 PJI is a Sacramento-based non-profit legal organization
18 dedicated to the preservation of religious and civil liberties.
19 (Aff. of Brad. W. Dycus in Supp. of Application Mot. to Intervene
20 ("Dycus Aff."), filed Nov. 29, 2005, ¶ 2). PJI has represented
21 numerous individuals, houses of worship, and religious
22 organizations which have been treated unjustly due to their
23 religious preferences. (Id. ¶ 3). PJI's mission and function is
24 to represent the interests of people of faith. (Id. ¶ 11). PJI

25
26 ² Because oral argument will not be of material
27 assistance, the court orders this matter submitted on the briefs.
See E.D. Cal. L.R. 78-230(h).

28 ³ Facts relating to the instant motion are drawn from
plaintiff's complaint and applicant's Motion to Intervene. These
facts are provided for background purposes only.

1 seeks to intervene as a defendant in this matter because it
 2 believes that plaintiff's lawsuit "would seriously undermine
 3 Pacific Justice Institute's organizational mission to protect
 4 religious liberty, including public expression of religious
 5 heritage." (Id. ¶ 17).

6 PJI brings this motion for intervention as of right or for
 7 permissive intervention. In the alternative, PJI requests that
 8 it be granted amicus status in the pending litigation.

9 STANDARD

10 Federal Rule of Civil Procedure 24⁴ provides two grounds for
 11 intervention in federal court: intervention as of right and
 12 permissive intervention.

13 Rule 24(a) governs applications for intervention as of
 14 right.⁵ In the absence of a statute conferring an unconditional
 15 right to intervene, the applicant must demonstrate that: (1) the
 16 application is timely; (2) the applicant has an interest in the
 17 subject matter of the litigation; (3) absent intervention,
 18 applicant's interest will be impaired; and (4) the existing
 19 parties inadequately represent the applicant's interests. League
 20 of United Latin American Citizens v. Wilson, 131 F.3d 1297, 1302
 21 (9th Cir. 1997). The focus of the court's inquiry should be the
 22

23 ⁴ All further references to the Rules are to the Federal
 24 Rules of Civil Procedure, unless otherwise noted.

25 ⁵ Rule 24(a)(2) provides: "Upon timely application anyone
 26 shall be permitted to intervene in an action . . . when the
 27 applicant claims an interest relating to the property or
 28 transaction which is the subject of the action and the applicant
 is so situated that the disposition of the action may as a
 practical matter impair or impede the applicant's ability to
 protect that interest, unless the applicant's interest is
 adequately represented by existing parties."

1 effect on the applicant, not on other parties to the litigation.
2 See 6 William Moore's Federal Practice 3d Ed. § 24.03(1)(c)
3 (2003). The rule is construed broadly in favor of the
4 applicants. Idaho Farm Bureau Fed'n v. Babbitt, 58 F.3d 1392,
5 1397 (9th Cir. 1995).

6 Applicants also may seek permissive intervention under Rule
7 24(b), which provides:

8 "Upon timely application, anyone may be
9 permitted to intervene in an action . . . when
10 an applicant's claim or defense and the main
11 action have a question of law or fact in common.
12 . . . In exercising its discretion, the court shall
consider whether the intervention will unduly
delay or prejudice the adjudication of the
rights of the original parties."

13 Unlike intervention as of right, permissive intervention focuses
14 on possible prejudice to the original parties to the litigation,
15 not the intervenor. See Moore's Federal Practice 3d Ed. §
16 24.10(1)(2003).

17 In reviewing a motion to intervene, the court generally
18 should accept as true the allegations and evidence submitted by
19 the applicant. Southwest Center for Biological Diversity v.
20 Berg, 268 F.3d 810, 819-820 (9th Cir. 2001).

21 ANALYSIS

22 I. Intervention as of Right

23 Plaintiff first asserts that it should be permitted to
24 intervene as of right under Federal Rule of Civil Procedure
25 24(a).

26 A. Timeliness

27 Timeliness is "the threshold requirement" for intervention
28 as of right. United States v. Oregon, 913 F.2d 576, 588 (9th

1 Cir. 1990). If the court finds "that the motion to intervene was
2 not timely, [it] need not reach any of the remaining elements of
3 Rule 24." Wilson, 131 F.3d at 1302 quoting United States v.
4 Washington, 86 F.3d 1499, 1503 (9th Cir. 1996). In determining
5 whether a motion is timely, the court considers: (1) the stage of
6 the proceedings; (2) the prejudice to other parties; and (3) the
7 reason for and length of the delay. United States ex rel.
8 McGough v. Covington Techs., 967 F.2d 1391, 1394 (9th Cir. 1992).
9 "[A]ny substantial delay weighs heavily against intervention."
10 Wilson, 131 F.3d at 1302. (citations omitted).

11 Here, the action was filed on November 18, 2005, and the
12 motion to intervene was filed on November 29, 2005. This motion
13 was brought at the outset of litigation, prior to the filing of
14 any response by the named defendants and prior to the issuance of
15 a pretrial scheduling order. See Sierra Club v. U.S. E.P.A., 995
16 F.2d 1478, 1481 (9th Cir. 1993) (upholding trial court's finding
17 that application was timely where filed before defendant had
18 filed its answer). There is no evidence that intervention by
19 applicant will prejudice any existing party. Accordingly, the
20 court finds that applicant's motion to intervene was timely
21 filed.

22 **B. Interest in the Subject Matter**

23 In addition to filing a timely motion, applicant must show
24 that it has an interest in the subject matter of the litigation.
25 Sagebrush Rebellion, Inc. v. Watt, 713 F.2d 525, 527 (9th Cir.
26 1983). "A public interest group is entitled as a matter of right
27 to intervene in an action challenging the legality of a measure
28 it has supported." Idaho Farm Bureau Fed'n, 58 F.3d at 1397

(citations omitted) (upholding intervention by conservation group that had participated in the listing of endangered species in a suit alleging substantive and procedural violations of the Endangered Species Act); Sagebrush Rebellion, 713 F.2d at 527.

Applicant's mission is the preservation of religious liberty, including public expressions of the nation's religious history and heritage. (Dacus Aff. ¶ 17; Mot. to Intervene at 4). Applicant has represented individuals, houses of worship, and religious organizations which have been treated unjustly due to their religious preferences. (Dacus Aff. ¶ 3). Applicant also assists governmental entities which are attacked for public acknowledgments of America's religious heritage. (Id. ¶ 5). Applicant asserts that the interpretation of the Establishment Clause and the constitutionality of the motto "In God We Trust" in the present action will affect PJI's mission and activities. Given the Ninth Circuit's holding that Rule 24 should be construed broadly in favor of the applicant, applicant has an interest in the subject matter of the litigation. See Idaho Farm Bureau Fed'n, 58 F.3d at 1397.

C. Impairment of Applicant's Interest

Applicant next must demonstrate that, absent intervention, its interests in the litigation will be impaired. Id. Applicant argues that the ability of PJI to defend expressions of religious heritage will be severely hindered if the court declares the government's use of phrase "In God We Trust" unconstitutional. It is PJI's position that the removal of the motto "from the public square will have a serious, detrimental effect on

Americans' awareness and appreciation" of the nation's religious heritage. (Dacus Aff. ¶ 14).

The mission of PJI is to "defend [the] nation's religious heritage against overly-restrictive interpretations of the Establishment Clause." (*Id.* ¶ 7). It is also PJI's mission and function to represent the interests of people of faith. (*Id.* ¶ 11). An adverse decision in this suit would impair PJI's ability to defend and promote American religious history and heritage. See *Sagebrush Rebellion*, 713 F.2d at 527 (finding that a conservation group's interest would be impaired because an adverse decision would impair its mission of preserving birds and their habitats).

D. Adequacy of Representation

Finally, the applicant must demonstrate that the party on whose side it seeks to intervene is not capable or willing to make the intervenor's arguments. See *Idaho Farm Bureau Fed'n*, 58 F.3d at 1398. "The burden of making this showing is minimal." *Pacific Gas & Elec. Co. v. Lynch*, 216 F. Supp. 2d 1016, 1025 (N.D. Cal. 2002) (citing *Sagebrush Rebellion*, 713 F.2d at 528). Applicant may satisfy this burden by demonstrating that the representation of their interests *may be* inadequate. *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1971). The Ninth Circuit

considers three factors in determining the adequacy of representation: (1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect.

1 Arakaki v. Cayetano, 324 F.3d 1078, 1086 (9th Cir. 2003) (citing
2 California v. Tahoe Reg'l Planning Agency, 792 F.2d 775, 778 (9th
3 Cir. 1986)).

4 The defendants in the current action are all government and
5 political actors or bodies. As such, defendants have various
6 competing interests to consider in asserting arguments and
7 defenses in this claim. PJI is a non-profit organization with
8 the goal of preserving the public expression of American
9 religious history and heritage. (Mot. to Intervene at 7). As
10 such, PJI's goals and interests differ from those of the
11 defendants. Thus, the defendants cannot necessarily be counted
12 on to make the same arguments as PJI.

13 Accordingly, because the four factor analysis under Rule
14 24(a) has been satisfied, applicant is entitled to intervene as
15 of right.

16 **II. Permissive Intervention⁶**

17 Applicant also seeks permissive intervention pursuant to
18 Rule 24(b). In order to intervene permissively, applicant first
19 must identify a common question of law or fact with the original
20 matter.⁷ Fed. R. Civ. P. 24(b). Here, applicant argues that its
21 interest in protecting the public expression of religious
22 heritage will be impaired by an adverse judgment in this matter.
23 Applicant also asserts that its activities include defending the
24

25 ⁶ While the court has found that applicant is entitled to
26 intervene as of right pursuant to Rule 24(a), the court considers
27 applicant's motion in the alternative to permissively intervene
pursuant to Rule 24(b).

28 ⁷ Timeliness also is a prerequisite for permissive
intervention. The court has found applicant's motion timely.
See Section I.A., above.

1 nation's religious heritage "against overly-restrictive
2 interpretations of the Establishment Clause."

3 PJI seeks to interpose defenses that share common factual
4 and legal questions as those raised in the main action which
5 alleges violations of the Establishment Clause through the use of
6 the motto "In God We Trust." (Mot. to Intervene at 9).

7 Therefore, the court grants applicant's motion for permissive
8 intervention.

9 **CONCLUSION**

10 For the reasons stated above, applicant's motion to
11 intervene as of right pursuant to Rule 24(a) is GRANTED. In the
12 alternative, applicant's motion for permissive intervention is
13 GRANTED.

14
15 IT IS SO ORDERED.

16 DATED: January 6, 2006.

17 /s/ Frank C. Damrell Jr.
18 FRANK C. DAMRELL, JR.
19 United States District Judge
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26
27
28

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

MICHAEL A. NEWDOW,
Plaintiff,

v.

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

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

Motion of the American Center for Law and Justice, United States Senator Jim DeMint, and United States Representatives Robert B. Aderholt, W. Todd Akin, Roscoe G. Bartlett, Kevin Brady, John Campbell, Steve Chabot, Chris Chocola, K. Michael Conaway, Geoff Davis, Jo Ann Davis, Phil English, Tom Feeney, Virginia Foxx, Trent Franks, Scott Garrett, Phil Gingrey, Virgil H. Goode, Jr., Gil Gutknecht, J.D. Hayworth, Jeb Hensarling, Wally Herger, Bob Inglis, Ernest J. Istook, Jr., Bobby Jindal, Sam Johnson, Michael T. McCaul, Patrick T. McHenry, Sue Wilkins Myrick, Randy Neugebauer, Charlie Norwood, Mike Pence, Charles W. "Chip" Pickering, Todd Russell Platts, Dana Rohrabacher, Paul Ryan, Jim Ryun, John B. Shadegg, Michael E. Sodrel, Mark E. Souder, Thomas G. Tancredo, Lee Terry, Todd Tiahrt, Zach Wamp, Dave Weldon, Lynn A. Westmoreland, and Roger F. Wicker for Leave to File Amici Curiae Brief in Support of Defendants' Motion to Dismiss

1 The American Center for Law and Justice (ACLJ), and United States Senator Jim DeMint
 2 and United States Representatives Robert B. Aderholt, W. Todd Akin, Roscoe G. Bartlett, Kevin
 3 Brady, John Campbell, Steve Chabot, Chris Chocoma, K. Michael Conaway, Geoff Davis, Jo Ann
 4 Davis, Phil English, Tom Feeney, Virginia Foxx, Trent Franks, Scott Garrett, Phil Gingrey,
 5 Virgil H. Goode, Jr., Gil Gutknecht, J.D. Hayworth, Jeb Hensarling, Wally Herger, Bob Inglis,
 6 Ernest J. Istook, Jr., Bobby Jindal, Sam Johnson, Michael T. McCaul, Patrick T. McHenry, Sue
 7 Wilkins Myrick, Randy Neugebauer, Charlie Norwood, Mike Pence, Charles W. “Chip”
 8 Pickering, Todd Russell Platts, Dana Rohrabacher, Paul Ryan, Jim Ryun, John B. Shadegg,
 9 Michael E. Sodrel, Mark E. Souder, Thomas G. Tancredo, Lee Terry, Todd Tiahrt, Zach Wamp,
 10 Dave Weldon, Lynn A. Westmoreland, and Roger F. Wicker respectfully move for leave to file
 11 the accompanying brief amici curiae in support of Defendants’ Motion to Dismiss.

12 **I. INTEREST OF AMICI CURIAE***

13 Proposed Amici have dedicated time and effort to defending and protecting Americans’
 14 First Amendment freedoms. It is this commitment to the integrity of the United States
 15 Constitution and Bill of Rights that compels them to support the dismissal of Plaintiff’s
 16 Complaint.

17 Amicus American Center for Law and Justice (ACLJ) is a non-profit public interest law
 18 firm that engages in litigation and supports attorneys who are involved in defending the religious
 19 and civil liberties of Americans through offices and affiliates throughout the United States. The
 20 ACLJ is committed both to educating the public regarding individuals’ First Amendment rights
 21 and to protecting those rights.

22 ACLJ attorneys have presented oral argument before the Supreme Court of the United
 23 States in the following First Amendment cases: *Locke v. Davey*, 540 U.S. 712 (2004); *Santa Fe*

24 * All parties have consented to the filing of the accompanying amici curiae brief.

1 *Independent School District v. Doe*, 530 U.S. 390 (2000); *Hill v. Colorado*, 530 U.S. 703 (2000);
 2 *Schenck v. Pro-Choice Network of Western New York*, 519 U.S. 855 (1997); *Lamb’s Chapel v.*
 3 *Center Moriches Union Free School District*, 508 U.S. 384 (1993); *Bray v. Alexandria Women’s*
 4 *Health Clinic*, 506 U.S. 263 (1993); *Board of Education of Westside Community Schools v.*
 5 *Mergens*, 496 U.S. 224 (1990); *United States v. Kokinda*, 497 U.S. 720 (1990); and *Board of*
 6 *Airport Commissioners v. Jews for Jesus*, 482 U.S. 569 (1987). In addition, the ACLJ has
 7 participated as amicus curiae in numerous cases involving constitutional issues before the
 8 Supreme Court and lower federal courts.

9 The proper resolution of this case is a matter of grave concern to amici because Plaintiff’s
 10 arguments, if accepted and followed to their logical end, will eventually result in the purging of
 11 every vestige of religious expression from public life. If Plaintiff is successful, it will
 12 undoubtedly embolden further challenges to other religious expressions in government venues,
 13 including the several religious works of art¹ and various religious inscriptions in the Capitol
 14 Complex,² as well as the prayer rooms in House and Senate Office buildings.³ The notion that
 15 the Establishment Clause requires such a “relentless and all-pervasive attempt to exclude religion
 16

17 ¹ For example, in the Rotunda of the Capitol Building are paintings with religious themes, such as *The Apotheosis*
 18 *of Washington*, depicting the ascent of George Washington into Heaven, and the *Baptism of Pocahontas*, portraying
 Pocahontas being baptized by an Anglican minister.

19 ² For example, a wall in the Cox Corridor of the Capitol is inscribed with a line from Katherine Lee Bates’ Hymn,
 20 *America the Beautiful*, “America! God shed his grace on Thee, and crown thy good with brotherhood from sea to
 21 shining sea.” In the prayer room of the House Chamber, two distinctly religious statements are inscribed: 1) “Annuit
 coeptus,” which means God has favored our undertakings; and 2) “Preserve me, O God, for in thee do I put my
 trust,” Psalm 16:1.

22 ³ Plaintiff’s overall strategy seeks to proscribe religious expression well beyond the national motto including
 23 presidential addresses invoking the name of God, the use of legislative chaplains, the invocation “God save the
 24 United States and this Honorable Court” prior to judicial proceedings, oaths of public officers, court witnesses, and
 jurors and the use of the Bible to administer such oaths, the use of “in the year of our Lord” to date public
 documents, the Thanksgiving and Christmas holidays, the National Day of Prayer, and the phrase “under God” in
 the Pledge of Allegiance.

1 from every aspect of public life”⁴ has no support in any Supreme Court case. It is Amici’s
 2 position that, if anything, such hostility to religious expression violates the Establishment Clause.

3 **II. WHY AN AMICI BRIEF IS DESIRABLE AND WHY THE MATTERS**
 4 **ASSERTED ARE RELEVANT TO THE DISPOSITION OF THE CASE**

5 Amici all have taken oaths to uphold and defend the United States Constitution and have
 6 expended time and effort defending the First Amendment rights of American citizens. The ACLJ
 7 possesses expertise regarding the Establishment Clause of the First Amendment and seeks to
 8 analyze the relevant case law concerning the vital constitutional issues raised in this case.

9 Amici take the position that the words “In God We Trust” in the national motto in no way
 10 violate the Establishment Clause of the First Amendment. These words simply echo the
 11 sentiments found in the Declaration of Independence and recognize the undeniable truth that our
 12 freedoms come from God. These words were adopted as the national motto for the express
 13 purpose of reaffirming America’s unique understanding of this truth. The United States is
 14 different from nations that recognize no higher authority than the state.

15 In their brief, amici clarify the Establishment Clause precedent relied upon by the
 16 Plaintiff. The brief analyzes the relevant Supreme Court and other federal cases dealing with
 17 government recognition of America’s religious heritage, including Supreme Court dicta
 18 indicating that the national motto is consistent with the First Amendment. Amici believe strongly
 19 that a proper understanding and application of the Establishment Clause jurisprudence of the
 20 Supreme Court supports unequivocally the constitutionality of “In God We Trust” as our
 21 national motto.

22
 23
 24 ⁴ *Allegheny County v. ACLU*, 492 U.S. 573, 657 (1989) (Kennedy, J., concurring) (quoting *Walz v. Tax Comm’n of New York City*, 397 U.S. 664, 670-71 (1970)).

1 **III. CONCLUSION**

2 WHEREFORE, this court should grant the present motion and allow amici to file the
3 accompanying brief amici curiae.

4 Respectfully submitted this 27th day of March, 2006.

5
6 

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

MICHAEL A. NEWDOW,
Plaintiff,

v.

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

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

Brief Amici Curiae of the American Center for Law and Justice and United States Senator Jim DeMint and United States Representatives Robert B. Aderholt, W. Todd Akin, Roscoe G. Bartlett, Kevin Brady, John Campbell, Steve Chabot, Chris Chocola, K. Michael Conaway, Geoff Davis, Jo Ann Davis, Phil English, Tom Feeney, Virginia Foxx, Trent Franks, Scott Garrett, Phil Gingrey, Virgil H. Goode, Jr., Gil Gutknecht, J.D. Hayworth, Jeb Hensarling, Wally Herger, Bob Inglis, Ernest J. Istook, Jr., Bobby Jindal, Sam Johnson, Michael T. McCaul, Patrick T. McHenry, Sue Wilkins Myrick, Randy Neugebauer, Charlie Norwood, Mike Pence, Charles W. "Chip" Pickering, Todd Russell Platts, Dana Rohrabacher, Paul Ryan, Jim Ryun, John B. Shadegg, Michael E. Sodrel, Mark E. Souder, Thomas G. Tancredo, Lee Terry, Todd Tiahrt, Zach Wamp, Dave Weldon, Lynn A. Westmoreland, and Roger F. Wicker in Support of Defendants' Motion to Dismiss

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INTEREST OF AMICI*

Amici United States Senator Jim DeMint and United States Representatives Robert B. Aderholt, W. Todd Akin, Roscoe G. Bartlett, Kevin Brady, John Campbell, Steve Chabot, Chris Chocola, K. Michael Conaway, Geoff Davis, Jo Ann Davis, Phil English, Tom Feeney, Virginia Foxx, Trent Franks, Scott Garrett, Phil Gingrey, Virgil H. Goode, Jr., Gil Gutknecht, J.D. Hayworth, Jeb Hensarling, Wally Herger, Bob Inglis, Ernest J. Istook, Jr., Bobby Jindal, Sam Johnson, Michael T. McCaul, Patrick T. McHenry, Sue Wilkins Myrick, Randy Neugebauer, Charlie Norwood, Mike Pence, Charles W. “Chip” Pickering, Todd Russell Platts, Dana Rohrabacher, Paul Ryan, Jim Ryun, John B. Shadegg, Michael E. Sodrel, Mark E. Souder, Thomas G. Tancredo, Lee Terry, Todd Tiahrt, Zach Wamp, Dave Weldon, Lynn A. Westmoreland, and Roger F. Wicker are currently serving in the One Hundred Ninth Congress.

These members of Congress and Amicus American Center for Law and Justice have dedicated time and effort to defending and protecting Americans’ First Amendment freedoms. It is this commitment to the integrity of the United States Constitution and Bill of Rights that compels them to support the dismissal of the Complaint in this case. Plaintiff’s strategy to purge all religious observances and references from American public life must not be permitted to move forward. If Plaintiff is successful, it will undoubtedly embolden further challenges to other religious expressions in government venues, including the several religious works of art¹ and various religious inscriptions in the Capitol Complex,² as well as the prayer rooms in House and

* This brief is filed upon Motion to the Court and with the consent of the parties. Amicus ACLJ discloses that no counsel for any party in this case authored in whole or in part this brief and that no monetary contribution to the preparation of this brief was received from any person or entity other than *amici curiae*.

¹ For example, in the Rotunda of the Capitol Building are paintings with religious themes, such as *The Apotheosis of Washington*, depicting the ascent of George Washington into Heaven, and the *Baptism of Pocahontas*, portraying Pocahontas being baptized by an Anglican minister.

Senate Office buildings.³

Amici urge this Court to uphold the use of “In God We Trust” as our national motto. While the First Amendment affords atheists complete freedom to disbelieve, it does not compel the federal judiciary to redact religious references in every area of public life in order to suit atheistic sensibilities.

SUMMARY OF ARGUMENT

The use of “In God We Trust” as this country’s national motto is fully consistent with the Establishment Clause of the First Amendment to the United States Constitution. The words of the motto echo the conviction held by the Founders of this Nation that our freedoms come from God. Congress codified “In God We Trust” as our national motto for the express purpose of reaffirming America’s unique history and understanding of this truth, and to distinguish America from atheistic nations who recognize no higher authority than the State.

Every court that has decided the issue has held that the national motto presents no Establishment Clause concerns. In fact, the decision of the U.S. Court of Appeals for the Ninth Circuit in *Aronow v. United States*, 432 F.2d 242 (9th Cir. 1970), is dispositive of Plaintiff’s claims in this case. The court in *Aronow* dismissed an identical challenge to federal statutes requiring the national motto to be inscribed on U.S. currency:

² For example, a wall in the Cox Corridor of the Capitol is inscribed with a line from Katherine Lee Bates’ Hymn, *America the Beautiful*, “America! God shed his grace on Thee, and crown thy good with brotherhood from sea to shining sea.” In the prayer room of the House Chamber, two distinctly religious statements are inscribed: 1) “Annuit coeptus,” which means God has favored our undertakings; and 2) “Preserve me, O God, for in thee do I put my trust,” Psalm 16:1.

³ Plaintiff’s overall strategy seeks to proscribe religious expression well beyond the national motto including presidential addresses invoking the name of God, the use of legislative chaplains, the invocation “God save the United States and this Honorable Court” prior to judicial proceedings, oaths of public officers, court witnesses, and jurors and the use of the Bible to administer such oaths, the use of “in the year of our Lord” to date public documents, the Thanksgiving and Christmas holidays, the National Day of Prayer, and the phrase “under God” in the Pledge of Allegiance.

1 Dated March 27, 2006

2 Respectfully submitted,

3
4 

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IN THE UNITED STATES DISTRICT COURT
FOR THE 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.

CASE NO. 2:05-CV-02339-FCD-PAN (JFM)

**FEDERAL DEFENDANTS' NOTICE OF
MOTION AND MOTION TO DISMISS**

Date: May 19, 2006
Time: 10:00 a.m.
Judge: Hon. Frank C. Damrell, Jr.
Courtroom: No. 2

PLEASE TAKE NOTICE that on May 19, 2006, at 10:00 a.m. in Courtroom #2 of the
United States District Court, Eastern District of California, 501 I Street, Sacramento, California,
or as soon thereafter as the parties may be heard, defendants United States Congress; Peter
LeFevre, Law Revision Counsel; the United States of America; John William Snow, Secretary of
the Treasury; Henrietta Holsman Fore, Director, United States Mint; and Thomas A. Ferguson,
Director, Bureau of Engraving and Printing (the "Federal Defendants") will move to dismiss this
action under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. Dismissal is

FEDERAL DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS

1 appropriate under Rule 12(b)(1) because plaintiff lacks standing and to the extent the Federal
2 Defendants are immune from plaintiff's claims. Dismissal is appropriate under Rule 12(b)(6)
3 because the complaint fails to state a claim upon which relief may be granted. The grounds for
4 this motion are set forth in the attached memorandum of law, and a proposed order is submitted
5 herewith.

6 Respectfully Submitted,

7 PETER D. KEISLER
8 Assistant Attorney General

9 MCGREGOR W. SCOTT
10 United States Attorney

11 THEODORE C. HIRT
12 Assistant Branch Director

13 /s/ Robert J. Katerberg
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26 Fore, and Thomas A. Ferguson
27
28

21 Dated: March 27, 2006

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THE REV. DR. MICHAEL A.
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Plaintiff,

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THE CONGRESS OF THE UNITED
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Defendants.

CASE NO. 2:05-CV-02339-FCD-PAN (JFM)

**FEDERAL DEFENDANTS'
MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS**

Date: May 19, 2006
Time: 10:00 a.m.
Judge: Hon. Frank C. Damrell, Jr.
Courtroom: No. 2

1 This type of injury to one's feelings falls short of the type of "concrete and particularized"
 2 injury "affect[ing] the plaintiff in a personal and individual way" that Article III requires. Lujan,
 3 504 U.S. at 560 & n.1, 112 S. Ct. at 2136 & n.1. The "psychological consequence presumably
 4 produced by observation of conduct with which one disagrees . . . is not an injury sufficient to
 5 confer standing under Article III, even though the disagreement is phrased in constitutional
 6 terms." Valley Forge, 454 U.S. at 485-86, 102 S. Ct. at 765. Plaintiff plainly disagrees with the
 7 inclusion of the words "In God We Trust" in the challenged statutes and believes they are
 8 unconstitutional, and even proposes some alternative mottos. But absent some concrete injury,
 9 his disagreement with the law cannot create standing. Diamond v. Charles, 476 U.S. 54, 62, 106
 10 S. Ct. 1697, 1703 (1986) ("The presence of a disagreement, however sharp and acrimonious it
 11 may be, is insufficient by itself to meet Art. III's requirements"). Thus, Article III injury "is not
 12 measured by the intensity of the litigant's interest or the fervor of his advocacy." Valley Forge,
 13 454 U.S. at 486, 102 S. Ct. at 766; accord Allen v. Wright, 468 U.S. 737, 755-56, 104 S. Ct.
 14 3315, 3327 (1984) ("abstract stigmatic injury" insufficient by itself to create Article III injury in
 15 fact); Schlesinger v. Reservists Committee to Stop the War, 418 U.S. 208, 223 n.13, 94 S. Ct.
 16 2925, 2933 n.13 (1974) ("abstract injury in nonobservance of the Constitution" insufficient to
 17 confer Article III injury).

18 Further, because of the ubiquity of coins and currency in everyday life, plaintiff's
 19 encounters with the national motto are not uniquely experienced by him. Rather, plaintiff's
 20 exposure is "undifferentiated from that of all other" residents of the United States who have a
 21 similar degree of daily contact with United States coins and currency in their daily business.
 22 Schlesinger, 418 U.S. at 217, 94 S. Ct. at 2930. Such an injury is not specific enough under

23
 24 ¹²(...continued)
 25 serve in certain military or civil service positions (Compl. ¶ 250). To the extent that these
 26 allegations would show a cognizable injury in fact (a matter we do not concede), it cannot
 27 reasonably be argued that they are traceable to the laws challenged in the complaint, nor that they
 28 could be redressed through this lawsuit. See infra Sections II.B, II.C.

Plaintiff separately claims injury on the basis that he pays federal taxes. That alleged
 ground for standing is discussed infra at Section II.D.

Free Exercise claims” (internal quotation marks omitted)), cert. denied, 505 U.S. 1219, 112 S. Ct. 3028 (1992).

And, even assuming arguendo plaintiff’s religious exercise has been “substantially burdened,” there is undoubtedly a compelling governmental interest in maintaining a national motto that “symbolizes the historical role of religion in our society, formalizes our medium of exchange, fosters patriotism, and expresses confidence in the future,” and in having coins and currency reflect that national motto. Gaylor v. United States, 74 F.3d 214, 216 (10th Cir.), cert. denied, 517 U.S. 1211, 116 S. Ct. 1380 (1996). Any argument that there might be less restrictive means of satisfying this compelling government interest would amount to, essentially, a proposal for a different, alternative national motto, see Compl. ¶ 270 (listing twelve proposed “candidates” for a replacement national motto), but it would contradict the very concept of a national motto to allow such a “heckler’s veto” over the overwhelming will of the citizenry as expressed through the political process. Cf. Good News Club v. Milford Central School, 533 U.S. 98, 119, 121 S. Ct. 2093, 2106 (2001) (“We decline to employ Establishment Clause jurisprudence using a modified heckler’s veto . . .”).

Finally, plaintiff asserts, almost in passing, that the national motto also violates the Free Speech Clause of the First Amendment and the equal protection component of the Fifth Amendment. Compl. ¶¶ 240-241. These claims are wholly without merit. With respect to the Free Speech Clause claim, plaintiff cites Wooley v. Maynard, 430 U.S. 705, 97 S. Ct. 1428 (1977), but neglects to acknowledge that Wooley itself disavows the proposition for which plaintiff cites it.³⁰ With respect to the equal protection claim, the statutes challenged here are not susceptible to equal protection analysis because they make no classifications or distinctions. See, e.g., Sturm v. Clark, 835 F.2d 1009, 1016 (3d Cir. 1989) (“Government action cannot violate the

³⁰ Wooley held that a state law requiring motorists to display the state motto, “Live Free or Die,” on their license plates violated the First Amendment by coercing the motorists’ speech, but expressly cautioned that its holding did not extend to the appearance of the national motto on coins and currency. See supra p. 43-44 (quoting Wooley, 430 U.S. at 717 n.15, 97 S. Ct. at 1436 n.15).

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

REV. DR. MICHAEL A. NEWDOW,
Plaintiff,

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

v.

THE CONGRESS OF THE UNITED
STATES OF AMERICA, et al.,
Defendants, and
PACIFIC JUSTICE INSTITUTE,
Intervenor-Defendant.

**UNOPPOSED MOTION BY THE
THOMAS MORE LAW CENTER,
AMICUS CURIAE, FOR LEAVE TO
FILE ITS AMICUS CURIAE BRIEF IN
SUPPORT OF THE DISMISSAL OF
THIS ACTION**

1 The Thomas More Law Center, amicus curiae, submits this unopposed motion for
 2 leave to file its amicus curiae brief, submitted separately to this court, in support of the
 3 dismissal of this action. The attorneys for the plaintiff, the federal defendants, and the
 4 intervenor-defendant have consented to the granting of this motion and to the filing of the
 5 amicus curiae brief.

6
 7 **STATEMENT OF IDENTITY**
AND INTEREST OF THE AMICUS CURIAE

8 The Thomas More Law Center is a national, nonprofit public interest law firm based in
 9 Ann Arbor, Michigan. The Law Center is dedicated to defending and promoting the religious
 10 freedom of Christians, time-honored family values, and the sanctity of human life. The Law
 11 Center accomplishes these goals on behalf of the citizens of the United States through
 12 litigation, education, and related activities.

13 The Thomas More Law Center has represented members of the public in federal courts
 14 throughout the nation and has filed amicus curiae briefs in many federal courts on issues in
 15 which the Law Center has an interest and a level of expertise that would be of service to the
 16 court in deciding the questions before it, as in this case.^{1/}

17 The Thomas More Law Center, along with its more than 57,000 members and
 18 supporters, has an interest in preserving the right of Americans to publicly acknowledge God
 19 and our God-given freedom, which is represented through our national motto, "In God We
 20 Trust."

21
 22
 23
 24 ^{1/} The Thomas More Law Center has been permitted to file amicus curiae briefs in
 25 such federal courts as the Supreme Court of the United States, the United States Court of
 Appeals for the Fifth, Eighth, and Ninth Circuits, and in the United States District Court for
 the Southern District of California in the case of *Paulson v. City of San Diego*, Case. No. 89-
 CV-820 (the Mt. Soledad Cross case).

1 The Thomas More Law Center appears as amicus curiae in support of the dismissal of
2 this action.

3 **REASONS TO GRANT THIS MOTION**

4 The Local Rules of this court and the Federal Rules of Civil Procedure do not have a
5 rule governing the acceptance of amicus curiae briefs. Yet, according to Federal Rule of
6 Appellate Procedure 29(b), an amicus curiae brief may be filed if it addresses matters relevant
7 to the disposition of the case. The brief submitted by the Thomas More Law Center in this
8 action addresses relevant matters and will assist this court in reaching its decision in this case.
9 Accordingly, this motion should be granted.
10

11 As noted in greater detail in the submitted amicus curiae brief, the United States Court
12 of Appeals for the Ninth Circuit, which is the governing court in this jurisdiction, has already
13 ruled that the national motto, “In God We Trust,” does not violate the Constitution of the
14 United States, something plaintiff has failed to acknowledge in his complaint. *Aronow v.*
15 *United States*, 432 F.2d 242 (9th Cir. 1970).

16 Beyond that binding authority, the phrase “In God We Trust” does not have the
17 constitutionally impermissible effect of establishing a religion. Rather, it acknowledges our
18 nation’s rich religious heritage, that is, the undeniably religious belief regarding God-given
19 freedom, which informed the founding of our independent nation and the establishment of our
20 limited form of government.
21

22 Moreover, our national motto provides an ongoing acknowledgment of our unifying
23 religious heritage, serves a beneficial secular purpose, and is completely compatible with the
24 Establishment Clause. In short, the phrase, “In God We Trust,” is constitutionally consistent
25 with our nation’s history and religious heritage.

CONCLUSION

For the above-stated reasons, the Thomas More Law Center, amicus curiae, respectfully requests that this court grant this unopposed motion for leave to file its amicus curiae brief in this action.

Dated: March 29, 2006

Respectfully submitted,

THOMAS MORE LAW CENTER

/s/ Edward L. White III

Edward L. White III* (MI P62485)

(as authorized on March 28, 2006)

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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
25

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 **I.**
 5 **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 (9th 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.")^{1/} For that reason alone, Newdow's claim should be dismissed.

21 ^{1/} 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 (10th Cir. 1996); *North Carolina Civil Liberties Union Legal Found. v.*
Constangy, 947 F.2d 1145, 1151 (4th Cir. 1991); *O'Hair v. Murray*, 588 F.2d 1144 (5th 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.^{2/} 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,

^{2/} [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 (10th 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 (7th 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."^{3/}
- Beginning in 1774, the Continental Congress adopted the procedure of opening its sessions with a prayer offered by a paid chaplain.^{4/}
- 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."^{5/}
- 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."^{6/}

^{3/} 3 Jared Sparks, ed., *The Writings of George Washington* 449 (1837).

^{4/} *Marsh v. Chambers*, 463 U.S. 783, 787 (1983).

^{5/} *Sherman*, 980 F.2d at 446 n.5.

^{6/} 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.^{7/} *Lambeth v. Board of Commissions of Davidson County*, 407 F.3d 266, 270-71 (4th 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

^{7/} "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.

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

3
 4 **C.**
THE DANGER OF DIVORCING
ALL PUBLIC REFERENCE TO GOD AND RELIGION

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

8
 9 A failure to publicly acknowledge God and the role of religion in our nation completely
 10 ignores what the majority of Americans have always believed. Almost 200 years ago, Alexis de
 11 Toqueville, that great observer of America and its people, commented in his two-part work,
 12 *Democracy in America*:

13 Religion in America . . . must be regarded as the foremost of the political
 14 institutions of that country; for if it does not impart a taste for freedom, it
 15 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.

16 1 Alexis de Toqueville, *Democracy in America* 316 (1955).

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

21
 22 And, as demonstrated by the very furor with which the public received the Ninth
 23 Circuit’s previous attempt to remove the phrase “under God” from the Pledge of Allegiance,
 24 Americans still want to publicly acknowledge God’s influence on our nation. *Newdow v.*
 25

1 Congress, 328 F.3d 466, 471-72 (9th 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 spoke⁸/ 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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⁸/ 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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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
SUPPORT OF 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

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INTRODUCTION

Plaintiff, Michael Newdow (hereinafter “Plaintiff” or “Newdow”) filed a complaint in this Court against numerous federal officials, agencies, Congress and the United States challenging the legality of the national motto, “In God We Trust” (36 U.S.C. §302), which is inscribed on U.S. coins and currency pursuant to 31 U.S.C. §§5112(d)(1); 5114(b). The Rev. Dr. Newdow seeks to use the judicial branch to purge all traces of religion from government and thus impose a secular interpretation of the Constitution which is more French than American. *McCreary County, Ky v. American Civil Liberties Union of Ky*, 125 S.Ct. 2722, 2748 (2005) (Scalia, J. dissenting). The Pacific Justice Institute (“PJI”) files this motion to dismiss¹ based on the proposition that the national motto, though religious, is not sectarian and hence its appearance on money does not violate the Establishment Clause.

SUMMARY OF THE ARGUMENT²

Dr. Newdow has failed to state a cause of action in his Complaint because use of the national motto on coins and the like does not violate the First Amendment’s Establishment Clause. First, PJI argues that the three pronged test of *Lemon v.*

¹ PJI brings this motion pursuant to FRCP 12(b)(6).

² The Federal Defendants filed a motion to dismiss under FRCP 12(b)(1) and (6) which the Intervenor/Defendant, Pacific Justice Institute, has joined. For the sake

1 *Kurtzman*, 403 U.S. 602, 91 S.Ct. 2105 (1971), is not applicable to the law and facts
 2 in this controversy. Second, “In God We Trust” is not, on its face, sectarian. Third,
 3 the motto is not sectarian because of (1) its historical ubiquity and (2) its primarily
 4 ceremonial and/or solemnizing purpose.
 5

6 **ARGUMENT**

7 **I. The National Motto Does Not Violate The Establishment Clause**

8 **a. *Lemon* is not applicable to all Establishment Clause** 9 **Cases.**

10 In Establishment Clause cases, the Supreme Court frequently uses the three-
 11 prong test from *Lemon*, i.e., (1) secular legislative purpose; (2) principal or primary
 12 effect of law or conduct must be one that neither advances nor inhibits religion; and,
 13 (3) said law or conduct must not foster excessive government entanglement with
 14 religion. *Id.*, 612-613. It is important to recognize that in analyzing Establishment
 15 Clause cases, the High Court has stopped short of making the *Lemon* prongs
 16 universal.
 17

18 Chief Justice Rehnquist wrote in *Van Orden v. Perry*, 125 S.Ct. 2854 (2005)
 19 that “the factors identified in *Lemon* are no more than helpful signposts.” *Id.*, 2861.
 20 For example, in addition to *Van Orden*, *Lemon* was not used in *Zelman v. Simmons-*
 21

22 of judicial economy, arguments raised by the Federal Defendants will not be
 23 repeated.
 24

1 *Harris*, 536 U.S. 639, 718, 122 S.Ct. 2460 (2002) (upholding school voucher
 2 program); *Good News Club v. Milford Central School*, 533 U.S. 98, 121 S.Ct. 2093
 3 (2001) (holding that allowing religious school groups to use school facilities does
 4 not violate the Establishment Clause); or *Marsh v. Chambers*, 463 U.S. 783, 103
 5 S.Ct. 3330 (1983) (confirming the constitutionality of legislative prayer).
 6
 7

8 Further, although the Supreme Court has not directly ruled on the
 9 constitutionality of the national motto, in its *dicta* it has **never** scrutinized “In God
 10 We Trust” using *Lemon*’s three prongs.³ It is PJI’s position that this Court should
 11 follow the Supreme Court’s lead and also resist that temptation.
 12

13 Absent consideration of rulings that do not rely on *Lemon*, Plaintiff’s radical
 14 interpretation of *Lemon* would have breathtaking implications. Cities would have to
 15 change their names because they are overtly religious, e.g., Sacramento (sacrament)
 16 or Santa Cruz (Holy Cross). An unquestioning loyalty to *Lemon* will end in
 17 draconian restrictions which will rob a predominantly religious people’s government
 18 of its historical traditions. Instead, a more nuanced approach to the Establishment
 19 Clause is appropriate.
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25 ³ For a detailed discussion of the Supreme Court’s *dicta* on the motto, see, generally,
 26 pp. 4-8 of the Federal Defendants’ Motion to Dismiss. Other than the fact that PJI
 27 joins that motion, for the sake of judicial economy, PJI will not repeat those
 28 arguments.

1 **b. The national motto is not sectarian.**

2 At the outset it is important to note that Dr. Newdow and PJI are in agreement
3
4 that a constitutional prohibition on government support of sectarian laws or practices
5 is a legal maxim. A brief review of this proposition is sufficient.

6 The high court has made the following observations: *West Virginia State Bd.*
7
8 *of Educ. v. Barnette*, 319 U.S. 624, 642, 63 S.Ct. 1178 (1943) (“If there is any fixed
9 star in our constitutional constellation, it is that no official, high or petty, can
10 prescribe what shall be orthodox in ... religion....”); *Larson v. Valente*, 456 U.S.
11 228, 244, 102 S.Ct. 1673 (1982) (“The clearest command of the Establishment
12 Clause is that one religious denomination cannot be preferred over another.”);
13 *Watson v. Jones*, 80 U.S. 679, 728 (1871) (“The law knows no heresy, and is
14 committed to the support of no dogma, the establishment of no sect.”)
15
16

17 The disagreement between Dr. Newdow and PJI is whether the phrase, “In
18 God We Trust,” is sectarian. Not surprisingly, Dr. Newdow’s position is that “In
19 God We Trust” is a “sectarian” phrase. He asserts that “‘In God We Trust’ on the
20 coins and currency (and as our national motto) lends that ‘power, prestige and
21 financial support’ to the sectarian view that there exists a God.” Complaint, pg. 34,
22
23 ¶184. Plaintiff paints with too broad a stroke. To the contrary, belief in God
24 encompasses such a wide expanse of religions and philosophies that it would rob
25 language of its meaning to assert that such a generalized concept is sectarian.
26
27
28

Perhaps this dispute is best resolved by observing that **none** of the Supreme Court *dicta* on the national motto has characterized “In God We Trust” as sectarian. *County of Allegheny v. ACLU*, 492 U.S. 573, 602-03, 109 S.Ct. 3086 (1989) (O'Connor, J., concurring); and *Lynch v. Donnelly*, 465 U.S. 668, 693, 104 S.Ct. 1355 (1984) (O'Connor, J., concurring); *Wooley v. Maynard*, 430 U.S. 705, 717, n.15, 97 S.Ct. 1428 (1977), *see, also* (Rehnquist, C.J. dissenting at 722); *Engel v. Vitale*, 370 U.S. 421, 440-441, 82 S.Ct. 1261 (1962);⁴ *School Dist. of Abington Township, Pa. v. Schempp*, 374 U.S. 203, 304, 83 S.Ct. 1560 (1963) (Brennan, J. concurring); *Stone v. Graham*, 449 U.S. 39, 45, 101 S.Ct. 192 (1980) (Rehnquist, C.J. dissenting); *Marsh v. Chambers*, 463 U.S. 783, 818, 103 S.Ct. 3330 (1983) (Brennan, J. dissenting); *Santa Fe Independent School Dist. v. Doe*, 530 U.S. 290, 322-323, 120 S.Ct. 2266 (2000) (Rehnquist, C.J. dissenting); *Van Orden v. Perry*, 125 S.Ct. 2854, 2879 (2005) (Stevens, J. dissenting); *McCreary County, Ky v. American Civil Liberties Union of Ky*, 125 S.Ct. 2722, 2749-2750 (2005) (Scalia, J. dissenting).

In addition to the Supreme Court's having never characterized the motto as sectarian, in view of the ordinary usage of the word, it is PJI's position that the

⁴ It should be noted that in Justice Douglas' concurrence he argued for a bright line that all religious aid, including the national motto, is unconstitutional. Despite this, he does not characterize the motto as sectarian.

1 motto is not, on its face, sectarian. “Sectarian” means “adhering or confined to the
2 dogmatic limits of a sect or denomination; partisan; of, relating to, or characteristic
3 of a sect.”⁵
4

5 In contrast to the plain meaning of *sectarian*, Dr. Newdow discusses in his
6 Complaint how he seeks to have this word defined in the most expansive of ways
7 possible. In a section entitled, “IN GOD WE TRUST,” CONSTITUTIONALLY, IS
8 SECTARIAN (Complaint, pp. 53-56) the Plaintiff asserts that “[S]ectarianism... --
9 in constitutional terms – refers not only to beliefs held by any one religious sect, but
10 to all religious beliefs that are not universal. In other words, any belief that is not
11 adhered to by all is – from the point of view of the Constitution as well as the
12 nonadherent – a sectarian belief.” Complaint, pg. 53, ¶ 285.
13
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17 The consequence of a court adopting such a position is sobering. It would
18 require that any governmental conduct, statement, or practice that relates to
19 “religion” must be **unanimous** to avoid unlawful sectarianism. Thus, government
20 would be unable to take a position on any values or attitudes unless the public is in
21
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23
24

25 ⁵ Dictionary.com © (<http://dictionary.reference.com/search?q=sectarian>).
26 Accessed March 29, 2006.
27
28

1 **total unanimity** on the issue. Otherwise, the public officials would entangle
2 themselves in a sectarian dispute.

3
4 But Plaintiff does not stop there. His concept of the word “religion” or
5 “religious” is the broadest possible. “Religion” is used in a manner that does not
6 necessarily include spirituality, i.e., “personal beliefs or values: a set of strongly-held
7 beliefs, values, and attitudes that somebody lives by.”⁶

8
9 For example, as an atheist, Dr. Newdow and those in his church insist that
10 they are “religious.” (Complaint, pg. 1, ¶ 7; pg. 29, ¶¶ 148, 150-152). Further,
11 Plaintiff alleges that he is an ordained minister (Complaint, pg. 1, ¶ 7) in the First
12 Amendmist Church of True Science (“FACTS”) (Complaint, pg. 29, ¶ 151). In
13 understanding the enormous scope of Dr. Newdow’s use of the term “religion,” it is
14 important to recognize that FACTS does not have ten commandments but rather
15 three “suggestions” for its members.⁷ *Id.*

16
17 Plaintiff’s view is so expansive that anyone who lives by a mere hand full of
18 **suggestions** is “religious.” This is problematic because Dr. Newdow asserts that
19 constitutionally, “sectarian refers to all *religious* beliefs that are not universal.”
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26 ⁶ Encarta Dictionary © <http://dictionary.reference.com/search?q=religion>. Accessed
27 March 30, 2006.

28 ⁷(1) Question, (2) Be honest, and (3) Do what’s right. Complaint, pg. 29, ¶ 151).

1 Complaint, pg. 53, ¶ 285 (emphasis added). This view is fundamentally flawed
2 because of its breadth.

3
4 Even though “In God We Trust” is concededly a religious sentiment on its
5 face, it is not sectarian merely because it is not a belief unanimously held by the
6 populace. Simply put, there is no legal authority to support Plaintiff’s breathtaking
7 proposition as to what is “sectarian.” Taken to its logical conclusion, any value-
8 based law or conduct by a state actor, whether ceremonial or even codified in penal
9 codes (e.g., prohibitions on larceny), would violate the Establishment Clause
10 because such judgments are “sectarian.” In view of this, the Court should reject Dr.
11 Newdow’s position as unworkable.

12
13
14 **A. Historically based conduct is not sectarian.**

15
16 A law or conduct should not be deemed sectarian if it has an historical basis.
17 The reason is self-evident. A nation’s history, both good and bad, is something that
18 its citizens share in common. Because of its commonality, said history is not
19 sectarian, even if religious.

20
21 Plaintiff’s Complaint, as well as the Federal Defendants’ Motion to Dismiss
22 and *amici* briefs, discuss at length the religious history of this country, particularly
23 as it relates to the national motto. For purposes of this motion PJI will not burden
24 the Court with more of the same. It is sufficient to note that this country was
25
26
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1 founded on religious principles and its people are now, and have always been,
2 religious. *Zorach v. Clauson*, 343 U.S. 306, 313, 72 S.Ct. 679 (1952).

3
4 Though not setting down a precise rule, the Supreme Court relied on the
5 concept of historical background in one of its most recent Establishment Clause
6 cases. In *Van Orden v. Perry*, 125 S.Ct. 2854, (2005), four justices penned separate
7 opinions in a case involving a monument displaying the Ten Commandments. Chief
8 Justice Rehnquist wrote the lead opinion in which he found the monument
9 constitutional. The essence of the argument was that the display did not violate the
10 Establishment Clause because of its nature and “by our Nation’s history” (*Id.*, 2861),
11 recognizing “the role the Decalogue plays in America’s heritage.” *Id.*, 2863.

12
13 Similarly, Justice Scalia argued that Establishment Clause jurisprudence
14 should be in “accord with our Nation’s past and present practices.” *Id.*, 2864
15 (Scalia, J. concurring). In like manner, Justice Thomas opined that it is permissible
16 for the government to engage in conduct which is consistent with acknowledging the
17 religious history of our country. *Id.*, 2865. (Thomas, J. concurring). Though using
18 a different construct, Justice Breyer also asserted that history, in the context of a
19 given case, should be factored into Establishment Clause analysis. *Id.*, 2870-71.
20 (Breyer, J. concurring).

1 The forerunner of this line of reasoning probably comes from Justice
 2 O'Connor who determined that governmental conduct which is ingrained in
 3 "historical ubiquity" is not sectarian. *Lynch, Id.*, 693 (O'Connor, J. concurring).
 4

5 Examples of historical ubiquity would include reciting the pledge of
 6 allegiance (i.e., "one nation under God"), singing the national anthem (verse 4),
 7 displaying historically based art work with religious themes in government
 8 buildings, opening legislative sessions in prayer⁸ and opening court sessions with
 9 "God save the United States and this Honorable Court." Justice O'Connor explains
 10 that these types of practices "cannot fairly be understood to convey a message of
 11 government endorsement of religion." Moreover, "because of their history and
 12 ubiquity, those practices are not understood as conveying government approval of
 13 particular religious beliefs. The display of the crèche likewise serves a secular
 14 purpose--celebration of a public holiday with traditional symbols." *Lynch, Id.*, 693
 15 (O'Connor, J. concurring). (Emphasis added).
 16
 17
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 19

20 Dr. Newdow raises two issues of protest. First, he writes: "'In God We Trust'
 21 places the government on one side in the quintessential theological debate: Does
 22 God exist?" Complaint, pg. 55, ¶ 292. In view of this country's origins, it is not
 23 surprising that the government would reflect the Nation's religious history in its
 24
 25

26
 27 ⁸ Consistent with this theme, the prayer was found constitutional due to its "unique
 28 history." *Marsh, Id.*, 790-792.

1 motto. Indeed, the initiating document (Declaration of Independence) makes
 2 numerous references to God. Because the belief in the existence of God is the
 3 historical reality of the founding of this country, it is not *per se* sectarian for the
 4 government to officially recognize something entwined in the Nation's heritage.
 5 "The truth is that *we have simply interwoven the motto so deeply into the fabric of*
 6 *our civil polity* that its present use may well not present that type of involvement
 7 which the First Amendment prohibits." *School Dist. of Abington Township, Pa. v.*
 8 *Schempp, Id.*, 304 (1963) (Brennan, J. concurring). (Emphasis added).

12 Second, the Plaintiff takes issue with the fact that the national motto is self-
 13 evidently monotheistic. Complaint, pp. 16-17, ¶¶ 76-77. Again, this is not
 14 surprising in that this Nation's initiating document's references to the divine are
 15 always monotheistic, e.g., "We, therefore, the Representatives of the United States
 16 of America...*appealing to the Supreme Judge of the world* for the rectitude of our
 17 intentions, do,...solemnly publish and declare, That these United Colonies are, and
 18 of Right ought to be Free and Independent States...." (Declaration of Independence,
 19 emphasis added). Though there is certainly no unanimity relative to polytheism
 20 versus monotheism, the monotheistic national motto is consistent with this country's
 21 history as reflected in the Declaration of Independence.

25 Because history is something that all citizens of a country have in common,
 26 official laws and practices which reflect a religious history pass constitutional muster

1 under the reasoning in *Van Orden* and *Lynch*. For this same reason, “In God We
2 Trust” is lawful because it is not sectarian.

3
4 **B. Ceremonial or solemnizing acts are not sectarian.**

5 Official law or conduct should not be deemed sectarian if they involve mere
6 ceremonial or solemnizing acts. Certain “government acknowledgments of religion
7 serve, in the only ways reasonably possible in our culture, the legitimate secular
8 purposes of solemnizing public occasions, expressing confidence in the future, and
9 encouraging the recognition of what is worthy of appreciation in society.” *Lynch*,
10 *Id.*, 693 (O’Connor, J. concurring). Justice O’Connor further explained in a case
11 familiar to the Plaintiff, as follows:

12 There are no *de minimis* violations of the Constitution--no constitutional
13 harms so slight that the courts are obliged to ignore them. Given the
14 values that the Establishment Clause was meant to serve, however, I
15 believe that government can, in a discrete category of cases,
16 acknowledge or refer to the divine without offending the Constitution.
17 This category of “ceremonial deism” most clearly encompasses such
18 things as the national motto (“In God We Trust”), religious references in
19 traditional patriotic songs such as the Star-Spangled Banner, and the
20 words with which the Marshal of this Court opens each of its sessions
21 (“God save the United States and this honorable Court”). See *Allegheny*,
22 *492 U.S. at 630, 109 S.Ct. 3086* (opinion of O’CONNOR, J.). These
23 references are not minor trespasses upon the Establishment Clause to
24 which I turn a blind eye. Instead, their history, character, and context
25 prevent them from being constitutional violations at all. (*Elk Grove*
26 *Unified School Dist. v. Newdow*, 542 U.S. 1, 36-37, 124 S.Ct. 2301
27 (2004))

28 It is self-evident that ceremony and tradition go hand in hand. The
question must be asked, how can the government engage in meaningful
ceremony or other solemnizing acts without reference to a common heritage of

1 religion? Should it sacrifice an animal or engrave “Hail Caesar” on the
2 penny? These may be perfectly fine ceremonial or solemnizing acts in other
3 nations. But in this country, such acts lack the traditions based in our common
4 historical roots to have meaning. As such, it is appropriate that “In God We
5 Trust” is engraved on coins and a variety of government buildings given the
6 religious history of this country. In sum, because it is primarily ceremonially
7 based upon religious historical tradition, use of the national motto is not
8 sectarian. *Lynch, Id.*, 693 (O’Connor, J. concurring).
9
10
11

12 CONCLUSION

13 For the foregoing reasons PJI requests that the Complaint be dismissed for
14 failure to state a cause of action upon which relief can be provided.
15
16

17 Date: March 31, 2006.

PACIFIC JUSTICE INSTITUTE

19 By: /s/ Kevin T. Snider
20 Kevin T. Snider
21 Attorney for Intervenor/Defendant
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25
26
27
28

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Civil Action No. **2:05-CV-02339-FCD-PAN (JFM)**

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

Plaintiff,

v.

THE CONGRESS OF THE UNITED STATES OF AMERICA;
PETER LEFEVRE, LAW REVISION COUNSEL;
THE UNITED STATES OF AMERICA;
JOHN WILLIAM SNOW, SECRETARY OF THE TREASURY;
HENRIETTA HOLSMAN FORE, DIRECTOR, UNITED STATES MINT;
THOMAS A. FERGUSON, DIRECTOR, BUREAU OF ENGRAVING AND PRINTING;

Defendants, and

PACIFIC JUSTICE INSTITUTE;

Intervenor-Defendant

PLAINTIFF'S RESPONSE TO FEDERAL DEFENDANTS' MOTION TO DISMISS

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

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ARGUMENT

I. THERE IS NO CONTROLLING PRECEDENT REGARDING PLAINTIFF'S RFRA CLAIM. THE ESTABLISHMENT CLAUSE PRECEDENT IS CONTROLLING, BUT MISTAKEN

A. THERE IS NO CONTROLLING PRECEDENT REGARDING PLAINTIFF'S RFRA CLAIM.

This case involves the government's choice of the phrase "In God We Trust" to be the nation's motto,¹ and its decision to place that motto on every coin and currency bill. In deciding this case, it is expected that the Court will adhere to "the canon of constitutional avoidance," and, therefore, the constitutional claims will not need to be decided. Dep't of Hous. v. Rucker, 535 U.S. 125, 134 (2002). That is because there exists a statutory basis for ruling that the laws under consideration are invalid. 42 U.S.C. § 2000bb et seq. (Religious Freedom Restoration Act (RFRA)). RFRA wasn't promulgated until 1993,² and the question of whether or not the use of "In God We Trust" as the motto and on the money is valid under RFRA has never been litigated in the Supreme Court or in this Circuit.

Plaintiff's Free Exercise claim is likely subsumed by the RFRA claim.

B. THE ESTABLISHMENT CLAUSE PRECEDENT IS CONTROLLING, BUT MISTAKEN

As for the Establishment Clause claim, Plaintiff agrees – as he must – that there is adverse precedent for the Court to follow in this case. Aronow v. United States, 432 F.2d 242 (9th Cir. 1970) is directly on point. However, Aronow was decided thirty-six years ago, before any of the current Supreme Court Establishment Clause tests were introduced. Application of any of those tests would result in invalidation of the motto and an overruling of Aronow, as Plaintiff plans to argue in the Court of Appeals. Accordingly, although he expects that the Court here will likely feel compelled to follow Aronow, Plaintiff is including his contrary arguments in this Response in order to preserve his right to make those arguments before the Ninth Circuit panel.

¹ 36 U.S.C. § 302 reads, "'In God we trust' is the national motto."

² Pub. L. 103-141, Sec. 2, Nov. 16, 1993, 107 Stat. 1488.

other Supreme Court case. Furthermore, Brown highlighted that the Supreme Court dicta under consideration in that case were not made “casually and without analysis.” Id. at 680 (citation omitted). “Casually and without analysis” is the perfect description of the dictum of Justice Blackmun, whose “analysis” consisted merely of references to other opinions where the question was also never analyzed. The fact is that there is little evidence that any of the Justices – much less a majority – in Allegheny would have ruled that the motto is constitutional had they been briefed and seen the incredibly (Christian) Monotheistic history and current effects.

Of particular note in that case was the fact that the Court was extremely fractured.¹⁶ Justice Blackmun may well have determined that it was necessary to “deviate from [his] personal sincere views about the law to secure the most desirable collective decision possible.”¹⁷ This is especially true since his statement was at complete odds with all of the others he’d made throughout his distinguished career – including those in Allegheny itself:

Perhaps in the early days of the Republic these words were understood to protect only the diversity within Christianity, but today they are recognized as guaranteeing religious liberty and equality to “the infidel, the atheist, or the adherent of a non-Christian faith such as Islam or Judaism.”

492 U.S., at 590

[T]his Court has come to understand the Establishment Clause to mean that government may not promote or affiliate itself with any religious doctrine.

492 U.S., at 590

¹⁶ The description as given in Findlaw is: “BLACKMUN, J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts III-A, IV, and V, in which BRENNAN, MARSHALL, STEVENS, and O’CONNOR, JJ., joined, an opinion with respect to Parts I and II, in which STEVENS and O’CONNOR, JJ., joined, an opinion with respect to Part III-B, in which STEVENS, J., joined, an opinion with respect to Part VII, in which O’CONNOR, J., joined, and an opinion with respect to Part VI. O’CONNOR, J., filed an opinion concurring in part and concurring in the judgment, in Part II of which BRENNAN and STEVENS, JJ., joined, post, p. 623. BRENNAN, J., filed an opinion concurring in part and dissenting in part, in which MARSHALL and STEVENS, JJ., joined, post, p. 637. STEVENS, J., filed an opinion concurring in part and dissenting in part, in which BRENNAN and MARSHALL, JJ., joined, post, p. 646. KENNEDY, J., filed an opinion concurring in the judgment in part and dissenting in part, in which REHNQUIST, C. J., and WHITE and SCALIA, JJ., joined, post, p. 655.”

¹⁷ “In certain contexts, a rational judge will deviate from her personal sincere views about the law to secure the most desirable collective decision possible.” Caminker, Sincere and Strategic Voting Norms on Multimember Courts, 97 Mich. L. Rev. 2297, 2299 (1999).

[A] statute or practice which touches upon religion, if it is to be permissible under the Establishment Clause, must have a secular purpose; it must neither advance nor inhibit religion in its principal or primary effect.

492 U.S., at 592

[Endorsement] has been noted that the prohibition against governmental endorsement of religion "preclude[s] government from conveying or attempting to convey a message that religion or a particular religious belief is favored or preferred." Wallace v. Jaffree, 472 U.S., at 70. (O'CONNOR, J., concurring in judgment) (emphasis added). Accord, Texas Monthly, Inc. v. Bullock, 489 U.S., at 27, 28 (separate opinion concurring in judgment) (reaffirming that "government may not favor religious belief over disbelief" or adopt a "preference for the dissemination of religious ideas"); Edwards v. Aguillard, 482 U.S., at 593 ("preference" for particular religious beliefs constitutes an endorsement of religion); Abington School District v. Schempp, 374 U.S. 203, 305 (1963) (Goldberg, J., concurring) ("The fullest realization of true religious liberty requires that government . . . effect no favoritism among sects or between religion and nonreligion").

492 U.S., at 592

Whether the key word is "endorsement," "favoritism," or "promotion," the essential principle remains the same. The Establishment Clause, at the very least, prohibits government from appearing to take a position on questions of religious belief or from "making adherence to a religion relevant in any way to a person's standing in the political community."

492 U.S., at 593-94 (citation omitted)

[W]hen evaluating the effect of government conduct under the Establishment Clause, we must ascertain whether "the challenged governmental action is sufficiently likely to be perceived by adherents of the controlling denominations as an endorsement, and by the nonadherents as a disapproval, of their individual religious choices."

492 U.S., at 597 (citation omitted)

[W]e have held [the Establishment Clause] to mean no official preference even for religion over nonreligion.

492 U.S., at 605.

[T]he bedrock Establishment Clause principle [is] that, regardless of history, government may not demonstrate a preference for a particular faith.

492 U.S., at 605.

Our cases, however, impose no such burden on demonstrating that the government has favored a particular sect or creed. On the contrary, we have expressly required "strict scrutiny" of practices suggesting "a denominational preference," in keeping with "the unwavering vigilance that the Constitution requires" against any violation of the Establishment Clause. ("[T]he myriad, subtle ways in which Establishment Clause values can be eroded" necessitates "careful judicial scrutiny" of "[g]overnment

practices that purport to celebrate or acknowledge events with religious significance").
 Thus, when all is said and done, JUSTICE KENNEDY'S effort to abandon the
 "endorsement" inquiry in favor of his "proselytization" test seems nothing more than
 an attempt to lower considerably the level of scrutiny in Establishment Clause cases.
 We choose, however, to adhere to the vigilance the Court has managed to maintain
 thus far, and to the endorsement inquiry that reflects our vigilance.
 492 U.S., at 608-609 (citations omitted)

[T]he Constitution mandates that the government remain secular, rather than affiliate
 itself with religious beliefs or institutions, precisely in order to avoid discriminating
 among citizens on the basis of their religious faiths.
 492 U.S., at 610.

It follows directly from the Constitution's proscription against government affiliation
 with religious beliefs or institutions that there is no orthodoxy on religious matters in
 the secular state.
 492 U.S., at 611

[O]nce the judgment has been made that a particular proclamation of Christian belief,
 when disseminated from a particular location on government property, has the effect
 of demonstrating the government's endorsement of Christian faith, then it necessarily
 follows that the practice must be enjoined to protect the constitutional rights of those
 citizens who follow some creed other than Christianity.
 492 U.S., at 612

Lynch v. Donnelly confirms, and in no way repudiates, the longstanding constitutional
 principle that government may not engage in a practice that has the effect of
 promoting or endorsing religious beliefs.
 492 U.S., at 621

[T]his kind of government affiliation with particular religious messages is precisely
 what the Establishment Clause precludes.
 492 U.S., at 601 (n.51)

[T]he availability or unavailability of secular alternatives is an obvious factor to be
 considered in deciding whether the government's use of a religious symbol amounts to
 an endorsement of religious faith.
 492 U.S., at 618 (n.67)

In fact, when one realizes that Justice Blackmun specifically noted in Allegheny (in
 regard to the National Day of Prayer) that "as this practice is not before us, we express no
 judgment about its constitutionality," 492 U.S., at 603 (n.52), it seems clear that his dictum
 about dicta cannot merit significant deference at all.

Finally, the Supreme Court has noted that courts need “the benefit of a full argument before dealing with [a] question,” Ladner v. United States, 358 U.S. 169, 173 (1958), and that “[c]onstitutional rights are not defined by inferences from opinions which did not address the question at issue,” Texas v. Cobb, 532 U.S. 162 (2001). It is extremely doubtful that Justice Blackmun – or any Justice, for that matter – is fully aware of the history of the passage of the Act of 1956 (as provided in the instant Complaint) or of the survey results that have been presented. Complaint, Appendix N. Certainly, that survey and that history – with its repeated demonstrations that the motto was chosen specifically for its (Christian) Monotheistic message – reveal that the phrase “In God We Trust” is completely **inconsistent** “with the proposition that government may not communicate an endorsement of religious belief.”

If one is to look for dicta which are to be controlling, it would be wisest to seek those based on principles rather than political or judicial expediency. Thus, the Court might wish to consider some of the following, in contrast to what the Defendants have offered:

Mr. Madison prepared a “Memorial and Remonstrance,” which was widely circulated and signed, and in which he demonstrated “that religion, or the duty we owe the Creator,” was not within the cognizance of civil government. Reynolds v. U.S., 98 U.S. 145, 163 (1878) (citation omitted).

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us. West Virginia Board of Education v. Barnette, 319 U.S. 624, 642 (1943)

Th[e First] Amendment requires the state to be a neutral in its relations with groups of religious believers and non-believers. Everson v. Board of Education, 330 U.S. 1, 18 (1947)

[T]he First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere. McCullum v. Board of Education, 333 U.S. 203, 212 (1948)

There cannot be the slightest doubt that the First Amendment reflects the philosophy that Church and State should be separated. And so far as interference with the “free exercise” of religion and an “establishment” of religion are concerned, the separation must be complete and unequivocal. The First Amendment within the scope of its coverage permits no exception: the prohibition is absolute. Zorach v. Clausen, 343 U.S. 306, 312 (1952)

We repeat and again affirm that neither a State nor the Federal Government ... can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.

Torcaso v. Watkins, 367 U.S. 488, 495 (1961)

When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain. But the purposes underlying the Establishment Clause go much further than that. Its first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and degrade religion.

Engel v. Vitale, 370 U.S. 421, 431 (1962)

[The Court] has consistently held that the [Establishment] clause withdrew all legislative power respecting religious belief or the expression thereof.

Abington School District v. Schempp, 374 U.S. 203, 222 (1963)

The general principle deducible from the First Amendment and all that has been said by the Court is this: that we will not tolerate either governmentally established religion or governmental interference with religion.

Walz v. Tax Commission, 397 U.S. 664, 669 (1970)

The history of many countries attests to the hazards of religion's intruding into the political arena or of political power intruding into the legitimate and free exercise of religious belief.

Lemon v. Kurtzman, 403 U.S. 602, 622-623 (1971)

[T]he State is constitutionally compelled to assure that the state-sponsored activity is not being used for religious indoctrination.

Levitt v. Committee for Public Education, 413 U.S. 472, 480 (1973)

[T]he core rationale underlying the Establishment Clause is preventing "a fusion of governmental and religious functions."

Larkin v. Grendel's Den, Inc., 459 U.S. 116, 126 (1982)

For just as religion throughout history has provided spiritual comfort, guidance, and inspiration to many, it can also serve powerfully to divide societies and to exclude those whose beliefs are not in accord with particular religions or sects that have from time to time achieved dominance. The solution to this problem adopted by the Framers and consistently recognized by this Court is jealousy to guard the right of every individual to worship according to the dictates of conscience while requiring the government to maintain a course of neutrality among religions, and between religion and non-religion.

Grand Rapids School District v. Ball, 473 U.S. 373, 382 (1985)

[T]he established principle [is] that the government must pursue a course of complete neutrality toward religion.

Wallace v. Jaffree, 472 U.S. 38, 60 (1985)

The First Amendment's Religion Clauses mean that religious beliefs and religious expression are too precious to be either proscribed or prescribed by the State.

Lee v. Weisman, 505 U.S. 577, 589 (1992)

To determine the object of a law, we must begin with its text, for the minimum requirement of neutrality is that a law not discriminate on its face. A law lacks facial neutrality if it refers to a religious practice without a secular meaning discernible from the language or context.

Church of Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520, 533 (1993)

The general principle that civil power must be exercised in a manner neutral to religion ... is well grounded in our case law.

Board of Education of Kiryas Joel v. Grumet, 512 U.S. 687, 704 (1994)

[G]iving sectarian religious speech preferential access to a forum close to the seat of government (or anywhere else for that matter) would violate the Establishment Clause.

Capitol Square Review and Advisory Bd. v. Pinette, 515 U.S. 753, 766 (1995)

A central lesson of our decisions is that a significant factor in upholding governmental programs in the face of Establishment Clause attack is their neutrality towards religion.

Rosenberger v. University of Virginia, 515 U.S. 819, 839 (1995)

As we have repeatedly recognized, government inculcation of religious beliefs has the impermissible effect of advancing religion.

Agostini v. Felton, 521 U.S. 203, 223 (1997)

The mechanism encourages divisiveness along religious lines ... a result at odds with the Establishment Clause.

Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290 (2000)

(4) There is Nothing Patriotic About Government Making the Purely Religious Claims that There Exists a God and that "In God We Trust"

Reciting a nation's motto is certainly "patriotic or ceremonial." FDM at 5:11. After all, a motto is "a ... phrase ... inscribed on something as appropriate to or indicative of its

compared with the religious views of Monotheists in a nation that has as its motto, “In God We Trust,” and which places that purely (Christian) Monotheistic dogma on thirty-seven million currency notes³⁸ and twenty-eight billion coins³⁹ every year.

While discussing Brown, it might be worthwhile to consider the extraordinarily different approach Defendant United States has taken in this civil rights case as opposed to the one from half a century ago. In that earlier case, the United States wrote:

In recent years the Federal Government has increasingly recognized its special responsibility for assuring vindication of the fundamental civil rights guaranteed by the Constitution. The President has stated: “We shall not * * * finally achieve the ideals for which this Nation was founded so long as any American suffers discrimination as a result of his race, or **religion**, or color, or land of origin of his forefathers. * * * The Federal Government has a clear duty to see that constitutional guarantees of individual liberties and of equal protection under the laws are not denied or abridged anywhere in our Union.”

Brief for *amicus curiae* United States at 2, Brown v. Board of Education, 347 U.S. 483 (1954) (hereafter “US1952 Brown brief”) (citing President Truman’s Message to the Congress, February 2, 1948, H. Doc. No. 516, 80th Cong., 2d sess., p. 2). One need not wonder long which approach to the Constitution – that which the United States took in Brown or the one it has take in the instant litigation – is the one which makes Americans proud.

The United States, in Brown, didn’t end its noble prose there. On the contrary, inspiring statements pervaded its *amicus* Brief in that seminal case:

Recognition of the responsibility of the Federal Government with regard to civil rights is not a matter of partisan controversy, even though differences of opinion may exist as to the need for particular legislative or executive action. Few Americans believe that government should pursue a *laissez-faire* policy in the field of civil rights, or that it adequately discharges its duty to the people so long as it does not itself intrude on their civil liberties. Instead, there is general acceptance of an affirmative government obligation to insure respect for fundamental human rights.⁴⁰

The constitutional right invoked in these cases is the basic right, secured to all Americans, to equal treatment before the law. The cases at bar do not involve isolated acts of ... discrimination by private individuals or groups. On the

³⁸ <http://www.ustreas.gov/education/faq/currency/production.shtml>, accessed on April 14, 2006.

³⁹ <http://www.ustreas.gov/education/faq/coins/production.shtml>, accessed on April 14, 2006.

⁴⁰ US1952 Brown brief, at 2.

contrary, it is contended in these cases that [the government] unconstitutionally discriminate[s] against [Atheists] solely because of [religion].⁴¹

This contention raises questions of the first importance in our society. For [religious] discriminations imposed by law, or having the sanction or support of government, inevitably tend to undermine the foundations of a society dedicated to freedom, justice and equality. The proposition that all men are created equal is not mere rhetoric. It implies a rule of law – an indispensable condition to a civilized society – under which all men stand equal and alike in the rights and opportunities secured to them by their government. Under the Constitution every agency of government, national and local, legislative, executive, and judicial, must treat each of our people as an *American*, and not as a member of a particular group classified on the basis of [religion] or some other constitutional irrelevancy. The color of a man's skin – **like his religious beliefs** or his political attachments, or the country from which he or his ancestors came to the United States – does not diminish or alter his legal status or constitutional rights. "Our Constitution is [religion-]blind, and neither knows nor tolerates classes among citizens."⁴²

Interestingly, Defendant United States then, in its Brown amicus brief, noted that "[t]he problem of ... discrimination is particularly acute in the District of Columbia, the nation's capital. This city is the window through which the world looks into our house." US1952 Brown brief, at 4. This "particularly acute" status certainly applies in as much force to the fact that the sectarian religious phrase, "In God We Trust," is our nation's motto and on each coin and currency bill, through which the billions of people who don't travel to our shores also, "loo[k] into our house." Defendant continued, quoting the President in stating that the District of Columbia, "should be a true symbol of American Freedom and democracy for our own people, and for the people of the world." *Id.* (citing President Truman's Message to the Congress, February 2, 1948, H. Doc. No. 516, 80th Cong., 2d sess., p. 5). Shouldn't our motto and our money be the same?

⁴¹ *Id.*, at 3. [Plaintiff has obviously changed (in brackets) the references to race to those pertaining to religion, which – according to the Constitution – is treated in a like manner. "Under our Constitution distinctions sanctioned by law between citizens because of race, ancestry, color or religion 'are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.'" Bell v. Maryland, 378 U.S. 226, 288 (Goldberg, J., concurring) (citation omitted).]

⁴² *Id.*, at 3 (italicized emphasis in original; bold emphasis added). [Again, to prove his point, Plaintiff has changed (in brackets) the original racial verbiage to religious verbiage.] The quote is footnoted as: "Mr. Justice Harlan in *Plessy v. Ferguson*, 163 U.S. 537, 559. Regrettably, he was speaking only for himself, in dissent." And regrettably, the government is speaking for itself in this case, in complete contradistinction to its words in Brown.

Along these lines, the United States also pointed out how, for “dark-skinned foreign visitors,” segregation was “of considerable embarrassment.” Id., at 5. Why is it that Defendant United States shows no such consideration for Atheistic foreign visitors who are at risk of confronting the phrase “In God We Trust” virtually every time they go to make a purchase during their visits. If:

The United States is trying to prove to the people of the world, of every nationality, race, and color, that a free democracy is the most civilized and most secure form of government yet devised by man. We must set an example for others by showing firm determination to remove existing flaws in our democracy.⁴³

then why isn’t the flaw that places – as the nation’s motto – government’s imprimatur upon a purely religious concept that excludes people due to their religious beliefs one that Defendant United States also seeks to remedy? “When the government puts its imprimatur on a particular religion, it conveys a message of exclusion to all those who do not adhere to the favored beliefs.” Lee v. Weisman, 505 U.S. 577, 606 (1992) (Blackmun, J., concurring) (footnote omitted). It was certainly appropriate for the United States to acknowledge that there was a view, “that the United States is hypocritical in claiming to be the champion of democracy while permitting practices of racial discrimination here in this country.” US1952 Brown brief, at 7 (citing the Secretary of State’s “Letter to the Attorney General, dated December 2, 1952.”). Why not acknowledge that the hypocrisy is no less when – while holding itself out to the world as the model of religious freedom – it chooses for its motto (out of the virtually endless other possibilities) a phrase that is purely religious and exclusionary?

The United States also cited from the Secretary of State’s Letter that:

Other peoples cannot understand how such a practice can exist in a country which professes to be a staunch supporter of freedom, justice, and democracy. The sincerity of the United States in this respect will be judged by its deeds as well as by its words.

Id., at 8. Where is the desire for that sincerity when the question is religious belief, rather than race?

In its Brown brief, Defendant United States made much of the issue that the “separate but equal” doctrine didn’t apply because there were unchallenged “findings of inequality in those cases [that] make it unnecessary to go further in order to establish that plaintiffs’

constitutional rights have been violated.” US1952 Brown brief, at 11. Is that inequality any
 2 less evident when the government claims there is a God in a nation with both theistic and
 Atheistic inhabitants?

4 Defendants might try to argue that Brown – because it involved children – is not
 applicable in the instant case. Besides being a claim that has no basis in the Constitution, it
 6 should be noted that Defendant United States – arguing in Brown that Plessy v. Ferguson, 163
 U.S. 537 (1896) was wrongly decided – impliedly indicated the opposite (inasmuch as Homer
 8 Plessy was an adult). US1952 Brown brief, at 13-14. Moreover, it explicitly indicated the
 opposite as well:

10 To be sure, those cases involved university graduate and professional schools,
 but nothing in the language or history of the Fourteenth Amendment could
 12 support a constitutional distinction between universities on the one hand, and
 public elementary or high schools on the other.

14 US1952 Brown brief, at 18-19.

16 The notion of equality – which seems to mean little to Defendant in the case at bar –
 was emphasized by the United States in Brown: “The constitutional requirement is that of
 18 equality, not merely in one sense of the word but in every sense.” Id., at 17-18. Quoting
Shelley v. Kraemer, 334 U.S. 1, 23 (1948), Defendant highlighted:

20 Whatever else the framers sought to achieve, it **is** clear that the matter of
 primary concern was the establishment of equality in the enjoyment of basic
 22 civil and political rights and the preservation of those rights from
 discriminatory action on the part of the States ...

24 US1952 Brown brief, at 22.

26 What is particularly noteworthy is the fact that the “history” argument proffered by the
 United States is precisely the one they argued against in Brown:

28 "Separate but equal" is sometimes described as an "ancient" doctrine of
 constitutional law. But its antiquity dates not from the adoption of the
 30 Fourteenth Amendment in 1866 but from a judicial expression which did not
 make its appearance in the reports of this court until 1896.

32 US1952 Brown brief, at 22. A thirty-three year delay, then, is significant because “ ‘the
 34 history of the times when they were adopted, and the general objects they plainly sought to
 accomplish’ may have become blurred by the passage of time.” Id., at 22-23. Yet the

⁴³ US1952 Brown brief, at 6.

“antiquity” of “In God We Trust” dates not from the adoption of the First Amendment in 1791, but from its first use on the coins in 1864, a seventy-three year delay. And its designation as the motto took place in 1956 – a delay of 155 years. One would think that a lot more “blurring” is likely to have occurred with these greater time intervals.

Perhaps most encouraging to read is the United States’ agreement with Plaintiff’s contention that the “power, prestige and financial support of government” really does make a (traceable) difference. See Complaint at ¶¶ 183, 184, 278, 279. Although it is argued now that Plaintiff lacks standing (see, e.g., FDM at 18:15-19 (contending that being degraded and turned into “political outsiders” isn’t a significant injury); FDM at 19:9-21:1 (contending that Plaintiff’s injuries aren’t traceable to the government’s use of “In God We Trust” as the motto and on the money); and FDM 21:2-23:6 (contending that Plaintiff’s injuries wouldn’t be redressed by a favorable decision)), that was hardly the United States’ contention in Brown:

Although legislation may not be able to “eradicate” racial prejudice, experience has shown that it can create conditions favorable to the gradual elimination of racial prejudice; or it can, on the other hand, strengthen and enhance it. As the Supreme Court of California has said, the way to eradicate racial tension is not “through the perpetuation by law of the prejudices that give rise to the tension,” Even if statutes cannot in themselves remove racial antagonisms, they cannot constitutionally exacerbate such antagonisms by giving the sanction of law to what would otherwise be private acts of discrimination.

US1952 Brown brief, at 24 (citing Peres v. Sharp, 32 Cal. 2d 711, 725 (1948)). The goal, wrote the United States, is:

“to advance in its standards of what is deemed reasonable and right. Representing as it does a living principle, due process is not confined within a permanent catalog of what may at a given time be deemed the limits or essentials of fundamental rights.” Wolf v. Colorado, 338 U.S. 25, 27. * * * “... the provisions of the Constitution ... [have] significance [which] is vital not formal. ...” Gompers v. United States, 233 U.S. 604, 610.

In sum, the doctrine ... is an unwarranted departure, based on dubious assumptions of fact combined with a disregard of the basic purposes of the Fourteenth Amendment, from the fundamental principle that all Americans, whatever their race or color, stand equal and alike before the law. The rule of *stare decisis* does not give it immunity from reexamination and rejection.

US1952 Brown brief, at 25-26.

The foregoing makes one wonder about Defendants' discussion of Justice O'Connor's "outsider" test. FDM, at 18:14-19:8. Is being branded a "political outsider" a significantly different harm than being branded "inferior," which the United States recognized as an injury in its Brown amicus brief:

Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group.

US1952 Brown brief, at 12 (citing District Court decision);

The very fact that colored people are singled out * * * is practically a brand upon them, affixed by the law, an assertion of their inferiority, and a stimulant to that race prejudice which is an impediment to securing to individuals of the race that equal justice which the law aims to secure to all others.

Id., at 21 (citing Strauder v. W. Va., 100 U.S. 303, 308 (1880)).

Also puzzling is Defendants' apparent suggestion that a plaintiff can be the victim of an Establishment Clause violation, yet not have standing:

The fact that the complaint frames allegations of injury in language that evokes the Supreme Court's Establishment Clause jurisprudence does not create standing in this case. As noted above, plaintiff repeatedly alleges that the motto "degrades" him and other atheists and makes them feel like "political outsiders." As plaintiff acknowledges, Justice O'Connor has used similar language to explain in general terms what may constitute a violation of the Establishment Clause.

FDM, at 18:14-19. This seems especially bizarre in view of the fact that at least one commentator has recognized that, under Justice O'Connor's analysis:

A person who perceives that a law endorses a religious belief which he does not accept, and who thus feels like an "outsider," has suffered precisely the kind of injury that the establishment clause, in O'Connor's view, is designed to prevent; and he should therefore have standing to challenge the law.

Smith SD. *Symbols, Perceptions, and Doctrinal Illusions: Establishment Neutrality and the "No Endorsement" Test*, 86 Mich.L.Rev. 268, 300 (1987).

In any event, Defendants seem to miss the point. It is not that a plaintiff has a "generally available grievance about government." FDM, at 15:22; has an "injury to one's

CONCLUSION

The Court might wish to contrast the dedication to equality and liberty found in Defendants' Memorandum in this case, with that displayed in the *amicus curiae* brief Defendant United States filed half a century ago in Brown v. Bd. of Educ. Believing he can't improve upon the words of that brief's conclusion, Plaintiff presents them now⁹⁵ in the hope that the civil rights case at bar will be decided in a manner similar to Brown:

The subordinate position occupied by [Atheists] in this country as a result of governmental discriminations ("second-class citizenship," as it is sometimes called) presents an unsolved problem for American democracy, an inescapable challenge to the sincerity of our espousal of the democratic faith.

In these days when the free world must conserve and fortify the moral as well as the material sources of its strength, it is especially important to affirm that the Constitution of the United States places no limitation, express or implied, on the principle of the equality of all men before the law. Mr. Justice Harlan said in his dissent in the *Plessy* case (163 U.S. at 562) :

We boast of the freedom enjoyed by our people above all other peoples. But it is difficult to reconcile that boast with a state of the law which, practically, puts the brand of [...] degradation upon a large class of our fellow-citizens, our equals before the law.

The government and people of the United States must prove by their actions that the ideals expressed in the Bill of Rights are living realities, not literary abstractions. As the President has stated:

If we wish to inspire the people of the world whose freedom is in jeopardy, if we wish to restore hope to those who have already lost their civil liberties, if we wish to fulfill the promise that is ours, we must correct the remaining imperfections in our practice of democracy.

We know the way. We need only the will.⁹⁶

⁹⁵ With the obvious substitution made as appropriate.

⁹⁶ US1952 Brown brief, at 31-32 (citing President Truman's Message to Congress, February 2, 1948, H. Doc. No. 516, 80th Cong., 2d sess., p. 2).

APPENDIX 2A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Daniel B. Sparr

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

NOV 25 1994

JAMES R. MANSPEAKER
CLERK

BY _____

Civil Action No. 94-S-1345

ANNE N. GAYLOR, et al.,
Plaintiffs,

v.

THE UNITED STATES OF AMERICA, et al.,
Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the court on the Defendants' Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6), filed August 29, 1994. The court has reviewed the motion, the Plaintiffs' response, the entire case file, and the applicable law and is fully advised in the premises. The court has determined that oral argument will not materially assist resolution of this matter.

Plaintiffs are individual taxpayers, citizens of the United States, and members of The Freedom From Religion Foundation, Inc., a nonprofit corporation with one of its "primary objectives" being "to promote the constitutional principle of separation of church and state." Plaintiffs allege that the national motto of the United States, "In God We Trust," as established by 36 U.S.C. § 186, and the statutes requiring printing of that motto on United States coins and currency, 31 U.S.C. § 5112(d)(1), as amended October 6, 1992, and 31 U.S.C. § 5114(b), are unconstitutional violations of the Establishment Clause of the First Amendment to the U.S. Constitution.¹ Defendants move to dismiss this civil action because the law is clear that the national motto and these two statutes do not violate the Establishment Clause.

Applying Rule 12(b)(6), the court should not dismiss this cause of action for failure to state a claim unless the court determines that the Plaintiffs can prove no set of facts that would entitle

¹ The sections regarding coins and currency were formerly codified at 31 U.S.C. §§ 324 and 324a, respectively, but were recodified to their present sections in 1982.

them to relief. Tri-Crown, Inc. v. American Fed. Sav. & Loan Ass'n., 908 F.2d 578, 582 (10th Cir. 1990). The court must liberally construe all of the Plaintiffs' pleadings, must accept all factual allegations as true, and must draw all reasonable inferences in favor of the Plaintiffs. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); Grider v. Texas Oil & Gas Corp., 868 F.2d 1147, 1148 (10th Cir.), *cert. denied*, 110 S.Ct. 76 (1989); Swanson v. Bixler, 750 F.2d 810, 813 (10th Cir. 1984). So long as the Plaintiffs offer evidence in support of a legally recognized claim for relief, a motion to dismiss must be denied. Hiatt v. Schreiber, 599 F. Supp. 1142, 1145 (D. Colo. 1984).

The Establishment Clause of the First Amendment states: "Congress shall make no law respecting an establishment of religion" The Supreme Court has applied a three-pronged test to determine whether legislation comports with the Establishment Clause. County of Allegheny v. ACLU, 492 U.S. 573, 592 (1989), citing Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971); Edwards v. Aguillard, 482 U.S. 578, 582-83 (1987), citing Lemon, 403 U.S. at 612-13.

First, the legislation must have a secular purpose. The secular purpose prong asks whether government's actual purpose is to endorse or disapprove of religion. Lynch v. Donnelly, 465 U.S. 668, 690 (1984) (O'Connor, J., concurring), *reh'g. denied*, 466 U.S. 994. A governmental purpose to promote religion may be evidenced by promotion of religion in general or by advancement of a particular religious belief. Edwards, 482 U.S. at 585 (citations omitted). The Supreme Court has invalidated legislation or governmental action on the ground that a secular purpose was lacking, but only when it has concluded there was no question that the statute or activity was motivated wholly by religious considerations. Lynch, 465 U.S. at 680 (citations omitted). The purpose need not be exclusively secular, Lynch, 465 U.S. at 681 n. 6, but the purpose may not be to endorse or disapprove of religion. Lynch, 465 U.S. at 691 (O'Connor, J., concurring).

Second, the legislation's primary effect must be one that neither advances nor inhibits

religion in its principal or primary effect. In decisions subsequent to Lemon, 403 U.S. at 602, the Supreme Court has refined the definition of governmental action that unconstitutionally advances religion. The Court has paid particular attention to whether the challenged governmental practice has either the purpose or effect of "endorsing" religion. Allegheny, 492 U.S. at 592-93 (citations omitted). The prohibition against governmental endorsement of religion precludes government from conveying or attempting to convey a message that religion or a particular religious belief is favored or preferred. Allegheny, 492 U.S. at 593 (citations omitted). At the very least, the Establishment Clause prohibits government from appearing to take a position on questions of religious belief or from making adherence to a religion relevant in any way to a person's standing in the political community. Allegheny, 492 U.S. at 593-94, citing Lynch, 465 U.S. at 687 (O'Connor, J., concurring).

Third, the legislation must not result in an excessive entanglement with religion. In order to determine whether government entanglement with religion is excessive, the court must "examine the character and purposes of the institutions that are benefitted, . . . , and the resulting relationship between the government and the religious authority." Lemon, 403 U.S. at 614-15.

In every Establishment Clause case, the courts "must reconcile the inescapable tension between the objective of preventing unnecessary intrusion of either the church or the state upon the other, and the reality that, . . . total separation of the two is not possible." Lynch, 465 U.S. at 672. The Constitution does not require complete separation of church and state; it affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility towards any. Lynch, 465 U.S. at 673 (citations omitted). The Supreme Court has refused "to construe the Religion Clauses with a literalness that would undermine the ultimate constitutional objective as illuminated by history." Lynch, 465 U.S. at 678, citing Walz v. Tax Comm'n., 397 U.S. 664, 671 (1970).

In the national public life, there are many manifestations of a belief in a Supreme Being which do not violate the First Amendment. See School District of Abington Township, Pa. v. Schempp, 374 U.S. 203, 303-04 (1963). 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. Lynch, 465 U.S. at 674. 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. Lynch, 465 U.S. at 675. The Government has long recognized holidays with religious significance, the reference to God in the Pledge of Allegiance, the exhibition of religious art in government-supported museums, and religious emblems in public buildings, among other things. Lynch, 465 U.S. at 676-78; Jager v. Douglas County School Dist., 862 F.2d 824, 839 (11th Cir.), *cert. denied*, 490 U.S. 1090 (1989).

Consistent with the Supreme Court's three-pronged analysis, numerous courts have found that the placement of the national motto on U.S. currency and coins does not violate the Establishment Clause of the First Amendment. In Aronow v. United States, the Ninth Circuit did not "discern any religious significance attendant the payment of a bill with coin or currency on which has been imprinted 'In God We Trust'. . . ." 432 F.2d 242, 243 (9th Cir. 1970). The Ninth Circuit considered the national motto excluded from First Amendment significance because it has no theological or ritualistic impact. Aronow, 432 F.2d at 243. Citing McGowan v. Maryland, 366 U.S. 420 (1961), the Ninth Circuit concluded that the national motto did not implicate any coercive governmental power to aid religion. Aronow, 432 F.2d at 244.

In O'Hair v. Blumenthal, 462 F. Supp. 19 (W.D. Texas 1978), *aff'd*, 588 F.2d 1144 (5th Cir.), *cert. denied*, 442 U.S. 930 (1979), the court dismissed the claim that the national motto and the statutes mandating the imprinting of the motto on the coin and currency of the United States violated the First Amendment. The court concluded that the motto on coin and currency did not

have the effect of advancing religion and that "it would be ludicrous to argue that the use of the national motto fosters any excessive government entanglement with religion." O'Hair, 462 F. Supp. at 19. The motto "In God We Trust" has been interwoven so deeply into the "fabric of our civil polity that its present use may well not present that type of involvement which the First Amendment prohibits." O'Hair, 462 F. Supp. at 20, citing Schempp, 374 U.S. at 303.

References to the Deity in our ceremonies and on our coinage do not violate the Establishment Clause because they merely reflect the history of this nation and no longer have any potentially entangling theological significance. Hall v. Bradshaw, 630 F.2d 1018, 1023 (4th Cir. 1980), *cert. denied*, 450 U.S. 965 (1981). Certain references to God, such as the words "In God We Trust" on American coinage, can best be understood as a form of "ceremonial deism," protected from Establishment Clause scrutiny chiefly because they have lost through rote repetition any significant religious content. Sherman by Sherman v. Community Consolidated School District 21 of Wheeling Township, 1993 WL 57522 at *3 (N.D. Ill. 1993), *aff'd.*, 8 F.3d 1160 (7th Cir. 1993), *cert. denied*, 114 S.Ct. 2109 (1994). Government acknowledgments of religion in American life, such as the printing of "In God We Trust" on our coins and currency, serve secular purposes and are not understood as conveying an endorsement of particular religious beliefs. Allegheny, 492 U.S. at 625 (O'Connor, J., concurring).

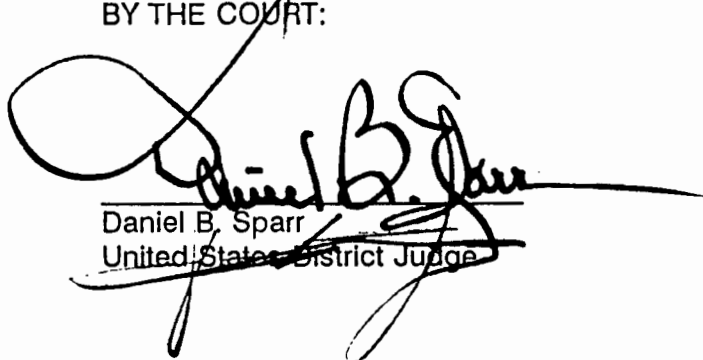
The law appears clear enough that the challenged use of the national motto on our coins and currency is not unconstitutional. Assuming, without deciding, that the Plaintiffs have standing to assert their claim, the court concludes that the national motto has been determined to be historic, patriotic, or ceremonial in nature, rather than religious in significance, and does not offend the Establishment Clause of the First Amendment.

Accordingly, IT IS ORDERED:

1. The hearing scheduled Thursday December 15, 1994 at 9:00 a.m. is hereby VACATED.
2. The Defendants' Motion to Dismiss is GRANTED.
3. This civil action is DISMISSED.
4. Each party shall bear his, her, or its own costs and fees.

DATED at Denver, Colorado, this 25th day of December, 1994.

BY THE COURT:



Daniel B. Sparr
United States District Judge

APPENDIX 2C

United States Supreme Court

Citations to James Madison's Memorial and Remonstrance

“[T]he most important document explaining the Founders' conception of religious freedom.”¹

Separate Opinions 33

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Separate Cases 31

Separate Justices 16

Black	4
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Clark.....	1
Kennedy	1
Rehnquist.....	1
Rutledge	1
Scalia	1
Stevens	1
Waite	1

¹ McConnell M. *New Directions in Religious Liberty: "God is Dead and We Have Killed Him!": Freedom of Religion in the Post-modern Age*. 1993 B.Y.U.L. Rev. 163, 169 (1993).

United States Supreme Court

Citations to James Madison's Memorial and Remonstrance

- (1) Van Orden v. Perry, 125 S. Ct. 2854, 2892 (2005) (Souter, J., dissenting)
- (2) McCreary County v. ACLU, 125 S. Ct. 2722, 2754 (Scalia, J., dissenting)
- (3) McCreary County v. ACLU, 125 S. Ct. 2722, 2746, 2747, (O'Connor, J., concurring)
- (4) Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301, 2332 (2004) (Thomas, J., concurring)
- (5) Locke v. Davey, 540 U.S. 712, 722 (2004) (Rehnquist, C.J., majority)
- (6) Zelman v. Simmons-Harris, 536 U.S. 639, 711 (2002) (Souter, J., dissenting)
- (7) Mitchell v. Helms, 530 U.S. 793, 871 (2000) (Souter, J., dissenting)
- (8) City of Boerne v. Flores, 521 U.S. 507, 560-61 (1997) (O'Connor, J., dissenting)
- (9) Agostini v. Felton, 521 U.S. 203, 243 (1997) (Souter, J., dissenting)
- (10) Rosenberger v. Rector & Visitors of the Univ. of Va., 515 U.S. 819, 853 (1995) (Thomas, J., concurring)
- (11) Lee v. Weisman, 505 U.S. 577, 590 (1992) (Kennedy, J., majority)
- (12) Corporation of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327, 341 n.2 (1987) (Brennan, J., concurring)
- (13) Edwards v. Aguillard, 482 U.S. 578, 605-606 (1987) (Powell, J., concurring)
- (14) Wallace v. Jaffree, 472 U.S. 38, 55 n.38 (1985) (Stevens, J., majority)
- (15) Marsh v. Chambers, 463 U.S. 783, 804 (1983) (Brennan, J., dissenting)
- (16) Valley Forge Christian College v. Americans United for Separation of Church & State, 454 U.S. 464, 502 (1982) (Brennan, J., dissenting)
- (17) Meek v. Pittenger, 421 U.S. 349, 383 (1975) (Brennan, J., dissenting)
- (18) Committee for Public Education & Religious Liberty v. Nyquist, 413 U.S. 756, 760, 772, 783, 798 (1973) (Powell, J., majority)
- (19) Lemon v. Kurtzman, 411 U.S. 192, 209 (1973) (Douglas, J., dissenting)
- (20) Wisconsin v. Yoder, 406 U.S. 205, 218 (1972) (Burger, C.J., majority)
- (21) Lemon v. Kurtzman, 403 U.S. 602, 633 (1971) (Douglas, J., concurring)
- (22) Tilton v. Richardson, 403 U.S. 672, 696 (1971) (Douglas, J., dissenting)
- (23) Walz v. Tax Com. of New York, 397 U.S. 664, 675 n.3 (1970) (Burger, J., majority)
- (24) Flast v. Cohen, 392 U.S. 83, 103 (1968) (Warren, C.J., majority)
- (25) Board of Education v. Allen, 392 U.S. 236, 266 (1968) (Douglas, J., dissenting)
- (26) School Dist. v. Schempp, 374 U.S. 203, 213, 225 (1963) (Clark, J., majority)
- (27) Engel v. Vitale, 370 U.S. 421, 433 n.13, n.15, 436 n.22 (1962) (Black, J., majority)
- (28) Torcaso v. Watkins, 367 U.S. 488, 491 (1961) (Black, J., majority)
- (29) McGowan v. Maryland, 366 U.S. 420, 431 n.7 (1961) (Warren, C.J., majority)
- (30) Illinois ex rel. McCollum v. Bd. of Educ., 333 U.S. 203, 214, 216 (1948) (Black, J., majority)
- (31) Everson v. Board of Education, 330 U.S. 1, 12, 13 n.12 (1947) (Black, J., majority)
- (32) Everson v. Board of Education, 330 U.S. 1, 12, 13 n.12 (1947) (extensive discussion in Justice Rutledge's dissent)
- (33) Reynolds v. United States, 98 U.S. 145, 163 (1878) (Waite, C.J., majority)

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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;¹ (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”² (PJI
 16 Memorandum of Law in Support of Motion to Dismiss, pg. 6, lines 1-3).
 17
 18
 19
 20

21
 22 ¹ 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 ² 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 (6th 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 It may well be argued that the national motto provides an ethereal benefit to
 7 those who are religious and, among that large category, those who embrace a
 8 monotheistic theology. However, "not every law that confers an 'indirect,' 'remote,'
 9 or 'incidental' benefit upon [religion] is, for that reason alone, constitutionally
 10 invalid." *Committee for Public Education & Religious Liberty v. Nyquist*, 413 U.S.
 11 756, 760, 771, S. Ct. 2955 (1973). As such, even allowing for a minimal boon that
 12 religion or people of faith receive from the inscription on coins, that benefit is not so
 13 great as to constitute a violation of the Establishment Clause.
 14
 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

Michael Newdow, in pro per
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916-427-6669

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Civil Action No. 2:05-CV-2339-FCD-PAN

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

Plaintiff,

v.

THE CONGRESS OF THE UNITED STATES OF AMERICA;
PETER LEFEVRE, LAW REVISION COUNSEL;
THE UNITED STATES OF AMERICA;
JOHN WILLIAM SNOW, SECRETARY OF THE TREASURY;
HENRIETTA HOLSMAN FORE, DIRECTOR, UNITED STATES MINT;
THOMAS A. FERGUSON, DIRECTOR, BUREAU OF ENGRAVING AND PRINTING;

Defendants, and

PACIFIC JUSTICE INSTITUTE;

Intervenor-Defendant.

FIRST AMENDED COMPLAINT

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

Plaintiff alleges as follows:

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JURISDICTION AND VENUE

1. This is a civil action claiming violations of the First and Fifth Amendments of the Constitution of the United States of America. As such, this Court has jurisdiction under 28 U.S.C. § 1331.
2. This is a civil action claiming violations of 42 U.S.C. § 2000bb et seq. (Religious Freedom Restoration Act (RFRA)). As such, this Court has jurisdiction under 42 U.S.C. § 2000bb-1(c) and 28 U.S.C. § 1331.
3. This action is founded in part upon the Constitution of the United States of America. As such, this Court has jurisdiction over Defendant United States of America under 28 U.S.C. § 1346(a)(2).
4. This action is in the nature of mandamus, and seeks to compel the Congress of the United States of America, the United States of America, its agents and its officers to perform their duties owed Plaintiff under the terms of the First and Fifth Amendments of the Constitution of the United States and under 42 U.S.C. § 2000bb et seq. As such, this Court has jurisdiction under 28 U.S.C. § 1361.
5. Defendants are each an officer or employee of the United States, an agency of the United States, or the United States. Plaintiff resides in this judicial district. Venue is therefore proper under 28 U.S.C. § 1391(e)(3).
6. A substantial part of the events or omissions giving rise to this claim occurred, occur or will occur in the Eastern District of California. Venue is therefore proper under 28 U.S.C. § 1391(b)(2) and § 1391(e)(2).

PARTIES

7. Plaintiff Michael A. Newdow is a resident and citizen of the United States, of the State of California, and of Sacramento County. He pays federal income taxes that are used to fund the activities of the Defendants. He is an ordained minister, and the founder of the Atheistic church, the First Amendmism Church of True Science (FACTS). He owns real

1 estate in Elk Grove, California, on which he has attempted to raise funds for FACTS.

2 Lastly, he is a numismatist, who has been collecting coins since his early childhood.

3 8. Defendant the Congress of the United States of America is the branch of government in
4 which all legislative powers are granted under Article I, Section 1 of the United States
5 Constitution.

6 9. Defendant Peter LeFevre is the Law Revision Counsel. As such – pursuant to 2 U.S.C. §
7 285b – he is responsible for the preparation and publication of the United States Code,
8 wherein Defendants United States Congress and the United States of America make the
9 purely religious assertion that “In God We Trust.”

10 10. Defendant the United States of America is the constitutionally established government of
11 the United States of America.

12 11. Defendant John William Snow is Secretary of the Treasury of the United States. Pursuant
13 to 31 U.S.C. § 301(b), Defendant Snow is “head of the Department [of the Treasury].”
14 Pursuant to 31 U.S.C. § 321(a)(4), Defendant Snow “shall ... mint coins, [and] engrave
15 and print currency.”

16 12. Defendant Henrietta Holsman Fore is the Director of the Mint. According to the Mint’s
17 website, “The primary mission of the United States Mint is to produce an adequate
18 volume of circulating coinage for the nation to conduct its trade and commerce.”¹
19 Defendant Fore – pursuant to 31 U.S.C. § 304(b)(2) – “shall carry out duties and powers
20 prescribed by the Secretary of the Treasury.”

21 13. Defendant Thomas A. Ferguson is the Director of the Bureau of Engraving and Printing
22 (BEP). According to the BEP website, the Bureau “prints billions of Federal Reserve
23 Notes for delivery to the Federal Reserve System each year.”² Defendant Ferguson –
24 pursuant to 31 U.S.C. § 303(b)(1) – “shall carry out duties and powers prescribed by the
25 Secretary [of the Treasury].”
26
27
28

¹ Accessed at http://www.usmint.gov/about_the_mint/ on May 8, 2005.

² Accessed at <http://www.moneyfactory.com/section.cfm/2> on May 8, 2005.

HISTORICAL BACKGROUND

A. HISTORY OF AMERICAN RELIGIOUS FREEDOM

14. In striking contrast to the Declaration of Independence,³ to the state constitutions in existence at the time,⁴ to the Articles of Confederation it replaced,⁵ to the Treaties of Paris of 1763⁶ and of 1783,⁷ to the Articles of Association of 1774,⁸ to the Declaration of the Causes and Necessity of Taking Up Arms,⁹ and even to the Virginia Bill for Religious Freedom,¹⁰ the Constitution of the United States is a completely secular document.

15. Thus, for instance, there is no reference to God in the Preamble to the United States Constitution.¹¹ This may be contrasted with the preambles that not only were incorporated

³ The Declaration of Independence has four references to a supernatural power: “Nature’s God,” “their Creator,” “the Supreme Judge of the World,” and “Divine Providence.” Accessed on May 26, 2005, at [http://memory.loc.gov/cgi-bin/query/r?ammem/bdsdcc:@field\(DOCID+@lit\(bdsdcc02101\)\)](http://memory.loc.gov/cgi-bin/query/r?ammem/bdsdcc:@field(DOCID+@lit(bdsdcc02101)))

⁴ See at note 15, *infra*.

⁵ The Articles of Confederation referenced “the Great Governor of the world.” Accessed on May 26, 2005, at <http://www.yale.edu/lawweb/avalon/artconf.htm>.

⁶ The First Sentence of the 1763 Treaty of Paris was, “In the Name of the Most Holy and Undivided Trinity, Father, Son, and Holy Ghost.” “God” was used 8 times, and “Christian” was used 39 times.

⁷ Putting a formal end to the Revolutionary War, the 1783 Treaty of Paris begins, “In the name of the most holy and undivided Trinity,” which is then followed by, “It having pleased the Divine Providence.”

⁸ Agreed to by the First Continental Congress, the representatives referred to themselves in the Articles of Association asw “the free Protestant colonies.”

⁹ Written in 1775, the Declaration of the Causes and Necessity of Taking Up Arms references referenced “the divine Author of our existence,” “reverance for our Creator,” “Divine favour towards us,” and “the supreme and impartial Judge and Ruler of the Universe.” Additionally, the Declaration was made “most solemnly, before God and the world, ... [and] exerting the utmost energy of those powers, which our beneficent Creator hath graciously bestowed upon us.”

¹⁰ The Bill for Religious Freedom began, “Whereas Almighty God hath created the mind free,” and speaks of “the Holy author of our religion.” *The Founders’ Constitution*, Volume 5, Amendment I (Religion), Document 44, The University of Chicago Press (citing *The Papers of John Marshall*. Edited by Herbert A. Johnson et al. Chapel Hill: University of North Carolina Press, in association with the Institute of Early American History and Culture, Williamsburg, Virginia, 1974--.) Accessed on May 26, 2005, at http://press-pubs.uchicago.edu/founders/documents/amendI_religions44.html.

¹¹ “We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.” Preamble to the United States Constitution, accessed at <http://www.house.gov/Constitution/Constitution.html> on May 26, 2005. This absence was by no means unintentional.

into the constitutions of each of the thirteen original colonies, but that have since been incorporated into the constitutions of every one of the fifty states.¹²

16. Additionally, unlike the specified oaths of office in the state constitutions (see, e.g., the 1777 Constitution of Georgia (Articles XIV, XV, XXIV and XXX) and the 1778 Constitution of South Carolina (Article XXXVI)), there is no “so help me God” in the only oath of office given in the federal Constitution – i.e., that of the President.¹³

17. Among the original thirteen colonies, eleven had constitutions in place when the federal constitution was being created in 1787.¹⁴ Of these, nine had religious tests as qualifications for public office.¹⁵ The Constitution of the United States specifically states that “no religious test shall ever be required as a qualification to any office or public trust under the United States.”¹⁶

¹² Seven state constitutional preambles reference “God” (Alaska, Connecticut, Minnesota, Montana, New Hampshire, South Carolina, Wyoming); thirty-three reference “Almighty God” (Alabama, Arizona, Arkansas, California, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Wisconsin); three reference something “Divine” (Delaware (“Divine Goodness”), Hawaii (“Divine Guidance”), and West Virginia (“Divine Providence”)); three reference the “Supreme Ruler of the Universe” (Colorado, Missouri, Washington); one (Maine) references the “Sovereign Ruler of the Universe;” one (Massachusetts) references the “great Legislator of the universe;” one (Virginia) references “our Creator;” and one (Iowa) references the “Supreme Being.” Brief of United States as Respondent Supporting Petitioners, Appendix B, Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301 (2004).

¹³ “Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:--’I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.’” United States Constitution, Article II, Section 1, cl. 8.

¹⁴ Connecticut (1662) (<http://www.yale.edu/lawweb/avalon/states/ct03.htm>) and Rhode Island (1663) (<http://www.yale.edu/lawweb/avalon/states/ri04.htm>) were still governed by distinctly Christian charters.

¹⁵ In four states, governmental officials were required to be Protestant (New Jersey, Georgia, North Carolina and South Carolina). Delaware – in Article 22 of its Constitution of 1776 – required its legislators to state, “I ... do profess faith in God the Father, and in Jesus Christ His only Son, and in the Holy Ghost, one God, blessed for evermore; and I do acknowledge the holy scriptures of the Old and New Testament to be given by divine inspiration.” Article 22. Three other states – Massachusetts, New Hampshire and Maryland – required adherence to Christianity, and Pennsylvania mandated, “I do believe in one God, creator and governor of the universe, the rewarder of the good and the punisher of the wicked. And I do acknowledge the Scriptures of the Old and New Testament to be given by Divine inspiration.” 1776 Constitution of Pennsylvania, Section 10. All provisions accessed at <http://www.yale.edu/lawweb/avalon/states/statech.htm> on May 26, 2005.

¹⁶ United States Constitution, Article VI, cl. 3.

- 1 18. So intent were the Framers to keep the federal government religion-neutral, that James
 2 Madison – the “Father of the Constitution”¹⁷ – reported to the Virginia State Ratifying
 3 Committee that “There is not a shadow of right in the general government to intermeddle
 4 with religion. Its least interference with it would be a most flagrant usurpation.”¹⁸
- 5 19. Similarly, Alexander Hamilton, explaining the difference between the King of England
 6 and the United States President, noted that whereas the former was “the supreme head and
 7 governor of the national church,” the President “has no particle of spiritual jurisdiction.”¹⁹
- 8 20. Richard Dobbs Spaight, who would later become Governor of North Carolina (as well as a
 9 member of the U.S. House of Representatives) stated, “As to the subject of religion ... No
 10 power is given to the general government to interfere with it at all. Any act of Congress on
 11 this subject would be a usurpation.”²⁰
- 12 21. Likewise, James Iredell – who was to be nominated by George Washington and confirmed
 13 by the Senate as one of the first justices of the Supreme Court – noted, “If any future
 14 Congress should pass an act concerning the religion of the country, it would be an act
 15 which they are not authorized to pass, by the Constitution.”²¹
- 16 22. This constitutional secularity, of course, did not go unnoticed by those who wished for a
 17 (Christian) Monotheism-based government. For instance, published on January 10, 1788,
 18 the anti-Federalist, “Samuel,”²² wrote:
- 19 [A]ll religion is expressly rejected, from the Constitution. Was there ever any
 20 State or kingdom, that could subsist, without adopting some system of religion?
 21 Not so much as to own the being, and government of a Deity; or any

¹⁷ As reported at the White House website, at <http://www.whitehouse.gov/history/presidents/jm4.html> (accessed on May 26, 2005).

¹⁸ The Founders’ Constitution, Volume 5, Amendment I (Religion), Document 49, The University of Chicago Press (citing *The Papers of James Madison*. Edited by William T. Hutchinson et al. Chicago and London: University of Chicago Press, 1962--77 (vols. 1--10); Charlottesville: University Press of Virginia, 1977--(vols. 11--). Accessed on May 26, 2005 at http://press-pubs.uchicago.edu/founders/documents/amendI_religions49.html.

¹⁹ Federalist #69. Accessed at <http://www.yale.edu/lawweb/avalon/federal/fed69.htm> on October 22, 2005.

²⁰ The Founders’ Constitution, Volume 5, Amendment I (Religion), Document 52, The University of Chicago Press (citing Elliot, Jonathan, ed. *The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787*. . . . 5 vols. 2d ed. 1888. Reprint. New York: Burt Franklin, n.d. Accessed on October 23, 2005, at http://press-pubs.uchicago.edu/founders/documents/amendI_religions52.html.

²¹ *Id.*

²² As was the case with “Publius” in *The Federalist Papers*, pseudonyms were frequently used in published political discourses at the time of the debates on the Constitution.

acknowledgment of him! or having any revelation from him! Should we adopt such a rejection of religion as this, the words of Samuel to Saul, will literally apply to us, – *Because thou hast rejected the word of the Lord, he hath also rejected thee from being king*. We may justly expect, that God will reject us, from that self government, we have obtained thro’ his divine interposition.²³

23. Similarly, Luther Martin – who, in addition to being Maryland’s longtime attorney was an active participant in the Constitutional Convention – hoped to have the United States deemed “a Christian country.”²⁴ As such, he argued, it should have both a religious test oath and an acknowledgement in the Constitution of “[a] belief of the existence of a Deity, and of a state of future rewards and punishments.”²⁵

24. In fact, “[r]egret at the omission of any direct recognition of God or of the Christian religion in the Federal Constitution was expressed in at least five of the state conventions called to ratify the document.”²⁶

25. In other words, everyone – even those who objected to the lack of acknowledgements of God – agreed that the Constitution, as written and understood, did not include any such acknowledgements. Some objected, but all understood that this document was to create a government free of even a “shadow” or a “particle” of religious dogma.

26. The extent to which this governmental design was meant to apply can be seen by examining the actions of the First Federal Congress. On April 6, 1789, the House of Representatives resolved:

That the form of the oath to be taken by this House, as required by the third clause of the sixth article of the Constitution of the government of the United States, be as followeth, to wit, “I, A.B., a representative of the United States in the Congress thereof, do solemnly swear (or affirm, as the case may be), in the presence of Almighty GOD, that I will support the Constitution of the United States. So help me God.”²⁷

²³ *The Complete Anti-Federalist*, Strong HJ, ed. (Chicago: University of Chicago Press, 1981), Vol. 4 (4.14.7), at 195-96.

²⁴ *Id.*, Vol. 2 (2.4.108), at 75.

²⁵ *Id.* See, also, Cornell S. *The Other Founders: Anti-Federalism and the Dissenting Tradition in America, 1788-1828* (University of North Carolina Press: Chapel Hill, NC; 1999) at 57.

²⁶ Stokes AP. *Church and State in the United States*. (Harper & Brothers: New York, 1950), Volume III, at 583 (citation omitted).

²⁷ 1 Annals of Cong. 102 (1789).

27. Despite the foregoing, after numerous exchanges and discussions in both houses of Congress – in which “the third clause of the sixth article of the Constitution” obviously played the central role – that proposed oath was revised, with the affirmative removal of both references to “the Almighty.” Thus, Statute I, “An Act to regulate the Time and Manner of administering certain Oaths” – states:

Sec. 1. Be it enacted by the Senate and [House of] Representatives of the United States of America in Congress assembled, That the oath or affirmation required by the sixth article of the Constitution of the United States, shall be administered in the form following, to wit: “I, A.B., do solemnly swear or affirm (as the case may be) that I will support the Constitution of the United States.”²⁸

28. In other words, **the very first statute of the government of the United States involved the specific and affirmative removal of all references to God** in the oath of office to be used by Congress, itself.

29. This secularity is remarkable. Religion was a huge issue when the Constitution was created, and the fact that the Framers opted not to even acknowledge God in any way shows their acute awareness of its tendency to divide rather than unify. If all men are really “created equal” then government cannot – in any manner – show favoritism in terms of religious belief.²⁹

30. The importance of this principle is, perhaps, best shown by examining Madison’s famous *Memorial and Remonstrance*, which references equality no less than thirteen times in its few pages. For instance, especially in terms of religion, “**equality** ... ought to be the basis of every law.” The majority “cannot deny an **equal** freedom to those whose minds have not yet yielded to the evidence which has convinced [them].” Any government favoritism in terms of religious belief:

degrades from the **equal** rank of Citizens all those whose opinions in Religion do not bend to those of the Legislative authority. Distant as it may be in its present form from the Inquisition, it differs from it only in degree. The one is the first step, the other the last in the career of intolerance.³⁰

²⁸ 1 Stat. 23.

²⁹ Thus, of the three major areas of inequality that were ignored when the Declaration of Independence claimed that “all men are created equal” – i.e., race, gender and religion – only the latter was remedied by the Constitutional Convention.

³⁰ Madison J. *Memorial and Remonstrance*, The Founders’ Constitution, Volume 5, Amendment I (Religion), Document 43, The University of Chicago Press, citing The Papers of James Madison. Edited by William T. Hutchinson et al. Chicago and London: University of Chicago Press, 1962--77 (vols. 1--10); Charlottesville: University Press of Virginia, 1977--(vols. 11--). Accessed on October 5,

31. This was the view of the Framers **before** the Bill of Rights came into being.

32. Thus, when the Bill of Rights was first proposed, those who wanted an acknowledgement of God had another opportunity to alter the secular character of the nation's charter.

33. Benjamin Rush, for instance – perhaps the most eminent physician of the time, and one of the signers of the Declaration of Independence – wrote to John Adams³¹ a week after James Madison first proposed the initial constitutional amendments on June 8, 1789. In that letter, he stated:

Many pious people wish the name of the Supreme Being had been introduced somewhere in the new Constitution. Perhaps an acknowledgement may be made of his goodness or of his providence in the proposed amendments.³²

34. Yet this suggestion was not acted upon, corroborating that it was the intent of the framers to have a society free from the divisiveness caused by governmental partiality to any religious belief system, including “generic” (Christian) monotheism.

35. Accordingly, the First Amendment – with its initial sixteen words: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof” – was ratified on December 15, 1791.³³

36. In other words, as James Madison later wrote, “Every new & successful example ... of a perfect separation between ecclesiastical and civil matters, is of importance. ... [R]eligion & Govt. will both exist in greater purity, the less they are mixed together.”³⁴

2005 at http://press-pubs.uchicago.edu/founders/documents/amendI_religions43.html. Emphases added.

³¹ Adams, of course, was Vice President of the United States and, therefore, President of the Senate when Dr. Rush penned this note.

³² Letter from Dr. Benjamin Rush to John Adams (June 15, 1789), in *Letters of Benjamin Rush* (L.H. Butterfield, editor) (Princeton University Press: Princeton, NJ; 1951), vol. 1, at 517.

³³ Library of Congress, American Memory. accessed on October 23, 2005, at <http://memory.loc.gov/ammem/today/dec15.html>.

³⁴ The Founders' Constitution, Volume 5, Amendment I (Religion), Document 66, The University of Chicago Press (citing *The Writings of James Madison*. Edited by Gaillard Hunt. 9 vols. New York: G. P. Putnam's Sons, 1900--1910. Accessed at http://press-pubs.uchicago.edu/founders/documents/amendI_religions66.html on May 27, 2005.

37. Thus, with our federal government authorized to act only pursuant to the powers enumerated in the Constitution, there is not only no authority to take any position on religion, but there are specific prohibitions against such activity.

38. This limitation on the federal government was recognized throughout our early history.

39. For instance – in addition to the clear statement by James Madison (§ 18, *supra*) – there is the Treaty of Tripoli, which became the “supreme law of the land”³⁵ only six years after the ratification of the Bill of Rights. Negotiated under President Washington and signed into law by John Adams (with the **unanimous** consent of the Senate), that treaty stated unequivocally that “the government of the United States is not in any sense founded on the Christian religion.”³⁶

40. In the early 1800s, there was a significant controversy over the fact that post offices remained open on Sundays. In 1830, the matter was taken up by Congress. Alluding to the Constitution’s Article VI test oath clause, as well as the Religion Clauses of the First Amendment, the House Report noted that the request to stop mail delivery on Sundays was based on religious belief, and – as such – “does not come within the cognizance of Congress.”³⁷ As a result, to pass the requested law would have been impermissible because it “would constitute a legislative decision of a religious controversy.”³⁸

41. After the history of religious intolerance in the world was discussed, along with the fact that the framers “evinced the greatest possible care in guarding against the same evil,”³⁹ the Report’s authors wrote:

In our individual character, we all entertain opinions, and pursue corresponding practice upon the subject of religion. However diversified these may be, we all harmonize as citizens, while each is willing that the other shall enjoy the same liberty which he claims for himself. But in a representative character, our individual character is lost. The individual acts for himself; the representative for his constituents. He is chosen to represent their *political*, and not their *religious* views – to guard the rights of man; not to restrict the rights of conscience.

If the measure recommended should be adopted, it would be difficult for human sagacity to foresee how rapid would be the succession, or how numerous the train of

³⁵ United States Constitution, Article VI, cl. 2. “This Constitution ... and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.”

³⁶ 8 Stat. 154.

³⁷ H.R. Rep. No. 271, 21st Cong., 1st Sess. 1 (1830).

³⁸ *Id.* at 2

³⁹ *Id.*

1 measures which might follow, involving the dearest rights of all – the rights of
2 conscience.⁴⁰

3
4 42. Those men continued with the recognition that, “Religious zeal enlists the strongest
5 prejudices of the human mind,”⁴¹ as well as the proud declaration that:

6 With the exception of the United States, the whole human race, consisting, it is
7 supposed, of eight hundred millions of rational beings, is in religious bondage. ...
8 [T]he conclusion is inevitable, that the line cannot be too strongly drawn between
9 Church and State.”⁴²

10
11 43. Perfectly applicable to the gravamen of the instant action, the Reporters wrote that, “if
12 their motive be to induce Congress to sanction, by law, their *religious opinions* and
13 *observances*, then their efforts are to be resisted,”⁴³ and went so far as to declare, “So far
14 from stopping the mail on Sunday, the committee would recommend the use of all
15 reasonable meanse [sic] to give it a greater expedition and a greater extension.”⁴⁴

16 44. In other words, “It is the duty of this Government to afford to *all* – to Jew or Gentile,
17 Pagan or Christians, the protection and the advantages of our benignant institutions, on
18 *Sunday*, as well as every day of the week.”⁴⁵

19
20 45. A similar adherence to the Constitution’s demand for religious liberty and equality was
21 seen in the midst of the increased (Christian) religious fervor that followed the Civil War.
22 In tabling a petition calling for “‘an acknowledgment of Almighty God and the Christian
23 religion’ placed into the Constitution of the United States,”⁴⁶ the House Judiciary
24 committee concluded that:

25 [T]he fathers of the Republic in the convention which framed the Constitution ...
26 decided, after grave deliberation, ... that, as this country ... was to be the home of the
27 oppressed of all nations of the earth, whether Christian or Pagan, and in full realization
28 of the dangers which the union between church and state had imposed upon so many
29 nations of the Old World, with great unanimity, [decided] that it was inexpedient to
30 put anything into the Constitution or frame of government which might be construed
31 to be a reference to any religious creed or doctrine.

⁴⁰ *Id.* (Emphases in original).

⁴¹ *Id.* at 3.

⁴² *Id.*

⁴³ *Id.* at 4. (emphases in original).

⁴⁴ *Id.* at 5.

⁴⁵ *Id.* at 5-6.

⁴⁶ H.R. Rep No. 143, 43rd Cong., 1st Sess. 1 (1874).

1
2 And ... that this decision was accepted by our Christian fathers with such great
3 unanimity that in the amendments which were afterward proposed, in order to make
4 the Constitution more acceptable to the nation, none has ever been proposed to the
5 States by which this wise determination of the fathers has been attempted to be
6 changed.⁴⁷
7

8 46. As will herein be demonstrated, that “wise determination” was changed when – upon the
9 urging of a Christian minister – “recognition of Almighty God” was spatchcocked onto
10 the nation’s monetary instruments by the unsupervised and unregulated acts of two
11 executive branch officials.
12
13
14

15 **B. HISTORY OF “IN GOD WE TRUST” ON THE COINS AND CURRENCY**

16 47. On September 2, 1789, Defendant Congress of the United States approved “An Act to
17 establish the Treasury Department.”⁴⁸

18 48. On April 2, 1792, Defendant Congress of the United States passed “An Act establishing a
19 Mint, and regulating the Coins of the United States” (The Coinage Act of 1792).⁴⁹

20 49. That Coinage Act specified the types of coins to be minted, and further prescribed that:

21 Upon one side of each of the said coins there shall be an impression emblematic of
22 liberty, with an inscription of the word Liberty, and the year of the coinage ; and upon
23 the reverse of each of the gold and silver coins there shall be the figure or
24 representation of an eagle, with this inscription, “United States of America” and upon
25 the reverse of each of the copper coins, there shall be an inscription which shall
26 express the denomination of the piece, namely, cent or half cent, as the case may
27 require.⁵⁰
28

29 50. On January 18, 1837, Defendant Congress of the United States enacted “An Act
30 supplemental to the act entitled ‘An Act establishing a mint, and regulating the coins of
31 the United States.’”⁵¹

⁴⁷ Id.

⁴⁸ 1 Stat. 65.

⁴⁹ 1 Stat. 246-51.

⁵⁰ 1 Stat. 248.

⁵¹ 5 Stat. 136-42.

1 51. That Act of January 18, 1837 provided that “[t]he engraver shall prepare and engrave,
2 with the legal devices and inscriptions, all the dies used in the coinage of the mint and its
3 branches.”⁵²

4 52. That Act of January 18, 1837 also provided that:

5 [U]pon one side of each of said coins there shall be an impression emblematic of
6 liberty, with an inscription of the word Liberty, and the year of the coinage ; and upon
7 the reverse of each of the gold and silver coins, there shall be the figure or
8 representation of an eagle, with the inscription United States of America, and a
9 designation of the value of the coin ; but on the reverse of the dime and half dime, cent
10 and half cent, the figure of the eagle shall be omitted.⁵³

11
12 53. It is to be noted that – in keeping with the constitutionally-derived notion “that it was
13 inexpedient to put anything into the ... frame of government which might be construed to
14 be a reference to any religious creed or doctrine”⁵⁴ – there was no religious inscription of
15 any kind on any United States coin through 1837.

16 54. In fact, it would be another two and a half decades – when increased religious fervor took
17 hold as the Civil War began – before the idea of violating that constitutional mandate
18 would arise.

19
20 55. On November 13, 1861, Rev. M.R. Watkinson – a **“Minister of the Gospel”** – wrote to
21 Secretary of the Treasury Salmon P. Chase, requesting that “the **recognition of Almighty**
22 **God**” be placed upon the nation’s coins.⁵⁵ Noting to the Secretary that “**You are**
23 **probably a Christian,**” the minister claimed that such recognition was important to
24 “relieve us from the ignominy of heathenism.” Additionally, it “would place us under the
25 Divine protection we have personally claimed. From my heart I have felt our national
26 shame in disowning God as not the least of our present national disasters.”⁵⁶

⁵² 5 Stat. 136.

⁵³ 5 Stat. 138.

⁵⁴ See ¶ 45, *supra*.

⁵⁵ Rev. Watkinson was not alone in believing that a reference to God should be on the nation’s coins. At least one other clergyman – the Reverend Henry Augustus Boardman of Philadelphia – voiced the same opinion one year later. Stokes AP. *Church and State in the United States*, Vol. III (New York: Harper, 1950), at 601.

⁵⁶ H.R. Rep. No. 662, 84th Cong., 1st Sess. 2 (1955). This information is also provided in a “fact sheet” on the Department of the Treasury’s website, at <http://www.treasury.gov/education/fact-sheets/currency/in-god-we-trust.shtml>.

56. In response, on November 20, 1861, Secretary Chase wrote to James Pollock, then the Director of the Mint in Philadelphia. In his short note, Secretary Chase claimed that “**No nation can be strong except in the strength of God**, or safe except in His defense. **The trust of our people in God** should be declared on our national coins.”⁵⁷

57. Secretary Chase then directed Director Pollock to “cause a device to be prepared without unnecessary delay with a motto expressing in the fewest and tersest words possible this national recognition.”⁵⁸

58. Director Pollock, it might be noted, was also a member of the National Reform Association.⁵⁹ As early as 1861, the founders of that organization had begun working “to amend the Constitution, which is the basis of the Union, as to acknowledge God, submit to the authority of his Son, [and] embrace Christianity.”⁶⁰

59. Even before 1861, Director Pollock had been active in national Christian religious devotional activities. For instance, he was a keynote speaker at the 1860 National Convention of the friends of Union Prayer Meetings.⁶¹

60. Ten years later, when the attempt to religiously amend the Constitution was in full swing, “The Pittsburg Convention” was held. The association behind that convention set forth the following among its resolutions:⁶²

Resolved, That civil government is ... an ordinance of God.

Resolved, That nations ... are morally accountable to God.

Resolved, That the moral law under which nations are held accountable, include not only the law written on the heart of man but also the fuller revelation of the divine character and will given in the Bible.

⁵⁷ H.R. Rep. No. 662, 84th Cong., 1st Sess. 3 (1955).

⁵⁸ *Id.*

⁵⁹ <http://www.aclj.org/News/Read.aspx?ID=489>, accessed on October 22, 2005.

⁶⁰ “[A] meeting [was held] in Allegheny City, Pennsylvania, on January 27, 1864, during which the NRA was formally organized. The NRA’s first name was actually ‘The National Association to Secure the Religious Amendment to the Constitution.’ The name was changed to the National Reform Association in November 1875.” <http://www.natreformassn.org/ecp/chap1.html>, accessed on October 22, 2005.

⁶¹ *Union Prayer Meetings: National Convention at Philadelphia*. New York Times, March 8, 1860, page 5. In his speech, Director Pollock “extolled the Union Prayer Meetings highly.”

⁶² *The Pittsburg convention: Resolutions Adopted Urging a Recognition of God in the Constitution – Officers Elected*. The New York Times. March 7, 1870, page 1.

1 Resolved, That it is the right of nations as such ... to worship God according to the
2 Christian religion in Christ Jesus.

3
4 Resolved, That in order to maintain and give permanency to the Christian features
5 which have marked its nation from its origin, it is necessary to give them
6 authoritative sanction in our organic law.

7
8 Resolved, That the proposed religious amendment to our national Constitution, so far
9 from infringing any individual's right of conscience, or tending in the least degree
10 to a union of Church and State, will afford the fullest security against a corrupt and
11 corrupting Church establishment, and form the strongest safeguard of both the
12 civil and religious liberties of all citizens.

13
14 Resolved, That the present movement is not sectarian, or even ecclesiastic; but that it
15 is the acknowledgment of the Deity and the assertion of the right of a people who
16 believe in the truth of Christianity to govern themselves in a Christian manner.
17

18 61. At that very convention, Director Pollock was named one of the organizations Vice-
19 Presidents.⁶³

20 62. Reflecting these (Christian) monotheistic religious activities, Director Pollock included in
21 his 1863 Annual Report as Director of the Mint that there should be "a distinct and
22 unequivocal National **recognition of the Divine Sovereignty**" on the nation's coins. He
23 continued:

24 **We claim to be a Christian nation** -- why should we not vindicate our character by
25 **honoring the God of Nations** in the exercise of our political Sovereignty as a Nation?
26 Our national coinage should do this. Its legends and devices **should declare our trust**
27 **in God -- in Him who is the "King of Kings and Lord of Lords."** ... Let us
28 **reverently acknowledge his sovereignty**, and let our coinage **declare our trust in**
29 **God.**⁶⁴
30

31 63. Thus, pursuant to Secretary Chase's request, Pollock suggested "Our country; our God,"
32 and "God our trust" as inscriptions.⁶⁵

33 64. Secretary Chase responded on December 9, 1863:

34 I approve your mottoes, only suggesting that on that with the Washington obverse the
35 motto should begin with the word "Our," so as to read, "Our God and our country."
36 And on that with the shield it should be changed so as to read: "In God we trust."⁶⁶

⁶³ *Id.*

⁶⁴ 1863 Annual Report of the Director of the Mint, at 10-11 (as provided in Stokes AP. *Church and State in the United States*, Vol. III (New York: Harper, 1950), at 602.

⁶⁵ H.R. Rep. No. 662, 84th Cong., 1st Sess. 3 (1955).

⁶⁶ *Id.* (The capitalization of these words – as the motto and on the money – has been varied.)

1
2 65. On April 22, 1864, a new coinage act was passed. This one stated that “there shall be,
3 from time to time, struck and coined at the mint a two-cent piece ... and the shape,
4 mottoes, and devices of said coi[n] shall be fixed by the Director of the Mint, with the
5 approval of the Secretary of the Treasury.”⁶⁷

6 66. This act, obviously, did not address what specific “mottoes” or “devices” would be
7 permitted. Thus, it was without specific authorization – and obviously inconsistent with
8 the Framers’ and the congressional determinations noted above (see at ¶¶ 14-45, *supra*) –
9 that the first United States coin bearing the religious verbiage, “IN GOD WE TRUST,”
10 was minted. This occurred on the two-cent piece in 1864.

11 67. With the religious precedent in place, another Act of Congress was passed on March 3,
12 1865. That act – authorizing the creation of a three-cent piece, and allowing that “the
13 shape, mottoes, and devices of said coin shall be determined by the Director of the Mint,
14 with the approval of the Secretary of the Treasury”⁶⁸ – included the first codified
15 reference to religious dogma on the coinage:

16 And be it further enacted, That, in addition to the devices and legends upon the gold,
17 silver, and other coins of the United States, it shall be lawful for the Director of the
18 Mint, with the approval of the Secretary of the Treasury, to cause the motto ‘In God
19 we trust’ to be placed upon such coins hereafter to be issued as shall admit of such
20 legend thereon.⁶⁹

21
22 68. Society immediately recognized that this act was purely religious. According to the New
23 York Times, placement of “In God We Trust” on the coins was a **“new form of national
24 worship.”**⁷⁰

25 69. This likely was quite satisfying to Director Pollock, who – in his zeal to impose
26 (Christian) Monotheism on the nation – concluded his official June 30, 1866 report (on the
27 previous year’s activity) with the words, **“Happy is the Nation, whose God is the
28 Lord.”**⁷¹

⁶⁷ 13 Stat. 54-55.

⁶⁸ 13 Stat. 517. The identical provision was given for a five-cent coin in an act of May 16, 1866 (14 Stat 47).

⁶⁹ 13 Stat. 518.

⁷⁰ New York Times, December 18, 1865, p. 4.

⁷¹ 1866 Annual Report of the Director of the Mint, at 9 (as provided in Stokes AP. *Church and State in the United States*, Vol. III (New York: Harper, 1950), at 603.

70. On February 12, 1873, the laws pertaining to coinage were revised, with the following language employed:

[U]pon the coins of the United States there shall be the following devices and legends: Upon one side there shall be an impression emblematic of liberty, with an inscription of the word “Liberty” and the year of the coinage, and upon the reverse shall be the figure or representation of an eagle, with the inscriptions “United States of America” and “E Pluribus Unum,” and a designation of the value of the coin; but on the gold dollar and three-dollar piece, the dime, five, three and one cent piece the figure of the eagle shall be omitted; and on the reverse of the silver trade-dollar the weight and the fineness of the coin shall be inscribed; and the director of the mint, with the approval of the Secretary of the Treasury, may cause the motto “In God we trust” to be inscribed upon such coins as shall admit of such motto: and any one of the foregoing inscriptions may be on the rim of the gold and silver coins. “⁷²

71. In 1905, at President Theodore Roosevelt’s urging, the sculptor, Augustus Saint-Gaudens, was commissioned to design new coinage. Considering the motto, “In God we trust,” to be “an inartistic intrusion not required by law,”⁷³ Saint-Gaudens designed a gold coin without those religious words.

72. President Roosevelt strongly supported the removal of that phrase from the coins “**in the very interest of religion.**”⁷⁴ To him, “to put such a motto on coins ... not only does no good but does positive harm, and is in effect irreverence which comes dangerously close to sacrilege.”⁷⁵ The use of the motto in this way, claimed the President, was “a constant source of jest and ridicule.”⁷⁶

73. When, in 1907, the coin was released, there was an immediate outcry, with demands made for the restoration of the “In God We Trust” inscription. Nonetheless, President Roosevelt

⁷² 17 Stat. 427. Interestingly, the clause pertaining to “In God we trust” was omitted when the statutes were revised. 18 Stat 3517, and – pursuant to a general provision – subsequently repealed. 18 Stat 5596. This legislation is also available for viewing at <http://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=017/llsl017.db&recNum=468>.

⁷³ Schwarz T. *A History of United States Coinage*. (A.S. Barnes & Co., New York; 1980) at 228 (citing a work by Saint-Gaudens’ son).

⁷⁴ *What Makes a Christian State?* The Independent, New York, Vol. LXIII, No. 3077 (November 21, 1907), at 1263 (emphasis added).

⁷⁵ November 11, 1907 Letter of Theodore Roosevelt to William Boldly, as reprinted in Schwarz T. *A History of United States Coinage*. (A.S. Barnes & Co., New York; 1980) at 230.

⁷⁶ President Roosevelt referenced “the innumerable cartoons and articles based on phrases like ‘In God we trust for the other eight cents’; ‘In God we trust for the short weight’; ‘In God we trust for the thirty-seven cents we do not pay’; and so forth” in making this claim. *Id.*

(referring to the possibility that Congress would order the phrase placed back onto the coin), wrote “I very earnestly trust that **the religious sentiment** of the country ... will prevent any such action being taken.”⁷⁷

74. The President was quite mistaken. Despite his arguments, the absence of what the New York Times referred to as “**one of the holiest religious expressions**”⁷⁸ was decried by those wishing to maintain this governmental endorsement of (Christian) Monotheism.

75. Accounts of the controversy were marked by recognition of “protests or expressions of regret **from many clergy** and others,”⁷⁹ of “various **religious organizations** and individuals, **especially clergymen**, [having] protested,”⁸⁰ of “a great number of **religious people** in this country” considering President Roosevelt’s decision “‘a huge blunder.’”⁸¹

76. Highlighting the fact that religious sentiment was at the root of the controversy, it was noted to be “strange that he did not foresee that **the great majority of religious people**, Protestant, Catholic, many Jews, would be sensitive at the removal of those words at a time when every vestige of **national recognition of God** is of importance.”⁸²

77. After all, “[t]here are a great many people ... who think that to take such an inscription off the coin is to disavow all trust in God and is therefore an act of irreligion. One clergyman is reported to have spoken of ‘the religious sentiment of the American people’ as being ‘effaced.’”⁸³

78. That the views of Atheists and others were considered of no consequence is illustrated in the words of another clergyman who stated, “‘The placing of the inscription ‘In God We Trust’ upon the national coinage is a unique recognition of our dependency as a people upon the Father of nations. ... [F]rom my childhood I have heard the blatant protests of infidels and unbelievers against this custom.’”⁸⁴

⁷⁷ *Id.* (emphasis added).

⁷⁸ New York Times, November 15, 1907, p. 8 (emphasis added).

⁷⁹ The Independent, New York, Vol. LXIII, No. 3077 (November 21, 1907), at 1196 (emphasis added).

⁸⁰ The Outlook, New York, Vol. 87, No. 13 (November 30, 1907), at 707 (emphases added).

⁸¹ Current Literature, New York, Vol. XLIV, No. 1 (January, 1908), at 68 (emphasis added).

⁸² *Id.*, at 69 (citing “the leading Methodist paper,” and noting that “Similar views are expressed by clergymen of all denominations,” and that religious organizations “have passed resolutions condemning the President’s action.”) (emphases added).

⁸³ *Id.*, at 708.

⁸⁴ Rev. Dr. Charles Edward Locke, of Brooklyn, as quoted in Current Literature, New York, Vol. XLIV, No. 1 (January, 1908), at 69.

79. In response to this religion-based outcry, Congress passed Public Law No. 120, which President Roosevelt signed on May 18, 1908. That law stated, “That the motto ‘In God we trust,’ heretofore inscribed on certain denominations of the gold and silver coins of the United States of America, shall hereafter be inscribed upon all such gold and silver coins of said denominations as heretofore.”⁸⁵

80. This was the first federal law mandating use of the “In God We Trust” phrase on United States monetary instruments. As the history manifestly reveals, this resulted from **religious** objection by **religious** individuals to the removal of **religious** words that were initiated for **religious** purposes.

81. As the House Report on the matter (erroneously) stated, “[‘In God We Trust’] reflects the reverent and **religious** conviction which underlies American citizenship.”⁸⁶

82. Indeed, the first sentence of the Department of the Treasury’s “Fact Sheet” on the “History of ‘In God We Trust’” explains that “The motto IN GOD WE TRUST was placed on United States coins largely **because of ... increased religious sentiment.**”⁸⁷

83. Moreover, “In God We Trust” was not rooted in general Monotheism. On the contrary, it was Christian Monotheism that underlay this sequence of events. After all, the subcommittee that authored that House Report was “unanimous in the belief that **as a Christian nation** we should restore the motto to the coinage ... [since] the best and only reliance for the perpetuation of the republican institution is upon **a Christian patriotism**, which, recogniz[es] the universal fatherhood of God.”⁸⁸

84. In sum, despite the Constitution’s mandate for religious neutrality and the absence of any authority vested in Congress to “pass any act concerning the religion of the country,”⁸⁹ Congress made “In God We Trust” our national motto, and mandated its use on our money. As a key figure in the intrusion of (Christian) Monotheistic religious dogma into

⁸⁵ Pub. L. 60-120, May 18, 1908, ch. 173, 35 Stat. 164.

⁸⁶ H.R. Rep. No. 1106, 60th Cong., 1st Sess. 1 (1908) (emphasis added).

⁸⁷ Accessed at <http://www.treas.gov/education/fact-sheets/currency/in-god-we-trust.html> on October 2, 2005 (emphasis added).

⁸⁸ H.R. Rep. No. 1106, 60th Cong., 1st Sess. 2 (1908) (emphases added).

⁸⁹ See at ¶ 21, *supra*.

our government put it, “‘In God We Trust’ [is a] statement of faith [that] has appeared on billions of coins.”⁹⁰

85. Unlike the coins, however, those religious words were not being used on the nation’s currency. This was noted by an Arkansas businessman and numismatist named Matthew H. Rothert “as the collection plate was being passed” in church one Sunday in 1953.⁹¹

86. Accordingly, Mr. Rothert wrote to the Secretary of the Treasury, George M. Humphrey, to suggest that those religious words be placed on the currency in order to **“affirm our trust in God** in such a manner that it will be heard around the world and give moral and spiritual strength to those who realize **a great nation humbly and reverently places its trust in the Almighty.**”⁹²

87. This matter was also brought to the attention of Donald K. Carroll, president of the Florida Bar, who (in turn) informed U.S. Representative Charles E. Bennett (FL).⁹³

88. Rep. Bennett contacted the Department of the Treasury and – after learning that “In God We Trust” was not only not required on the currency, but that there were coins that did not require the use of that motto – introduced H.R. 619 (“the inscription ‘In God We Trust’ ... shall appear on all United States currency and coins”), on the first day of the first session of the 84th Congress.⁹⁴

89. To Rep. Bennett, “In God We Trust” was appropriate because **“the sentiment of trust in God is universal.**”⁹⁵

90. Then-Senator Lyndon B. Johnson pushed for the Bill in the Senate, stating that the motto **“reflect[s] the spiritual basis** of our way of life.”⁹⁶

⁹⁰ S. Rep. No. 1287, 83rd Cong., 2nd Sess. 2 (1954) (Remarks of Senator Homer Ferguson).

⁹¹ Petrucelli F. *Almighty Dollar Mentions God Because of Arkansan*. Arkansas Gazette, March 4, 1955, page 2F.

⁹² *Camden Man Asks Treasury To Put Religious Motto on Bills*, Arkansas Gazette, December 6, 1953, page 10C (emphases added). It might be noted that when this story was related in 1987, the author did not hesitate to describe the use of the motto on the currency as “the affirmation of our nation’s belief in Divine Guidance.” Rochette E. *The Man Who Put God’s Trust In Your Pocket* Antiques & Collecting, July, 1987, at 80.

⁹³ 101 Cong. Rec. 4384 (April 13, 1955).

⁹⁴ *Id.*

⁹⁵ 101 Cong. Rec. 7796 (June 7, 1955) (emphasis added).

⁹⁶ 101 Cong. Rec. 9448 (June 29, 1955).

1 91. The motto also obviously reflected the political disenfranchisement of Atheists in America
 2 at the time, inasmuch as the bill was unanimously passed in both the House and the
 3 Senate.⁹⁷

4 92. The Report of the House Committee on Banking and Currency (which accompanied H.R.
 5 619) demonstrates that the use of “In God We Trust” was intended to be purely religious.

6 93. The main portion of the Report was entitled, “**Religious Inscriptions** on Coins in the
 7 United States.” Its prose referenced Rev. Watkinson’s 1861 letter to Treasury Secretary
 8 Chase, stating, “**You are probably a Christian,**” and decrying the “fact touching our
 9 currency [that] has been seriously overlooked ... **the recognition of Almighty God** in
 10 some form in our coins.”⁹⁸

11 94. The hearing before that Committee was also revealing. After stating that “as far as I know
 12 there is no opposition to this legislation,”⁹⁹ Rep. Bennett noted that “this motto ...
 13 expresses so tersely and with such dignity **the spiritual basis** of our way of life.”¹⁰⁰ He
 14 then proclaimed that:

15 Most of us agree wholeheartedly with the first advance of this motto, Secretary of the
 16 Treasury S. P. Chase, when he said: “No nation can be strong except in the strength of
 17 God, or safe except in His defense. **The trust of our people in God should be**
 18 **declared** on our national coins,”¹⁰¹

19
 20 concluding with:

21 At the base of our freedom is **our faith in God** and the desire of Americans **to live by**
 22 **His will and by His guidance.** As long as **this country trusts in God,** it will
 23 prevail.¹⁰²

24
 25 95. Rep. Abraham J. Multer (NY) spoke next. After stating, “I don’t want to get **into an**
 26 **argument on religion,**”¹⁰³ he echoed the opinion President Roosevelt voiced a half
 27 century earlier:

⁹⁷ Id.

⁹⁸ H.R. Rep. No. 662, 84th Cong., 1st Sess. 2 (1955).

⁹⁹ *United States Currency Inscription: Hearing on H.R. 619 and related bills, before the Committee on Banking and Currency, 84th Cong., 1st Sess. 47 (Tuesday, May 17, 1955).*

¹⁰⁰ Id. at 48.

¹⁰¹ Id. (emphasis added)

¹⁰² Id. at 49 (emphases added). Rep. Bennett’s remarks are also available at 101 Cong. Rec. 4384 (April 13, 1955).

¹⁰³ Id. (emphasis added)

[W]hile I would not oppose it or take any action in opposition to the bill, I want it made crystal clear on this record that I think **I am as religious as any man** in this House. We may differ in our forms, but I respect every other person's form or ritualistic observance, and I know they do mine, too, but I feel very strongly that it was a mistake to put it on coins in the first place, and this is perpetuating a grievous error. I think it is the base of **all of those who believe in God**; to put anything like that on anything so materialistic as our coins and our currency – I don't think anybody is made more religious by putting it on the coins and currency. ... If we are going to have **religious concepts** – and I am in favor of them – I don't think the place to put them is on our currency or on our coins.”¹⁰⁴

96. It should be noted that no one at the hearing in any way disputed Rep. Multer's characterization of “In God We Trust” as being a “**religious concep[t]**.”

97. Also demonstrating a complete lack of consideration of non-Montheistic views, Rep. William E. McVey (IL) maintained, “I can't possibly see any objection to having the inscription “In God We Trust” on all of our currency, and I am very glad to support it.”¹⁰⁵

98. The Committee chairman, Rep. Brent Spence (KY), joined in:

I think if there ever was a nation that has, by its course, demonstrated that God had a hand in its making and its progress, it is this country. I always believe that God was present in the Convention Hall where our Constitution was formed.¹⁰⁶

99. The desire to intrude Monotheism into our government was so pervasive that Rep. Gordon L. McDonough (CA) exclaimed, “I don't think we can insert that phrase in too many places in regard to the Government of the United States.”¹⁰⁷

100. When Rep. Herman P. Eberharter (PA) spoke – after having recently recovered from an illness – Rep. Barratt O'Hara (IL) commended him for coming “at great sacrifice to himself, to testify for this bill, which affirms his faith and **the faith of all others in our country, in God**.”¹⁰⁸

101. Rep. Eberharter, incidentally, placed in the record a resolution passed by the National Convention of the American Legion. That resolution stated that “the United States of America is a **God-fearing country**.”¹⁰⁹

¹⁰⁴ Id. at 50 (emphases added).

¹⁰⁵ Id. at 51.

¹⁰⁶ Id.

¹⁰⁷ Id. at 52.

¹⁰⁸ Id. at 54 (emphasis added).

¹⁰⁹ Id. (Emphasis added.)

1 102. Rep. Oren Harris (AR) stated, “It does not take the inscription on our coins for me to
 2 **proclaim my faith and trust in God.** ... With the inscription on our coins it is another
 3 expression, not only individually but collectively, in this country, **of our faith.**”¹¹⁰ He,
 4 too, could “see no objection whatsoever to this further expression of this quotation on
 5 the currency that we use in this country.”¹¹¹

6 103. Rep. Harris also placed a Resolution in the record. This one was from the American
 7 Numismatic Association, and stated that “this legend relating to **the power of Almighty**
 8 **God** shall be placed upon the currency.”¹¹²

9 104. Rep. Lawrence H. Fountain (NC) referred to “In God We Trust” as one of the “many
 10 instances indicat[ing] **our belief in the existence of God.**”¹¹³ He further noted that:

11 **The Bible begins** with the words “In the beginning, God” and I think more and more
 12 it is essential for us to recognize the fact that we as individuals and as a nation are
 13 merely the custodians of the things which **God has so graciously granted** to us.”¹¹⁴
 14

15 105. Further evidence that this legislator – like every other legislator on the committee –
 16 intended and assumed that the motto was unequivocally religious is provided by Rep.
 17 Fountain’s additional statements:

18 [B]y having this inscription on our coins and on our currency ... we are indicating ...
 19 because of **the goodness of God** we have become a prosperous and powerful
 20 nation.¹¹⁵
 21

22 [T]hat inscription indicates that even though this coin is necessary, it is not in this coin
 23 we trust, but **it is in God that we trust.**¹¹⁶
 24

25 106. In signaling his agreement, Rep. Harris demonstrated that it was not only Monotheism
 26 that Congress was endorsing, but Christian Monotheism, as he referenced “**our Lord**
 27 **and Saviour.**”¹¹⁷

28 107. Thus, it should be noted that not one person at the key hearing that led to the mandatory
 29 inscription of “In God We Trust” on all of the nation’s coins and currency ever even

¹¹⁰ Id. at 55 (emphases added).

¹¹¹ Id.

¹¹² Id. at 56 (emphasis added).

¹¹³ Id. (Emphasis added.)

¹¹⁴ Id. (Emphases added.)

¹¹⁵ Id. (Emphasis added.)

¹¹⁶ Id. (Emphasis added.)

¹¹⁷ Id. (Emphasis added.)

suggested that the phrase was anything other than purely religious. Nor did anyone represent the views of Atheists and others among their constituencies who deny the existence of “the Almighty.”

108. This, of course, was merely a reflection of the (Christian) Monotheistic bent that was pervasive in Congress in the 1950s. APPENDIX E.

109. The House Report accompanying H.R. 619 noted that “a mandatory provision of law requiring inscription on all coins and currency of the United States of the motto “In God We Trust” ... expresses so tersely and with such dignity **the spiritual basis** of our way of life.”¹¹⁸

110. Similarly, the corresponding Senate Report stated specifically that “for almost a century, there has been no inscription on our currency reflecting **the spiritual basis** of our way of life.”¹¹⁹

111. “Spiritual” in this context, of course, synonymous with “religious.” This notion – that government can decree a spiritual or religious “way of life” that reflects “our” nation – clearly violates the Establishment Clause.

112. Even if this were not the case, placing any “spiritual basis of our way of life” on the nation’s coins and currency could never be an interest that is “compelling” enough to justify an infringement upon any citizen’s fundamental constitutional right.

113. That Congress, itself, recognized that this interest was not “compelling” can be appreciated by noting that the printing of “In God We Trust” was to be delayed until “such time as new dies for the printing of currency are adopted in connection with the current program of the Treasury Department to increase the capacity of presses utilized by the Bureau of Engraving and Printing.”¹²⁰

114. Be that as it may, “An Act to provide that all United States currency shall bear the inscription ‘In God We Trust’” – which actually mandated that this religious inscription be placed on all coins as well – became the law of the land on July 11, 1955.¹²¹

¹¹⁸ H.R. Rep. No. 662, 84th Cong., 1st Sess. 4 (1955).

¹¹⁹ S. Rep. No. 637, 84th Cong., 1st Sess. 2 (June 27, 1955), reprinted in 1955 U.S. Code Cong. & Ad. News 2417, 2417.

¹²⁰ H.R. 619, 84th Cong., 1st Sess. 1 (July 11, 1955), reprinted in 1955 U.S. Code Cong. & Ad. News 318.

¹²¹ Id. (reprinted in 1955 U.S. Code Cong. & Ad. News 318-19).

115. The codification of this act – which will hereafter be referred to the “Act of 1955” – is now found at 31 U.S.C. § 5112 (d)(1): “United States coins shall have the inscription ‘In God We Trust’ . ;” and at 31 U.S.C. § 5114(b): “United States currency has the inscription ‘In God We Trust’ in a place the Secretary decides is appropriate. ...”

C. HISTORY OF “IN GOD WE TRUST” AS THE NATIONAL MOTTO

116. (Christian) religious fervor, APPENDIX B, and anti-Atheism, APPENDIX C, characterized the 1950s.

117. As has been demonstrated already in this Complaint, the placement of “In God We Trust” on the coins and currency was clearly done for religious purposes and to have religious effects.

118. Additional similar uses of that religious phrase corroborate this unequivocal fact.

119. For instance, an attempt was made to have “In God We Trust” mandated for all postage in order to acknowledge “the faith of Americans in divine providence.”¹²²

120. That use of the religious motto on all postage was never mandated. However, on April 8, 1954 – in the “most impressive and most widely publicized ceremony of its kind in the history of the United States Post Office Department”¹²³ – Postmaster General Arthur E. Summerfield led a celebration to “[t]he symbolism of God and Country.”¹²⁴ The cause of this extraordinary “celebration” was the introduction of a stamp with the words, “In God We Trust.”

121. At this event, “[t]he stamp was introduced to a nationwide audience during a 15-minute program in which President Eisenhower, Secretary of State John Foster Dulles and Postmaster General Summerfield participated **with the leaders of the Nation’s three largest religious groups.**”¹²⁵

¹²² 99 Cong. Rec. A2658 (May 15, 1953 Remarks of Senator Homer Ferguson).

¹²³ “*In God We Trust*” – *New Postage Stamp to Carry Message to World*. The Gideon, May, 1954, p. 24.

¹²⁴ *Id.* at 25. These were the Postmaster General’s words.

¹²⁵ *Id.*

1 122. With President Eisenhower in attendance, this event marked “the first time that a
 2 **religious tone** ha[d] been incorporated into a regular or ordinary stamp.”¹²⁶ This was
 3 obviously contrary to the principles so nobly adhered to by Congress earlier in our
 4 history. See at ¶¶ 40-44, supra.

5 123. According to Postmaster General Summerfield, “This stamp rededicates our faith in the
 6 spiritual foundations that has always been and is today the bulwark of this Nation – and
 7 its greatest source of strength.”¹²⁷

8
 9 124. According to Senator Homer Ferguson, “In God We Trust” over the door of the Senate
 10 serves not only to remind the senators that “belief in God is a part of our very lives,”¹²⁸
 11 but “recognizes that we believe there is a Divine Power, and that we, our children, and
 12 children’s children should always recognize it.”¹²⁹

13 125. Turning Atheists into “political outsiders” at least as much as he was turning (Christian)
 14 Monotheists into “political insiders,” Rep. Louis C. Rabaut (MI), noted that “[w]e
 15 cannot afford to capitulate to the atheistic philosophies of godless men.”¹³⁰

16 126. Rep. Rabaut, it must be noted, had previously placed in the Congressional Record the
 17 incredibly offensive claim that “An atheistic American ... is a contradiction in terms.”¹³¹

18 127. Referencing “In God We Trust” on United States coins, Rep. Francis E. Dorn (NY)
 19 declared that, “He is the God, undivided by creed, to whom we look, in the final
 20 analysis, for the well-being of our Nation.”¹³²

21 128. To Rep. Peter Rodino (NJ), the religious motto “expresses the constant attitude of the
 22 American people ... that we wish now, with no ambiguity or reservation, to place
 23 ourselves under the rule and care of God.”¹³³

24 129. After informing us that “our citizenship is of no real value ... unless we can open our
 25 souls before God and before Him conscientiously say, “I am an American,” Rep. Hugh

¹²⁶ Id. (Emphasis added.)

¹²⁷ Id.

¹²⁸ 100 Cong. Rec. 6348 (May 21, 1954 Remarks of Sen. Homer Ferguson).

¹²⁹ 100 Cong. Rec. 7833 (June 8, 1954 Remarks of Sen. Homer Ferguson).

¹³⁰ 101 Cong. Rec. 8156 (June 14, 1955 Remarks of Rep. Louis C. Rabaut).

¹³¹ 100 Cong. Rec. 2, 1700 (Feb. 12, 1954) (Remarks of Rep. Louis C. Rabaut).

¹³² 100 Cong. Rec. 6085 (May 5, 1954 Remarks of Rep. Francis E. Dorn).

¹³³ 100 Cong. Rec. 7764 (June 7, 1954 Remarks of Rep. Peter Rodino).

1 J. Addonizio (NJ) referenced “In God we trust” as illustrating that “God is the symbol of
2 liberty to America.”¹³⁴

3 130. His colleague, Rep. Charles A. Wolverton (NJ), told us that “In God we trust” – taken
4 “in conjunction” with “under God” in the Pledge of Allegiance – “can be taken as
5 evidence of our faith in that divine source of strength that has meant and always will
6 mean so much to us as a nation.”¹³⁵ He did not hesitate to characterize those who deny
7 God as purveying “forces of evil.”¹³⁶

8 131. Thus, it was within that milieu that H.R. Res. 396 – seeking to have “In God We Trust”
9 declared the national motto – was introduced on July 21, 1955.¹³⁷

10 132. On March 28, 1956, the House of Representatives’ Committee on the Judiciary
11 considered H.J. Res. 396. With an incredibly superficial analysis, the Committee simply
12 stated: “At present the United States has no national motto. It is most appropriate that
13 ‘In God We Trust’ be so designated.”¹³⁸

14 133. In its Report, the Committee spent no time at all considering the constitutionality of the
15 verbiage. It simply noted (1) that the phrase had been used in the past on coins, and (2)
16 that the Star-Spangled Banner – which has similar words in one of its four stanzas – had
17 been adopted as the national anthem.¹³⁹

18 134. The Committee concluded – despite the constitutional mandate for strict governmental
19 neutrality in terms of religious ideology – that “it is clear that ‘In God We Trust’ has a
20 strong claim as our national motto.”¹⁴⁰

21 135. It might be noted also that the Committee dismissively cast “E pluribus unum” aside.
22 Although it acknowledged that this phrase had “also received wide usage in the United
23 States,” it declared by fiat: “However, the committee considers ‘In God We Trust’ a

¹³⁴ 100 Cong. Rec. 7765 (June 7, 1954 Remarks of Rep. Hugh J. Addonizio).

¹³⁵ 100 Cong. Rec. 14919 (August 17, 1954 Remarks of Rep. Charles A. Wolverton).

¹³⁶ *Id.*

¹³⁷ 101 Cong. Rec. 11193. A copy of H. J. Res. 396 (84th Cong., 1st Sess.) – also noting this date – was inserted into the record during a meeting of Subcommittee No. 4 of the Committee of the Judiciary, held on Friday, February 24, 1956. (84) H.J. Res. 396, (84) HJ-T.114 (Feb. 24, 1956), House Committee on Judiciary, House Subcommittee No. 4 (“To Establish a National Motto of the United States”).

¹³⁸ H.R. Rep. No. 1959, 84th Cong., 2nd Sess. 1 (March 28, 1956).

¹³⁹ *Id.* at 1-2.

¹⁴⁰ *Id.* at 2.

superior and more acceptable motto for the United States.”¹⁴¹ (“E pluribus unum,” of course, has an extraordinary historical pedigree. See at ¶ 285, page 50, *infra*.)

136. Apparently, this is because of its “great **spiritual** and psychological value to our country.”¹⁴²

137. Thus, H.J. Res. 396 was quickly approved and signed into law¹⁴³ by President Eisenhower on July 30, 1956.¹⁴⁴

138. The codification of this act – which will hereafter be referred to the “Act of 1956” – is now found at 36 U.S.C. § 302: “‘In God we trust’ is the national motto.”

D. THE POLITICAL CLIMATE WAS PRO-MONOTHEISTIC AND ANTI-ATHEISTIC WHEN THE CHALLENGED ACTS WERE IMPLEMENTED

139. The foregoing demonstrates unequivocally that the government’s use of the patently religious words “In God We Trust” (on the coins and currency and as the nation’s motto) occurred as a result of officials acting with patently religious purposes.

140. Such patently unconstitutional activity, *Lemon v. Kurtzman*, 403 U.S. 602, 612-613 (1971), can only occur in a political climate that empowers those advocating (Christian) Monotheism while disenfranchising Atheists. Such a climate existed in the 1950s.

141. For instance, there was marked support for (Christian) Monotheism at that time.

APPENDIX B.

142. Simultaneously, there was pervasive anti-Atheistic sentiment. **APPENDIX C.**

143. In fact – referencing “In God We Trust” on the nation’s money as justification for his outlandish decision – at least one Federal District Court judge refused to grant citizenship to a very deserving applicant solely on the basis of his Atheistic beliefs.

APPENDIX O.

¹⁴¹ *Id.*

¹⁴² *Id.* (emphasis added).

¹⁴³ Pub. L. 84-851 is now codified at 36 U.S.C. Section 186.

¹⁴⁴ Act of July 30, 1956, ch. 795, 70 Stat. 732.

1 144. Clearly, then, that era in our nation's history was filled with governmental activities
 2 devoted towards fostering "dedication of our Nation and our people to the Almighty."¹⁴⁵

3 145. In adding the words "under God" to the Pledge of Allegiance, for example, it's clear that
 4 Congress was intent upon endorsing (Christian) Monotheism and disapproving of
 5 Atheism. APPENDIX D.

6 146. The Pledge's implementation also demonstrates that – like the acts mandating "In God
 7 We Trust" on the money and turning that religious phrase into our national motto – the
 8 government's purpose was religious in nature. APPENDIX F.

9
 10
 11
 12 **E. THE POLITICAL CLIMATE HAS REMAINED PRO-MONOTHEISTIC AND**
 13 **ANTI-ATHEISTIC SINCE THE CHALLENGED ACTS WERE IMPLEMENTED**
 14

15 147. It should be noted that the history just provided is not a reflection of a predilection for
 16 religion that ended in the 1950s. Rather, governmental endorsement of (Christian)
 17 Monotheism has persisted since that time. Furthermore – with remarkable hypocrisy –
 18 our government has engaged in the very same behaviors it alleged were violating
 19 religious freedoms when occasioned by officially Atheistic regimes.

20 148. In 1965, for example, Congress reported on "Antireligious Activities in the Soviet
 21 Union and in Eastern Europe."¹⁴⁶ Among the activities deemed to be demonstrating
 22 religious persecution in the Soviet Union was "active propagation of the concepts of
 23 atheism."¹⁴⁷ Certainly, governmental "active propagation of (Christian) Monotheism" is
 24 no less offensive to the ideals of religious liberty.

25 149. Similarly, that House Report denounced the fact that, in communist countries, "jobs and
 26 promotion opportunities are lost"¹⁴⁸ due to governmental acts disfavoring
 27 (Monotheistic) religious beliefs. Yet jobs and promotion opportunities have been (and

¹⁴⁵ 100 Cong. Rec. 7, 8618 (June 22, 1954) (Statement by President Dwight D. Eisenhower, as reported by Sen. Homer Ferguson.)

¹⁴⁶ H. Rep. 532, 89th Cong., 1st Sess. (June 21, 1965) (as reported in House Miscellaneous Reports on Public Bills IV, 12665-4).

¹⁴⁷ *Id.*, at 2.

¹⁴⁸ *Id.*, at 3.

continue to be) lost in the United States due to governmental acts disfavoring Atheistic religious beliefs. (In fact, Plaintiff Newdow has personally suffered this very harm. See at ¶ 188, at page 35, *infra*.)

150. The Report also decried the fact that under Soviet rule, “Islam was declared to be a ‘hostile ideology.’”¹⁴⁹ Yet – while self-righteously engaging in this disapprobation – Congress had been maligning “atheistic communism” and “atheistic materialism” in numerous ways over and over and over again.¹⁵⁰

151. Similarly, while the anti-Atheistic sentiment officially espoused by Congress was fueling anti-Atheistic views in the media here, the Report berated the Soviets over the fact that “[v]irulent anti-Islamic propaganda is prevalent in newspapers and magazines.”¹⁵¹

152. In view of the foregoing, one could well imagine how Congress would have responded had the Soviet government given their citizens no choice but to utilize monetary instruments stating that “God does not exist,” or espousing that claim as its national motto.

153. Without question, such an act on the part of our rivals would have resulted in severe castigation and rebuke by our Congress. Yet there is no legal, moral or rational difference between that motto – which the Soviets did NOT use – and “In God We Trust” – which Congress DID use.

154. Had the Soviet Union utilized its national currency to export its Atheistic beliefs, Congress would also undoubtedly have registered the highest of protestations. Yet doing just that is one of the expressed goals of our government. In the United States Mint Annual Report for the year 2003, for example, it was written that:

Wherever United States coins travel, they serve as reminders of the values that all Americans share. The words and symbols that define us as Americans have a permanent place in our coins: “Liberty” ... “In God

¹⁴⁹ *Id.*, at 4.

¹⁵⁰ These terms were repeatedly employed by congressmen and other governmental actors, always in a reproachful manner. As but a small representative sample, *see, e.g.*, 99 Cong. Rec. A1428 (March 23, 1953 Remarks of Senator John M. Butler (MD)); 99 Cong. Rec. A4130 (July 7, 1953 Remarks of Rep. Donald L. Jackson (CA)); 100 Cong. Rec. A2515 (April 1, 1954 Remarks of Louis C. Rabaut (MI)); 100 Cong. Rec. 5915 (May 4, 1954 Remarks of Senator Alexander Wiley (WI)); 100 Cong. Rec. 8618 (June 22, 1954 Remarks of Senator Homer Ferguson (MI)); 100 Cong. Rec. 7758 (June 7, 1954 Remarks of Rep. Overton Brooks (LA)).

¹⁵¹ *Id.*, at 5.

1 We Trust” ... E Pluribus Unum” ... Our coins are small declarations
 2 of our beliefs. They showcase how we see ourselves and our sense of
 3 sovereign identity. And they serve as ambassadors of American values
 4 and ideals.¹⁵²

5
 6 155. Although obviously aware that many citizens find the motto offensive (e.g., “This use of
 7 the national motto has been challenged in court many times over the years that it has
 8 been in use¹⁵³), Defendant Snow’s Treasury Department is almost defiant as it snubs
 9 those who seek to have their fundamental liberties upheld:

10 The Department of the Treasury and the Department of Justice intend to actively
 11 defend against challenges to the use of the national motto.”¹⁵⁴

12
 13 156. The favoritism for (Christian) Monotheism which “In God We Trust” has helped spawn
 14 is demonstrated over and over by governmental officials. Appendix Q.

15

¹⁵² Accessed at [http:// www.usmint.gov/downloads/about/annual_report/2003AnnualReport.pdf](http://www.usmint.gov/downloads/about/annual_report/2003AnnualReport.pdf) on May 8, 2005.

¹⁵³ Accessed at <http://www.moneyfactory.com/document.cfm/18/107> on May 8, 2005.

¹⁵⁴ Id.

CLAIM FOR RELIEF

A. PLAINTIFF NEWDOW DOES NOT TRUST IN GOD

157. Plaintiff Newdow is an Atheist whose religious beliefs are specifically and explicitly based on the idea that there is no god. Appendix I, ¶¶ 3-6. He finds belief in such an entity to be a significantly distasteful notion. He has no desire to impose his Atheistic beliefs upon others or to use the government to proselytize regarding Atheism. Nor does he need assistance dealing with the significant amounts of (Christian) Monotheism that pervades American society. However, he finds it deeply offensive to have his government and its agents advocating for a religious view he specifically decries.

158. More importantly, Newdow is personally injured when his government and its agents – including Defendants here – engage in such advocacy.

159. Plaintiff Newdow is a minister, having been ordained in 1977. Appendix I, footnote 2. His ministry espouses the religious philosophy that the true and eternal bonds of righteousness and virtue stem from reason rather than mythology. It recognizes that it is never possible to prove that something does not exist, but finds that fact to be an absurd justification to accept the unproved. The bizarre, the incredible and the miraculous deserve not blind faith, but rigorous challenge.

160. To Plaintiff Newdow and his religious brethren, belief in a deity represents the repudiation of rational thought processes, and offends all precepts of science and natural law. His religion incorporates the same values of goodness, hope, advancement of civilization and elevation of the human spirit common to most others. However, it presumes that all these virtues must ultimately be based on truth, and that they are only hindered by reliance upon a falsehood, which its adherents believe any God to be.

161. Accordingly, his church – the First Amendmist Church of True Science (FACTS) – holds as a fundamental truth that there is no god or other supernatural being. The notion of “supernatural” is an oxymoron.

162. Believing that “commandments” are the antithesis of any true religion, FACTS has three “suggestions” for its members. Those suggestions are (1) Question, (2) Be honest, and (3) Do what’s right. Appendix I, ¶ 7.

1 163. Plaintiff Newdow is a Grand Pwevacki in FACTS. Appendix I, ¶ 3. A Grand Pwevacki
2 is one who has chosen to live his or her life devoted to the three suggestions.

3 164. The specific denial of any god follows from Newdow's (and his fellow FACTS
4 members') adherence to the three FACTS suggestions.

5
6
7
8 **B. THE DEFENDANTS IN THIS CASE, INDIVIDUALLY AND COLLECTIVELY,**
9 **HAVE ACTED AND CONTINUE TO ACT TO FURTHER THE PRO-**
10 **MONOTHEISTIC AND ANTI-ATHEISTIC BIAS THAT STEMS FROM THE USE**
11 **OF THE MOTTO**
12

13 165. 31 U.S.C. § 5103 states that "United States coins and currency ... are legal tender for all
14 debts"

15 166. Pursuant to 31 U.S.C. § 5111(a)(1), "The Secretary of the Treasury – shall mint and
16 issue coins described in section 5112 of this title in amounts the Secretary decides are
17 necessary to meet the needs of the United States."

18 167. Pursuant to 31 U.S.C. § 5112(a), Defendant Snow – as Secretary of the Treasury – is
19 authorized to mint and issue dollar, half dollar, quarter dollar, dime, 5-cent and one-cent
20 coins.

21 168. Pursuant to 31 U.S.C. § 5112(d)(1), "United States coins shall have the inscription "In
22 God We Trust."

23 169. Pursuant to 31 U.S.C. § 5112(e)(4), "the Secretary shall mint and issue, in quantities
24 sufficient to meet public demand, coins which ... have inscriptions of ... the words ...
25 "In God We Trust."

26 170. Defendant Snow does mint coins with this inscription.

27 171. Pursuant to 31 U.S.C. § 304(b)(2), Defendant Fore – as Director of the Mint – shares in
28 minting and issuing the coins bearing that religious motto.

29
30 172. Pursuant to 31 U.S.C. 5114(b), "United States currency has the inscription 'In God We
31 Trust' in a place the Secretary decides is appropriate."

1 173. Pursuant to 31 U.S.C. § 5115, “The Secretary of the Treasury may issue United States
2 currency notes.”

3 174. Defendant Snow does issue United States currency notes with the inscription “In God
4 We Trust” in a place he has decided is appropriate.

5 175. Pursuant to 31 U.S.C. § 303(b)(1), Defendant Ferguson – as Director of the Bureau of
6 Engraving and Printing (BEP) – shares in engraving, printing and issuing United States
7 currency and currency notes.

8
9 176. 2 U.S.C. § 285b (3) states that the Law Revision Counsel “shall ... prepare and publish
10 periodically a new edition of the United States Code ... with annual cumulative
11 supplements reflecting newly enacted laws.”

12 177. Defendant Peter LeFevre – as the Law Revision Counsel – has been responsible for the
13 preparation and publication of 36 U.S.C. § 302, in which it is stated that “In God we
14 trust” is the national motto.

15 178. His activity in this regard “degrades [Newdow and other Atheists] from the equal rank
16 of citizens,” turning them into “political outsiders, not full members of the political
17 community.”

18 179. He also has been responsible for the preparation and publication of 31 U.S.C. §
19 5112(d)(1), which states, “United States coins shall have the inscription ‘In God We
20 Trust.’” Similarly, he has been responsible for the preparation and publication of 31
21 U.S.C. § 5114(b), which states, “United States currency has the inscription ‘In God We
22 Trust.’”

23
24 180. Newdow will prove at trial that these Code sections have real effects, degrading Atheists
25 such as Newdow from the equal rank of citizens. As the Supreme Court has noted:

26 When the power, prestige and financial support of government is placed behind a
27 particular religious belief, the indirect coercive pressure upon religious minorities to
28 conform to the prevailing officially approved religion is plain. But the purposes
29 underlying the Establishment Clause go much further than that.¹⁵⁵

30
31 181. One of those “much further” purposes is to not turn citizens into “political outsiders.”
32 As the polls consistently show, Atheists are the epitome of “political outsiders” in this

1 nation. Plaintiff will demonstrate at trial that the Defendants – more than any others –
 2 are responsible for perpetuating (if not initiating) this “outsider” status.

3 182. In addition to their Establishment Clause effects – these Code sections also infringe on
 4 Free Exercise rights, as individuals such as Newdow are forced to further a religious
 5 message with which they may disagree.

6
 7
 8
 9 **C. “IN GOD WE TRUST” – ON THE COINS AND CURRENCY AND AS THE**
 10 **NATION’S MOTTO – TURNS NEWDOW INTO A “POLITICAL OUTSIDER,”**
 11 **THUS VIOLATING THE ESTABLISHMENT CLAUSE**

12
 13 183. Anticipating that Defendants will raise issues of standing, it might be noted that
 14 Newdow’s confrontations of an offensive religious ideology are far more pervasive,
 15 offensive and personalized than those which occurred in such cases as Lynch v.
 16 Donnelly, 465 U.S. 668 (1984), Allegheny County v. Greater Pittsburgh ACLU, 492
 17 U.S. 573 (1989) and Van Orden v. Perry, 125 S. Ct. 2854, 2864 (2005) (“Texas’
 18 placement of the Commandments monument on its capitol grounds is a far more passive
 19 use of those texts than was the case in Stone, where the text confronted elementary
 20 school students every day.”)

21 184. In fact, the very incident that precipitated Newdow’s activism on the part of religious
 22 equality occurred during Thanksgiving, 1997, when he again noticed “In God We Trust”
 23 on all of his coins and currency. APPENDIX I, ¶ 17. That phrase – which he had always
 24 considered offensive – struck an especially disharmonious chord that day, and triggered
 25 the efforts that will likely, to a large extent, define this man’s life.

26
 27 185. In his *Memorial and Remonstrance* – which the Supreme Court has repeatedly
 28 referenced to explain the Religion Clauses of the First Amendment¹⁵⁶ – James Madison
 29 spoke of equality no less than thirteen times.

¹⁵⁵ Engel v. Vitale, 370 U.S. 421, 431 (1962).

¹⁵⁶ See, e.g., Van Orden v. Perry, 125 S. Ct. 2854, 2892 (2005) (Souter, J., dissenting); McCreary County v. ACLU, 125 S. Ct. 2722, 2754 (Scalia, J., dissenting); McCreary County v. ACLU, 125 S. Ct. 2722, 2746, 2747, (O’Connor, J., concurring); Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301, 2332 (2004) (Thomas, J., concurring); Locke v. Davey, 540 U.S. 712, 722 (2004); Zelman v.

1 186. Perhaps the clearest statement in this regard – highlighting the key injury that
 2 individuals suffer from religious establishments of any sort – is that any such
 3 constitutional transgression “degrades from the equal rank of Citizens all those whose
 4 opinions in Religion do not bend to those of the Legislative authority.”¹⁵⁷

5 187. Newdow – who specifically denies that there exists a god and who finds it offensive to
 6 be included among those who would trust in what he believes is a pure fiction – has
 7 been personally “degrade[d] from the equal rank of citizens” by Defendants’ activities.

8 188. Evidence of this – and the severe effects of this as it applies to Plaintiff here – can be
 9 appreciated by noting that Newdow (who acquired some notoriety due to his challenges
 10 to the phrase “under God” in the Pledge of Allegiance¹⁵⁸) was just recently refused a job
 11 because of the (mis-)perception of his activism.¹⁵⁹ APPENDIX I, ¶¶ 51-53.¹⁶⁰

Simmons-Harris, 536 U.S. 639, 711 (2002) (Souter, J., dissenting); Mitchell v. Helms, 530 U.S. 793, 871 (2000) (Souter, J., dissenting); City of Boerne v. Flores, 521 U.S. 507, 560-61 (1997) (O’Connor, J., dissenting); Agostini v. Felton, 521 U.S. 203, 243 (1997) (Souter, J., dissenting); Rosenberger v. Rector & Visitors of the Univ. of Va., 515 U.S. 819, 853 (1995) (Thomas, J., concurring); Lee v. Weisman, 505 U.S. 577, 590 (1992); Corporation of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327, 341 n.2 (1987) (Brennan, J., concurring); Edwards v. Aguillard, 482 U.S. 578, 605-606 (1987) (Powell, J., concurring); Wallace v. Jaffree, 472 U.S. 38, 55 n.38 (1985); Marsh v. Chambers, 463 U.S. 783, 804 (1983) (Brennan, J., dissenting); Valley Forge Christian College v. Americans United for Separation of Church & State, 454 U.S. 464, 502 (1982) (Brennan, J., dissenting); Meek v. Pittenger, 421 U.S. 349, 383 (1975) (Brennan, J., dissenting); Committee for Public Education & Religious Liberty v. Nyquist, 413 U.S. 756, 760, 772, 783, 798 (1973); Lemon v. Kurtzman, 411 U.S. 192, 209 (1973) (Douglas, J., dissenting); Wisconsin v. Yoder, 406 U.S. 205, 218 (1972); Lemon v. Kurtzman, 403 U.S. 602, 633 (1971) (Douglas, J., concurring); Tilton v. Richardson, 403 U.S. 672, 696 (1971) (Douglas, J., dissenting); Walz v. Tax Com. of New York, 397 U.S. 664, 675 n.3 (1970); Flast v. Cohen, 392 U.S. 83, 103 (1968); Board of Education v. Allen, 392 U.S. 236, 266 (1968) (Douglas, J., dissenting); School Dist. v. Schempp, 374 U.S. 203, 213, 225 (1963); Engel v. Vitale, 370 U.S. 421, 433 n.13, n.15, 436 n.22 (1962); Torcaso v. Watkins, 367 U.S. 488, 491 (1961); McGowan v. Maryland, 366 U.S. 420, 431 n.7 (1961); Illinois ex rel. McCollum v. Bd. of Educ., 333 U.S. 203, 214, 216 (1948); Everson v. Board of Education, 330 U.S. 1, 12, 13 n.12 (1947) (plus extensive discussion in Justice Rutledge’s dissent); Reynolds v. United States, 98 U.S. 145, 163 (1878).

¹⁵⁷ *The Founders’ Constitution*, Volume 5, Amendment I (Religion), Document 43 (citing The Papers of James Madison. Edited by William T. Hutchinson et al. Chicago and London: University of Chicago Press, 1962--77 (vols. 1--10); Charlottesville: University Press of Virginia, 1977--(vols. 11--)). Accessed at http://press-pubs.uchicago.edu/founders/documents/amendI_religions43.html on May 29, 2005.

¹⁵⁸ Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301 (2004).

¹⁵⁹ Many have interpreted Newdow’s advocacy as being in favor of Atheism. It is nothing of the sort. It is in favor only of (religious) equality.

¹⁶⁰ It cannot be reasonably contended that Newdow would ever have been refused those jobs had his notoriety resulted from attempts to further (rather than end) government-sponsored (Christian) monotheism. In other words, violating the Constitution would not have resulted in this significant

189. Thus, Newdow is similar to the plaintiff in Sherbert v. Verner, having suffered a severe, personalized injury, which occurred largely because of the Defendants' activities.

190. This denial of employment was in no small part due to the Defendants' constant reinforcement of the twin notions that belief in God is "good," and disbelief in God is "bad." "In God We Trust" on the money and as the nation's motto plays a significant role in that reinforcement.

191. Similar losses of employment have apparently recurred since, and are likely to recur in the future as long as the current motto remains.

192. As repeatedly phrased by the Supreme Court, government may not act to turn individuals into political "outsiders" on the basis of their religious beliefs:

The second and more direct infringement is government endorsement or disapproval of religion. Endorsement sends a message to nonadherents that they are outsiders, not full members of the political community¹⁶¹

193. Yet Defendants have done just that. As but one more example, Newdow recently accepted an invitation to attend a Baptist church service. On the cover of the program for that purely Christian ceremony were printed the words, "In God We Trust," lying beneath an open Bible, which – in turn – was lying on an American flag. Appendix I, ¶¶ 12-14.

194. This use of the nation's motto – which the Baptists can point to as supporting their religious viewpoint, but which is completely contrary to the religious view held by Newdow and his church – reinforced to Newdow (as well as to the (Christian) Monotheists) that Newdow, personally, is among those in this nation who "are outsiders, not full members of the political community."

195. This injury would never have occurred "but for" the Defendants' use of the purely religious phrase, "In God We Trust."

196. Similarly, Newdow has been a guest on numerous nationally broadcast radio and television shows. Repeatedly, the fact that "In God We Trust" is on the coins and

harm. Only upholding that document's principles has yielded this interference with Newdow's ability to earn a living.

¹⁶¹ Lynch v. Donnelly, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring).

1 currency has been raised ... specifically to highlight how “real Americans believe in
2 God.”

3 197. On multiple occasions – in regard to this governmental endorsement of (Christian)
4 Monotheistic religious dogma – Newdow has heard statements such as, “If you don’t
5 like it here, leave!” Appendix I, ¶ 34.

6 198. On December 8, 2004, Newdow was on Fox Television’s Hannity and Colmes show.
7 Another guest was Lt. Col. Oliver North, a well known conservative commentator.
8 During the show, Colonel North pulled out a dollar bill, and used the “In God We Trust”
9 phrase to “prove” that the United States is a (Christian) Monotheistic country. Appendix
10 I, ¶ 11. This nationally-televised incident again demonstrates how the Defendants’
11 maintenance of “In God We Trust” personally injures Plaintiff Newdow, turning him
12 into a “political outsider” in his own country.

13
14 199. That the Defendants have turned Newdow into a “political outsider” in and of itself
15 reveals the Establishment Clause violation. That their activities have also failed each of
16 the many other Supreme Court Establishment Clause tests gives further evidence of their
17 constitutional transgressions.

18 200. For instance, the history provided above demonstrates that “In God We Trust” was
19 chosen and utilized to serve a religious purpose. Thus it violates the “purpose prong” of
20 the test enunciated by the Supreme Court in Lemon v. Kurtzman, 403 U.S. 602, 612-613
21 (1971). See, also, Van Orden v. Perry, 125 S. Ct. 2854 (2005).

22 201. The foregoing also demonstrates that there was no secular purpose in choosing “In God
23 We Trust” for use on the coins or as the national motto. Any alleged secular purpose is
24 clearly pretextual.

25 202. Lemon’s “effects prong” has also been violated. By serving its intended religious
26 purposes, “In God We Trust” has the religious effects its promoters have sought.

27 203. “In God We Trust” implies there is a God, which is disputed by millions of American
28 citizens, including Newdow. Thus it violates the religious neutrality required by the
29 Establishment Clause.

1 204. “In God We Trust” places government’s imprimatur on the religious ideas that (a) there
 2 exists a God, and (b) the United States’ citizens believe in God. Thus, “In God We
 3 Trust” violates the Establishment Clause.

4 205. “In God We Trust” endorses the religious idea that there exists a God. Thus, “In God
 5 We Trust” violates the Establishment Clause.

6 206. In addition to turning Newdow and his religious brethren into political outsiders, “In
 7 God We Trust” sends “an accompanying message to adherents that they are insiders,
 8 favored members of the political community.” Lynch v. Donnelly, 465 U.S. 668 (1984).
 9 Thus, for this reason as well, “In God We Trust” violates the Establishment Clause.

10 207. Again, when “the power, prestige and financial support of government is placed behind
 11 a particular religious belief,”¹⁶² there are adverse effects upon those who hold different
 12 beliefs.¹⁶³

13 208. “In God We Trust” on the coins and currency (and as our national motto) lends that
 14 “power, prestige and financial support” to the sectarian view that there exists a God.

15 209. In significant part as a result of this governmental decree, nearly half of Americans
 16 maintain that belief in God is necessary to be moral.¹⁶⁴

17 210. Similarly, this endorsement of (the Christian) God has led to a situation where two-
 18 thirds of Americans believe that the United States is a Christian Nation,¹⁶⁵ further
 19 turning Newdow into a “political outsider.”

20 211. When government ends official policies that send messages that politically
 21 disenfranchised groups are second-class citizens, that second-class citizenship ends.
 22 Thus, when government stopped sending messages (with its segregation policies) that
 23 blacks are second-class citizens, the percentage of those refusing to vote for a black
 24 candidate decreased from 53% in 1958 to 4% in 1999. Similarly, as policies for equality
 25 towards women replaced policies of repression, those refusing to vote for a woman
 26 candidate decreased from 41% to 7%. The diminution of anti-Catholic bias took a great

¹⁶² Engel v. Vitale, 370 U.S. 421, 431 (1962).

¹⁶³ In fact, that is largely the reason our nation has its Establishment Clause.

¹⁶⁴ Poll conducted by the Pew Research Center, March 20, 2002, entitled, *Americans Struggle with Religion’s Role at Home and Abroad*. Accessed on October 23, 2005 at <http://people-press.org/reports/display.php3?ReportID=150>.

¹⁶⁵ Id.

1 leap forward when John Kennedy took office as president. Accordingly, those refusing
 2 to vote for a Catholic went from 22% to 4% during that interval. Yet for Atheists –
 3 where government continues to send messages (especially with its use of “In God We
 4 Trust”) that “real Americans believe in God” – the percentage of those refusing to vote
 5 for such an individual has remained extraordinarily high, with the last Gallup poll
 6 showing the figure to be 48%!¹⁶⁶

7 212. This statistic has been replicated by other organizations. For instance, the results of a
 8 poll performed by Zogby International (in 2000) led to the following summary:

9 In picking a candidate for vice president of the United States, it would be acceptable to
 10 choose a woman, a black or a Jew, somewhat acceptable to pick an Arab American,
 11 somewhat less acceptable to nominate a homosexual -- but do not on any account
 12 choose an atheist.¹⁶⁷

13
 14 213. A study published just last month corroborated this conclusion.¹⁶⁸ “[T]he gap between
 15 acceptance of atheists and acceptance of other racial and religious minorities is large and
 16 persistent.”¹⁶⁹

17 214. Accordingly, the government-perpetuated (if not created) anti-Atheistic bias that
 18 Defendants have maintained has caused Plaintiff Newdow to give up hope of obtaining
 19 elected office. APPENDIX I, ¶ 54.

20
 21
 22
 23 **D. NEWDOW IS FORCED TO PAY TAX DOLLARS TO SUPPORT THE PURELY**
 24 **RELIGIOUS NOTION THAT “WE” TRUST IN GOD, TURNING HIMSELF,**
 25 **PERSONALLY, INTO A “POLITICAL OUTSIDER”**
 26

27 215. Plaintiff is a federal taxpayer, APPENDIX I, ¶ 38, and some of his federal tax dollars
 28 are used to propagate a religious opinion that he expressly denies – i.e., that “In God We

¹⁶⁶ Polls given July 30-August 4, 1958 and February 19-21, 1999. Copyright: The Gallup Organization, Princeton, NJ. A.I.P.O. See, www.gallup.com and www.gallupjournal.com.

¹⁶⁷ Accessed at <http://www.zogby.com/search/ReadClips.dbm?ID=2192> on November 6, 2005.

¹⁶⁸ Edgell P, Gerteis J, and Hartmann D. *Atheists as “Other”: Moral Boundaries and Cultural Membership in American Society*. American Sociological Review (April, 2006) Vol. 71, pages 211-34.

¹⁶⁹ *Id.*, at 230.

Trust.” As Thomas Jefferson wrote, “to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical.”¹⁷⁰

216. In addition to the government’s general propagation of that opinion, Newdow’s tax dollars are also used to propagate the opinion in a manner that directly impinges upon Newdow himself. For example, Newdow’s tax dollars are used to manufacture the coins and currency that Newdow, himself, must utilize.

217. Some of the federal tax dollars paid by Plaintiff Newdow are used to pay for the salaries of Defendants LeFevre, Snow, Fore and Ferguson, who – while employed – serve to perpetrate the injuries described herein.

218. The aforementioned tax moneys are also used to pay for (i) the salaries of the employees under Defendants’ authority, (ii) the manufacture of the coins and currency that bears the religious motto, (iii) the physical plants wherein the perpetuation and promotion of the religious motto occurs (including construction, maintenance and utilities), and (iv) the printing of the United States Code, which – by way of the various code sections previously mentioned – codifies and officially establishes the (Christian) Monotheism in which Newdow “disbelieves.”

219. Some (if not all) of the federal dollars spent in the aforementioned activities are apportioned under the taxing and spending power of Article I, Section 8 of the Constitution of the United States. (“[F]ederal taxpayers have standing to raise Establishment Clause claims against exercises of congressional power under the taxing and spending power of Article I, § 8, of the Constitution.” Bowen v. Kendrick, 487 U.S. 589, 618 (1988).)

220. Although even a minimal expenditure of funds that serves religious ends violates the Constitution,¹⁷¹ these funds are not minimal.

221. The preceding examples show that Plaintiff’s tax monies are used for governmental functions designed to bolster the use and status of the religious motto. The taking by the government of Plaintiff’s (and the rest of the citizenry’s) personal wealth to be used to

¹⁷⁰ Thomas Jefferson, *Bill for Establishing Religious Freedom* (1799), in *Basic Writings of Thomas Jefferson*, Foner PS (ed.) (Wiley Book Company: New York, 1944), p. 48.

¹⁷¹ “Who does not see ... that the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?” James Madison, *Memorial and Remonstrance against Religious Assessments*, II Writings of Madison 183, at 185-186.

1 advocate for a statement that places the government's imprimatur on religious beliefs to
 2 which Plaintiff does not adhere is a violation of both the Establishment and Free
 3 Exercise clauses.

4
 5 **E. "IN GOD WE TRUST" – ON THE COINS AND CURRENCY AND AS THE**
 6 **NATION'S MOTTO – SUBSTANTIALLY BURDENS NEWDOW'S RIGHT TO**
 7 **THE FREE EXERCISE OF HIS RELIGION**¹⁷²
 8

9 222. In addition to the Establishment Clause violations caused by the Defendants' challenged
 10 practices, Plaintiff has had his fundamental constitutional right of Free Exercise violated
 11 as well.

12
 13 223. Because there is no other practical way to pay for (or receive payment for) the small
 14 incidentals in life, Defendants' use of "In God We Trust" on the money repeatedly
 15 forces Newdow to confront a religious belief he finds offensive. This, in and of itself,
 16 substantially burdens Newdow's right to exercise his Atheistic beliefs.

17 224. This confrontation is especially burdensome upon Newdow, inasmuch as he has been
 18 collecting coins since his early childhood, and has continuously maintained a significant
 19 collection for well over forty years. Pendix I, ¶¶ 15-16. He routinely checks the coins he
 20 obtains during his normal purchasing activities, and he not infrequently pulls out
 21 portions of his collection to admire the uniqueness and beauty¹⁷³ of many of his
 22 specimens.

23 225. When he does this, Newdow is forced to confront government-endorsed, purely
 24 religious dogma that is directly contrary to his faith and to the tenets of his church.

25 226. The combination of general spending and numismatics forces Newdow to receive these
 26 messages, on average, far more often than most people spend in worship. APPENDIX I,
 27 ¶¶ 16-17.

28

¹⁷² The burdens noted here give rise to a statutory claim (under RFRA) as well as a constitutional claim (under the Free Exercise Clause). To the extent that there was a question as to RFRA's validity against the federal government, the question has now been unequivocally answered by the Supreme Court. Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 126 S. Ct. 1211 (2006).

¹⁷³ He considers that beauty to be marred by the offensive words, "In God We Trust."

1 227. Newdow is not only forced to countenance this offensive, purely religious dogma. He is
 2 also effectively compelled by the Defendants to carry that dogma on his person as the
 3 price to pay for merely being able to engage in normal societal commerce (since all
 4 coins and currency claim that “In God We Trust”).

5 228. This is no different than compelling a Jew to carry a cross, a Muslim to carry a Jewish
 6 star, a Christian to carry an Islamic Star and Crescent, and so on.

7 229. The government has no business in this religious realm, and – because it has entered into
 8 it – Newdow has suffered. For instance, derogatory remarks have repeatedly been hurled
 9 at Newdow since his Atheism became known. Appendix I, ¶¶ 9-11, 33-41. Time and
 10 again, those who wish to castigate him have argued that he is a hypocrite for using
 11 money that has the “In God We Trust” verbiage. APPENDIX I, ¶ 9.

12
 13 230. It doesn’t end there. Not only must Newdow confront the offensive religious verbiage
 14 and carry it on his person, but he must proselytize for the purely religious claim which
 15 that phrase makes.

16 231. In fact, proselytizing for God-belief was one of the expressed purposes of placing the
 17 purely religious phrase, “In God We Trust,” on the coins and currency.

18 232. As Matthew H. Rothert first wrote to the Secretary of the Treasury, placing “In God We
 19 Trust” on the currency “affirm[s] our trust in God in such a manner that it [is] heard
 20 around the world.”¹⁷⁴

21 233. Similarly, at the hearing before the House Banking and Currency Committee, Rep.
 22 Herman P. Eberharter (PA) noted that:

23 the American dollar travels all over the world, into every country of the world, and
 24 frequently gets behind the Iron Curtain, and if it carries this message in that way I
 25 think it would be very good. I think that is one of the most compelling reasons why we
 26 should put it on our currency.¹⁷⁵

27
 28 234. The American Legion – advocating for the use of the religious motto on the money –
 29 felt the same. In a resolution placed into the Congressional Record, that organization

¹⁷⁴ See at ¶ 19, *supra*.

¹⁷⁵ *United States Currency Inscription: Hearing on H.R. 619 and related bills, before the Committee on Banking and Currency, 84th Cong., 1st Sess. 53 (Tuesday, May 17, 1955).*

wrote that “the principles laid down by God and the teachings of our way of life should be kept alive in the hearts and minds of our friends enslaved behind the Iron Curtain.”¹⁷⁶

235. Rep. Lawrence H. Fountain also reiterated this idea:

[T]hat inscription ... indicates to the world that ... the material is not the thing upon which we should rely, but it is God.”¹⁷⁷

236. In fact, as previously noted, the position of the United States Mint is that America’s coins – with the words “In God We Trust” – “are small declarations of our beliefs [which] showcase how we see ourselves and our sense of sovereign identity. And they serve as ambassadors of American values and ideals.”¹⁷⁸

237. In other words, “In God We Trust” on the coins and currency serves as a form of religious evangelism, in which all who pass those monetary instruments – whether willingly or unwillingly – participate. Newdow is forbidden by his religion from participating in such evangelism for (Christian) Monotheism, spreading the word that there is a (Christian) God, and that, as a United States citizen, he trusts in that (Christian) God. Newdow trusts in nothing of the sort.

238. By being thus forced to evangelize for a religious belief that he explicitly denies, to “showcase” that this nation holds this offensive religious belief, and to make “small declarations” that he (as a citizen of the United States) trusts in God, Newdow’s Free Exercise rights are further substantially burdened.

239. This injury is compounded to an even greater degree when that proselytizing and evangelism occurs while – as a member and minister of FACTS – he needs to use coins or currency in relation to church activities.

240. FACTS meets every new moon. Appendix I, ¶ 18. Like ministers of other religions, Newdow wishes to raise money during his church meetings. That endeavor is futile, however, because Newdow often cannot raise money – and his fellow parishioners often cannot contribute – without violating FACTS’ basic tenets. Thus, for this reason, too, the Defendants’ acts in placing offensive religious dogma on the nation’s monetary instruments burden Newdow’s free exercise rights.

¹⁷⁶ Id. at 54.

¹⁷⁷ Id. at 56.

241. In fact, FACTS meetings include “the passing of the collection plate in church,” APPENDIX I, ¶ 29, which the Supreme Court has recognized as being a standard part of religion practice. Murdock v. Pennsylvania, 319 U.S. 105, 111 (1943). Yet – unlike the adherents of Monotheistic religions – Newdow and his Atheistic brethren cannot, consistent with their religious beliefs, reap the benefits of that practice. This is true solely because the Defendants have chosen to place purely ((Christian) monotheistic) religious dogma on the coins and currency, as is forbidden under the Constitution of the United States.

242. Newdow has attempted to raise money for his church in other ways, as well.

243. For instance, he owns undeveloped real estate in a commercial area in Elk Grove, California. He has used that property for religious purposes, including worshipping and discussing the FACTS religious philosophy.

244. Additionally, Newdow has used the property for attempts at church fund-raising. However, because those fund-raising activities have been based on obtaining cash donations, they have been futile. Appendix I, ¶ 31.

245. This, again, is because the Defendants – by placing “In God We Trust” on the nation’s monetary supply – have effectively precluded Newdow from acquiring money by one of the most common channels.

246. Worship at FACTS meetings is, itself, substantially burdened by the acts of the Defendants.

247. FACTS garb – worn during FACTS church services – at times cannot be purchased. Appendix I, ¶¶ 19-23.

248. The FACTS libation – known as “The Freethink Drink” – at times cannot be formulated in its recommended manner. Appendix I, ¶ 24.

249. Purchases of books and other items for the FACTS church library, etc., have been substantially burdened. This has occurred when – at times – the only means of paying for those materials is with United States coins and currency, bearing the claim that “In God We Trust.” Newdow cannot – in keeping with his religious principles – make purchases for such items with such monetary instruments. APPENDIX I, ¶ 56.

¹⁷⁸ See at paragraph 154, supra.

1
2 250. Newdow has also attended numerous events where he has attempted to sell items (such
3 as FACTS pens) to raise money for the church. Appendix I, ¶ 29.

4 251. In none of these situations was Newdow able to take any donations, since all that were
5 offered were in the form of currency or coin, engraved or inscribed with the phrase, “In
6 God We Trust.” Accepting and/or using money with that phrase for church activities –
7 when the fundamental religious belief of the church is that there is no god in which trust
8 can be placed – would violate the second and third FACTS suggestions.

9
10 252. Newdow’s ability to educate himself in regard to matters affecting his religion have also
11 been substantially burdened.

12 253. For instance, Newdow planned a visit to the Harvard Divinity School. That visit was
13 scrapped due to the need to use money that proclaims “In God We Trust.” Appendix I, ¶
14 60.

15 254. This problem has occurred locally as well. Trips to engage in FACTS-related research at
16 the State Library as well as at the Central library in downtown Sacramento have also
17 been foregone because of the need to use “In God We Trust” imprinted coins or
18 currency. Appendix I, ¶ 61.

19
20 255. Defendants’ use of the purely religious, (Christian) monotheistic motto has also
21 substantially burdened Newdow’s ability to meet and assemble with others for the
22 purpose of furthering his ministry. “[T]he ‘exercise of religion’ often involves not only
23 belief and profession but the performance of (or abstention from) physical acts:
24 assembling with others for a worship service.” Employment Div. v. Smith, 494 U.S.
25 872, 877 (1990).

26 256. For instance, travel frequently requires that the nation’s monetary instruments be used
27 (at toll booths, for instance, or to pay porters and others who take neither checks nor
28 credit cards).

29 257. One of the results of this has been that Newdow has not been able to take trips to the
30 Bay area for FACTS-related purposes. Appendix I, ¶ 62. He would otherwise travel

there in order to expand his church among the numerous Atheist contacts he has in that region.

258. As the founder and a Grand Pwevacki of FACTS, Plaintiff Newdow also desires to have one or more large gatherings – perhaps with a national (or international) attendance – where adherents of the religious ideals espoused by the Church will assemble and worship. To facilely plan and run such gatherings requires the use of and the ability to readily collect cash and currency.

259. Plaintiff cannot freely exercise his religious rights to engage in such assembly and worship by utilizing such monetary instruments when they contain religious dogma that specifically contradicts the tenets of his religion.

260. Newdow has traveled to numerous foreign lands, including Andorra, Aruba, Ascension Island, Australia, the Bahamas, Bali, Barbados, Belgium, Canada, Chile, Cuba, Denmark, Dominican Republic, Ecuador, Egypt, England, France, Germany, Gibraltar, Greece, Haiti, Holland, Honduras, Hong Kong, Indonesia, Israel, Italy, Japan, Malaysia, Mexico, New Zealand, Norway, Palau, Panama, Puerto Rico, St. Thomas, South Korea, Spain, Sri Lanka, Sweden, Switzerland, Taiwan, Thailand, Tobago, and Trinidad.

APPENDIX I, ¶ 57.

261. Although he often has taken travelers' cheques on these trips, he frequently has needed to exchange small quantities of American currency in order to avoid financial losses (due to exchanges of large denomination cheques). *Id.*, ¶ 58. In so doing, he was forced to evangelize for (Christian) Monotheism precisely as Congress and others envisioned.

262. Newdow plans to continue his foreign travels – including as a minister of FACTS. *Id.*, ¶ 59. Defendants' acts, requiring him to evangelize for a religious view he explicitly denies, substantially burden the free exercise of his Atheism. *Id.*

263. In fact, over the past year or so, this burden has repeatedly materialized during Newdow's numerous trips to Mexico. Appendix I, ¶ 27-28. Refusing to use money with "In God We Trust" upon it to further his religious goals, he has been forced to forego opportunities to proselytize during those trips.

264. To force Newdow to confront, carry and proselytize for “In God We Trust” while exercising his Atheistic faith is certainly a violation of – and a “substantial burden” upon – his Free Exercise rights.

265. That Newdow is forced to pay taxes to further (Christian) monotheism is also a substantial burden upon the Free Exercise of his Atheistic religion. See at ¶¶ 215-221, supra.

266. Thus, it is abundantly clear that Defendants – through their unconstitutional activities – have unequivocally “substantially burdened” Newdow’s Free Exercise rights in numerous ways.

F. “IN GOD WE TRUST” – ON THE COINS AND CURRENCY, AND AS THE NATION’S MOTTO – VIOLATES NEWDOW’S FREE SPEECH AND EQUAL PROTECTION RIGHTS

267. It should be noted that, in addition to the Establishment Clause and Free Exercise Clause violations, the coercion previously noted results in a Free Speech violation as well. Wooley v. Maynard, 430 U.S. 705 (1977).¹⁷⁹

268. Because the official governmental endorsement of the religious notion that God exists perpetuates prejudice against Atheists – and, thus, against Plaintiff here – the Defendants’ use and advocacy of “In God We Trust” also violates the requirements of Equal Protection as found in the Fifth Amendment to the United States Constitution.¹⁸⁰

G. DEFENDANTS HAVE NO COMPELLING INTEREST

269. The first right listed in the Bill of Rights is that relating to the fact that “Congress shall make no law respecting an establishment of religion.” As James Madison wrote, this

¹⁷⁹ It should be noted that the phrase at issue in Wooley had no religious overtones. “In God We Trust” is purely religious.

¹⁸⁰ Although there is no explicit Equal Protection Clause in the Fifth Amendment, the Supreme Court has read the requirement of Equal Protection into that amendment’s Due Process Clause. Adarand Constructors, Inc. v. Mineta, 534 U.S. 103, 105 (2001).

right exists to prevent any governmental act that “degrades from the equal rank of Citizens all those whose opinions in Religion do not bend to those of the Legislative authority.”¹⁸¹ As the Supreme Court has phrased it, this right prevents government from “send[ing] a message to nonadherents that they are outsiders, not full members of the political community.”¹⁸²

270. The second right listed in the Bill of Rights is that “Congress shall make no law ... prohibiting the free exercise [of religion].”

271. These rights, therefore, are fundamental constitutional rights. As such, the demands of strict scrutiny are called into play.¹⁸³

272. Even were this not the case constitutionally, there is a statutory requirement for government to meet those strict scrutiny demands. This is found in RFRA, which applies to any governmental act that “substantially burdens” an individual’s free exercise of his or her religion.¹⁸⁴

273. The requirements of strict scrutiny have not been met.

274. There is no compelling interest in having “In God We Trust” on the nation’s coins and currency or as the national motto.

275. On the contrary, even the bogus contention that the phrase serves to remind us of our “religious heritage” (while serving to ignore our heritage of standing up for religious equality) is anything but “compelling.”

276. Furthermore, especially as it pertains to the coinage, the motto is a hindrance to the beauty and design of the products:

Artistic rendering and a superabundance of lettering do not go hand in hand towards the best results. Our artists at the start are handicapped by having to place on the coin

¹⁸¹ Madison J. *Memorial and Remonstrance*, The Founders’ Constitution, Volume 5, Amendment I (Religion), Document 43, The University of Chicago Press, citing The Papers of James Madison. Edited by William T. Hutchinson et al. Chicago and London: University of Chicago Press, 1962--77 (vols. 1--10); Charlottesville: University Press of Virginia, 1977--(vols. 11--). Accessed on October 5, 2005 at http://press-pubs.uchicago.edu/founders/documents/amendI_religions43.html. Emphases added.

¹⁸² *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring).

¹⁸³ “[C]lassifications affecting fundamental rights are given the most exacting scrutiny.” *Clark v. Jeter*, 486 U.S. 456, 461 (1988) (citations omitted).

¹⁸⁴ 42 U.S.C. § 2000bb-1(b)(1) and (b)(2) state, “Government may substantially burden a person’s exercise of religion only if it demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest.”

1 “United States of America, “E Pluribus Unum,” “Liberty,” “In God We Trust,” the
 2 date and the denomination. In other words, six separate mottoes or legends.
 3 Consequently, the artist cannot strive for simplicity, and, despite his best endeavors,
 4 one or both sides of the coin are bound to be chopped up with a lot of discordant
 5 elements.¹⁸⁵
 6

7
 8
 9 **H. “IN GOD WE TRUST” IS – AND WAS INTENDED TO BE – RELIGIOUS, AND**
 10 **ANY CLAIM TO THE CONTRARY IS PRETEXTUAL**
 11

12 277. “In God We Trust” is clearly and unequivocally religious, and – as has been
 13 demonstrated – was intended to be clearly and unequivocally religious.

14 278. As Plaintiff Newdow has declared under oath, APPENDIX I at ¶ 9, he has received
 15 myriad contacts from strangers who have pointed to “In God We Trust” on the coins,
 16 currency and as our motto as evidence that “we” are a nation that believes in God.

17 279. This view has been confirmed scientifically. In 1994, a poll commissioned by the
 18 Freedom from Religion Foundation was performed by an independent research firm.
 19 The results of that poll revealed that Americans – by a two to one margin – believed that
 20 “In God We Trust” is religious, and – by a three to one margin – they opined that the
 21 phrase endorsed a belief in God. APPENDIX N.

22 280. In fact, it is only in court briefs and legal arguments that “In God We Trust” is stripped
 23 of its religious meaning. In our daily lives, its purely religious nature is
 24 unquestionable.¹⁸⁶

25 281. The claim that “In God We Trust” is “ceremonial” is nothing but a further bogus excuse
 26 to justify the majority’s desire to do what the Constitution forbids. APPENDIX G. The
 27 same is true for the claim that “In God We Trust” causes a “*de minimis*” injury. *Id.*

28 282. The Claim that “In God We Trust” is an “acknowledgement” of religion and not an
 29 “endorsement” of religion is nonsensical as well. APPENDICES H and N.

30 283. “In God We Trust” is also not excusable because of any “historical” significance. There
 31 are all sorts of historical violations of the equality that underlies our constitutional

¹⁸⁵ Schwarz T. *A History of United States Coinage*. (A.S. Barnes & Co., New York; 1980) at 281.

framework. For instance, it is “historical” that our nation was founded by people who felt that it was acceptable to enslave the Negro race, and to forbid basic liberties to women. Yet no one would permit those past historical truths to be placed on our money, or used as our national motto. Thus, it is not the “history” that underlies the use of “In God We Trust.” Rather, it is the message being provided by that history. And that message – being purely religious – is one which government may not espouse. To quote Justice Scalia, “The government may not ... lend its power to one or the other side in controversies over religious ... dogma.” Employment Div. v. Smith, 494 U.S. 872, 877 (1990).

284. In anticipation of the claim that “In God We Trust” is patriotic, it should be noted that there is nothing patriotic about trusting in God. Patriotism is demonstrated by trusting in the Constitution, which forbids governmental advocacy for any religious view.

285. It should also be noted that the *de facto* motto of the United States was “E pluribus unum” for the 180 years from 1776 until 1956. This motto was chosen by a committee formed on July 4, 1776, whose members were none other than Benjamin Franklin, Thomas Jefferson and John Adams.¹⁸⁷

286. Now that’s historic! Yet that motto – in place since its creation by a committee that had its birth on the day we declared our independence, and that was comprised of three of the most renowned and important architects of our constitutional democracy – was discarded by Congress.

287. This was done even though “an unbroken practice . . . is not something to be lightly cast aside.” Marsh v. Chambers, 463 U.S. 783, 790 (1983) (citing Walz v. Tax Comm’n, 397 U.S. 664, 678 (1970)).

288. That no concern for “history” was heard from Congress when “E Pluribus Unum” was replaced by “In God We Trust” shows clearly that the “history” justification is a mere pretext.

289. It should be noted that while the United States (which holds itself out as the beacon of religious liberty) has deemed it necessary to choose a purely religious motto, the

¹⁸⁶ A typical example was seen on a popular television show. That show revolved around the idea of a living, personal God. In one episode, the protagonist stated, “Look at that penny. Does it say ‘In Luck We Trust?’” *Touched by an Angel*. Broadcast on March 13, 2000.

¹⁸⁷ July 30, 1956, ch. 795, 70 Stat. 732.

overwhelming majority of nations (including those where religion has historically been wedded to the state) have seen no need for this at all.

290. With the United States – which has been enriched more than any other nation by the diversity of its citizens – choosing to have a pure statement of religious ideology as its motto (in violation of its Constitution), it deserves mention that the European Union – comprised of distinctly religious nations – has chosen “Unity in diversity” for its motto.¹⁸⁸

291. The history is clear that “In God We Trust” was chosen purely for its religious message. The virtually infinite number of alternative mottoes is further evidence of the truth of this assertion. Even limiting the motto to the current format, myriad other nonreligious choices have always existed. “In Equality We Trust,” “In Liberty We Trust,” “In Diversity We Trust,” “In Justice We Trust,” “In the Constitution We Trust,” “In Principles We Trust,” “In Fairness We Trust,” “In Honesty We Trust,” “In Humanity We Trust,” “In Truth We Trust,” “In Wisdom We Trust,” “In Trust We Trust,” and on and on, are all inclusive candidates that embrace the noble principles underlying our governmental structure without compromising (or even implicating) constitutional mandates. The fact that – as among all of these many alternatives – Congress opted for a purely religious phrase is strong evidence of the fact that it was nothing but the advocacy of a (Christian) Monotheistic ideology that was the driving force of those involved.

292. A “motto” is defined as:

1 : a sentence, phrase, or word inscribed on something as appropriate to or indicative of its character or use

2 : a short expression of a guiding principle¹⁸⁹

293. Thus, the national motto should be the distillation, in one concise phrase, of that which is “indicative of” our nation, or evincing our nation’s “guiding principle.” For a nation that has a guarantee of governmental neutrality in matters of religion – **as the first clause in its Bill of Rights**, no less – to contend that a disputed religious precept serves as its guiding principle (and is indicative of its character) is absurd.

¹⁸⁸ http://en.wikipedia.org/wiki/European_symbols#Motto. Accessed on October 21, 2005.

¹⁸⁹ Merriam-Webster Online Dictionary, accessed <http://www.m-w.com/dictionary/motto> on November 12, 2005.

1 **I. “IN GOD WE TRUST,” CONSTITUTIONALLY, IS SECTARIAN**

2
3 294. Plaintiff readily acknowledges that the majority of Americans – certain of their belief in
4 the existence of a God – are completely blind to the offensiveness the words “In God
5 We Trust” as the nation’s motto and on the coins and currency hold for Plaintiff and his
6 religious brethren. That is precisely what one would expect to see as a result of religious
7 bias, and the Framers’ recognition of this sort of ecclesiastically-based myopia is largely
8 why the Religion Clauses were created.

9 295. The rights of religious freedom are fundamental constitutional rights, and, as such, they
10 must be examined from the perspective of those individuals whose rights are abridged.
11 “The proper focus of constitutional inquiry is the group for whom the law is a
12 restriction, not the group for whom the law is irrelevant.” Planned Parenthood of
13 Southeastern Pa. v. Casey, 505 U.S. 833, 894 (1992).

14 296. Accordingly, with respect to the Religion Clauses, this “focus” is measured in terms of
15 sectarianism, which – in constitutional terms – refers not only to beliefs held by any one
16 religious sect, but to all religious beliefs that are not universal. In other words, any belief
17 that is not adhered to by all is – from the point of view of the Constitution as well as the
18 nonadherent – a sectarian belief. This is graphically illustrated in APPENDIX K.

19 297. Sectarianism – on the part of government – is forbidden by the First Amendment.
20 (“[T]he *government’s* use of religious symbols is unconstitutional if it effectively
21 endorses sectarian religious belief.” Capitol Square Review and Advisory Bd. v. Pinette,
22 515 U.S. 753, 765 (1995) (emphasis in original).)

23 298. The phrase “In God We Trust” expresses a religious belief to which a significant
24 segment of the population does not adhere.¹⁹⁰ Again, this phrase is constitutionally
25 sectarian, especially in the current American society that has become increasingly
26 religiously diverse. “This Nation is heir to a history and tradition of religious diversity
27 that dates from the settlement of the North American Continent. Sectarian differences
28 among various Christian denominations were central to the origins of our Republic.

¹⁹⁰ A recent poll found that approximately 10% of Americans are atheists or agnostics. This is more than five times the percentage of the population that is Jewish, Muslim, and a multitude of other non-Christian religions. Nonetheless, because those other theistic sects can join with the majority in claiming that “In God We Trust,” they are not politically disenfranchised. It is only the Atheists – who

Since then, adherents of religions too numerous to name have made the United States their home, as have those whose beliefs expressly exclude religion.” Allegheny County v. Greater Pittsburgh ACLU, 492 U.S. 573, 589 (1989). See, also, Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301, 2326 (2004) (O’Connor, J., concurring) (noting that the 1950s was “a time when our national religious diversity was neither as robust nor as well recognized as it is now.”).

299. Sectarianism is often denied as such by legislators, scholars, “experts” and courts.

Viewing themselves as broadminded because they have embraced religions and sects beyond their own, some such individuals fail to see that they still are taking a limited view when they don’t embrace all religions and sects. In colonial New Jersey, for instance, those who set forth:

That there shall be no establishment of any one religious sect in this Province, in preference to another; and that no Protestant inhabitant of this Colony shall be denied the enjoyment of any civil right, merely on account of his religious principles; but that all persons, professing a belief in the faith of any Protestant sect, who shall demean themselves peaceably under the government, as hereby established, shall be capable of being elected into any office of profit or trust, or being a member of either branch of the Legislature, and shall fully and freely enjoy every privilege and immunity, enjoyed by others their fellow subjects.¹⁹¹

apparently felt themselves to be advocating nonsectarianism. New Jersey’s Catholics likely felt otherwise.

300. In Abington School District v. Schempp, 374 U.S. 203 (1963), it was noted that “Dr. Weigle stated that the Bible was non-sectarian.” Id. at 210. Perhaps it was in response to Jewish objections that “[h]e later stated that the phrase ‘non-sectarian’ meant to him non-sectarian within the Christian faiths.” Id. (quoting the trial court’s summary).

301. Similarly, when Representative Overton Brooks sponsored the introduction of a National Day of Prayer, he must have felt himself to be quite the liberal by encompassing “Catholics, Jewish and Protestants” in his definition of “all denominations.” 98 Cong. Rec. 771 (1952). Would Muslim, Hindu and other Americans not take issue with that proclamation?

cannot join with the majority in matters of religious belief – who are “left out.” (For references on percentages of religious adherents in the United States, please see at footnotes 195 and Appendix N.)

¹⁹¹ Constitution of the State of New Jersey (1776), Section XIX.

302. For Atheists, of course, exclusion such as that just noted is the norm.¹⁹² The endorsement of theism, as a religious belief system in opposition to Atheism, involves sectarianism exactly as occurs when Catholics are excluded from other Christians, Jews are excluded from other Judeo-Christians, and non-Judeo-Christians are excluded from other Monotheists.

303. Justice Blackmun, in Allegheny County v. Greater Pittsburgh ACLU, 492 U.S. 573, 615 (1989), addressed this exact idea when he wrote that “The simultaneous endorsement of Judaism and Christianity is no less constitutionally infirm than the endorsement of Christianity alone.” And, similarly, the simultaneous endorsement of all Monotheistic religions is no less constitutionally infirm than the endorsement of any one of those Monotheistic religions alone.

304. “In God We Trust” places the government on one side in the quintessential theological debate: Does God exist? This is forbidden under the Federal Constitution. “[T]he First Amendment [requires] ... on the part of all organs of government a strict neutrality toward theological questions” Abington School District v. Schempp, 374 U.S. 203, 243 (1963) (Brennan, J., concurring).¹⁹³

¹⁹² As was written in 1955, “Americans are proud of their tolerance in matters of religion: one is expected to ‘believe in God,’ but otherwise religion is not supposed to be a ground of ‘discrimination.’” Herberg, Will. *Protestant – Catholic – Jew: An Essay in American Religious Sociology*. (Garden City, NY: Doubleday & Co., 1955), p. 88.

¹⁹³ Neutrality has been deemed essential by every current member of the Supreme Court who has written or joined in an opinion involving the Establishment Clause: Mitchell v. Helms, 530 U.S. 793, 809 (2000) (Justice Thomas wrote, “In distinguishing between indoctrination that is attributable to the State and indoctrination that is not, we have consistently turned to the principle of neutrality.”); Rosenberger v. University of Virginia, 515 U.S. 819, 839 (1995) (Justice Kennedy referenced “the guarantee of neutrality”); Board of Education of Kiryas Joel v. Grumet, 512 U.S. 687, 704 (1994) (Justice Souter wrote that “civil power must be exercised in a manner neutral to religion.”); Employment Div. v. Smith, 494 U.S. 872, 886 (1990) (Justice Scalia focused on “generally applicable, religion-neutral laws”); Wallace, 472 U.S. at 60 (Justice Stevens explained that “government must pursue a course of complete neutrality toward religion”). Justices Ginsburg and Breyer joined Justice Souter’s dissent in Rosenberger, 515 U.S. at 879 (noting that it is key for a law to be “truly neutral with respect to religion”) and Justice Stevens’ majority opinion in Santa Fe, 530 U.S. at 304 (“The whole theory of viewpoint neutrality is that minority views are treated with the same respect as are majority views” (quoting Board of Regents v. Southworth, 529 U.S. 217, 235 (2000))).

1 305. To tell Plaintiff there is a God is no less an affront than it is to tell Buddhists there is no
 2 Buddha, Christians there is no Jesus, Muslims there is no Allah,¹⁹⁴ and so on for every
 3 other faith.

4 306. Atheists are a disenfranchised minority in this nation. National polls have revealed that
 5 93-96% of Americans believe in God – only 3% to 4% do not.¹⁹⁵ APPENDIX J.

6 307. The history, purpose and effect of the Acts of 1955 and 1956 was to endorse the ideas
 7 that (a) there is a God, and (b) that “we” trust in that God. Such an endorsement violates
 8 the Federal Constitution. “Government promotes religion as effectively when it fosters a
 9 close identification of its powers and responsibilities with those of any – or all –
 10 religious denominations as when it attempts to inculcate specific religious doctrines. If
 11 this identification conveys a message of government endorsement or disapproval of
 12 religion, a core purpose of the Establishment Clause is violated.” Grand Rapids School
 13 District v. Ball, 473 U.S. 373, 389 (1985).

14 308. There is an overwhelming amount of principled dicta that supports Plaintiff’s position in
 15 this case. APPENDIX L (revealing principled quotes from twenty-eight separate
 16 justices, inconsistent with government claiming that “In God We Trust”), and
 17 APPENDIX M (providing – as just a sample – two hundred dicta incompatible with
 18 government claiming that “In God We Trust”).

19 309. There are no principled dicta supporting the governmental advocacy of the phrase “In
 20 God We Trust.” All one finds is attempts to manufacture excuses for what is an obvious
 21 constitutional violation.

¹⁹⁴ “Allah,” of course, is simply the Arab word for God. However, in the context of a predominantly Christian country, its limited meaning would undoubtedly be understood by all.

¹⁹⁵ Polls have actually shown a fairly wide divergence. These figures represent what Plaintiffs believe are a best integration of the various data, including such sources as Harris Interactive® (Harris Poll #59, October 15, 2003; American Religious Identification Survey, 2001 (“ARIS 2001”), from The Graduate Center of the City University of New York; Louis Harris and Associates, August 12, 1998; Opinion Dynamics, December 5, 1997; the Pew Research Center for the People and the Press, May 31 through June 9, 1996. Of course, constitutional principles do not change based on the percentages, whatever they may actually be.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

- I. To declare that Congress, in passing the Acts of 1955 and 1956, violated the Establishment and Free Exercise Clauses of the United States Constitution.
- II. To declare that by having (much less mandating) “In God We Trust” on our coins and currency, 31 U.S.C. § 5112(d)(1) and 31 U.S.C. § 5114(d)(1) violate the Establishment and Free Exercise Clauses of the United States Constitution, and that they violate RFRA;
- III. To declare that by having “In God We Trust” as our national motto, 36 U.S.C. § 302 violates the Establishment and Free Exercise Clauses of the United States Constitution, and that it violates RFRA;
- IV. To enjoin Defendants from continuing to mint coins and print currency on which is engraved “In God We Trust;”
- V. To enjoin Defendants from including in the United States Code any act or law that claims that “In God We Trust;”
- VI. To allow Plaintiff to recover costs, expert witness fees, attorney fees, etc. as may be allowed by law; and
- VII. To provide such other and further relief as the Court may deem proper.

Respectfully submitted,

/s/ - Michael Newdow

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APPENDIX A

PERTINENT CONSTITUTIONAL PROVISIONS AND CODE SECTIONS

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

ARTICLE I. SECTION 1.

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

AMENDMENT I

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.

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

UNITED STATES CODE

28 U.S.C. § 1331

TITLE 28 – JUDICIARY AND JUDICIAL PROCEDURE
PART IV – JURISDICTION AND VENUE
CHAPTER 85 –DISTRICT COURTS; JURISDICTION
SECTION 1331 – Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1346 (a) (2)

TITLE 28 – JUDICIARY AND JUDICIAL PROCEDURE
PART IV – JURISDICTION AND VENUE
CHAPTER 85 – DISTRICT COURTS; JURISDICTION
SECTION 1346 – United States as defendant

(a) The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of:

(2) Any other civil action or claim against the United States, not exceeding \$10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or ...

28 U.S.C. § 1361

TITLE 28 – JUDICIARY AND JUDICIAL PROCEDURE
PART IV – JURISDICTION AND VENUE
CHAPTER 85 – DISTRICT COURTS; JURISDICTION
SECTION 1361 – Action to compel an officer of the United States to perform his duty

The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

28 U.S.C. § 1391(b) and (e)

TITLE 28 – JUDICIARY AND JUDICIAL PROCEDURE
PART IV – JURISDICTION AND VENUE
CHAPTER 87 – DISTRICT COURTS; VENUE
SECTION 1391 – Venue generally

(b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in ... (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated ...

(e) A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought in any judicial district in which ... (2) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) the plaintiff resides if no real property is involved in the action.

31 U.S.C. § 301(a) and (b)

TITLE 31 – MONEY AND FINANCE
SUBTITLE I – GENERAL
CHAPTER 3 – DEPARTMENT OF THE TREASURY
SECTION 301 – DEPARTMENT OF THE TREASURY

- (a) The Department of the Treasury is an executive department of the United States Government at the seat of the Government.
- (b) The head of the Department is the Secretary of the Treasury. The Secretary is appointed by the President, by and with the advice and consent of the Senate.

31 U.S.C. § 321(a)(4)

TITLE 31 – MONEY AND FINANCE
SUBTITLE I – GENERAL
CHAPTER 3 – DEPARTMENT OF THE TREASURY
SECTION 321 – General authority of the Secretary

The Secretary of the Treasury shall – ... mint coins, engrave and print currency and security documents, and refine and assay bullion, and may strike medals;

31 U.S.C. § 304(b)(2)

TITLE 31 – MONEY AND FINANCE
SUBTITLE I – GENERAL
CHAPTER 3 – DEPARTMENT OF THE TREASURY
SECTION 304 – United States Mint

The Director shall carry out duties and powers prescribed by the Secretary of the Treasury.

31 U.S.C. § 303(b)(1)

TITLE 31 – MONEY AND FINANCE
SUBTITLE I – GENERAL
CHAPTER 3 – DEPARTMENT OF THE TREASURY
SECTION 304 – Bureau of Engraving and Printing

The Director - shall carry out duties and powers prescribed by the Secretary.

31 U.S.C. § 5112(d)(1)

TITLE 31 – MONEY AND FINANCE
SUBTITLE IV – MONEY
CHAPTER 51 – COINS AND CURRENCY
SECTION 5112 – Denominations, specifications, and design of coins

(d)(1) United States coins shall have the inscription “In God We Trust”. ...

31 U.S.C. § 5114(b)

TITLE 31 – MONEY AND FINANCE
SUBTITLE IV – MONEY
CHAPTER 51 – COINS AND CURRENCY
SECTION 5114 – Engraving and printing currency and security documents

(b) United States currency has the inscription “In God We Trust” in a place the Secretary decides is appropriate. ...

36 U.S.C. § 302

TITLE 36 – PATRIOTIC AND NATIONAL OBSERVANCES, CEREMONIES AND
ORGANIZATIONS
SUBTITLE I – Patriotic and National Observances and Ceremonies
CHAPTER 3 – NATIONAL ANTHEM, MOTTO, FLORAL EMBLEM AND MARCH
SECTION 302 – National motto

“In God we trust” is the national motto.

42 U.S.C. § 2000bb et seq.

TITLE 42 – THE PUBLIC HEALTH AND WELFARE
CHAPTER 21B – RELIGIOUS FREEDOM RESTORATION

(Religious Freedom Restoration Act (RFRA)) states, in pertinent parts:

§ 2000bb(a)(3): “The Congress finds that governments should not substantially burden religious exercise without compelling justification.”

§ 2000bb(b)(1) and (b)(2): “The purposes of this chapter are to restore the compelling interest test ... and to guarantee its application in all cases where free exercise of religion is substantially burdened; and to provide a claim or defense to persons whose religious exercise is substantially burdened by government.”

§ 2000bb-1(b)(1) and (b)(2): “Government may substantially burden a person’s exercise of religion only if it demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest.”

§ 2000bb-1(c): A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

§ 2000bb-2(4): “[T]he term “exercise of religion” means religious exercise, as defined in section 2000cc–5 of this title.” [§ 2000cc–5(7)(A) “The term ‘religious exercise’ includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.”]

§ 2000bb-3(a): “This chapter applies to all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after November 16, 1993.”

§ 2000bb-3(c): “Nothing in this chapter shall be construed to authorize any government to burden any religious belief.”

§ 2000cc–5(7)(A): “The term ‘religious exercise’ includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.”

§ 2000cc–5(7)(B): “The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.”

APPENDIX B

AMERICAN SOCIETY WAS OVERTLY PARTIAL TO (CHRISTIAN) MONOTHEISM AT THE TIME OF THE PASSAGE OF THE ACTS OF 1955 AND 1956, WHICH WERE INTENDED TO ENDORSE (CHRISTIAN) MONOTHEISM

After the Second World War and into the 1960s, the United States was in the grips of the “Cold War.” This was the period of time in which Senator Joseph McCarthy rose to power with his wanton accusations of communist affiliations, and “an admission of membership in the Communist Party ... [could] be used to prosecute the registrant under ... federal criminal statutes.” Albertson v. Subversive Activities Control Board, 382 U.S. 70, 77 (1965) (Brennan, J., majority).¹ Within this milieu were serious infringements upon American civil liberties.² Even suspected affiliation with the Communist Party could lead to the loss of job and friends.³ “In 1947 [President Truman] sought to root out subversion through the Federal Employee Loyalty Program. The program included a loyalty review board to investigate government workers and fire those found to be disloyal. The government dismissed hundreds of employees, and thousands more felt compelled to resign. By the end of Truman’s term, 39 states had enacted antisubversion laws and loyalty programs. In 1949 the Justice Department prosecuted 11 leaders of the Communist Party, who were convicted and jailed under the Smith Act of 1940.”⁴ President Eisenhower – who followed President Truman – had a loyalty program of his own. “Under [Eisenhower’s] loyalty program, some 10,000 federal employees resigned or were dismissed.”⁵

The world’s main communist stronghold was the Union of Soviet Socialist Republics (USSR), which had instituted a repressive, totalitarian form of government. As a result, Soviet citizens were deprived of many of the freedoms that Americans cherish. One of those lost

¹ The Communist Control Act of 1954 contained the following: “The Congress hereby finds and declares that the Communist Party of the United States, although purportedly a political party, is in fact an instrumentality of a conspiracy to overthrow the Government of the United States.” Under the Act, “any” participation – including preparing documents, mailing material, or imparting information of any kind – was to be considered by the jury. U.S. Statutes at Large (1954), Public Law 637, Chap. 886, p. 775-780 (Sec. 2, “Findings of Fact”).

² “When Senator Joseph McCarthy was at his prime ... there were scarcely a dozen papers in this Nation that stood firm for the citizen’s right to due process and to First Amendment protection.” Columbia Broadcasting System, Inc. v. Democratic Nat’l Committee, 412 U.S. 94, 154-155 (1973) (Douglas, J., concurring).

³ The blacklisting of the “Hollywood Ten” is but one example of the vile consequences of that era’s mindset.

⁴ [http://encarta.msn.com/encyclopedia_1741500823_16/United_States_\(History\).html](http://encarta.msn.com/encyclopedia_1741500823_16/United_States_(History).html)

freedoms was the right to worship freely, because the USSR – lacking the protections found in our First Amendment’s religion clauses – officially espoused Atheism. Wishing to differentiate our nation from that evil regime (but failing to recognize that the difference was America’s guarantee of religious liberty, not our de facto majoritarian (Christian) monotheism⁶), our politicians took to touting the superiority of a belief in God and in Jesus Christ. Vermont Senator Ralph Flanders, for instance, attempted to put through a Constitutional Amendment stating that “this nation devoutly recognizes the authority and law of Jesus Christ, Saviour and Ruler of Nations, through whom are bestowed the blessings of Almighty God.”⁷ Adlai Stevenson, the Democratic candidate for President in both 1952 and 1956, claimed that, “We are all children of the same Judaic-Christian civilization, with very much the same religious background,”⁸ and that “God has set for us an awesome mission: nothing less than the leadership of the free world.”⁹ Earl Warren, then the newly-appointed Chief Justice of the United States Supreme Court, stated in 1954 that the United States is “a Christian land governed by Christian principles.”¹⁰ While serving as Secretary of State from 1953-1959, John Foster Dulles stated that, “there is no way to solve the great perplexing international problems except by bringing to bear on them the force of Christianity.”¹¹ In fact, President Eisenhower’s staff was so monotheistically religious that one writer, in referring to the Secretary of Defense, stated he was “the only man in the Administration who doesn’t talk about God.”¹²

The Congressional Record clearly reflected this religious zeal. As shown in the bar graph in Appendix E, the number of entries pertaining to religion increased **fifty-fold** between the five years prior to 1954 and the five years after. A review of the Index volumes starting in 1954 shows such extraordinary titles as “Meditation, Christ, our hope,” “Christians in Politics,” “Duty of Christian Politician,” “Free Government Based on Faith,” “God’s Answer to Communism,” “Strengthening America Under God,” “We Pray or We Perish,” “Drive to Erect World’s Largest

⁵ Oakley, J. Ronald. *God’s Country: America in the Fifties*. (New York: Dembner, 1986) p. 177.

⁶ “Faith in God and Father of our Lord Jesus Christ and the recognition of His moral law are the only effective antidotes for the godlessness of present-day Communism.” Crawford CC. *The American Faith*, (Ann Arbor, Michigan: Edwards Brothers, 1955) p. 3.

⁷ Miller, William Lee. *Piety Along the Potomac*. The Reporter (11 August 1954) p. 25.

⁸ Stevenson, Adlai. *Major Campaign Speeches of Adlai E. Stevenson*, 1952 (New York, 1953), p. 282.

⁹ Marty, Martin. *Modern American Religion*, vol. 3, “A Civic Religion of the American Way of Life,” (Chicago: University of Chicago Press, 1986) p. 307.

¹⁰ “Eisenhower Joins in a Breakfast Prayer Meeting.” New York Times, February 5, 1954, A-10.

¹¹ “Miller, William Lee. *Piety Along the Potomac*. The Reporter (11 August 1954), pp. 41-42.

Cross,” “God Meant Us To Find Atom,” “God and U.N.,” “Great Christian,” “President Honored for Religious Aim,” “What Did Jesus Believe About Wealth?,” “Who Are Disciples of Christ?,” “I Speak for Christian Citizenship,” “Communists versus God,” “Seeking God’s Way for World Peace,” “Eisenhower Should Lead Godly Against Reds,” “Our Home and God,” “Religious Illiteracy Is Problem for Home,” “Thanks Be to Providence,” “The Christian Leader and Politics,” “Bible ABC Verses,” “Christ Did Not Wear Crown of Thorns To Teach Appeasement,” “Christianity, Patriotism, and Myth of National Communism,” “Unfair Trial of Jesus,” “Christian Survival at Stake,” “Convert Russia Through Prayer,” “God’s Time,” “Prayer Is Power,” “Why Not Teach Religion?,” “Errors in trial of Jesus,” “Atheistic Character of Communism,” “Antichrists on Prowl,” “Moses, Prophets, Jesus Fought To Erase Inequality,” “Speak for Christian citizenship,” “Subsidy for ministers,” “Protestantism speaks on justice and integration,” “Reaffirm Christian faith in Middle East crisis,” “Aggressive Secularism Undermining Nation,” “Can-Do Christians,” “Christianity or Communism?,” “Christian Philosophy of Civil Government,” “We Believe in Prayer,” “Lecture: Existence of God,” “Christ and Politics,” “Power of Prayer,” “Union of Church and State,” “Jesus, the Perfect Man,” “Washington’s Lady Ambassador for Christ,” “Make yourself a rubberstamp for God,” “Bible: eternal source of strength,” It is odd, to say the least, to see this in the Congressional Record of the nation that holds itself out to the world as the beacon of religious freedom.

Perhaps most important than the foregoing were the words and acts of President Eisenhower, himself. Starting with his 1953 inauguration, where “[t]he lead float ... was ‘God’s Float,’ exhibiting pictures of churches and other religious places and the slogans ‘In God We Trust’ and ‘Freedom of Worship’ written in Gothic script,”¹³ faith in God permeated his presidency. The new President was actually baptized two weeks after taking office.¹⁴ He worked “to get legislative support for a national day of prayer, attend[ed] annual presidential prayer breakfasts, and appoint[ed] a minister to a new special presidential post for religious matters.”¹⁵ “On April

¹² Brogan, D.W. *Unnoticed Changes in America*. Harper’s Magazine (February, 1957) p. 33.

¹³ Oakley, J. Ronald. *God’s Country: America in the Fifties*. (New York: Dembner, 1986) p. 320.

¹⁴ Marty, Martin. *Modern American Religion*, vol. 3, “A Civic Religion of the American Way of Life,” (Chicago: University of Chicago Press, 1986) p. 303..

¹⁵ Marty, Martin. *Modern American Religion*, vol. 3, “A Civic Religion of the American Way of Life,” (Chicago: University of Chicago Press, 1986) p. 303.

8, 1954, Eisenhower issued the first stamp bearing the motto “In God We Trust,”¹⁶ after an attempt in Congress to have – as with the coins and currency – that motto mandated for all postage.¹⁷ The President participated in the American Legion’s *Back to God* crusade,¹⁸ proclaiming that “Recognition of the Supreme Being is the first, the most basic, expression of Americanism. Without God, there could be no American form of government, nor an American way of life.”¹⁹ As Chief Executive, he was “determined to use his influence and his office to help make this period a spiritual turning point in America.”²⁰ In fact, the Republican National Committee declared that “in every sense of the word, [President Eisenhower] is not only the political leader, but the spiritual leader of our times,”²¹ an assessment that was widely shared.²² In short, “Eisenhower often used religious phrases and talked about the need for religious faith and spiritual values. He frequently called on divine aid for himself and his country in speeches, held prayer breakfasts, received church delegations in his office, and had Billy Graham and Norman Vincent Peale as overnight guests at the White House. He also began cabinet meetings with a prayer.”²³ As another author wrote of the President:

His priesthood was part of his role as leader of a “crusade,” as he called it, against “godless Communism” ... “The things that make us proud to be Americans are of the soul and of the spirit,” Eisenhower declared. And being American, for a president who was baptized and who joined a church for the first time after having been elected, meant being a theist.²⁴

¹⁶ Medhurst MJ. *God Bless the President: The Rhetoric of Inaugural Prayer*. (The Pennsylvania State University, 1980). (Available on microfilm from University Microfilms International, Ann Arbor, MI (800-521-0600). At 231-232.

¹⁷ 99 Cong. Rec. A2659 (May 15, 1953).

¹⁸ It might be noted that the American Legion – through both its leadership and its members – had been largely responsible for the brutalization of Jehovah’s Witnesses in the aftermath of the Supreme Court’s ruling in *Minersville v. Gobitas*, 310 U.S. 586 (1940). See, Ellis R. *To the Flag* (Lawrence, Kansas: University Press of Kansas, 2005) pp 106-07.

¹⁹ [Life Magazine, April 11, 1955, page 138; New York Herald Tribune, February 22, 1955.](#)

²⁰ [High, Stanley. What the President Wants. Reader’s Digest \(April, 1953\) pp 2-4.](#)

²¹ Resolution of the Republican National Committee, February 17, 1955, as reported Marty, Martin. *Modern American Religion*, vol. 3, “A Civic Religion of the American Way of Life,” (Chicago: University of Chicago Press, 1986) p. 295.

²² “The central symbol of the nation’s political piety was the President himself.” Miller, Douglas T. & Nowak, Marion. *The Fifties: The Way We Really Were* (Garden City, NY, Doubleday & Co. 1977) p. 89-90.

²³ Oakley, J. Ronald. *God’s Country: America in the Fifties*. (New York: Dembner, 1986) p. 153.

²⁴ Marty, Martin. *Modern American Religion*, vol. 3, “A Civic Religion of the American Way of Life,” (Chicago: University of Chicago Press, 1986) p. 296.

This entanglement of religiosity and politics led to the precise circumstances the Establishment Clause was meant to address. In the 1950s it was noted that “hardly an official, statesman, politician or leader in general, however complaisant he may be in such matters in private, takes a public step or makes a speech without some genuflection to the Deity.”²⁵ Thus, governmental officials not only routinely spoke of “godless communism,” but they filled their speeches with references to Americans as “freedom-loving, God-fearing people.”²⁶ In fact, at the nation’s military academies, the “one clear purpose [was] to build good, strong, God-fearing character in men like ourselves – men who, before long, will have the job of running this great country of ours.”²⁷ In 1955, President Eisenhower implemented the *Code of Conduct for Members of the Armed Forces*. Under that Code, “all members of the armed forces of the United States” were required to “trust in my God and in the United States of America.”²⁸ Thus, “[a]mong a growing number of Americans, belief in God became intertwined with patriotism.”²⁹ In other words, it became “un-American to be unreligious.”³⁰ In fact, as was reflected in the words and deeds of their governmental officials, it wasn’t simply belief in a Supreme Being that was involved. Belief in the Christian God was often specifically implicated. Thus, “th[e] nationalization of Christianity in the fifties” was “pervasive.”³¹ As written in Time Magazine in 1954, “today in the U.S., the Christian faith is back in the center of things.”³²

²⁵ Weissman David L. *Gott Mit Uns*. The Nation, January 19, 1957 at 32.

²⁶ 1956 year-end statement of John Foster Dulles, President Eisenhower’s Secretary of State, as noted in Weissman David L. *Gott Mit Uns*. The Nation, January 19, 1957 at 32.

²⁷ Wilton B. Persons, Deputy Assistant to the President of the United States, Commencement Speech delivered to the Staunton Military Academy, Staunton, Virginia, May 30, 1954, as provided in Vital Speeches of the Day. Vol. XX, No. 22, September 1, 1954, at 688.

²⁸ Eisenhower Presidential Library. Official File Series; Box 108 OF 3-R-9 - *Code of Conduct for Members of the Armed Forces*. See, also, Code of Federal Regulations, Title 3, 1954-1958 Compilation (Government Printing Office (1961)) at 266.

²⁹ Reader’s Digest Association, *Our glorious century*. Harvey, Edmund H. Jr., ed. (Pleasantville, N.Y.: Reader’s Digest Association, 1994), p. 266.

³⁰ Eckardt, A. Roy. *The New Look in American Piety*. The Christian Century 71 (17 November 1954), p. 1396. See, also, Miller, Douglas T. & Nowak, Marion. *The Fifties: The Way We Really Were* (Garden City, NY, Doubleday & Co. 1977) p. 92. (“Patriotism and religion seemed synonymous. Atheists or agnostics were not tolerated.”); Herberg, Will. *Protestant-Catholic-Jew* (Garden City, 1960) p. 53 (“[B]eing a Protestant, a Catholic, or a Jew is understood as the specific way, and increasingly perhaps the only way, of being an American and locating oneself in American society.”); Wittner, Lawrence S., *Cold War America: From Hiroshima to Watergate* (New York: Praeger, 1974), p. 123. (“Recognition of the Supreme Being is the first, most basic expression of Americanism.”); Oakley, J. Ronald. *God’s Country: America in the Fifties*. (New York: Dembner, 1986) p. 324 (“[I]n the fifties ... atheists were automatically considered to be unpatriotic, un-American, and perhaps even treasonous.”)

³¹ Oakley, J. Ronald. *God’s Country: America in the Fifties*. (New York: Dembner, 1986) p. 324.

³² Time Magazine, April 19, 1954, p. 62

Americans flocked to their churches in droves: “the conservative fifties saw a major revival of religion. Year after year the statistics pointed to unprecedented increases in church membership.”³³ In 1955, “of adult Americans ... 96.9 per cent were found to identify themselves religiously (70.8 per cent Protestants, 22.9 per cent Catholics, 3.1 per cent Jews).”³⁴ From 1949-1953, alone, “the distribution of Scripture in the United States increased 140 per cent.”³⁵ Clergymen – with remarkably successful books, radio shows, television shows, crusades and the like – became increasingly popular and influential.³⁶ In 1942, when Americans were questioned about which groups did the most “good” for the country, religious leaders came in third. By the mid-fifties, “[n]o other group – whether government, congressional, business, or labor – came anywhere near matching the prestige and pulling power of the men who are the ministers of God.”³⁷ Billy Graham,³⁸ Fulton Sheen³⁹ and Norman Vincent Peale,⁴⁰ for example, became household names.

As might be expected, popular culture and mercantilism reflected this religious growth. Thus, when the Chairman of the Board of the Chamber of Commerce of the United States spoke, he

³³ Oakley, J. Ronald. *God's Country: America in the Fifties*. (New York: Dembner, 1986) p. 185.

³⁴ Herberg, Will. *Protestant – Catholic – Jew: An Essay in American Religious Sociology*. (Garden City, NY: Doubleday & Co., 1955), p. 78 (note 2) (citing Public Opinion News Service, March 20, 1955).

³⁵ Herberg, Will. *Protestant – Catholic – Jew: An Essay in American Religious Sociology*. (Garden City, NY: Doubleday & Co., 1955), p. 14 (citing Report of the American Bible Society at its 138th annual meeting, *Time*, May 24, 1954).

³⁶ Oakley, J. Ronald. *God's Country: America in the Fifties*. (New York: Dembner, 1986) pp. 321-327.

³⁷ Polls conducted by Elmo Roper, as reported in Miller, Douglas T. & Nowak, Marion. *The Fifties: The Way We Really Were* (Garden City, NY, Doubleday & Co. 1977) p. 85-86.

³⁸ Billy Graham's masterful crusades are legendary. See, e.g., *The New Evangelist* Time Magazine 64 (25 October 1954), at 54. “Like many other evangelists of the day, [Rev. Graham] also often equated Christianity with Americanism and with anticommunism.” Oakley, J. Ronald. *God's Country: America in the Fifties*. (New York: Dembner, 1986) p. 322. As Graham characterized it, “a great sinister and anti-Christian movement masterminded by Satan has declared war upon the Christian God.” Lewis, Peter *The fifties* (New York: Lippincott, 1978) p. 73-74.

³⁹ *Life Is Worth Living*, a TV show with Rev. Fulton J. Sheen, aired from 1952-1957. Rev. Sheen “warned that no peace was possible with Russia, the leader of international godless communism.” Oakley, J. Ronald. *God's Country: America in the Fifties*. (New York: Dembner, 1986) p. 322-3.

⁴⁰ Norman Vincent Peale's *The Power of Positive Thinking* “quickly went to the top of the nonfiction best-seller list and stayed there for 112 consecutive weeks. In 1954 it sold more copies than any other book except the Bible.” *Id.*, at 323. That book, according to Dr. Peale, “teaches applied Christianity,” [Peale, Norman Vincent *The Power of Positive Thinking* (New York: Prentice-Hall, 1952) at ix], noting that “there is no problem, difficulty, or defeat that you cannot solve or overcome by faith, positive thinking, and prayer to God.” *Id.*, at 275. The concluding line of the work is: “God will help you – so believe and live successfully.” *Id.*, at 276.

felt no need to hesitate in stating that “our Christian religion and our competitive business system are in themselves the two most revolutionary forces in the world today.”⁴¹ Reflecting this view – and “the resurgence of religious feeling and practice in America today” – the Ideal Toy Company manufactured “praying dolls” with flexible knees for kneeling.⁴² Religious songs were noted to be obtaining a stronghold in the nation’s juke boxes.⁴³ In the February 1955 “Little Leaguer Magazine, the new *Little League Pledge*, beginning with “I trust in God,” was published.⁴⁴ The Boy Scouts of America – which had previously maintained a relatively tepid religious emphasis – increased its ecclesiastical fervor “in the fifth edition (1948) [when] the authors of the [Boy Scout] *Handbook* began to expand their explanation of ‘duty to God.’”⁴⁵ And Norman Rockwell – arguably the most popular and influential artist of America of the 1950’s – ably “combined “duty to God” and “duty to country” in a single picture.”⁴⁶

⁴¹ Johnston Clement D. *The Spiritual Responsibility of American Business and Industry*. Vital Speeches of the Day. Vol. XXII, No. 5, December 15, 1955, at 151.

⁴² Time Magazine, 20 September 1954, *Words and works*, p. 65.

⁴³ *Life Magazine*, April 11, 1955, pp. 138-40.

⁴⁴ Little League online, <http://www.littleleague.org/about/pledge.asp>, accessed on July 26, 2005.

⁴⁵ That edition contained the admonition that, “Above all you are faithful to Almighty God’s Commandments.” Mechling, Jay. *On my honor : Boy Scouts and the making of American youth* (University of Chicago Press: Chicago, 2001), p. 41. Mechling notes that the 1948 *Handbook* incorporated a “wedding of religion and democratic ideology, of religion and patriotism.” *Id.*, at 42. Even in this book – on the Boy Scouts – can one find acknowledgement of the entanglement of religion, government and politics:

Religion had become an important marker distinguishing between the Communists and the Western democracies. “They” were “godless communists,” while we were religious. ... [I]t was living in Eisenhower’s America of the 1950s that made so clear to everyone the ways Protestant Christianity and Cold War ideology became tangled in the definitions of America ... A boy had to have a faith, for atheism—and probably agnosticism—was the characteristic of Communists, our sworn enemies.

Id., at 43-44.

⁴⁶ Mechling, Jay. *On my honor : Boy Scouts and the making of American youth* (University of Chicago Press: Chicago, 2001), p. 46 (quoting Hillcourt W. *Norman Rockwell’s World of Scouting* (Abrams: New York, 1977), p. 144).

APPENDIX C

AMERICAN SOCIETY WAS OVERTLY ANTAGONISTIC TO ATHEISM AT THE TIME OF THE PASSAGE OF THE ACTS OF 1955 AND 1956

As is the case with discrimination against blacks and women, discrimination against atheists predates the founding of our nation. However, whereas conscientious efforts have been made to end racial and gender prejudice, government – to this day – has continued to foster anti-atheistic sentiment. Thus, antagonism to atheism was still extant when the Acts of 1955 and 1956 were passed.

In tracing the history of this bigotry, one can start with the Bible, in which it is stated that Atheists are “corrupt ... there is none that doeth good”¹ and disbelief in God is equated with “unrighteousness.”² Under the common law of England, from which our legal system arose, denying God’s existence was punishable “by fine and imprisonment, or other infamous corporal punishment.”³ Additionally, of the eleven state constitutions in existence during the framing of our secular federal Constitution, nine required professions of belief in God to obtain full benefits of citizenship.⁴

With this background, the secular nature of our federal Constitution – with no reference to God or Jesus – is remarkable. Yet, although objection was heard from the

¹ Psalms 14:1.

² 2 Corinthians 6:14.

³ 4 Blackstone Commentaries 59.

⁴ Delaware (1776) Article 22: “I ...do profess faith in God the Father, and in Jesus Christ His only Son, and in the Holy Ghost;” Pennsylvania (1776) Article 2, Section 10: “I do believe in one God, the creator and governor of the universe;” New Jersey (1776) Article 19: “[A]ll persons, professing a belief in the faith of any Protestant sect. ... shall be capable of being elected into any office;” Georgia (1777) Article VI: “The representatives ... shall be of the Protestant religion;” Massachusetts (1780) Article 2: “It is ... the duty of all men in society, publicly, and at stated seasons, to worship the SUPREME BEING.” Article 3 : “[E]very denomination of christians ...shall be equally under the protection of the law;” Maryland (1776) Section 33: “[A]ll persons, professing the Christian religion, are equally entitled to protection in their religious liberty;” South Carolina (1778) Article 38: “[A]ll persons ... who acknowledge that there is one God ... shall be freely tolerated. The Christian Protestant religion ... is ... the established religion of this State;” New Hampshire (1784) Article VI: “[E]very denomination of christians ... shall be equally under the protection of the law;” North Carolina (1776) Article 32: “[N]o person, who

outset,⁵ criticism was quite rare as the nation took root.⁶ Only as an increasing number of citizens more fervently embraced (Christian) monotheistic belief – thus leading to the very circumstances that the principles underlying the Religion Clauses seek to address – did cries for a reversion to the melding of religion and government become prominent.⁷

Hopes for governmental godliness increased during the Civil War era, too, as Christian Americans claimed that the nation's conflict was a sign of His wrath. In fact, that theory was used in an attempt to Christianize the nation with a Constitutional amendment. The movement was led by the newly formed National Reform Association, whose goal was to alter the Preamble so that it would begin with the following verbiage:

We, the people of the United States, humbly acknowledging Almighty God as the source of all authority and power in civil government, the Lord Jesus Christ as the

shall deny the being of God or the truth of the Protestant religion, ...shall be capable of holding any office."

⁵ For instance, the First Presbytery Eastward in Massachusetts and New Hampshire complained about the absence of "some explicit acknowledgment of the only true God and Jesus Christ whom He has sent, inserted somewhere in the Magna Carta of our country" in a letter written to George Washington on October 27, 1789. McAllister D. *Testimonies to the religious defect of the Constitution of the United States*. Christian Statesman Tract No. 7, Philadelphia (1874) at 2-3. Similarly, Luther Martin of Maryland decried the fact that there was no acknowledgement of "[a] belief of the existence of a Deity, and of a state of future rewards and punishments."⁵ The Complete Anti-Federalist, Strong HJ, ed. (Chicago: University of Chicago Press, 1981), Vol. 2 (2.4.108), at 75. See, also, Cornell S. *The Other Founders: Anti-Federalism and the Dissenting Tradition in America, 1788-1828* (University of North Carolina Press: Chapel Hill, NC; 1999) at 57.

⁶ McAllister's tract was an attempt to demonstrate that "[t]his defect ... never passed altogether unnoticed" by placing all "testimony" into "one complete summary." *Tract No. 7* at 1. Yet, for the 22 years between 1790 and 1812, McAllister apparently could find only three protestations within all of the colonial literature. *Tract No. 7* at 3-4.

⁷ Perhaps the most renowned example was Timothy Dwight's 1812 oratory:

We formed our Constitution without any acknowledgement of GOD; without any recognition of his mercies to us, as a people, of his government, or even of his existence. The Convention, by which it was formed, never asked, even once, his direction, or his blessing upon their labours. Thus we commenced our national existence under the present system, without GOD.

A discourse in two parts: delivered July 23, 1812, on the public fast, in the chapel of Yale College by Timothy Dwight, D.D.L.L.D., President of that Seminary; Published at the request of the students, and others; New Haven, Published by Howe and Deforest; Sold also by A.T. Goodrich and Co. No. 124, Broadway, New-York; Printed by J. Seymour, 49, John Street, New York, p. 40.

Ruler among the nations, his revealed will as the supreme law of the land, in order to constitute a Christian government, ...⁸

As might be expected, anti-Atheistic sentiment was blatant during that campaign. For instance, at the National Reform Association convention held on February 26–27, 1873 in New York, Jonathan Edwards, D. D. uttered the following:

Tolerate atheism, sir? There is nothing out of hell that I would not tolerate as soon! The atheist may live, as I have said; but, God helping us, the taint of his destructive creed shall not defile any of the civil institutions of all this fair land! Let us repeat, atheism and Christianity are contradictory terms. They are incompatible systems. They cannot dwell together on the same continent!⁹

With such a legacy of antipathy towards Atheism, the official espousal of that creed by the nation's chief political rival was seized upon by the (Christian) monotheistic majority as the Cold War took shape. "Believing that 'atheistic Communism' threatened America both without and within, Americans saw the world in terms of good and evil, godly and godless."¹⁰ In fact, "[i]n th[e] confused times of the fifties, socialists and Atheists were often thought to be communists."¹¹ Accordingly, it was believed that "Communists were our mortal enemies and they were atheists. Religion, therefore, came to seem essential in the fight against communism,"¹² which the monotheistic majority readily joined.¹³

⁸ *American State Papers Bearing on Sunday Legislation*. [1st Edition] Compiled and Annotated by Blakely WA (1890). Revised and Enlarged Edition, [2nd Edition] Edited by Colcord W (The Religious Liberty Association: Washington, DC; 1911) pp 341-343.

⁹ Jones AT. *Civil Government and Religion, or Christianity and the American Constitution*, American Sentinel, 26 & 28 College Place, Chicago, Ill. 1059 Castro St. Oakland, Cal.; 43 Bond St. N Y Atlanta, Georgia. 1889. Facsimile Reproduction Printed 1973 by Atlantic Printers & Publishers Sherrington, P. Q. pp. 53-56

¹⁰ Miller, Douglas T. & Nowak, Marion. *The Fifties: The Way We Really Were* (Garden City, NY: Doubleday & Co. 1977) p.82.

¹¹ Oakley, J. Ronald. *God's Country: America in the Fifties*. (New York: Dembner, 1986) p. 185.

¹² Miller, Douglas T. & Nowak, Marion. *The Fifties: The Way We Really Were* (Garden City, NY, Doubleday & Co. 1977) p. 91.

¹³ For example, a National Conference on the Spiritual Foundations of Our Democracy was held shortly after the Act of 1954 was passed. There, "[t]he interfaith leaders [sought] a statement of common faith on which to fight Communism." *The New York Times*, November 11, 1954.

“Godless communism” became a catch-phrase, permeating that era’s American society. Even dictionary definitions of “godless” standardly included “wicked” as one of the synonyms,¹⁴ and that word’s relative, “ungodly,” was defined to include “sinful.”¹⁵ Thus, the stage was set for governmental agents to parlay this manifest prejudice against adherents of a minority religious belief system to their advantage in terms of popular support. For instance, the Director of the Federal Bureau of Investigation, J. Edgar Hoover, stated:

I think that the criminal flood is an inescapable result of our earlier failure to teach God convincingly to the youthful unfortunates who are our juvenile delinquents of today and who will be our adult criminals of tomorrow.¹⁶

Former President Herbert Hoover wrote that, “[w]hat the world needs today is a definitive, spiritual mobilization of the nations who believe in God against this tide of Red agnosticism,” and actually suggested reorganizing or replacing the United Nations with a “moral and spiritual co-operation of God-fearing free nations.” He concluded that, “in rejecting an Atheistic other world, I am confident that the Almighty God will be with us.”¹⁷

The phrase “godless communists” filled the pages of the Congressional Record as the movement to intrude “under God” into the Pledge took hold. Rep. Louis Charles Rabaut – the chief House sponsor of the Act of 1954 – went so far as to place in that setting the

¹⁴ “Godless” was defined in *Webster’s New Twentieth Century Dictionary of the English Language – Unabridged*. (Standard Reference Works Publishing Co., Inc.: New York, 1956) as “Having no reverence for God; impious; ungodly; irreligious; wicked.” Page 749. In *Funk & Wagnalls New Practical Standard Dictionary of the English Language*, Volume One: A-P (Funk & Wagnalls Co.: New York, 1956) the definition was “Ungodly; atheistical; wicked.” Page 569.

¹⁵ *The New Century Dictionary of the English Language*, Volume 2 (D. Appleton-Century Co.: New York, 1948), p. 2095. Reinforced by “under God” in the Pledge, that unabashedly deprecating definition exists to this day: “ungodly: 1 a : denying or disobeying God : IMPIOUS, IRRELIGIOUS b : contrary to moral law : SINFUL, WICKED.” Merriam-Webster Online Dictionary, accessed at <http://www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=ungodly> on August 24, 2005.

¹⁶ 99 Cong. Rec. 12 (Appendix), A4155 (May 22, 1953) (Attributed to J. Edgar Hoover in article inserted into the record by Rep. Louis C. Rabaut, sponsor of the House resolution to insert the words “under God” into the previously secular Pledge of Allegiance)

¹⁷ Hoover, Herbert. *Addresses upon the American Road 1948-1950* (Stanford, California: Stanford University Press, 1951) pp. 66-67.

incredible assertion that “[a]n atheistic American ... is a contradiction in terms.”¹⁸ On Flag Day in 1955 – commemorating the one-year anniversary of the religious alteration of the Pledge – Rep. Rabaut stated, “We cannot afford to capitulate to the atheistic philosophies of godless men.”¹⁹ Rep. George H. Fallon felt the Congressional Record was a proper locale to claim that “when Francis Bellamy wrote this stirring pledge, the pall of atheism had not yet spread its hateful shadow over the world.”²⁰ Also placed into the Congressional Record (with the unanimous consent of the Senate) was an editorial from the Milwaukee Sentinel that stated, “[I]n times like these when Godless communism is the greatest peril this Nation faces, it becomes more necessary than ever to avow our faith in God and to affirm the recognition that the core of our strength comes from Him.”²¹ As Congress changed our national motto from “e pluribus unum” – which had been chosen by a committee formed on July 4, 1776 (and comprised of Benjamin Franklin, Thomas Jefferson and John Adams) – to “In God We Trust,”²² Rep. Louis C. Rabaut sponsored another bill; this one to have “Pray for Peace” as the cancellation stamp of all first- and second-class mail. This, he contended, would help counter “the ever increasing attacks upon us by forces of godlessness and atheism.”²³

The other branches of government joined in the fray. The Supreme Court equated Atheism with subversion: “[T]he Court of Appeals felt that the Legislature’s reasonable belief in such conditions justified the State in enacting a law to free the American group from infiltration of such atheistic or subversive influences.”²⁴ And the nation’s “spiritual leader” – President Eisenhower – succinctly stated that, “Recognition of the Supreme Being is the first, the most basic, expression of Americanism.”²⁵

¹⁸ 100 Cong. Rec. 2, 1700 (Feb. 12, 1954).

¹⁹ 101 Cong. Rec. 6, 8156 (June 14, 1955) (Rep. Louis C. Rabaut’s statement during the 1955 Flag Day ceremonies.)

²⁰ 100 Cong. Rec. 18 (Appendix), A3448 (May 11, 1954).

²¹ 100 Cong. Rec. 5, 5915 (May 4, 1954).

²² July 30, 1956, ch. 795, 70 Stat. 732.

²³ Silk M. *Spiritual Politics: Religion and America since World War II*. (New York; Simon and Schuster, 1988) p. 100.

²⁴ Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church, 344 U.S. 94, 109 (1952).

²⁵ Herberg, Will. *Protestant – Catholic – Jew: An Essay in American Religious Sociology*. (Garden City, NY: Doubleday & Co., 1955), p. 274 (citing the President’s “address launching the American Legion’s ‘Back to God’ campaign” for 1955.)

The media, also, fanned the flames of this bigotry. For instance, William Randolph Hearst – who was eventually to use his vast newspaper empire to advocate for interlarding the Pledge with “under God” – wrote a 1940 opinion column denigrating “atheism, anarchism and Godless despotism.”²⁶ Thus, socially and politically, Atheists were set up to be disenfranchised, as it was accepted by the majority that “[n]ot to be ... either a Protestant, a Catholic, or a Jew is somehow not to be an American.”²⁷ Worse yet, Atheism “may imply being obscurely ‘un-American.’”²⁸

At the time of the Acts of 1955 and 1956, therefore, “a professed ‘unbeliever’ ... would have no chance whatever in political life.”²⁹ The statistics bore this out, demonstrating that any complaints about this barrage of societal monotheistic indoctrination³⁰ were to no avail. In 1946, for instance, 57% of Americans felt that Atheists should be denied the opportunity to even broadcast their religious views on radio.³¹ A poll taken eight years later showed that 60% of the population would not grant Atheists the right to do the same in a speech, 60% favored removing any of their books on the topic from the public libraries, and an amazing 84% believed that Atheists should not be permitted to teach in college or universities.³² In 1958, more than three-quarters of the population stated they would not vote for an otherwise qualified candidate for

²⁶ Coblenz Edmond D. William Randolph Hearst: A Portrait in his Own Words (Simon and Schuster: New York, 1952) Pp 302-303.

²⁷ Herberg, Will. *Protestant – Catholic – Jew: An Essay in American Religious Sociology*. (Garden City, NY: Doubleday & Co., 1955), p. 274.

²⁸ Herberg, Will. *Protestant – Catholic – Jew: An Essay in American Religious Sociology*. (Garden City, NY: Doubleday & Co., 1955), p. 274.

²⁹ Herberg, Will. *Protestant – Catholic – Jew: An Essay in American Religious Sociology*. (Garden City, NY: Doubleday & Co., 1955), p. 65. As Herberg also noted, “every candidate for public office is virtually required to testify to his high esteem for religion.” *Id.*

³⁰ “From every corner and on every level, high, low, and middle brow, we have for years been bombarded with theological propaganda.” Russell, B. *Why I am not a Christian* (Touchstone / Simon & Schuster, Inc.: New York; 1957) (Editor’s Introduction by P. Edwards, at xii.)

³¹ Gallup Poll – A.I.P.O. (December 18, 1946).

³² Joint survey conducted in 1954 by the Gallup Poll and the National Opinion Research Center of the University of Chicago, as reported in Stouffer, Samuel. *Communism, Conformity, and Civil Liberties: A Cross Section of the Nation Speaks Its Mind* (Garden City, NY: Doubleday & Co. 1955), pp. 32-33.

president if that person were an Atheist.³³ Perhaps most incredible of all, 27% of the population stated in 1965 that they didn't think Atheists should even be allowed to vote! In contrast, when asked if "people who have quit school and never completed high school" should be have that right, only 6% of the population felt that group should be excluded.³⁴ As the author of a treatise on the Supreme Court and the Religion Clauses noted in 1962, "Atheism is fair game for the sniper, and overtones of 'blasphemy' and 'sacrilege' still linger."³⁵

³³ The poll looked into other religions and race as well. The results are revealing: Would not vote for a: Baptist (4%), Catholic (27%), Jew (29%), Negro (54%), Atheist (77%). Id.

³⁴ Gallup Poll – A.I.P.O. (July 21, 1965).

³⁵ *The Supreme Court on Church and State*. Tussman J. (ed.). (Oxford University Press: New York; 1962), at xxi.

APPENDIX D

THE CONTEMPORANEOUS INTERLARDING OF THE PLEDGE OF ALLEGIANCE WITH “UNDER GOD” CONFIRMS CONGRESS’S INTENT TO ENDORSE (CHRISTIAN) MONOTHEISM AND DISAPPROVE OF ATHEISM

It was in the previously described markedly pro-monotheistic (APPENDIX B) and anti-Atheistic (APPENDIX C) environment that the formerly secular Pledge of Allegiance was interlarded with the words, “under God.” This contemporaneous act of Congress – along with the other contemporaneous acts about to be mentioned here – further reveals the degree to which this religious favoritism pervaded American society at the time of the passage of the Act of 1955 and the Act of 1956.

The specific movement to have the Pledge infused with (Christian) monotheism began in 1951, when the Knights of Columbus – “the largest Catholic laymen’s organization”¹ – inserted those two words after “one Nation” for their members to recite when uttering the Pledge. The Knights recommended the change to our federal leaders in 1952,² the same year Congress requested that the president “set aside and proclaim ... a National Day of Prayer, on which the people of the United States may turn to God in prayer and meditation at churches, in groups, and as individuals.”³

In 1953, the proposal to add “under God” to the Pledge was made at the annual dinner of the obviously religiously-oriented Washington Pilgrimage of American Churchmen.⁴ The initial legislative backing for the idea came on April 20, 1953, two months after the introduction of H. Con. Res. 60 to create a “Prayer Room” in the Capitol “to seek Divine strength and guidance.”⁵ On that date, the first of eighteen separate bills to place “under God” into the Pledge was proposed.⁶ Authored by Michigan’s Rep. Louis Charles Rabaut, the bill

¹ *Elk Grove Unified Sch. Dist. v. Newdow*, 159 L. Ed. 2d 98, 124 S. Ct. 2301 (2004), *Brief for amicus curiae Knights of Columbus* at 1.

² *Id.* at 1-2.

³ 66 Stat. 64 (1952); 36 U.S.C. § 169h.

⁴ 100 Cong. Rec. 2, 2008-09 (Feb. 18, 1954) (Remarks of Rep. Oliver P. Bolton).

⁵ *The Prayer Room in the United States Capitol*, Document No. 234, 84th Cong., 1st Sess. (1954); US GPO, Washington: 1956, at 1.

⁶ *Big Issue in D.C.: The Oath of Allegiance*. New York Times, May 23, 1954, E-7. The eighteen separate resolutions of the 83rd Congress which were introduced to place the words, “under God,” into the Pledge of Allegiance were: S.J. Res. 126, H.J. Res. 243, H.J. Res. 334, H.J. Res. 371, H.J. Res. 383, H.J. Res. 479, H.J. Res. 497, H.J. Res. 502, H.J. Res. 506, H.J. Res. 513, H.J. Res. 514, H.J. Res. 518, H.J. Res. 519, H.J. Res. 521, H.J. Res. 523, H.J. Res. 529, H.J. Res. 531, and H.J. Res. 543.

gathered its main support on February 7, 1954, when the Rev. George M. Docherty spoke before his congregation at Washington, DC's New York Avenue Presbyterian Church. Thus, the chief catalyst for placing purely religious words into our perfectly functioning secular pledge was a Sunday sermon – a sermon in which Rev. Docherty made the incredibly offensive and discriminatory assertion that “[a]n atheistic American is a contradiction in terms.”⁷

Voicing no objection whatsoever to those words of patent bigotry while attending that sermon was President Eisenhower. Three days earlier, the President and other of the nation's leaders publicly joined in attending a prayer breakfast sponsored by the International Council for Christian Leadership.⁸ On the afternoon of Rev. Docherty's sermon, the President took part in a radio and television broadcast of the American Legion's “Back to God” program. The program was “an appeal to the people of America and elsewhere to seek Divine guidance in their everyday activities, with regular church attendance, daily family prayer and the religious training of youth.”⁹ From the White House, the President stated he was “delighted that our veterans are sponsoring a movement to increase our awareness of God in our daily lives.”¹⁰ He also claimed, “In battle, they learned a great truth – that there are no atheists in the foxholes.”¹¹

Over the next months, the House and Senate worked together on the legislation, with numerous congressmen openly expressing pro-Monotheistic and anti-Atheistic biases. APPENDIX E (providing nine pages of citations). As noted in the New York Times, the Act was religious: “All of the various sponsors, as well as the Rev. Mr. Docherty, agree on one thing: the widespread support the bill is receiving must bear testimony to a religious revival of significance.”¹² An article in the same edition spoke of a lecture delivered the day before by Agnes E. Meyer, a Washington author and civic leader:

⁷ Marty, Martin. *Modern American Religion*, vol. 3, “A Civic Religion of the American Way of Life,” (Chicago: University of Chicago Press, 1986) p. 301.

⁸ *Eisenhower Joins in a Breakfast Prayer Meeting*. New York Times, February 5, 1954, A-10.

⁹ *Nation Needs Positive Acts of Faith, Eisenhower Says*. New York Times, February 8, 1954, A-1, 11.

¹⁰ “Text of President's Talk on Faith.” New York Times, February 8, 1954, A-11.

¹¹ *The Public Papers of the Presidents, Dwight D. Eisenhower, 1954* (Office of the Federal Register, National Archives and Records Service, General Services Administration, U.S. Government Printing Office, 1960) pp 243-244. For those not struck by the egregious offensiveness of this oft-repeated statement, the analogous claims that, “There are no Jews in foxholes,” or “There are no Catholics in foxholes,” might be considered.

¹² Knowles, Clayton. *Big Issue in D.C.: The Oath of Allegiance* NY Times May 23, 1954, pg E7.

Mrs. Meyer said that among some people religion had simply become the latest fad.

“If you don’t bring God into every cabinet meeting, political convention or other assembly it is bad public relations,” she asserted.

She cited as being contrary to the principle of separation of church and state Senator Homer Ferguson’s resolution to insert “under God” in the pledge of allegiance. She also was critical of Senator Ralph E. Flanders’ proposed amendment to the Constitution which reads:

“This nation devoutly recognizes the authority and law of Jesus Christ, Saviour and Ruler of Nations, through whom are bestowed the blessings of Almighty God.”¹³

With Rep. Rabaut stating that the new Pledge would remind children that “democratic... institutions presuppose a Supreme Being,”¹⁴ the final bill passed without objection in either house.¹⁵ The result was the Act of 1954. As noted, this Act did nothing but add the two purely religious words, “under God,” to the Nation’s Pledge of Allegiance, which – up until that time – had never included any religious dogma. As one commentator noted, the Act resulted from “the pressure of sanctimonious zeal unrestrained by constitutional principle.”¹⁶

Perhaps the most unequivocal evidence that the act of 1954 was passed as a result of the desire to endorse (Christian) monotheism and to disapprove of Atheism can be found in the Summary of the Act delivered to the Senate by the Senate’s chief sponsor of the legislation, Senator Homer Ferguson.¹⁷ The fifteen most glaring excerpts are provided here:

- (1) Recognizing that the pledge did not specifically acknowledge that we are a people who do believe in and want our Government to operate under divine guidance, I introduced in the Senate a resolution to add the words which forever, I hope, will be on the lips of Americans.
- (2) To put the words “under God” on millions of lips is like running up the believer’s flag as the witness of a great nation’s faith. It is also displayed to the gaze of those who deny the sacred sanctities which it symbolizes.

¹³ *Surpass Orthodoxy, Christianity Urged*. NY Times May 23, 1954 pg 30

¹⁴ “Under God,” *Newsweek*, May 17, 1954

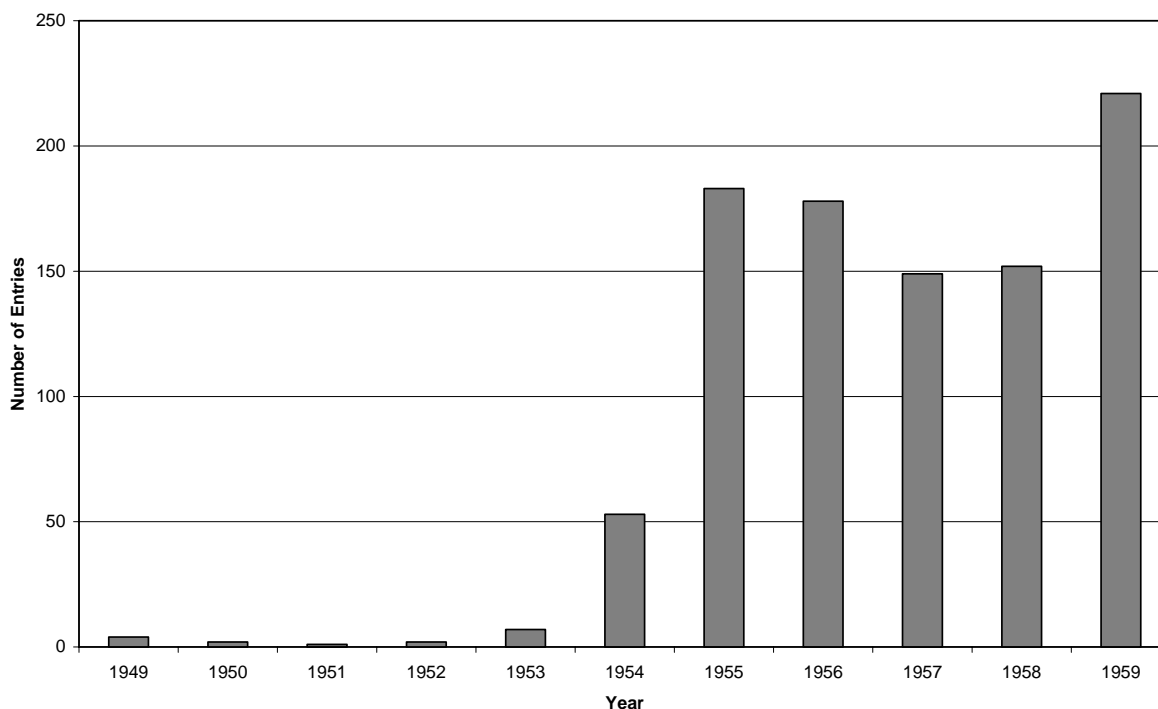
¹⁵ 100 Cong. Rec. H7757-66 (June 7, 1954); 100 Cong. Rec. S7833-34 (June 8, 1954).

¹⁶ *The Supreme Court on Church and State*. Tussman J. (ed.). (Oxford University Press: New York; 1962), at xvii.

¹⁷ 100 Cong. Rec. S8617-18 (June 22, 1954).

- (3) Then, appropriately, as the flag was raised a bugle rang out with the familiar strains of "Onward, Christian Soldiers!"
- (4) Thus at the White House and at the Capital was "under God" written across the Stars and Stripes, in its homage to deity taking its place with the "In God We Trust" on our coinage and "the power that hath made and preserved us a Nation" in our national anthem. Concerning this meaningful event the White House made this thrilling pronouncement, to which is the sound of a great "Amen" in a mighty host of God-fearing hearts:
- (5) "From this day forward the millions of our schoolchildren will daily proclaim in every city and town, every village and rural schoolhouse the dedication of our Nation and our people to the Almighty.
- (6) To be "under God" is to be under an intelligible explanation of the mysterious universe in which we find ourselves. To believe in nothing higher than the flag of one's nation is to thwart the soul's highest instincts, as well as to insult the intellect.
- (7) The results of blasphemous denials of God on a tremendous scale already are being shudderingly shown by the baneful social pattern of atheistic materialism.
- (8) Suspicion begins to grow that it is not the believer who is irrational, but the cynical denier.
- (9) Certainly, one who accepts the beliefs of unbelief, with its assumption of a universe that is dead and godless, is called before the bar of reason to explain such undeniable facts as self-sacrifice, nobility, and heroism, which have made the earthen vessels of humanity blaze with a shining glory.
- (10) The unbeliever has to assert that the grandeur and splendor of life at its best are but the product of blind chance. To deny the implications of "under God" and to point to dust to explain destiny is about as sensible as declaring that you could take a bag containing the letters of the alphabet and, throwing a few handfuls of them into the air, expect them to fall to the ground in the form of a Shakespeare's sonnet or of a Tennyson's In Memoriam. The thing is absurd.
- (11) There is no liberty anywhere except under God.
- (12) The promising streams of freedom disappeared in the sands of futility when there is nothing higher than the state. With a deified state in a godless realm iron curtains but hide broken strands of rainbows which once arched the sky of those who imagined themselves pioneers of a new freedom. Without God, unkept promises became the fetters of a worse thralldom at the hands of alleged emancipators.
- (13) We are suddenly aghast at the dire possibilities of stupendous power in the hands of men who have no God in their hearts.

- (14) Any so-called freedom, if it is not under God, is under sentence of death.
- (15) I hope, and respectfully suggest, that every newspaper in the country, at least once before the Fourth of July, print on its front page the new Pledge of Allegiance with the words “under God” in bold-face type, so that all the people may know the new pledge of allegiance.

APPENDIX E**THE CONGRESSIONAL RECORD: 1949-1959****Congressional Record "Religion" Entries by Year, 1949-1959**

This bar graph was created by counting the number of entries under the heading “Religion” (and associated terms) in each Index volume of the Congressional Record for the years 1949 through 1959. For the five years from 1949-1953, there was an average of 3.2 entries. For the five years from 1955-1959, the average shot up to 176.6 ... a greater than fifty-fold increase!

These data clearly reveal the increased influence and involvement of religion in government (and of government in religion) that occurred contemporaneously with Congress mandating “In God We Trust” on the money and as the national motto. Two hundred sample titles (from 1954-1960) follow, after which are provided ten pages of Congressional Record excerpts. This evidence demonstrates that Congress’s activities did not stem from “history” or “patriotism.” Rather, the challenged legislation was unquestionably driven by a desire to use the machinery of the state to infuse government and society with the majority’s (Christian) monotheistic religious belief.

SELECTED CONGRESSIONAL RECORD INDEX ENTRIES
1954-1960

- | | |
|---|--|
| (1) Transcript of Back to God Program ¹ | (37) Our Prayers Could Change World ³⁷ |
| (2) Celebration, 300 years of Protestantism ² | (38) President Honored for Religious Aim ³⁸ |
| (3) Thank God for Freedom ³ | (39) What Did Jesus Believe About Wealth? ³⁹ |
| (4) City Under God ⁴ | (40) Who Are Disciples of Christ? ⁴⁰ |
| (5) Religion Versus Communism ⁵ | (41) Effect of Spiritual Guidance ⁴¹ |
| (6) Threats to Christianity and Democracy ⁶ | (42) I Speak for Christian Citizenship ⁴² |
| (7) Faith Versus Fear ⁷ | (43) One Nation Under God ⁴³ |
| (8) "Under God" this Nation lives ⁸ | (44) Communists versus God ⁴⁴ |
| (9) For God and Country ⁹ | (45) Atheists misquote George Washington ⁴⁵ |
| (10) Meditation, Christ, our hope ¹⁰ | (46) God: acknowledge in the Constitution ⁴⁶ |
| (11) Ninety-first Psalm ¹¹ | (47) Erection of Giant Cross ⁴⁷ |
| (12) Proceedings of Dedictory Prayer Breakfast ¹² | (48) Religion in American Life ⁴⁸ |
| (13) Dedication of Crucifix in Gary, Ind. ¹³ | (49) This I Believe ⁴⁹ |
| (14) Christian in Politics ¹⁴ | (50) Christian Impact ⁵⁰ |
| (15) Christians in Politics ¹⁵ | (51) Christian Life ⁵¹ |
| (16) Duty of Christian Politician ¹⁶ | (52) Love of Neighbor Is God's Guided Missile to Peace ⁵² |
| (17) Faith in Our Time ¹⁷ | (53) Need for Spiritual Values in These Times ⁵³ |
| (18) Faiths of Our Presidents ¹⁸ | (54) Our Holy Father ⁵⁴ |
| (19) Free Government Based on Faith ¹⁹ | (55) Place of God In Education ⁵⁵ |
| (20) God's Answer to Communism ²⁰ | (56) Religion Should Accompany Student ⁵⁶ |
| (21) No Coexistence of Religion and Communism ²¹ | (57) Seeking God's Way for World Peace ⁵⁷ |
| (22) One Hundred Years of Spiritual Blessing ²² | (58) Spiritual Statesmanship ⁵⁸ |
| (23) Strengthening America Under God ²³ | (59) Spiritual Strength in Cold War ⁵⁹ |
| (24) This Nation Under God ²⁴ | (60) Supplying Education with Religious Spirit ⁶⁰ |
| (25) We Pray or We Perish ²⁵ | (61) This Nation Under God ⁶¹ |
| (26) With Faith and Flag They Called It America ²⁶ | (62) World Must Choose Between Religion and Ruin ⁶² |
| (27) Beloved Man of God ²⁷ | (63) Christian and Jew ⁶³ |
| (28) Christian and Debt ²⁸ | (64) Eisenhower Should Lead Godly Against Reds ⁶⁴ |
| (29) Congressmen Get Prayer Room ²⁹ | (65) Man Who Sees Inside Heaven ⁶⁵ |
| (30) Drive to Erect World's Largest Cross ³⁰ | (66) Our Home and God ⁶⁶ |
| (31) God Meant Us To Find Atom ³¹ | (67) Prayer - Exposure to God ⁶⁷ |
| (32) God and U.N. ³² | |
| (33) Great Christian ³³ | |
| (34) Harvesting Lord's Acre ³⁴ | |
| (35) Has Your Home a Prayer Room? ³⁵ | |
| (36) Our Father's God to Thee ³⁶ | |

- (68) Religious Illiteracy Is Problem for Home⁶⁸
- (69) Supping With Devil⁶⁹
- (70) Thanks Be to Providence⁷⁰
- (71) The Christian Leader and Politics⁷¹
- (72) Worship and Work⁷²
- (73) World Day of Prayer⁷³
- (74) "I Met God There"⁷⁴
- (75) Christian amendment flier⁷⁵
- (76) Bible ABC Verses⁷⁶
- (77) Christ Did Not Wear Crown of Thorns To Teach Appeasement⁷⁷
- (78) Christianity, Patriotism, and Myth of National Communism⁷⁸
- (79) Faith That Built America⁷⁹
- (80) Role of Church in American Politics⁸⁰
- (81) Unfair Trial of Jesus⁸¹
- (82) Appeal to Churches⁸²
- (83) Apostolic Blessing⁸³
- (84) Christian in Politics⁸⁴
- (85) Christian Survival at Stake⁸⁵
- (86) Church Versus Dictatorships⁸⁶
- (87) Convert Russia Through Prayer⁸⁷
- (88) Cross Against Sky⁸⁸
- (89) Direction of Our Gratitude⁸⁹
- (90) Faith Is Target⁹⁰
- (91) God's Time⁹¹
- (92) Ideas Are God's Weapons for New World⁹²
- (93) Prayer Is Power⁹³
- (94) Why Not Teach Religion?⁹⁴
- (95) Church of Christ⁹⁵
- (96) Mobilizing religious influence⁹⁶
- (97) Prayer breakfast: proceedings⁹⁷
- (98) Amendment to Constitution recognizing God⁹⁸
- (99) Christian Reformed Church in America⁹⁹
- (100) Errors in trial of Jesus¹⁰⁰
- (101) Power of prayer¹⁰¹
- (102) Proceedings of sixth annual presidential prayer breakfast¹⁰²
- (103) Atheistic Character of Communism¹⁰³
- (104) Church-Related Colleges¹⁰⁴
- (105) Importance of Easter and Good Friday¹⁰⁵
- (106) Modern Delusions and God's Design¹⁰⁶
- (107) Politics and Christian Service¹⁰⁷
- (108) Antichrists on Prowl¹⁰⁸
- (109) Christ in Marketplace¹⁰⁹
- (110) Churches Under Open Skies¹¹⁰
- (111) Contemporary Church Heraldry in America¹¹¹
- (112) Has My Church Left Me?¹¹²
- (113) Holy Week Holds the Answer¹¹³
- (114) Moses, Prophets, Jesus Fought To Erase Inequality¹¹⁴
- (115) Opposes Asking God's Aid for United States¹¹⁵
- (116) 139 Joined Church During Crusade¹¹⁶
- (117) Presidential Prayer Breakfast¹¹⁷
- (118) Religious Imperatives and Foreign Aid¹¹⁸
- (119) Religious Overseas Aid¹¹⁹
- (120) Uriel, Flame of God¹²⁰
- (121) World Day of Prayer¹²¹
- (122) Yes; My Church Has Left Me - Thank God¹²²
- (123) Faith of our forefathers¹²³
- (124) Speak for Christian citizenship¹²⁴
- (125) Subsidy for ministers¹²⁵
- (126) Voting according to religious precepts¹²⁶
- (127) Spiritual faith of our fathers¹²⁷
- (128) Catholicism and politics¹²⁸
- (129) God, peace, and you¹²⁹
- (130) Protestantism speaks on justice and integration¹³⁰
- (131) Reaffirm Christian faith in Middle East crisis¹³¹
- (132) Essay: Christian Principles and Citizenship¹³²
- (133) Proceedings at presidential prayer breakfast¹³³
- (134) Aggressive Secularism Undermining Nation¹³⁴
- (135) Can-Do Christians¹³⁵
- (136) Catholic President?¹³⁶
- (137) Christian Amendment Resolution¹³⁷
- (138) Faith¹³⁸
- (139) Faith and Learning¹³⁹

- (140) For God and Country¹⁴⁰
- (141) In Remembrance of Him¹⁴¹
- (142) Our Religious Heritage¹⁴²
- (143) Religion Today¹⁴³
- (144) Religious Acknowledgements in Political Documents¹⁴⁴
- (145) Religious Education and Democracy¹⁴⁵
- (146) Spirituality and Prayer: Weapons Against Communism¹⁴⁶
- (147) Ten Commandments¹⁴⁷
- (148) Catholic Can Become President¹⁴⁸
- (149) Catholic in Politics¹⁴⁹
- (150) Christianity or Communism?¹⁵⁰
- (151) Christ United Church of Christ¹⁵¹
- (152) Christian Philosophy of Civil Government¹⁵²
- (153) Everybody Prays at Sholl's¹⁵³
- (154) Ex-Coach Blaik Believes in Prayer¹⁵⁴
- (155) Foreign Policy and Christian Conscience¹⁵⁵
- (156) Jesuit Denounces Racism as Pagan¹⁵⁶
- (157) Let's Not Forget Power of Faith¹⁵⁷
- (158) Man Sent From God¹⁵⁸
- (159) Our Religious Heritage¹⁵⁹
- (160) Sunday Change Shocks God Fearing¹⁶⁰
- (161) Will Science Ever Replace God?¹⁶¹
- (162) God and Mr. Dulles¹⁶²
- (163) Khrushchev, Nikita: minute of silent prayer to greet¹⁶³
- (164) American spiritual values versus Lenin and Marx¹⁶⁴
- (165) Lord's Day Observance¹⁶⁵
- (166) Vaughn Bible Class¹⁶⁶
- (167) We Believe in Prayer¹⁶⁷
- (168) We Pay Taxes for Sin¹⁶⁸
- (169) Lecture: Existence of God¹⁶⁹
- (170) Proceedings at Presidential Prayer breakfast¹⁷⁰
- (171) Text on broadcast on Christian amendment¹⁷¹
- (172) Christian amendment¹⁷²
- (173) Christ and Politics¹⁷³
- (174) Dedication of "In God We Trust" Plaque in Post Offices¹⁷⁴
- (175) Power of Prayer¹⁷⁵
- (176) Union of Church and State¹⁷⁶
- (177) Apostate Clergymen Battle for God-Hating Communist China¹⁷⁷
- (178) Christianity and Capital Punishment¹⁷⁸
- (179) Did God Attend the Summit?¹⁷⁹
- (180) Guide to Atheism¹⁸⁰
- (181) How Much God Is There in Government¹⁸¹
- (182) Jesus, the Perfect Man¹⁸²
- (183) Millennium of Christianization¹⁸³
- (184) Washington's Lady Ambassador for Christ¹⁸⁴
- (185) What Faith in God Has Meant to Me¹⁸⁵
- (186) Christian Citizenship¹⁸⁶
- (187) Faith by William Jennings Bryan¹⁸⁷
- (188) Shrine of the Immaculate Conception¹⁸⁸
- (189) Make yourself a rubberstamp for God¹⁸⁹
- (190) Religious qualifications for the Presidency¹⁹⁰
- (191) Spiritual values are our basic need¹⁹¹
- (192) Revised Standard Version of the Holy Bible: adoption of¹⁹²
- (193) World Day of Prayer¹⁹³
- (194) Bible: eternal source of strength¹⁹⁴
- (195) Bible: light that illumines the pathway¹⁹⁵
- (196) Good Shepherd and the abundant life¹⁹⁶
- (197) Holy Week¹⁹⁷
- (198) In the beginning God¹⁹⁸
- (199) Prayer rooms, U.S. Capitol¹⁹⁹
- (200) Psalm 23²⁰⁰

¹ 100-a Cong. Rec. A1204 (1954).
² 100-a Cong. Rec. A5288 (1954).
³ 100-a Cong. Rec. A5674 (1954).
⁴ 100-a Cong. Rec. A5519 (1954).
⁵ 100-a Cong. Rec. A5569 (1954).
⁶ 100-a Cong. Rec. A3187 (1954).
⁷ 100-a Cong. Rec. 13977 (1954).
⁸ 100-a Cong. Rec. 15828 (1954).
⁹ 100-a Cong. Rec. A5879 (1954).
¹⁰ 101-a Cong. Rec. 11120 (1955).
¹¹ 101-a Cong. Rec. 4767 (1955).
¹² 101-a Cong. Rec. 1212 (1955).
¹³ 101-a Cong. Rec. 6264 (1955).
¹⁴ 101-a Cong. Rec. 1698 (1955).
¹⁵ 101-a Cong. Rec. A129 (1955).
¹⁶ 101-a Cong. Rec. 8792 (1955).
¹⁷ 101-a Cong. Rec. A4822 (1955).
¹⁸ 101-a Cong. Rec. A4625 (1955).
¹⁹ 101-a Cong. Rec. A2167 (1955).
²⁰ 101-a Cong. Rec. A2057 (1955).
²¹ 101-a Cong. Rec. 275 (1955).
²² 101-a Cong. Rec. A505 (1955).
²³ 101-a Cong. Rec. 11111 (1955).
²⁴ 101-a Cong. Rec. A2982 (1955).
²⁵ 101-a Cong. Rec. A3247 (1955).
²⁶ 101-a Cong. Rec. A145 (1955).
²⁷ 101-a Cong. Rec. A150 (1955).
²⁸ 101-a Cong. Rec. A2262 (1955).
²⁹ 101-a Cong. Rec. A836 and A1211 (1955).
³⁰ 101-a Cong. Rec. 2872 (1955).
³¹ 101-a Cong. Rec. 2853 (1955).
³² 101-a Cong. Rec. A4664 (1955).
³³ 101-a Cong. Rec. A742 (1955).
³⁴ 101-a Cong. Rec. A1972 (1955).
³⁵ 101-a Cong. Rec. A5881 (1955).
³⁶ 101-a Cong. Rec. A2149 (1955).
³⁷ 101-a Cong. Rec. A786 (1955).
³⁸ 101-a Cong. Rec. A3368 (1955).
³⁹ 101-a Cong. Rec. A4210 (1955).
⁴⁰ 101-a Cong. Rec. A1953 (1955).
⁴¹ 101-a Cong. Rec. 4942, A2945, A2946, A2987, A2990, A2991, A2996, and A5468 (1955).
⁴² 101-a Cong. Rec. A3151 (1955).
⁴³ 101-a Cong. Rec. A3154 (1955).
⁴⁴ 101-a Cong. Rec. 6265 (1955).
⁴⁵ 101-a Cong. Rec. 13135 (1955).
⁴⁶ 101-a Cong. Rec. 6848 (1955).
⁴⁷ 101-a Cong. Rec. 4400 (1955).
⁴⁸ 101-a Cong. Rec. 3217 (1955).

⁴⁹ 101-a Cong. Rec. 6603 (1955).
⁵⁰ 102-a Cong. Rec. A1957 (1956).
⁵¹ 102-a Cong. Rec. A6037 (1956).
⁵² 102-a Cong. Rec. A1589 (1956).
⁵³ 102-a Cong. Rec. A542 (1956).
⁵⁴ 102-a Cong. Rec. A4893 (1956).
⁵⁵ 102-a Cong. Rec. A2131 (1956).
⁵⁶ 102-a Cong. Rec. A2659 (1956).
⁵⁷ 102-a Cong. Rec. 2272 (1956).
⁵⁸ 102-a Cong. Rec. 4547 (1956).
⁵⁹ 102-a Cong. Rec. 9454 (1956).
⁶⁰ 102-a Cong. Rec. A4122 (1956).
⁶¹ 102-a Cong. Rec. A3533 and 9277 (1956).
⁶² 102-a Cong. Rec. A429 (1956).
⁶³ 102-a Cong. Rec. A2803 (1956).
⁶⁴ 102-a Cong. Rec. A452 (1956).
⁶⁵ 102-a Cong. Rec. A5129 (1956).
⁶⁶ 102-a Cong. Rec. 6895 (1956).
⁶⁷ 102-a Cong. Rec. A1493 (1956).
⁶⁸ 102-a Cong. Rec. A1650 (1956).
⁶⁹ 102-a Cong. Rec. A5842 and A6209 (1956).
⁷⁰ 102-a Cong. Rec. A3960 (1956).
⁷¹ 102-a Cong. Rec. 8031 (1956).
⁷² 102-a Cong. Rec. A5366 (1956).
⁷³ 102-a Cong. Rec. 2751 (1956).
⁷⁴ 102-a Cong. Rec. 1519 (1956).
⁷⁵ 102-a Cong. Rec. A700 (1956).
⁷⁶ 103-a Cong. Rec. A4891 (1957).
⁷⁷ 103-a Cong. Rec. A2221 (1957).
⁷⁸ 103-a Cong. Rec. A291 (1957).
⁷⁹ 103-a Cong. Rec. A4008 (1957).
⁸⁰ 103-a Cong. Rec. A4184 (1957).
⁸¹ 103-a Cong. Rec. 8121 (1957).
⁸² 103-a Cong. Rec. A4124 (1957).
⁸³ 103-a Cong. Rec. A45 (1957).
⁸⁴ 103-a Cong. Rec. A4236 (1957).
⁸⁵ 103-a Cong. Rec. A532 (1957).
⁸⁶ 103-a Cong. Rec. A5220 (1957).
⁸⁷ 103-a Cong. Rec. A1008 (1957).
⁸⁸ 103-a Cong. Rec. A3083 (1957).
⁸⁹ 103-a Cong. Rec. A1512 (1957).
⁹⁰ 103-a Cong. Rec. A2671 (1957).
⁹¹ 103-a Cong. Rec. A1357 (1957).
⁹² 103-a Cong. Rec. A4515 (1957).
⁹³ 103-a Cong. Rec. A3467 (1957).
⁹⁴ 103-a Cong. Rec. A7212 (1957).
⁹⁵ 103-a Cong. Rec. A154 (1957).
⁹⁶ 103-a Cong. Rec. 8249 (1957).
⁹⁷ 103-a Cong. Rec. 2085 (1957).
⁹⁸ 103-a Cong. Rec. 234 (1957).
⁹⁹ 103-a Cong. Rec. 6128 (1957).

¹⁰⁰ 103-a Cong. Rec. 5848 (1957).
¹⁰¹ 103-a Cong. Rec. 2452 (1957).
¹⁰² 104-a Cong. Rec. 2192 (1958).
¹⁰³ 104-a Cong. Rec. A32 (1958).
¹⁰⁴ 104-a Cong. Rec. A3246 (1958).
¹⁰⁵ 104-a Cong. Rec. A3578 (1958).
¹⁰⁶ 104-a Cong. Rec. A2159 (1958).
¹⁰⁷ 104-a Cong. Rec. 10790 (1958).
¹⁰⁸ 104-a Cong. Rec. A2214 (1958).
¹⁰⁹ 104-a Cong. Rec. A5975 (1958).
¹¹⁰ 104-a Cong. Rec. A6724 (1958).
¹¹¹ 104-a Cong. Rec. A1257 (1958).
¹¹² 104-a Cong. Rec. A3993 (1958).
¹¹³ 104-a Cong. Rec. A3199 (1958).
¹¹⁴ 104-a Cong. Rec. A883 (1958).
¹¹⁵ 104-a Cong. Rec. A2494 (1958).
¹¹⁶ 104-a Cong. Rec. A690 (1958).
¹¹⁷ 104-a Cong. Rec. A1119 (1958).
¹¹⁸ 104-a Cong. Rec. 6283 (1958).
¹¹⁹ 104-a Cong. Rec. A927 (1958).
¹²⁰ 104-a Cong. Rec. A3253 (1958).
¹²¹ 104-a Cong. Rec. A1606 (1958).
¹²² 104-a Cong. Rec. A4976 (1958).
¹²³ 104-a Cong. Rec. A4646 (1958).
¹²⁴ 104-a Cong. Rec. A5262 (1958).
¹²⁵ 104-a Cong. Rec. A869 (1958).
¹²⁶ 104-a Cong. Rec. A7215 (1958).
¹²⁷ 104-a Cong. Rec. 18591 (1958).
¹²⁸ 104-a Cong. Rec. A7518 (1958).
¹²⁹ 104-a Cong. Rec. A3088 (1958).
¹³⁰ 104-a Cong. Rec. 1918 (1958).
¹³¹ 104-a Cong. Rec. A7264 (1958).
¹³² 105-a Cong. Rec. A4622 (1959).
¹³³ 105-a Cong. Rec. 4418 (1959).
¹³⁴ 105-a Cong. Rec. A8440 (1959).
¹³⁵ 105-a Cong. Rec. A1524 (1959).
¹³⁶ 105-a Cong. Rec. A5345 (1959).
¹³⁷ 105-a Cong. Rec. 6158 (1959).
¹³⁸ 105-a Cong. Rec. A174 (1959).
¹³⁹ 105-a Cong. Rec. A4918 (1959).
¹⁴⁰ 105-a Cong. Rec. A1966 (1959).
¹⁴¹ 105-a Cong. Rec. A3369 (1959).
¹⁴² 105-a Cong. Rec. 9499 (1959).
¹⁴³ 105-a Cong. Rec. A7022 (1959).
¹⁴⁴ 105-a Cong. Rec. A1125 (1959).
¹⁴⁵ 105-a Cong. Rec. A7057 (1959).
¹⁴⁶ 105-a Cong. Rec. A8446 (1959).
¹⁴⁷ 105-a Cong. Rec. A7354 (1959).
¹⁴⁸ 105-a Cong. Rec. 3482 (1959).
¹⁴⁹ 105-a Cong. Rec. 12008 (1959).
¹⁵⁰ 105-a Cong. Rec. A4465 (1959).

¹⁵¹ 105-a Cong. Rec. A5375 (1959).
¹⁵² 105-a Cong. Rec. A4536 (1959).
¹⁵³ 105-a Cong. Rec. A4718 (1959).
¹⁵⁴ 105-a Cong. Rec. A1529 (1959).
¹⁵⁵ 105-a Cong. Rec. A4653 (1959).
¹⁵⁶ 105-a Cong. Rec. A4950 (1959).
¹⁵⁷ 105-a Cong. Rec. A1278 (1959).
¹⁵⁸ 105-a Cong. Rec. A5186 (1959).
¹⁵⁹ 105-a Cong. Rec. A5838 (1959).
¹⁶⁰ 105-a Cong. Rec. A6542 (1959).
¹⁶¹ 105-a Cong. Rec. A3542 (1959).
¹⁶² 105-a Cong. Rec. A648 (1959).
¹⁶³ 105-a Cong. Rec. 17448 (1959).
¹⁶⁴ 105-a Cong. Rec. 5346 (1959).
¹⁶⁵ 105-a Cong. Rec. A6540 (1959).
¹⁶⁶ 105-a Cong. Rec. A1568 (1959).
¹⁶⁷ 105-a Cong. Rec. A1573 (1959).
¹⁶⁸ 105-a Cong. Rec. A4315 (1959).
¹⁶⁹ 106-a Cong. Rec. 13735 (1960).
¹⁷⁰ 106-a Cong. Rec. 3591 (1960).
¹⁷¹ 106-a Cong. Rec. A478 and A410 (1960).
¹⁷² 106-a Cong. Rec. A1538 (1960).
¹⁷³ 106-a Cong. Rec. A6547 (1960).
¹⁷⁴ 106-a Cong. Rec. A5504 (1960).
¹⁷⁵ 106-a Cong. Rec. 15044 (1960).
¹⁷⁶ 106-a Cong. Rec. A1578 (1960).
¹⁷⁷ 106-a Cong. Rec. A1476 (1960).
¹⁷⁸ 106-a Cong. Rec. A6053 (1960).
¹⁷⁹ 106-a Cong. Rec. A5421 (1960).
¹⁸⁰ 106-a Cong. Rec. A5601 (1960).
¹⁸¹ 106-a Cong. Rec. 3903 and 9337 (1960).
¹⁸² 106-a Cong. Rec. A3291 (1960).
¹⁸³ 106-a Cong. Rec. A2563 (1960).
¹⁸⁴ 106-a Cong. Rec. A404 (1960).
¹⁸⁵ 106-a Cong. Rec. 17414 (1960).
¹⁸⁶ 106-a Cong. Rec. A3910 (1960).
¹⁸⁷ 106-a Cong. Rec. 6744 (1960).
¹⁸⁸ 106-a Cong. Rec. A170 (1960).
¹⁸⁹ 106-a Cong. Rec. A5895 (1960).
¹⁹⁰ 106-a Cong. Rec. A5673 (1960).
¹⁹¹ 106-a Cong. Rec. A6441 (1960).
¹⁹² 106-a Cong. Rec. 8272 (1960).
¹⁹³ 106-a Cong. Rec. 6009 (1960).
¹⁹⁴ 106-a Cong. Rec. 8708 (1960).
¹⁹⁵ 106-a Cong. Rec. 8849 (1960).
¹⁹⁶ 106-a Cong. Rec. 12072 (1960).
¹⁹⁷ 106-a Cong. Rec. 8070 (1960).
¹⁹⁸ 106-a Cong. Rec. 10519 (1960).
¹⁹⁹ 106-a Cong. Rec. 3403 (1960).
²⁰⁰ 106-a Cong. Rec. 8850 (1960).

SELECTED EXCERPTS FROM THE CONGRESSIONAL RECORD
Circa 1954¹

“I think that the criminal flood is an inescapable result of our earlier failure to teach God convincingly to the youthful unfortunates who are our juvenile delinquents of today and who will be our adult criminals of tomorrow.”²

“Without these words, ... the pledge ignores a definitive factor in the American way of life and that factor is belief in God.”³

“[T]he fundamental issue which is the unbridgeable gap between America and Communist Russia is a belief in Almighty God.”³

“From the root of atheism stems the evil weed of communism.”³

“An atheistic American ... is a contradiction in terms.”³

“[T]he American way of life is ... ‘a way of life that sees man as a sentient being created by God and seeking to know His will, whose soul is restless till he rests in God.’”³

“From their earliest childhood our children must know the real meaning of America. Children and Americans of all ages must know that this is one Nation which ‘under God’ means ‘liberty and justice for all.’”³

“[T]he fundamental basis of our Government is the recognition that all lawful authority stems from Almighty God.”⁴

“[W]e recognize the spiritual origins and traditions of our country as our real bulwark against atheistic communism.”⁴

“[O]nly under God will our beloved country continue to be a citadel of freedom.”⁴

“The pledge of allegiance should be proclaimed in the spirit ... recogni[zing] God as the Creator of mankind, and the ultimate source both of the rights of man and of the powers of government.”⁵

¹ These quotations were originally used in Plaintiff’s prior challenge to “under God” in the Pledge of Allegiance. *Elk Grove Unified Sch. Dist. v. Newdow*, 124 S. Ct. 2301 (2004). They are just as pertinent in revealing how the political climate of the 1950s was permeated with (Christian) monotheism, which Congress was intent on infusing into society.

² 99 Cong. Rec. 12 (Appendix), A4155 (May 22, 1953) (Attributed to J. Edgar Hoover in article inserted into the record by Rep. Louis C. Rabaut, sponsor of the House resolution to insert the words “under God” into the previously secular Pledge of Allegiance)

³ 100 Cong. Rec. 2, 1700 (Feb. 12, 1954) (Statement of Rep. Louis C. Rabaut, sponsor of the House resolution to insert the words “under God” into the previously secular Pledge of Allegiance)

⁴ 100 Cong. Rec. 17 (Appendix), A2515-A2516 (Apr. 1, 1954) (Statement of Rep. Louis C. Rabaut, sponsor of the House resolution to insert the words “under God” into the previously secular Pledge of Allegiance)

“Certainly, in these days of great challenge to America, one can hardly think of a more inspiring symbolic deed than for America to reaffirm its faith in divine providence.”⁶

“What better training for our youngsters could there be than to have them, each time they pledge allegiance to Old Glory, reassert their belief, like that of their fathers and their fathers before them, in the all-present, all-knowing, all-seeing, all-powerful Creator.”⁶

“[I]n times like these when Godless communism is the greatest peril this Nation faces, it becomes more necessary than ever to avow our faith in God and to affirm the recognition that the core of our strength comes from Him.”⁷

“Hence it is fitting that those two profoundly meaningful words “under God” should be included in the pledge of allegiance so that we and our children, who recite the pledge far more often than adults, may be reminded that spiritual strength derived from God is the source of all human liberty.”⁷

“[The] principles of the worthwhileness of the individual human being are meaningless unless there exists a Supreme Being.”⁸

“It is the Nation itself which was born and lives ‘under God.’”⁸

“[T]he one fundamental issue which is the unbridgeable gap between America and Communist Russia is belief in Almighty God.”⁸

“More importantly, the children of our land, in the daily recitation of the pledge in school, will be daily impressed with a true understanding of our way of life and its origins. ... Fortify our youth in their allegiance to the flag by their dedication to ‘one Nation, under God.’”⁸

“He is the God, undivided by creed, to whom we look, in the final analysis, for the well-being of our Nation. Therefore, when we make our pledge to the flag I believe it fitting that we recognize by words what our faith has always been.”⁹

⁵ 100 Cong. Rec. 4, 5069 (Apr. 13, 1954) (Statement of Rep. Peter W. Rodino, Jr. in support of the resolution to insert the words “under God” into the previously secular Pledge of Allegiance)

⁶ 100 Cong. Rec. 5, 5915 (May 4, 1954) (Statement of Sen. Alexander Wiley in support of Sen. Ferguson’s resolution to insert the words “under God” into the previously secular Pledge of Allegiance)

⁷ 100 Cong. Rec. 5, 5915 (May 4, 1954) (Milwaukee Sentinel editorial printed in the Congressional Record – with the unanimous consent of the Senate – as requested by Sen. Alexander Wiley in support of Sen. Ferguson’s resolution to insert the words “under God” into the previously secular Pledge of Allegiance)

⁸ 100 Cong. Rec. 5, 6077-6078 (May 5, 1954) (Statement of Rep. Louis C. Rabaut, sponsor of the House resolution to insert the words “under God” into the previously secular Pledge of Allegiance)

⁹ 100 Cong. Rec. 5, 6085 (May 5, 1954) (Statement of Rep. Francis E. Dorn, supporting passage of House Joint Resolution 502 which sought to insert the words “under God” into the previously secular Pledge of Allegiance)

It is a “fundamental truth ... that a government deriving its powers from the consent of the governed must look to God for divine leadership.”¹⁰

“We are asking that only two words be added to the Pledge of Allegiance, but they are very significant words.”¹¹

“[T]he Pledge of Allegiance to the Flag which stands for the United States of America should recognize the Creator who we really believe is in control of the destinies of this great Republic.”¹¹

“It is true that under the Constitution no power is lodged anywhere to establish a religion. This is not an attempt to establish a religion; it has nothing to do with anything of that kind. It relates to belief in God, in whom we sincerely repose our trust.”¹¹

“Appropriations and expenditures for defense will be of value only if the God under whom we live believes that we are in the right. We should at all times recognize God’s province over the lives of our people and over this great Nation.”¹¹

“[The Pledge] is not only a pledge of words but also of belief.”¹¹

“[B]elief in God is part of our very lives.”¹¹

“The United States is one of the outstanding nations of the world standing foursquare on the principle that God governs the affairs of men.”¹²

“Billy Graham [said,] ‘We have dropped our pilot, the Lord Jesus Christ, and are sailing blindly on without divine chart or compass.’”¹²

“[I]t is well that when the pledge of allegiance to the flag is made by every loyal citizen and by the schoolchildren of America, there should be embodied in the pledge our allegiance and faith in Almighty God. The addition of the words ‘under God’ will accomplish this purpose.”¹²

“[W]hen Francis Bellamy wrote this stirring pledge, the pall of atheism had not yet spread its hateful shadow over the world, and almost everyone acknowledged the dominion of Almighty God.”¹³

¹⁰ S. Rep. No. 1287, 83rd Cong., 2d Sess. 2, reprinted in 100 Cong. Rec. 5, 6231 (May 10, 1954) (Letter of Sen. Homer Ferguson, sponsor of the Senate resolution to insert the words “under God” into the previously secular Pledge of Allegiance, to Sen. William Langer, Chairman of the Senate Judiciary Committee, March 10, 1954)

¹¹ 100 Cong. Rec. 5, 6348 (May 11, 1954) (Sen. Homer Ferguson’s explanation of the joint resolution to insert the words “under God” into the previously secular Pledge of Allegiance, to Sen. William Langer, Chairman of the Senate Judiciary Committee, March 10, 1954)

¹² 100 Cong. Rec. 5, 6919 (May 20, 1954) (Rep. Homer D. Angell’s remarks on the joint resolution to insert the words “under God” into the previously secular Pledge of Allegiance)

¹³ 100 Cong. Rec. 18 (Appendix), A3448 (May 11, 1954) (Letter entered into the record by Rep. George H. Fallon. This was “[p]assed without a single dissenting vote, and later adopted by the DAR,

“[N]ow that the militant atheistic Red menace is abroad in our land, it behooves us to remind the free people of these United States that they are utterly at the mercy of God.”¹³

“Now that pagan philosophies have been introduced by the Soviet Union, there is a necessity for reaffirming belief in God.”¹⁴

“I appear here today in support of any and all bills that would serve to recognize the power and universality of God in our pledge of allegiance.”¹⁵

“The inclusion of God in our pledge would acknowledge the dependence of our people, and our Government upon the moral direction and the restraints of religion.”¹⁵

“The significant import of our action today ... is that we are officially recognizing once again this Nation’s adherence to our belief in a divine spirit, and that henceforth millions of our citizens will be acknowledging this belief every time they pledge allegiance to our flag.”¹⁶

“How fitting that we here today should take action to once more affirm our belief in ... the guidance of a divine spirit.”¹⁶

“Once again we are proclaiming to the world that ... the flag which flies over our land is a symbol of a nation and of a people under God.”¹⁶

“[T]his measure is more than one of passing importance. It goes to the very fundamentals of life and creation. It recognizes that all things which we have in the way of life, liberty, constitutional government, and rights of man are held by us under the divine benediction of the Almighty. There is a hope and a hereafter in these two words and they, of course, should be included in the pledge of allegiance to Old Glory.”¹⁷

“One thing separates free peoples of the Western World from the rabid Communist, and this one thing is a belief in God. In adding this one phrase to our pledge of allegiance to our flag, we in effect declare openly that we denounce the pagan doctrine of communism and declare ‘under God’ in favor of free government and a free world.”¹⁷

“Fortify our youth in their allegiance to the flag by their dedication to ‘one nation under God.’”¹⁸

the Flag House Association, the VFW, the DAV, sections of the American Legion ..., incorporated in the pledge at the ‘I Am An American Day’ ... etc., etc.”)

¹⁴ 100 Cong. Rec. 18 (Appendix), A4066 (May 24, 1954) (Newspaper article from the Malden (Mass.) Press of May 13, 1954, entered into the record by Rep. Angier L. Goodwin.)

¹⁵ 100 Cong. Rec. 6, 7590-7591 (June 2, 1954) (Rep. John R. Pillion’s statement provided on May 5, 1954 to Subcommittee No. 5 of the House Committee on the Judiciary.)

¹⁶ 100 Cong. Rec. 6, 7757 (June 7, 1954) (Statement of Rep. Oliver P. Bolton in support of the joint resolution to amend the previously secular Pledge.)

¹⁷ 100 Cong. Rec. 6, 7758 (June 7, 1954) (Statement of Rep. Brooks in support of the joint resolution to amend the previously secular Pledge.)

¹⁸ 100 Cong. Rec. 6, 7759 (June 7, 1954) (Statement of Rep. Louis C. Rabaut in support of the joint resolution to amend the previously secular Pledge.)

“Regaining our reverence for God we in America in this 20th century can rediscover our own value and the solid basis on which it rests.”¹⁹

“The first sentence of section 7 of the joint resolution (36 U.S.C. sec. 172), as amended, ‘one Nation indivisible under God,’ is a realistic recognition of the theological and philosophical truth – the existence of a Supreme Being.”²⁰

“When the forces of anti-God and antireligion so persistently spread their dangerous and insidious propaganda, it is wholesome for us to have constantly brought to our minds the fact that, mighty and essential as armed strength may be, it is the strength of the spirit and the moral force generated by the righteousness of our cause and the purity of our motives to which we must ultimately look for salvation from destruction and for triumph over the evil forces that best us.”²¹

“Faith in God ... has never been misplaced. House Joint Resolution 243 is a proclamation to all the world and to ourselves, ever to keep us mindful and prayerful, that the United States of America is in truth and in the acknowledged fact, a ‘Nation under God.’”²²

“This [is a] victory for God and country.”²²

“[The joint resolution] seems to have struck a note of universal approval, indicating an underlying acknowledgement of our indebtedness to God and our dependence upon Him.”²³

“At this moment of our history the principles underlying our American Government and the American way of life are under attack by a system that does not believe in God. A system that denies the existence of God.”²³

“Thus, the inclusion of God in our pledge of allegiance rightly and most appropriately acknowledges the dependence of our people and our Government upon that divinity that rules over the destinies of nations as well as individuals.”²³

“The God of nations who helped in bringing to a successful conclusion the war of independence, has never ceased to control the destiny of this great Nations, and I trust He never will.”²³

¹⁹ 100 Cong. Rec. 6, 7759 (June 7, 1954) (Statement of Rep. Charles G. Oakman in support of the joint resolution to amend the previously secular Pledge.)

²⁰ 100 Cong. Rec. 6, 7760 (June 7, 1954) (Letter written by the Chairman of the Department of Political Science at the University of Detroit, placed into the record by Rep. Brooks in support of the joint resolution to amend the previously secular Pledge.)

²¹ 100 Cong. Rec. 6, 7760 (June 7, 1954) (Statement of Rep. Keating in support of the joint resolution to amend the previously secular Pledge.)

²² 100 Cong. Rec. 6, 7761-7762 (June 7, 1954) (Statement of Rep. Barratt O’Hara in support of the joint resolution to amend the previously secular Pledge.)

²³ 100 Cong. Rec. 6, 7762-7763 (June 7, 1954) (Statement of Rep. Wolverton in support of the joint resolution to amend the previously secular Pledge.)

“[O]ne of the greatest differences between the free world and the Communists [is] a belief in God. The spiritual bankruptcy of the Communists is one of our strongest weapons in the struggle for men’s minds and this resolution gives us a new means of using that weapon.”²³

“The use of the phrase ‘under God’ in the pledge of allegiance to the flag sets forth in a mere two words, but, very strong and meaningful words, the fundamental faith and belief of America in the overruling providence of God and our dependence at all times upon Him.”²³

“The recitation of this acknowledgement that God is the foundation of our Nation will be of incalculable value, all through the years, of ever keeping vividly before our people, including our children who from earliest childhood, pledge their allegiance to the flag, that the real source of our strength in the future, as in the past, is God.”²³

“[T]he Government and people of America have recognized the necessity of doing the will of God as we see it, and of relying for our strength and welfare on the protection of His divine providence.”²⁴

“To insert these two words in the pledge ... would be the most forceful possible defiance of the militant atheism and ‘dialectical materialism’ that are identified with Russian and international communism.”²⁴

“[W]e wish now, with no ambiguity or reservation, to place ourselves under the rule and care of God.”²⁴

“We Members of Congress ... felt and acted on the popular urge to give expression to the conviction that our deliberations should be publicly and tangibly submitted to the guidance of God.”²⁴

“[W]e do well to once more publicly and officially affirm our faith.”²⁵

“[O]ur citizenship is of no real value to us unless our hearts speak in accord with our lips; and unless we can open our souls before God and before Him conscientiously say, ‘I am an American.’”²⁶

“God is the symbol of liberty to America.”²⁶

“The amendment to the pledge of allegiance to the flag, by inserting the words ‘under God,’ is a simple device by which we can verbally proclaim our intense desire to continue this land as ‘one Nation, under God, indivisible.’”²⁶

²⁴ 100 Cong. Rec. 6, 7763-7764 (June 7, 1954) (Statement of Rep. Peter W. Rodino, Jr. in support of the joint resolution to amend the previously secular Pledge. Amazingly, included in this statement were the words “I am firmly of the opinion that our Founding Fathers ... meant to prevent ... any provision of law that could raise one form of religion to a position of preference over others.”)

²⁵ 100 Cong. Rec. 6, 7764 (June 7, 1954) (Statement of Rep. Oliver P. Bolton in support of the joint resolution to amend the previously secular Pledge.)

²⁶ 100 Cong. Rec. 6, 7765-7766 (June 7, 1954) (Statement of Rep. Hugh J. Addonizio in support of the joint resolution to amend the previously secular Pledge.)

“[L]iberty, justice, and human equality ... are man’s own heritage from God.”²⁶

“Never before in our national history have so many diverse groups enjoyed such a complete measure of religious freedom as exists in the United States today. But it is even more inspiring to realize that these religious groups are all working ‘under God’ in their own ways, to help solve the problems which characterize our troubled era.”²⁶

“A child’s belief in spiritual values is beautiful to behold.”²⁶

“I believe it to be of great importance that we as a Nation recognize a higher power than ourselves in the guidance of our existence. This joint resolution recognizes that we believe there is a Divine Power, and that we, our children, and our children’s children should always recognize it.”²⁷

“I believe we should trust in God and we should recognize that God is guiding our destiny and the hopes and aspirations of this Nation.”²⁷

“It is so fitting that we declare to the world, in our position as leader among the sister nations of the earth, our dependence upon Almighty God.”²⁸

“In my experience as a public servant and as a Member of Congress I have never seen a bill which was so noncontroversial in nature or so inspiring in purpose.”²⁹

“I am proud to have been associated with this effort that produced this legislation which recognizes the importance of divine guidance in our national affairs.”²⁹

“We see the pledge, as it now stands, as a formal declaration of our duty to serve God and our firm reliance, now as in 1776, on the protection of divine providence.”³⁰

“To put the words ‘under God’ on millions of lips is like running up the believer’s flag as the witness of a great nation’s faith.”³¹

²⁷ 100 Cong. Rec. 6, 7833-7834 (June 8, 1954) (Statement of Sen. Homer Ferguson in support of the joint resolution to amend the previously secular Pledge.)

²⁸ 100 Cong. Rec. 6, 7935 (June 9, 1954) (Letter from Rep. Louis C. Rabaut to President Eisenhower, informing him of the passage in Congress of the joint resolution to amend the previously secular Pledge.)

²⁹ 100 Cong. Rec. 6, 7989 (June 10, 1954) (Statement of Rep. Charles G. Oakman recounting the passage of the joint resolution to amend the previously secular Pledge.)

³⁰ 100 Cong. Rec. 7, 8563 (June 22, 1954) (Statement of Sen. Burke, submitting a resolution to provide for printing of the now sectarian Pledge as a Senate document. Sen. Burke also noted that the resolution adding “under God” to the previously secular Pledge “had been passed by House and Senate with no opposition.”)

³¹ 100 Cong. Rec. 7, 8617-8618 (June 22, 1954) (Statement of Sen. Homer Ferguson, reviewing the meaning of the new law that added “under God” to the previously secular Pledge, and recapping the events of that first Flag Day celebration with the new Pledge.)

“[A]s the flag was raised a bugle rang out with the familiar strains of ‘Onward, Christian Soldiers!’”³¹

“From this day forward, the millions of our school children will daily proclaim in every city and town, every village and rural schoolhouse, the dedication of our Nation and our people to the Almighty.”³²

“It is my belief that an extensive circulation of these printed copies of the Pledge of Allegiance to the Flag will imprint, indelibly, upon the minds of those who read them, whether they be young or old, that their great Nation, these United States, exists and endures purposefully ‘Under God.’”³³

“Freedom in a world faced with this interminable conflict between communism and Christianity will survive only so long as freemen are willing to fight for that precious principle.”³⁴

“You have learned that you live in a free nation composed of free men and women who are willing to sacrifice all they possess, as did their forefathers, to preserve the Christian principles of a free nation under God.”³⁴

“Today we express ... our national dependence upon almighty God by pledging, as a nation, our allegiance to the Stars and Stripes.”³⁵

“Wherever this banner is unfurled there is hope in the hearts of men who believe that God created man and destined him to be free.”³⁵

“[T]he need now is for the Christian ideas to neutralize the preponderance of material know-how. ... We cannot afford to capitulate to the atheistic philosophies of godless men – we must strive to ever remind the world that this great Nation has been endowed by a creator.”³⁵

“The sordid records of the divorce courts, of the juvenile delinquency case histories, the tragedy of broken homes, wandering families, of the cheap price put on human life, the old heads on young children, the disrespect for authority, the contempt for law, the chiseling among those in authority, the lack of honor among the citizenry – all of this is the shame of America, the open sores of her secularist spirit.”³⁶

³² 100 Cong. Rec. 7, 8618 (June 22, 1954) (Statement by President Dwight D. Eisenhower, as reported by Sen. Ferguson.)

³³ 100 Cong. Rec. 7, 8893 (June 24, 1954) (Statement of Rep. Louis C. Rabaut submitting a resolution to provide for printing of the now sectarian Pledge as a House document.)

³⁴ 101 Cong. Rec. 6, 8073 (June 13, 1955) (From text of address given by Rep. Martin at the joint commissioning ceremonies for Army, Navy and Air Force ROTC graduates at Dartmouth College, June 11, 1955.)

³⁵ 101 Cong. Rec. 6, 8156 (June 14, 1955) (Rep. Louis C. Rabaut’s statement during the 1955 Flag Day ceremonies.)

³⁶ 101 Cong. Rec. 18 (Appendix), A5920-A5921 (Aug. 2, 1955) (Article submitted by Rep. Louis C. Rabaut, sponsor of the House resolution to insert the words “under God” into the previously secular Pledge.)

“If we have no rights under God, then America has no purpose of existence. For America is all that she is simply because she recognizes our rights under God.”³⁶

“The further men move from God and His principles, the worse it will be for America.”³⁶

“Our people without God would be a people reading the death warrant to real American freedom.”³⁶

“[The] right to profess God-given principles, to practice God-given commandments, and to live God-ordered lives ... is America and will always be America. There is no other pattern of life that can bear this trademark.”³⁶

“It is time that we really be neighbors in the Christian sense, that we live as neighbors, and have trust one for the other. This is the American way; this is God’s way.”³⁶

“Only God-fearing men can guarantee to America her greatness, her survival, and her continued blessings.”³⁶

“As these words are repeated, ‘one Nation, under God, indivisible, with liberty and justice for all,’ we are reminded not only of our dependence upon God but likewise the assurance of security that can be ours through reliance upon God.”³⁷

“These words, ‘under God,’ ... can be taken as evidence of our faith in that divine source of strength that has meant and always will mean so much to us as a nation.”³⁷

“Let us never forget that recognition of God by this and the other nations of the free world will mean victory and security against the forces of evil that deny God. May we, as a nation under God, ever recognize Him as the source of our refuge and strength.”³⁷

“These principles of the worthwhileness of the individual human being are meaningless unless there exists a Supreme Being.”³⁸

“‘Under God’ in the pledge of allegiance to the flag expresses, aptly and forcefully, a grateful nation’s attitude of dependence upon Almighty God.”³⁸

“For under God this Nation lives.”³⁸

“Our political institutions reflect the traditional American conviction of the worthwhileness of the individual human being. That conviction, in turn, is based on our belief that the human person is important because he has been created in the image and likeness of God and that he has been endowed by God with certain inalienable rights.”³⁸

³⁷ 100 Cong. Rec. 11, 14918-14919 (Aug. 17, 1954) (Remarks of Rep. Wolverton entitled “One Nation – Under God.”)

³⁸ 100 Cong. Rec. 12, 15828-15829 (Aug. 20, 1954) (Remarks of Rep. Louis C. Rabaut, sponsor of the House resolution placing the words “under God” into the previously secular Pledge.)

APPENDIX F**THE CURRENT SECTARIAN MOTTO CONTINUES TO FOSTER AND
ACCENTUATE THE GOVERNMENTAL ENDORSEMENT OF MONOTHEISM
AND DISAPPROVAL OF ATHEISM**

Since the passage of the Acts of 1955 and 1956, the official view that monotheism is superior to atheism (and that atheism is actually bad) has been perpetuated among the citizenry. This can be seen in myriad ways. For instance, there recently was a controversy in Cupertino, California regarding a teacher's emphasis on God-belief and Christianity in the public schools. In a *Los Angeles Times* story, "Web-fueled attacks labeling the school godless, unpatriotic and communist" were noted.¹ Additionally, the superintendent apparently never thought twice as he assembled together the three descriptors, "communists, stupid, nonbelieving."² Governmental claims that we, as a nation, trust in God most assuredly contribute to this mindset, and to the manifestly erroneous notion that "[r]ecognition of the Supreme Being is the first, most basic expression of Americanism."³ Would our governmental officials simply accept that "the first, most basic expression of Americanism" is "recognition that Jesus Christ is Lord?" How about "recognition of white racial superiority,"⁴ or "recognition that women belong at home?"⁵ Those expressions, of course, are just as "historic" as the former, and would become just as "patriotic" were the citizenry to carry coins and adhere to a motto that claimed "In Jesus We Trust," "In White Supremacy We Trust," or "In Male Dominion We Trust."

¹ Pringle P. Fire, *Brimstone Over Faith*. December 26, 2004. LATimes.com. Accessed on December 27, 2004 at <http://www.latimes.com/features/religion/la-me-teacher26dec26,0,7224317,print.story?coll=la-news-religion>.

² Id.

³ Wittner, Lawrence S., *Cold War America: From Hiroshima to Watergate* (New York: Praeger, 1974), p. 123.

⁴ Judicial notice can be taken that three of the first four Presidents were slave-owners, and that the Constitution had its infamous "three-fifths" clause. United States Constitution, Article I, Section 2.

⁵ "The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator." *Bradwell v. State*, 83 U.S. 130, 141 (1872) (Bradley, J., concurring). Judicial notice can also be taken that women could not vote or own property under the Framers' worldview.

The perpetuation of anti-atheistic bias is perhaps best seen in the political arena, since politicians generally take pains not to offend minority sensitivities. Yet, when it comes to atheists, they feel confident in making the most egregious and derogatory statements. For instance, when then Vice-President George H. W. Bush first announced his plans to become the Republican Party's nominee for President, he was asked how he intended to gather the support of patriotic atheistic citizens. His response was "I don't know that atheists should be regarded as citizens, nor should they be regarded as patriotic."⁶ Similarly, when Miami Mayor Joe Carollo wished to express his displeasure over the Bureau of Immigration and Naturalization Service's raid to free Elian Gonzales – an incident that had nothing whatsoever to do with anything religious – his insult of choice was, "These are atheists. They don't believe in God."⁷ And Congressman John J. LaFalce of New York issued a press release a month later, equating "secular atheism" with "greed, abject poverty [and] selfishness."⁸

As if to amplify the offensiveness of these insulting and imprudent remarks, no media protest is ever heard when they are uttered.⁹ One can imagine the response were a politician to equate Catholicism with "greed, abject poverty [and] selfishness," to insult the INS by stating, "They're Jews. They don't believe in Jesus," or to comment at a press briefing that "I don't know that Muslims should be regarded as citizens, nor should they be regarded as patriotic." But make those statements about Atheists, and not a whimper is heard. Nor is it noticed when our leaders completely disregard the very existence of Atheists.¹⁰ No wonder such an incredibly offensive statement as "An atheistic American

⁶ As detailed at <http://www.robsherman.com/information/liberalnews/2002/0303.htm>, accessed on December 26, 2004.

⁷ Salazar C and Garcia M. *Elian Seized Crying Boy Carried Off Amid Guns, Tear Gas*. The Miami Herald, April 23, 2000, page 1A.

⁸ Press release of Congressman John J. LaFalce, 29th District, New York, May 22, 2000.

⁹ This might be contrasted with the media uproar – and subsequent loss of his Senate Majority leader position – over Senator Trent Lott's somewhat diluted approval of Senator Strom Thurmond's racial segregationist political past. See, e.g., CNN.com, December 13, 2002, *Lott: Segregation and racism are immoral*, accessed at <http://archives.cnn.com/2002/ALLPOLITICS/12/13/lott.transcript/> on December 27, 2004.

¹⁰ See, e.g., President Bush's proclamation for Thanksgiving Day 2001 ("**Americans of every belief and heritage** give thanks to God") or for the National Day of Prayer 2003 ("America welcomes individuals of all backgrounds and religions, and our citizens hold diverse beliefs. In prayer, we share **the universal desire** to speak and listen to our Maker.") (emphases added). Accessed on February 26, 2006 at <http://www.whitehouse.gov/news/proclamations/>.

... is a contradiction in terms” could be proudly placed into the Congressional Record by one of our elected representatives.¹¹

That this anti-Atheism retains its consequential nature is readily appreciated by considering how political capital has been sought from its perpetuation, and how monotheistic religion, itself, has become a key issue in the nation’s elections.¹² In fact, so significant has the issue of belief in God become that the term “the God gap” was frequently referenced during the last presidential election.¹³ As one commentator summarized the topic, “[t]he wall between church and state is falling fast.”¹⁴

The Republican Party of Texas – only two years ago – perpetuated in its platform the arrogant¹⁵ claim “that the United States of America is a Christian nation,”¹⁶ and now has “African Americans, Hispanics and Republicans All Believe: IN GOD” listed on its website.¹⁷ It seems highly unlikely that the same acceptance would occur with “African Americans, Hispanics and Republicans All Believe: IN ALLAH,” “African Americans, Hispanics and Republicans All Believe: IN JESUS,” or “African Americans, Hispanics and Republicans All Believe: THERE IS NO GOD.” Again, the political disenfranchisement of Atheists – preserved by a national government that persistently proclaims that “In God We Trust” – is obvious.

Other present-day examples of manifest anti-Atheistic sentiment interspersed within government and politics abound. Former Attorney General John Ashcroft –

¹¹ 100 Cong. Rec. 2, 1700 (Feb. 12, 1954) (Statement of Rep. Louis C. Rabaut).

¹² See, e.g., Kropf S. *Senate GOP race has divine element*. Post and Courier Charleston.net. Accessed on May 7, 2004, at http://www.charleston.net/stories/050704/sta_07pledge.shtml.

¹³ See, e.g., Fortt J. “God gap” blocks understanding of “moral values” phenomenon. Mercury News, November 14, 2004, accessed at <http://www.mercurynews.com/mld/mercurynews/news/editorial/10179393.htm>; Polman D *Kerry invoked God to appeal to the faithful*. Philadelphia Inquirer, October 17, 2004, accessed at <http://www.philly.com/mld/inquirer/news/nation/9937390.htm?1c>.

¹⁴ Gibson D. *Confession Time: The wall between church and state is falling fast*. November 7, 2004, accessed at <http://nj.com/opinion/ledger/perspective/index.ssf?/base/news-0/109981008744860.xml>.

¹⁵ “[T]he Court takes a long step backwards to the days when Justice Brewer could arrogantly declare for the Court that ‘this is a Christian nation.’ Church of Holy Trinity v. United States, 143 U.S. 457, 471 (1892). Those days, I had thought, were forever put behind us.” Lynch v. Donnelly, 465 U.S. 668, 717-718 (1984) (Brennan, J., dissenting).

¹⁶ 2004 Republican Party of Texas Platform, accessed on December 26, 2004 at <http://www.texasgop.org/library/platform.php>.

¹⁷ Accessed at http://www.texasgop.org/site/PageServer?pagename=library_sharedvalues on October 5, 2005.

patently ignoring Atheists – announced that, “Civilized individuals, Christians, Jews, and Muslims, all understand that the source of freedom and human dignity is the Creator.”¹⁸ A Colorado town trustee “who refused to stand during the Pledge of Allegiance because he object[ed] to the words “under God”¹⁹ was recalled.²⁰ In April, 2004, the Atheist Alliance International requested letters of welcome for their annual convention being held in Colorado Springs. Those letters were denied by both Colorado’s governor and the local mayor, who acknowledged this was the only time he’d ever denied such a request.²¹ That same month, Christian monotheists were granted access to the Alabama State Capitol building for a National Day of Prayer rally. When Atheists requested the very same access for the very same day, they were rebuffed.²² When an Atheist was invited to give an invocation at the Charleston, South Carolina City Council meeting a few years ago, members of the council walked out before he uttered his first sentence. In the words of one, “He can worship a chicken if he wants to, but I’m not going to be around when he does it.”²³ The same thing occurred a year later in Tampa, Florida.²⁴ There, not only was disrespect shown to the Atheist, but the City Council member who invited him “made a host of new enemies” because of that invitation.²⁵ In Biscayne Park, the vice mayor showed little respect for the constitutional rights of Atheists when an attempt was made

¹⁸ Remarks of Attorney General John Ashcroft to the National Religious Broadcasters convention, Nashville, Tennessee, February 19, 2002, accessed at <http://www.usdoj.gov/archive/ag/speeches/2002/021902religiousbroadcasters.htm> on April 28, 2006.

¹⁹ *Recall for Colorado Official Who Protests Pledge*. Reuters, December 16, 2004. Accessed on December 26, 2004, at <http://olympics.reuters.com/newsArticle.jhtml?type=domesticNews&storyID=7119645>.

²⁰ *Voters recall Pledge objector*. Washington Times, March 24, 2005 Accessed on October 5, 2005 at <http://www.washtimes.com/national/20050323-110303-1711r.htm>.

²¹ *Atheist Conference Shunned by Colorado Governor, Mayor*. April 9, 2004. Secular Coalition for America. Accessed on December 27, 2004, at <http://www.secular.org/silverman.html>.

²² *Alabama Atheists Allege Unfair Treatment*. FoxNews.com, April 23, 2004. Accessed on December 27, 2004 at <http://www.foxnews.com/story/0,2933,118046,00.html>.

²³ Harden J. *Some on city council snub atheist’s invocation*. Charleston Post and Courier, March 27, 2003, accessed at http://www.charleston.net/stories/032703/loc_27atheist2.shtml on December 26, 2004.

²⁴ Carp D. *Council splits on atheist’s invocation*. St. Petersburg Times Online. July 30, 2004, page 1.A.

²⁵ Karp D. *Council member, 2 unions on outs*. St. Petersburg Times Online. August 4, 2004. Accessed at http://stpetetimes.com/2004/08/04/news_pf/Hillsborough/Council_member_2_uni.shtml on December 26, 2004.

to introduce prayer at commission meetings. His statement was, “prayers don’t offend anybody except the atheists, and I feel bad for the atheists, but we live in a country where the majority rules, and if you don’t like it you can go to another country because our country is a religious country.”²⁶ Also in Florida, the Department of Highway Safety and Motor Vehicles received a complaint signed by ten people who were offended by an “ATHEIST” vanity license plate. The Department responded by recalling the plate after deeming it ““obscene or objectionable.””²⁷ After all, as one Florida mayor explained, “If you are a devout person and have a sincere belief in God, you are more likely to be ... ethical and moral.”²⁸

In the United States Senate – in the aftermath of the Ninth Circuit’s decision in the case challenging the words “under God” in the Pledge of Allegiance, Newdow v. United States Cong., 292 F.3d 597 (9th Cir. 2002), rev’d on standing grounds, Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1 (2004) – “its president pro tempore, Sen. Robert C. Byrd, D-W.Va., said [Senate Chaplain] Ogilvie would lead ‘the prayer to almighty God, the supreme judge of the world’” only one day after stating that “I, for one, am not going to stand for this country’s being ruled by a bunch of atheists. If they do not like it, let them leave.”²⁹

The constitutions of eight states still have clauses denying to Atheists the right to hold public office and/or testify in a court of law.³⁰ It seems not one of the combined

²⁶ Nahed A. *Prayer Invokes Heated Discussion*. The Miami Herald, July 11, 2004, Page 8N.

²⁷ Wexler K. ‘ATHEIST’ plate raises a holy ruckus. St. Petersburg Times Online. March 14, 2002, accessed at http://www.sptimes.com/2002/03/14/State/_ATHEIST_plate_raise.shtml.

²⁸ Statement of Tom Truex, mayor of Davie, Florida, as reported on Monday, March 22, 2004. Accessed at <http://www.miami.com/mld/miamiherald/8245381.htm?1c> on November 27, 2004.

²⁹ 151 Cong. Rec. S6103 (Wednesday, June 26, 2002 Remarks of Sen. Robert C. Byrd (WV)). Referring to Circuit Court Judge Alfred Goodwin – who authored the opinion – Senator Byrd made the incredible statements that, “That judge should not be a judge in my opinion,” *id.*, that “Let that judge’s name ever come before this Senate while I am a Member, and he will be blackballed ... fast,” *id.*, and “I hope the Senate will waste no time in throwing this back in the face of this stupid judge.” *Id.*

³⁰ Arkansas State Constitution: Article 19, Section 1 (“No person who denies the being of a God shall hold any office in the civil departments of this State, nor be competent to testify as a witness in any court.”); Maryland State Constitution: Article 37 (“That no religious test ought ever to be required as a qualification for any office of profit or trust in this State, other than a declaration of belief in the existence of God.”); Mississippi State Constitution: Article 14, Section 265 (“No person who denies the existence of a Supreme Being shall hold any office in this state.”); North Carolina State Constitution: Article 6, Section 8 (“The following persons shall be disqualified for office: First, any person who shall deny the being of Almighty God.”); Pennsylvania State

1328 state legislators has been willing to risk his or her career to eliminate those extraordinarily offensive constitutional provisions. Although these clauses are now legal nullities, the fact that they remain – unchanged for all the world to see – on the most vital document in each of those states, powerfully demonstrates the extreme political disenfranchisement of Atheists.³¹

In 1958, a Gallup poll asking people if they would vote for various categories of candidates showed that 22% wouldn't vote for a Catholic, 28% wouldn't vote for a Jew, 41% wouldn't vote for a woman, 53% wouldn't vote for a black, and 77% wouldn't vote for an atheist. With the government no longer condoning (much less endorsing) discrimination against Catholics, Jews, women and blacks, those numbers fell dramatically to 4%, 6%, 7% and 4%, respectively, in 1999. With governmental endorsement of the idea that real Americans believe in God, however, the prejudice against Atheists has remained, so that still 48% won't vote for a member of this minority religious persuasion – an order of magnitude greater than that for those other groups.³² In fact, “voters have a far more favorable impression of every religion tested than they do of Atheists. Just 32% hold a favorable opinion of atheists.”³³ As one commentator wrote, “if one finds himself on what's perceived to be the wrong side of God, he loses.”³⁴

Constitution: Article 1, Section 4 (“No person who acknowledges the being of a God and a future state of rewards and punishments shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this Commonwealth.”); South Carolina State Constitution: Article 17, Section 4 (“No person who denies the existence of a Supreme Being shall hold any office under this Constitution.”); Tennessee State Constitution: Article 9, Section 2 (“No person who denies the being of God, or a future state of rewards and punishments, shall hold any office in the civil department of this state.”); Texas State Constitution: Article 1, Section 4 (“No religious test shall ever be required as a qualification to any office, or public trust, in this State; nor shall any one be excluded from holding office on account of his religious sentiments, provided he acknowledge the existence of a Supreme Being.”)

³¹ If this point needs to more strongly be made, one need only ponder how long phrases such as “No [Jew] shall hold any office under this Constitution” (South Carolina State Constitution, Article XVII, Section 4) or “No [African-American] shall hold any office in the civil department of this state” (Tennessee State Constitution, Article IX, Section 2) would persist in today's society.

³² Polls given July 30 – August 4, 1958, and February 19-21, 1999, respectively. Copyright © 1958, 1999 The Gallup Organization, Princeton, NJ. See, www.gallup.com and www.gallupjournal.com. Phrased alternatively, At least 92% of respondents would vote for a candidate who is “Black,” “Catholic,” “Baptist,” “a woman,” or “Jewish.” For atheists, the figure is 49%.

³³ *Religion and Politics: the Ambivalent Majority*, The Pew Research Center for the People and the Press in association with The Pew Forum on Religion and Public Life, September 20, 2000

Just this year, a study was released by researchers at the University of Minnesota. The authors concluded that, “atheists are less likely to be accepted, publicly and privately, than any others from a long list of ethnic, religious, and other minority groups,”³⁵ and that “Americans draw symbolic boundaries that clearly and sharply exclude atheists in both private and public life.”³⁶ It is certainly possible (if not likely) that “the gap between acceptance of atheists and acceptance of other racial and religious minorities is large and persistent.”³⁷

According to Laura Olson, Ph.D. – a professor of political science at Clemson University and author of *Religion and Politics in America* – “religion and morality are definitely more salient in today’s political discourse than they were 50 years ago or so.”³⁸ Recognizing how incredibly salient they were 50 years ago or so,³⁹ along with how Atheists are negatively perceived in our current society (along with how the First Amendment’s Establishment Clause demands governmental neutrality in matters of religion), the purely religious phrase under challenge in this litigation must be removed from the coins and currency, and must be replaced as our national motto. Until that occurs – and the “power, prestige and financial support of government” cease to further the erroneous notion that “In God We Trust” – it is virtually certain that this anti-Atheistic animus (and pro-(Christian) monotheistic favoritism) will prevail.

(accessed at <http://people-press.org/reports/print.php3?PageID=177>). Additionally, that same number (32%) held “Very Unfavorable” opinions of Atheists. This can be contrasted with 3% for Evangelical Christians, 3% for Jews and 3% for Catholics and 8% for Muslim Americans.

³⁴ Smith J. *Democrats need an improved image*. The Battalion, November 17, 2004. Accessed on December 26, 2004, at <http://www.thebatt.com/news/2004/11/17/Opinion/Democrats.Need.An.Improved.Image-807486.shtml>.

³⁵ Edgell P, Gerteis J, and Hartmann D. *Atheists as “Other”: Moral Boundaries and Cultural Membership in American Society*. American Sociological Review (April, 2006) Vol. 71, pages 211-34, at 211.

³⁶ *Id.*, at 212.

³⁷ *Id.*, at 230.

³⁸ Tammeus B. *Issues of Faith Envelop Roberts*. Kansas City Star, August 20, 2005. Accessed on August 24, 2005 at <http://www.kansascity.com/mld/kansascity/12434132.htm>.

³⁹ See APPENDICES B, C, D, and E.

APPENDIX G

“IN GOD WE TRUST” IS NOT MERELY “CEREMONIAL.” NOR IS ITS RELIGIOUS CONTENT OR EFFECT “*DE MINIMIS*”

It is expected that – rather than simply adhere to the clear principles underlying the Religion Clauses (and RFRA) and remove “In God We Trust” as requested – the Defendants in this case will engage in attempts to legitimize that clearly unconstitutional phrase. One likely means will be to claim that motto is “ceremonial,” with any religious content and/or effect being “*de minimis*.” The history already provided in the body of the Complaint totally belies this bogus contention. The following – pertaining to the closely related “under God” in the Pledge of Allegiance¹ – does as well.

- (1) When the Ninth Circuit, on June 26, 2002, ruled that “under God” in the Pledge was unconstitutional, Newdow v. United States Cong., 292 F.3d 597 (9th Cir. 2002),² there developed “a firestorm across most of the nation.”³ National firestorms (of controversy) are not created by the loss of merely “ceremonial” items with “*de minimis*” content or effects.
- (2) Both houses of Congress stopped their important work to spend significant amounts of time decrying the ruling in Newdow v. U.S. Congress.⁴ Congress doesn’t stop its work due to merely “ceremonial” items with “*de minimis*” content or effects.
- (3) The Senate almost immediately considered and unanimously passed a resolution condemning the decision in Newdow v. U.S. Congress.⁵ Such Senate activity doesn’t stem from merely “ceremonial” items with “*de minimis*” content or effects.

¹ Numerous congressional bills and resolutions have considered and/or addressed the “under God” phrase in the Pledge along with the “In God We Trust” phrase in the motto and on the coins. See, e.g., S. Res. 243, 109th Cong., 1st Sess. (September 15, 2005) (“Whereas the Senate believes that the Pledge of Allegiance, as revised in 1954, as recodified in 2002, and as recognized in a resolution in 2003, is a fully constitutional expression of patriotism; Whereas the National Motto, patriotic songs, United States legal tender, and engravings on Federal buildings also refer to ‘God’ ...”).

² Newdow v. U.S. Congress was the initial Ninth Circuit case subsequently reversed by the Supreme Court in Elk Grove Unified Sch. Dist. v. Newdow, 159 L. Ed. 2d 98, 124 S. Ct. 2301 (2004).

³ *Gov’t to ask rehearing of Pledge ruling*, June 27, 2002. CNN.com.
<http://archives.cnn.com/2002/LAW/06/27/pledge.allegiance/>

⁴ 148 Cong. Rec. S6105-S6112 (daily ed. 6/27/02); 148 Cong. Rec. H4125-H4136 (daily ed. 6/28/02).

⁵ S. Res. 292, 107th Cong., 148 Cong. Rec. S6105 (2002).

- (4) By a vote of 416-3, the House of Representatives almost immediately considered and passed a resolution condemning the decision in Newdow v. U.S. Congress.⁶ Such House activity doesn't stem from merely "ceremonial" items with "*de minimis*" content or effects.
- (5) The Plaintiff in Newdow v. U.S. Congress was named *Time Magazine*'s "Person of the Week."⁷ People aren't accorded such recognition over matters that are merely "ceremonial" items with "*de minimis*" content or effects.⁸
- (6) President Bush's Press Secretary – on June 26, 2002 – stated that the reaction of the President of the United States "was that this ruling is ridiculous."⁹ The President, himself, commented on the ruling. In fact, it was the first item addressed by him at his news conference on June 27, 2002 ... following a meeting with Russian President Vladimir Putin, no less.¹⁰ Presidents and their press secretaries don't address matters that are merely "ceremonial" and with "*de minimis*" content or effects.
- (7) At that June 27, 2002 news conference, the President referred to Newdow v. U.S. Congress by noting this nation's "relationship with an Almighty," that the Pledge is "a confirmation of the fact that we received our rights from God, as proclaimed in our Declaration of Independence, and that "our rights were derived from God."¹¹ Such comments by the nation's Chief Executive – a deeply religious man – are not made over matters that are merely "ceremonial" and with "*de minimis*" content or effects.
- (8) In response to the Ninth Circuit Court of Appeals' decision in Newdow v. U.S. Congress, Robert C. Byrd – a United States Senator – placed the following into the Congressional Record:

Let that judge's name ever come before this Senate while I am a Member, and he will be blackballed ... fast. ... I hope the Senate will waste no time in throwing this back in the face of this stupid judge.¹²

These are not the words a United States Senator – referencing an appellate-level Federal judge, no less – uses in response to matters that are merely "ceremonial" items with "*de minimis*" content or effects.

- (9) After the Ninth Circuit's Newdow v. U.S. Congress decision was announced, its author – Judge Alfred Goodwin – had an "e-mail system [that] was literally

⁶ H.R. Res. 459, 107th Cong., 148 Cong. Rec. H4135 (2002).

⁷ H.R. Res. 459, 107th Cong., 148 Cong. Rec. H4135 (2002).

⁸ <http://www.time.com/time/pow/article/0,8599,266658,00.html>.

⁹ <http://www.whitehouse.gov/news/releases/2002/06/20020626-8.html>.

¹⁰ <http://www.whitehouse.gov/news/releases/2002/06/20020627-3.html>.

¹¹ *Id.*

¹² 148 Cong. Rec. S6103 (daily ed. June 26, 2002).

jammed, frozen with public opinion. Ten boxes of mail piled up at his office, ‘all scolding me for being un-American.’”¹³ The litigation was “easily the most publicized and hotly debated case in Goodwin’s fifty-three-year legal career.”¹⁴ This is not a reaction that stems from a decision affecting something merely “ceremonial” with “*de minimis*” content or effects.

- (10) As chosen by the Religion Newswriters Association, the story about the Pledge litigation was among the top 10 religion stories for 2002, 2003 and 2004.¹⁵ Such a ranking – as a “religion story,” three years in a row – is not consistent with something merely “ceremonial” with “*de minimis*” content or effects.
- (11) The Pew Research Center for the People & the Press reviewed the top news stories from 1986-2004 in terms of the maximum degree they were followed by the public.¹⁶ Out of 1103 stories listed, the Pledge was #57 – ahead of, for instance, the O.J. Simpson trial (#89), the breakup of the Soviet Union (#91), and the Space Shuttle Columbia disaster (#111). Public interest to that extraordinary degree is not garnered by something merely “ceremonial” and with “*de minimis*” content or effects.
- (12) The United States – in its Writ Petition to the Supreme Court in Newdow v. U.S. Congress – claimed that “[t]he question presented is one of great importance.”¹⁷ It makes little sense to claim that something the United States itself believes to be “of great importance” is merely “ceremonial” and with “*de minimis*” content or effects.
- (13) Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301, 2326 (2004) was referenced as “one of the most intensely watched church-state cases in recent memory.”¹⁸ Such a description hardly fits a case involving a merely “ceremonial” matter with “*de minimis*” content or effects.
- (14) Pages and pages of the Congressional Record are dedicated to debate about Newdow v. U.S. Congress and the subsequent Supreme Court litigation. Members of Congress don’t spend extensive amounts of time posturing over an issue that is merely “ceremonial” and has “*de minimis*” content or effects.¹⁹
- (15) On September 23, 2004, the House of Representatives actually passed the “Pledge Protection Act of 2004,” which would deny the federal judiciary any

¹³ Williams K. *Allegiance to the Law*. Oregon Quarterly. Autumn, 2004, page 22.

¹⁴ Id.

¹⁵ <http://www.rna.org/>

¹⁶ <http://people-press.org/nii/>.

¹⁷ *Petition for a Writ of Certiorari* for Petitioner United State of America, United States of America v. Newdow, April, 2003, at 25.

¹⁸ Lane C. *Justices Keep ‘Under God’ in Pledge*. The Washington Post, Tuesday, June 15, 2004; A01.

¹⁹ Plaintiffs do not rely too strongly upon this assertion.

jurisdiction to hear any challenge to the constitutionality of the Pledge of Allegiance.²⁰ Such an unprecedented statute – so breathtaking in its nature – surely would not be created to deal with a merely “ceremonial” matter with “*de minimis*” content or effects.

- (16) Fifty-five separate *amicus* briefs were filed in the Newdow case. Additionally, the case was covered in countless media reports, symposia, webchats, and commentaries. (Included among these were works by religious scholars and theologians,²¹ Christian and Jewish clergy,²² historians,²³ and respected commentators – legal²⁴ and otherwise²⁵ – who agreed with the Plaintiff in the Newdow case.) Such a level of participation by *amici* does not occur over matters that are merely “ceremonial” and that have “*de minimis*” content or effects.
- (17) In the last presidential election, the danger of “political outsiders” based on religious belief was accentuated more than ever before. In fact, the Pledge litigation played a role. For instance, in Allentown, PA, a billboard stating “Bush

²⁰ 150 Cong. Rec. H7478 (daily ed. September 23, 2004).

²¹ Nineteen Religious Scholars and Theologians wrote an *amicus* brief in support of the plaintiff in the Elk Grove case. See, *Brief amicus curiae of Religious Scholars and Theologians*, Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301 (2004).

²² Thirty-two respected Christian and Jewish clergy members wrote an *amicus* brief in support of the plaintiff in the Elk Grove case. *Brief amicus curiae of Rev. Dr. Betty Jane Bailey, et al.*, Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301 (2004).

²³ In Newdow, the only *amicus* brief written by historians was in support of the Plaintiff’s position. Twenty-two esteemed experts from academic institutions across the nation agreed that the school district policy in that case, “would have been opposed by the Framers of the Constitution.” See, *Brief amici curiae of Historians and Law Scholars*, Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301 (2004), at 1.

²⁴ See, e.g., Thompson JE. *What’s the Big Deal? The Unconstitutionality of God in the Pledge of Allegiance*. 38 Harv. C.R.-C.L. L. Rev. 563, 586 (2003) (“From their cognitive birth Americans receive the message: ‘You can be almost anything, but not an atheist.’ We are prejudiced, biased from the outset. This anti-atheist sentiment is so pervasive that many fail to recognize its manifestations. ... To reject God means overcoming ... monumental social barriers sponsored by the government. Of course, the religious do not understand this message of disrespect for nontheism as a harm.”); Hamilton M. *Why the Court Should Reject This Pledge, and Why the Department of Justice Is Wrong To Support It*, Findlaw.com, March 25, 2004, accessed at <http://writ.news.findlaw.com/hamilton/20040325.html> (“[I]t is not only the right thing for the Court to find in favor of Mr. Newdow and the principle of neutrality toward religion in the First Amendment’s Free Exercise and Establishment Clauses. It is also in the national interest to do so.”)

²⁵ See, e.g., William Safire, New York Times, March 24, 2004, *Of God and the Flag*, Section A, Page 21, Column 1 (“The only thing this time-wasting pest Newdow has going for him is that he’s right.”); Ellen Goodman, Boston Globe, March 28, 2004, accessed at http://www.boston.com/news/globe/editorial_opinion/oped/articles/2004/03/28/why_make_such_a_big_deal_of_two_little_words/ (“Here’s the problem. ... Newdow is right.”)

Cheney 04 – One Nation Under God” was utilized.²⁶ People don’t take out billboards to sway their fellow citizens votes in presidential election campaigns and plaster them with a matter that is merely “ceremonial” and has “*de minimis*” content or effects

- (18) Rev. Brenda Bartella Peterson – appointed director of religious outreach for the Democratic Party – was forced to resign merely because she had joined thirty-one other clergy members to support the Plaintiff in Elk Grove Unified Sch. Dist. v. Newdow.²⁷ Political pressure sufficient to cause a key appointment to be reversed during an extremely close presidential election doesn’t arise from merely joining more than thirty other esteemed individuals in signing a legal brief over a matter that is merely “ceremonial” and has “*de minimis*” content or effects.
- (19) In the 2000 presidential election, potential candidates were interviewed by the Committee to Restore American Values. This arm of the so-called “religious right” specifically asked, “Would you support a removal of the words ‘under God’ from the Pledge of Allegiance?”²⁸ Joined by the executive director of the Christian Coalition, there can be no doubt as to the religious agenda the commission had in posing that question. This further demonstrates the illusory notion behind any “ceremonial deism” or “*de minimis*” claims.
- (20) Recently, recitation of the Pledge in public schools was again ruled to violate the Establishment Clause. That occurred during the time when the confirmation hearings of Chief Justice Roberts were taking place. When the District Court decision was announced, Justice Roberts was asked for his opinions on this issue.²⁹ Candidates for the Chief Justice position of the United States Supreme Court are not asked by United States senators about matters that are “ceremonial” or “*de minimis*.”

²⁶ Kirkpatrick D. *Battle Cry of Faithful Pits Believers Against the Rest*. New York Times, October 31, 2004. Section 1, Page 24.

²⁷ Duin J. *Furor over Pledge stance prompts Democrat to quit*. The Washington Times, August 6, 2004, accessed at <http://www.washingtontimes.com/functions/print.php?StoryID=20040805-113248-2858r>.

²⁸ *Religious Right Queries GOP Rivals*, Washington Post, Thursday, February 4, 1999; page A4.

²⁹ *Pledge again ruled unconstitutional*. San Francisco Chronicle, Thursday, September 15, 2005. Accessed at <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2005/09/15/PLEDGE.TMP> on October 22, 2005.

APPENDIX H**“IN GOD WE TRUST” IS NOT AN “ACKNOWLEDGEMENT” OF RELIGION.
RATHER, IT ENDORSES THE PARTICULAR RELIGIOUS BELIEF THAT
THERE EXISTS A (CHRISTIAN) GOD**

Anticipating the Defendants will allege that the phrase, “In God We Trust,” is merely an “acknowledgement” of the religious history of our country, Plaintiff will initially refer (again) to Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301 (2004). In the only *amicus* brief in that case wherein historians formally participated, it was stated unequivocally that “the policy ... of having schoolchildren recite the [now-religious] Pledge of Allegiance ... would have been opposed by the Framers of the Constitution.”¹ For the use of “In God We Trust” to be an acknowledgement of the role religion played in our Nation’s history would be rather paradoxical, since – as these noted scholars pointed out – our history was one where the alleged “acknowledgement,” itself, was something to which the Framers were “firmly opposed.” This was evidenced by the inclusion of the Religious Test Clause in Article VI of the Constitution, which “has become an enduring symbol of freedom of conscience and equality of belief in this nation.”² Thus, the use of “In God We Trust” is not an acknowledgement of the role religion has played in our Nation’s history. Just as, “[i]t cannot be gainsaid that the overriding purpose of the 1954 amendment was to incorporate a religious affirmation into the Pledge,”³ it also cannot be gainsaid – especially in view of the history provided in the Complaint here – that “In God We Trust” was intended to indicate active, purely religious thought and belief.

That “In God We Trust” is religious – rather than historical – is also seen in the actions of the Republican National Committee in response to legal proceedings related to that phrase’s cousin, “under God,” in the Pledge. The RNC sent “mailings, which included images of a Bible labeled ‘banned’” to the voters during the 2004 Presidential

¹ Brief *amicus curiae* of Historians and Law School Scholars in Support of Respondent, page 1, Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301 (2004). Among the twenty-two esteemed academicians who signed onto this brief were five History professors.

² Id. at 15 (footnote omitted).

³ Id. at 21.

campaign. According to RNC spokesman Christine Iverson, the mailings were triggered at least in part by “activist judges [who] also want to remove the words ‘under God’ from the Pledge of Allegiance.”⁴ Such a mailing was clearly intended to play on the purely religious – and not historical – sentiments of the voters. In fact, as noted by nineteen religious scholars and theologians, “[I]t would be hard to imagine, outside the sanctuary of a Christian church, a more sectarian religious ceremony”⁵ than that which occurred on June 14, 1954, when the newly amended Pledge was introduced to the American people. It was essentially the same Congress that turned “In God We Trust” into the official national motto. “In God We Trust” – like the revised Pledge – “not only favors religion over non-religion; it also favors some religions over others.”⁶ Additionally, “[t]hirty-two named Christian and Jewish clergy, together with the Unitarian Universalist Association” wrote that, “[t]o recite that the nation is “under God” is inherently and unavoidably a religious affirmation. Indeed, it is a succinct religious creed, less detailed and less specific than many creeds, but stating a surprising amount and implying more.”⁷ “In God We Trust” is nothing less, and the statement these esteemed ecclesiastics made in regard to “under God” in the Pledge is just as applicable here:

If the religious language ... is *not* intended to sincerely affirm the succinct creed entailed in its plain meaning ... then it is a vain and ineffectual form of words. The numerically predominant religious faiths in the United States have a teaching about such vain references to God: “Thou shalt not take the name of the Lord thy God in vain.” Exodus 20:7.⁸

Free Exercise and RFRA claims are also part of this litigation. As it pertains to those legal notions, it should be appreciated that taking the Lord’s name in vain is obviously not a compelling interest.

⁴ Roff P. *GOP admits to mailers suggesting Bible ban*. New York, Sept. 24, 2004 (UPI) accessed at <http://committeeofjustice.org/cgi-data/blog/files/22.shtml>.

⁵ Brief *amicus curiae* of Religious Scholars and Theologians in Support of Respondent, page 4, Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301 (2004).

⁶ Id.

⁷ Brief *amicus curiae* of Rev. Dr. Betty Jane Bailey, et al. in Support of Respondent, page 4, Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301 (2004).

⁸ Id. at 8 (emphasis in original).

APPENDIX I

DECLARATION OF MICHAEL NEWDOW

I, Michael Newdow, declare as follows:

- (1) I am competent to testify to the matters stated herein.
- (2) I am a strong advocate for “the equality which ought to be the basis of every law.”¹ Accordingly, I have acquired a legal degree, and have spent a great deal of time litigating to change laws that I believe violate that equality.
- (3) I am also a member, founder, ordained minister,² and Grand Pwevacki of the First Amendmism Church of True Science (FACTS). This church is one that espouses Atheism. In other words, we specifically deny that there is a God.
- (4) At FACTS, we hold the belief that God is a fiction, and that belief or trust in such a fiction often leads to harms, which are not infrequently horrific.
- (5) Because of this – and because we feel that belief in supernatural entities is a repudiation of the scientific and skeptical thought processes which allow for the advancement of the human race – we in FACTS seek to specifically distance ourselves from any suggestion that there is exists a God.
- (6) Accordingly, we vehemently **DO NOT** trust in God, and are offended by any suggestion to the contrary.
- (7) FACTS has three “suggestions,”³ which comprise the basis of our religion. These are (1) “Question,” (2) “Be Honest,” and (3) “Do What’s Right.” It is a violation of Suggestions (2) and (3) for FACTS members to use or to accept money that has the words “In God We Trust.”
- (8) We in FACTS believe that the United States government – by manufacturing such money as the nation’s legal tender – substantially burdens the exercise of our religion by forcing us to endure great inconvenience to simply spend and receive money.

¹ Madison J. *Memorial and Remonstrance*, The Founders' Constitution, Volume 5, Amendment I (Religion), Document 43, The University of Chicago Press, citing The Papers of James Madison. Edited by William T. Hutchinson et al. Chicago and London: University of Chicago Press, 1962--77 (vols. 1--10); Charlottesville: University Press of Virginia, 1977--(vols. 11--). Accessed on March 4, 2006 at http://press-pubs.uchicago.edu/founders/documents/amendI_religions43.html

² I was ordained by the Universal Life Church in 1977.

³ We are not so arrogant as to have “Commandments.”

- (9) That this is obvious not only to us but to many who believe in God is demonstrated by the repeated comments I have had thrown in my face when I have been confronted by those who disagree with my advocacy in terms of religious equality. Statements such as, “Hey, I bet you don’t mind getting paid with money that has ‘In God We Trust’ on it!” – hurled in an unquestionably insulting manner – are heard virtually every time such confrontations occur. Additionally, the fact that “In God We Trust” is our motto is touted as if that gives the advocate some legitimacy that I lack.
- (10) In fact, during a radio interview with a Sacramento radio station that took place as I was writing this Declaration, the host repeatedly referenced the fact that I would be accepting money with “In God We Trust” at a presentation I planned to give on the Constitution. He did so clearly with the intention of impugning my integrity.
- (11) Similarly – before a national television audience – I was a guest on the Fox network’s Hannity and Colmes show. Colonel Oliver North was also a guest. In the middle of our discussion, Colonel North pulled out a dollar bill and held it up for all to see, pointing to “In God We Trust” to “prove” that my attempts to have the government treat all religious views with equal respect were misguided.
- (12) In response to an invitation by a Sunday school class, I attended Sunday service at the Boone’s Chapel Baptist Church in Prattville, Alabama, on April 30, 2006.
- (13) Former Alabama Supreme Court Chief Justice Roy Moore⁴ was the featured speaker at that church service.
- (14) The program for that worship service had on its cover, “In God We Trust,” written under an open Bible, which was lying on an American flag. (Appendix P, page 8).⁵

⁴ Roy Moore, it may be recalled, was removed from the office of Chief Justice on November 3, 2003, after he refused to abide by a federal court order requiring him to remove a Ten Commandments monument which he had placed in the rotunda of the Alabama State Judicial Building. Order of the Alabama Court of the Judiciary, accessed at http://www.foxnews.com/projects/pdf/111303_moore.pdf on May 4, 2006.

⁵ This item is a stock item sold by Broadman & Holman, which describes itself as “a major publisher of Christian living, fiction, homeschool, youth, history, and other categories.” A very similar pre-printed “bulletin” was encountered by Plaintiff at his work in El Paso, TX, where it was used in a government-sponsored memorial service. That bulletin employed the nation’s pledge of allegiance, rather than its motto, with the phrase, “one nation UNDER GOD” placed below a bald eagle in front of an American flag, with the words “Holy Bible” just above the Pledge excerpt. (Appendix P, page 10).

- (15) I have been a numismatist since I was seven or eight years old, and still have a significant coin collection. As a result, I often look carefully at the coins (and, at times, the currency) that I carry.
- (16) I am virtually always confronted with the words, “In God We Trust” when I look at the coins and currency. I would estimate that this occurs on average at least five times a day.
- (17) In fact, my involvement in seeking to uphold the principle of equality upon which the Establishment Clause is founded⁶ was initiated during such an occasion. It was my inspection of the coins and currency in my hand, in November 1997, that initiated my efforts to eliminate the myriad laws that have essentially established (Christian) monotheism as the nation’s official religion.
- (18) FACTS members are encouraged to meet every new moon, to pause and reflect on life, and to join with other members in considering the ideals of the Church.
- (19) During these Church meetings, we recommend that our congregants wear FACTS religious garb.
- (20) For numerous reasons – including the fact that the Earth has a limited ability to handle pollution, and that money spent on expensive clothing would be better used to help the needy – we recommend that this garb be purchased “used” at thrift stores.
- (21) Because one of the tenets of the Church is to help others, we also recommend that the monetary difference between the amount spent on thrift store garb and that which would have been spent had “new” items been purchased be donated to the Church for use in its eleemosynary activities.
- (22) Many thrift stores do not take credit cards at all, and others only take credit cards for amounts greater than some minimum amount above that which is necessary to find appropriate FACTS religious garb. Thus, cash is often the only available option for purchasing Church-related items.
- (23) Because the nation’s money has “In God We Trust” on it, I cannot purchase those items. This has happened to me, personally, on numerous occasions, as I shop for new religious garb.
- (24) A ritual at each FACTS meeting is to share in the “Freethink Drink.” It is recommended that – when possible – the fruits and pastry components be purchased at locales such as farmers’ markets, where they can be tasted beforehand. Vendors

⁶ I was the Plaintiff in Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1 (2004), which involved a challenge to the use of the words “under God” in the Pledge of Allegiance.

at farmers' markets almost always accept only cash for their wares. Thus, Newdow has been substantially burdened in making purchases for the Freethink Drink (which, of course, is not limited to FACTS meetings. On the contrary, this religious ritual may be engaged in and enjoyed at any time.).

- (25) I envision a network of FACTS churches around the country and around the world. Imagine encouraging the natural tendency of children to question everything, rather than to simply accept what others say are true. Imagine teaching them to be honest – with themselves as well as with others. I feel this will lead to truth, happiness and achievement, as FACTS adherents place their faith in themselves and their fellow men, rather than in mythical deities.
- (26) Because one of the goals of the Church is to spread the religious message that there is no god, and that life is more fulfilling once one accepts that fact. I am significantly burdened in engaging in such proselytizing because I cannot – consistent with Church teachings – use American currency.
- (27) This is especially the case when I travel to Mexico,⁷ which I do often. One of FACTS' recommended ways to proselytize is to strike up conversations with street vendors while purchasing items from them. Were I to have money available that didn't have "In God We Trust" upon it, I could make these purchases without a second thought. Instead, I have to find a way to exchange my money for Mexican currency, which – in and of itself – is often impractical (if not impossible) to do without using American coins and/or currency.
- (28) On the one occasion I changed money using a credit card – so that I could proselytize in Mexico – I was not only charged a handling fee, but the exchange rate resulted in a significant loss of buying power. This was a significant burden to the exercise of my religion.
- (29) I have – on numerous occasions – sought to raise money for FACTS. For instance, I "pass the plate" at church meetings, and I have repeatedly attempted to sell FACTS pens. During these occasions, people have offered their money to me. However, in every case, that money has contained the words, "In God We Trust." Thus, pursuant to the mandates of my religion, I have not been able to accept that money.
- (30) I have also sought to raise money for FACTS by holding giveaways of toys and games. During those giveaways, a basket for donations has been placed nearby. Again, I (and other FACTS members) have not been able to accept any of the money offered. This is because of the "In God We Trust" verbiage engraved on the given monetary instrument.
- (31) It should be noted that I own real estate in Elk Grove, California, that I purchased specifically for matters related to FACTS. I have worshipped on that property.

⁷ Judicial notice may be taken that, like most countries, Mexico (which is strongly Catholic) manages to engage in commerce without religious references on its money.

Additionally, it has been on this property that I held one of the toy and game giveaways. I had plans for other fundraising at that site as well, in addition to conjoined worship and fund-raising. However, I have put those plans on hold, recognizing that it is futile to attempt to raise money when my religious tenets forbid me from accepting that money, which is the case due solely to the “In God We Trust” verbiage now required by law.

- (32) I was the plaintiff in Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301 (2004), in which the words, “under God,” in the Pledge of Allegiance were challenged.
- (33) As a result of my involvement in Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1 (2004) I have repeatedly received letters, e-mails and phone calls from people who disagree with my efforts. Often, the given individuals reference “In God We Trust” on the coins and currency. To the best of my recollection, those references have always clearly highlighted that the given individuals find that phrase to be religious, and that the religious ideal being advocated by the phrase is (a) consistent with their religious views, and (b) contrary to my religious views.
- (34) Accordingly, I was repeatedly told that I should leave the country because of my efforts to have the equality enshrined in the constitution upheld.. A typical statement was, “If you don’t like it here, leave.”
- (35) Many of those persons indicated that I would suffer in the afterlife due to my atheistic beliefs.
- (36) Often, “In God We Trust,” was referenced by these individuals, used as (to them) proof that I am a “political outsider” who may be tolerated, but whose rights and religious freedoms are not equal to theirs.
- (37) I received a host of far more vitriolic messages as well.
- (38) Strangers left messages on my answering machine, calling me, among other things, an “atheist piece of shit,” a “sick son of a bitch,” “the idiest most stupidest man,” an “imbicilic bastard,” “a traitor,” “an idiot,” “a horrible person,” “a stupid whore,” “a sick man,” a “fucking unpatriotic fuckface,” and “one giant asshole.”
- (39) Additionally, individuals suggested that I “should fucking go to hell,” that “you have a wild hair up your ass,” that “There is a hell, and you will be in it,” that “you’re disgusting and vile,” that “you’re just disgusting,” and that “You better change your goddamn view.”
- (40) Strangers also at times identified me in public. I was referred to as “the freak” in public, when I was with my child.

- (41) I was invited to speak at multiple venues. At one – on March 26, 2004, two days after the Supreme Court oral argument in the case – I gave a talk at the University of Toledo Law School. (Justice O'Connor gave a speech at that same locale less than two weeks later.) My presentation was delayed by a bomb threat.
- (42) I also received many communications from individuals who were supportive of my efforts, and who thanked me for bringing this case.
- (43) Many of the supporters stated that they were not atheists, but simply agreed with my work to uphold the principles underlying the Religious Clauses of the First Amendment
- (44) Other supporters – comprising the vast majority – were atheists and other “freethinkers” who had long felt discriminated against and/or suffered adverse consequences due to their inability to recite the pledge consistent with their religious ideals. A recurring theme from those individuals is that they wanted to do what I had done, but that they either thought it was futile, or they feared the consequences.
- (45) The Elk Grove case hinged on a family law matter. Myriad individuals believe that the family laws of this nation are egregiously abusive, and have for years been seeking ways to attract media attention in order to detail the destruction and waste caused by the family law system.
- (46) Accordingly, I contacted many of the groups these people have formed to ask if they would be interested in writing amicus briefs. Although those groups frequently complain that their voices are not heard, none of the major organizations would agree to participate in the case.⁸ The reason I was given – over and over – was that it would be too politically dangerous to be aligned with an Atheist.
- (47) I, personally, feel like a political outsider every time I see “In God We Trust” on our coins and currency, on government documents, and on other governmental locales.
- (48) As a result of the reactions to my involvement in the previous case – where I did nothing but attempt to uphold the Constitution – I am continually wondering if I’m being treated differently (especially negatively). For instance, I am involved in a family court proceeding where the judge has made no secret about his staunch Catholicism. Is it my Atheism that has caused his repeated adverse rulings?⁹ I was recently treated inappropriately when I made an inquiry at a municipality office in Elk Grove. Was that because the workers there knew of my religious beliefs?

⁸ One small group – the United Fathers of America – did write an *amicus* brief. That organization, however, has a strong association with atheists.

⁹ It certainly isn’t my ability to care for, nurture and love my child.

- (49) When the Elk Grove case was heading to the Supreme Court, I attempted to add parties to eliminate any standing concerns. The first family I contacted was comprised of friends who had been supportive since the case first broke. They were initially very willing to participate. Nonetheless, even though I told them I would attempt to add them anonymously, they subsequently declined to join the case. The reason given was that they feared the social consequences, especially loss of employment.
- (50) With my standing having been denied by the Supreme Court, numerous families have contacted me regarding their willingness to be plaintiffs in new challenges. Most have been atheists, and virtually all of them have expressed significant concerns as to their safety. Many have opted not to proceed due to the potential adverse ramifications of their being identified either as atheists, or as individuals supporting this cause.
- (51) I am a board-certified emergency physician with more than twenty-five years of experience. I recently applied for a number of positions in hospitals situated in nearby rural communities. The contracting company informed me that the hospitals will not hire me ... solely because of my work in seeking to remove endorsements of God and (Christian) monotheism from government.
- (52) That work has as its goal the adherence to the principle of equality that underlies the Establishment Clause. I strongly doubt that I wouldn't have been hired had I been working to **add** God to the government – an activity that would be in violation of that constitutional ideal.
- (53) I believe strongly that this denial of employment – which apparently has recurred at least once since – is the result of the antipathy towards Atheists that has been perpetuated largely by such government acts as declaring “In God We Trust” to be the national motto, and placing “In God We Trust” on all of the nation’s coins and currency.
- (54) I have also long held a desire to run for public office. Unfortunately, the reality is that an atheist is virtually assured of defeat in this nation ... largely, I believe, due to the anti-Atheistic messages constantly espoused by the government. Chief among these is the claim that “In God We Trust.” This reality has directly affected my activity in this political regard.
- (55) I have paid federal taxes for each of the last (at least) twenty years, and expect that I will continue to pay federal taxes for at least another decade.
- (56) I have attended numerous meetings of atheist, humanist and other secular organizations. At those meetings, books and other items directly related to my religious beliefs are often offered for sale, and I have, on more than one occasion, wished to make a purchase. When the sellers only take cash – or when I only have

cash on my person – the only way I can make the given purchase is with money that bears the words, “In God We Trust.” I cannot in good conscience, consistent with my religious principles, make purchases for religious materials with money that sends that message. Thus, I have forsaken making the given purchase(s).

- (57) I have traveled to numerous foreign lands, including Andorra, Aruba, Ascension Island, Australia, the Bahamas, Bali, Barbados, Belgium, Bimini, Canada, Chile, Cuba, Denmark, Dominican Republic, Ecuador, Egypt, England, France, Germany, Gibraltar, Greece, Haiti, Holland, Honduras, Hong Kong, Indonesia, Israel, Italy, Japan, Korea (South), Malaysia, Mexico, New Zealand, Norway, Palau, Panama, Puerto Rico, St. Thomas, Spain, Sri Lanka, Sweden, Switzerland, Taiwan, Thailand, Tobago, Trinidad, and likely others not presently recalled.
- (58) Although I often would take travelers’ cheques on these trips, I frequently would need to exchange small quantities of American currency in order to avoid financial losses (due to exchanges of large denomination cheques).
- (59) I plan on continuing my foreign travels – including as a minister of FACTS. I expect that I will continue to be forced to spend United States currency, thus further being placed in a situation where Defendants’ acts have required me to evangelize for a religious view I explicitly deny.
- (60) I was in Boston in March of this year. I planned to visit the Harvard Divinity School, especially to explore its Andover-Harvard Theological Library. However, the only parking available required payment in cash. Accordingly, because I cannot (in accordance with the precepts of FACTS) spend money that proclaims “In God We Trust” – especially when acting in my role as minister – I was forced to forego that visit.
- (61) This problem occurs not only in distant locales. On multiple occasions, I have located books at the Sacramento County Central library and at the State Library in downtown Sacramento. I have foregone trips to obtain those books as well because the only convenient parking is on the street, where meters – accepting only American coins – are situated.
- (62) The problem of forced use of coins and currency occurs in regard to toll roads and bridges as well. For instance, I have desired for quite some time to hold facts meetings in the Bay Area, but have foregone those opportunities due to the sacrilege involved.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 9, 2006 in Sacramento, CA.

/s/ - Michael Newdow

Michael Newdow

APPENDIX J**DATA ON RELIGION IN THE UNITED STATES****No. 67. Self-Described Religious Identification of Adult Population:
1990 and 2001**

[In thousands (175,440 represents 175,440,000). The American Religious Identification Survey (ARIS) 2001 was based on a random digit-dialed telephone survey of 50,281 American residential households in the continental U.S.A (48 states). Respondents were asked to describe themselves in terms of religion with an open-ended question. Interviewers did not prompt or offer a suggested list of potential answers. Moreover, the self-description of respondents was not based on whether established religious bodies, institutions, churches, mosques or synagogues considered them to be members. Quite the contrary, the survey sought to determine whether the respondents themselves regarded themselves as adherents of a religious community. Subjective rather than objective standards of religious identification were tapped by the surveys]

Religious group	1990	2001	Religious group	1990	2001
Adult population, total ¹	175,440	207,980	Fundamentalist	27	61
Total Christian	151,496	159,506	Salvation Army	27	25
Catholic	46,004	50,873	Independent Christian Church	25	71
Baptist	33,964	33,830	Total other religions	5,853	7,740
Protestant - no denomination supplied	17,214	4,647	Jewish	3,137	2,831
Methodist/Wesleyan	14,174	14,150	Muslim/Islamic	527	1,104
Lutheran	9,110	9,580	Buddhist	401	1,082
Christian - no denomination supplied	8,073	14,150	Unitarian/Universalist	502	629
Presbyterian	4,985	5,596	Hindu	227	766
Pentecostal/Charismatic	3,191	4,407	Native American	47	103
Episcopalian/Anglican	3,042	3,451	Scientologist	45	55
Mormon/Latter-Day Saints	2,487	2,787	Baha'i	28	84
Churches of Christ	1,769	2,593	Taoist	23	40
Jehovah's Witness	1,381	1,331	New Age	20	68
Seventh-Day Adventist	668	724	Eckankar	18	26
Assemblies of God	660	1,106	Rastafarian	14	11
Holiness/Holy	610	569	Sikh	13	57
Congregational/United Church of Christ	599	1,378	Wiccan	8	134
Church of the Nazarene	549	544	Deity	6	49
Church of God	531	944	Druid	(NA)	33
Orthodox (Eastern)	502	645	Santeria	(NA)	22
Evangelical ²	242	1,032	Pagan	(NA)	140
Mennonite	235	346	Spiritualist	(NA)	116
Christian Science	214	194	Ethical Culture	(NA)	4
Church of the Brethren	206	358	Other unclassified	837	386
Born Again ²	204	56	No religion specified, total	14,331	29,481
Nondenominational ²	195	2,489	Atheist	(NA)	902
Disciples of Christ	144	492	Agnostic	1,186	991
Reformed/Dutch Reform	161	289	Humanist	29	49
Apostolic/New Apostolic	117	254	Secular	(NA)	53
Quaker	67	217	No religion	13,116	27,486
Full Gospel	51	168	Refused to reply to question	4,031	11,246
Christian Reform	40	79			
Foursquare Gospel	28	70			

NA Not available. ¹ Refers to the total number of adults in all fifty states. All other figures are based on projections from surveys conducted in the continental United States (48 states). ² Because of the subjective nature of replies to open-ended question, these categories are the most unstable as they do not refer to clearly identifiable denominations as much as underlying feelings about religion. Thus they may be the most subject to fluctuation over time.

Source: 1990 data, Barry A. Kosmin and Seymour P. Lachman, "One Nation Under God: Religion in Contemporary American Society", 1993; 2001 data, The Graduate Center of the City University of New York, New York, NY, Barry A. Kosmin, Egon Mayer and Ariela Keysar, American Religious Identification Survey, 2001 (copyright).

BELIEF IN GOD AND CERTAINTY OF BELIEF**“Are you ...?”**

	Total	RELIGIOUS AFFILIATION			
		Catholic	Protestant	Jewish	Atheist/ Agnostic
	%	%	%	%	%
Believe in God (NET)	79	79	90	48	15
Absolutely certain that there is a God	66	63	81	24	4
Somewhat certain that there is a God	12	16	9	24	11
Believe there is no God (NET)	9	8	4	19	52
Somewhat certain that there is no God	5	4	2	13	28
Absolutely certain that there is no God	4	4	2	5	23
Not sure whether or not there is a God	12	13	6	33	33

Base: All Adults.***The Harris Poll #59, October 15, 2003***

Survey by Harris Interactive® based on a nationwide sample of 2,306 adults surveyed online between September 16 and 23, 2003.

(Accessed on August 23, 2005
at http://www.harrisinteractive.com/harris_poll/index.asp?PID=408)

SUPPORT FOR CHANGES IN PUBLIC POLICY ACCORDING TO SEVEN KEY FAITH GROUPS

	All Adults	Evangelicals	Non- evangelical born again	Notional	Non-Christian faith	Atheist/ Agnostic	Protestant	Catholic
Remove 10 Commandments	18%	< 0.5%	6%	16%	32%	55%	6%	18%
Remove "In God We Trust"	13%	1%	4%	12%	28%	37%	4%	15%
Remove "One nation under God"	15%	4%	6%	13%	24%	40%	7%	13%
Teach creationism	59%	86%	70%	60%	42%	29%	69%	59%
Allow the "F-word" on broadcast TV	15%	6%	8%	17%	21%	35%	9%	19%
Make Christianity the official religion of the U.S.	32%	66%	44%	25%	21%	8%	43%	24%

Base: 1024 adults.

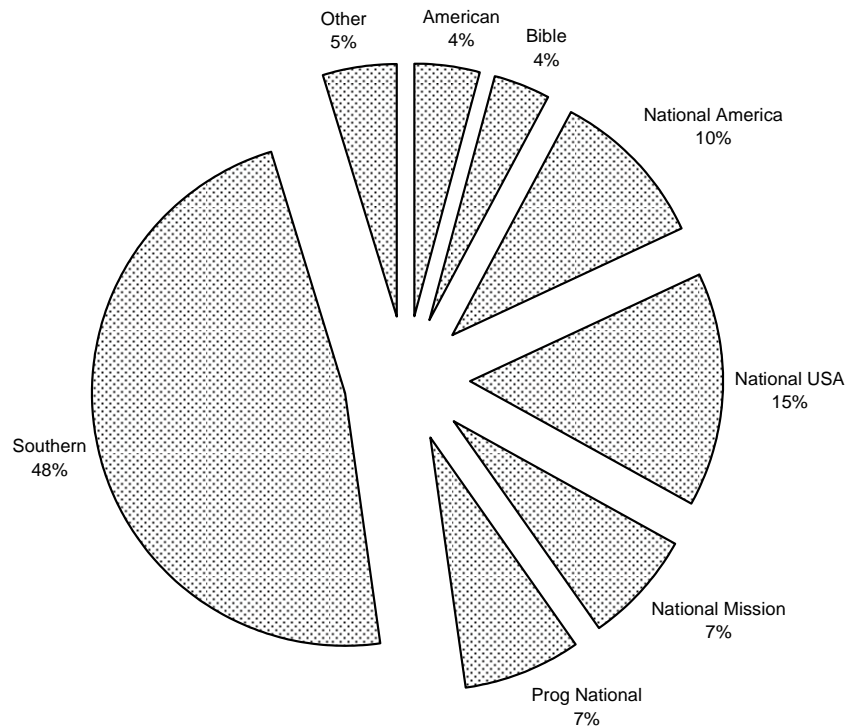
From poll reported on July 26, 2004 by The Barna Group, Ltd., 1957 Eastman Ave., Ste B, Ventura, CA
93003

(Accessed at <http://www.barna.org/FlexPage.aspx?Page=BarnaUpdate&BarnaUpdateID=168> on December 21, 2004)

APPENDIX K

**CONSTITUTIONALLY, MONOTHEISM IS JUST AS SECTARIAN
AS IS ANY OTHER DENOMINATION**

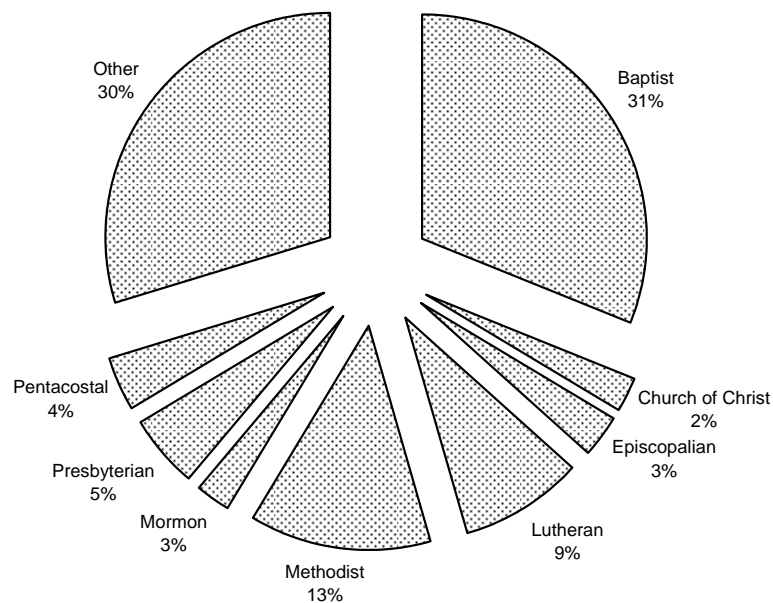
ALL BAPTISTS



**Citizens excluded (apr.):
246,000,000 (85%)**

**CONSTITUTIONALLY, MONOTHEISM IS JUST AS SECTARIAN
AS IS ANY OTHER DENOMINATION**

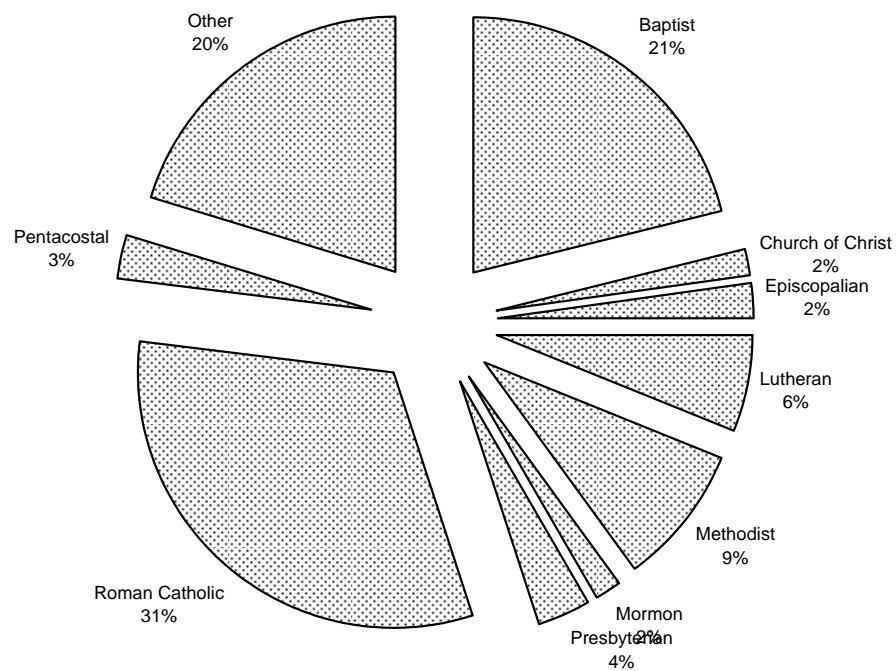
ALL PROTESTANTS



**Citizens excluded:
142,000,000 (49%)**

**CONSTITUTIONALLY, MONOTHEISM IS JUST AS SECTARIAN
AS IS ANY OTHER DENOMINATION**

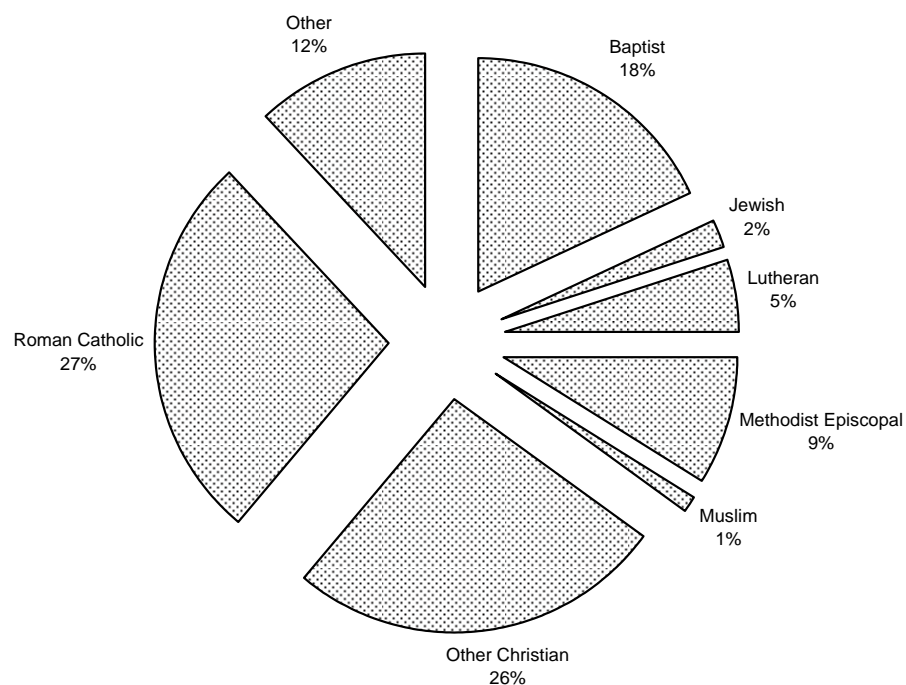
ALL CHRISTIANS



**Citizens excluded:
75,000,000 (26%)**

**CONSTITUTIONALLY, MONOTHEISM IS JUST AS SECTARIAN
AS IS ANY OTHER DENOMINATION**

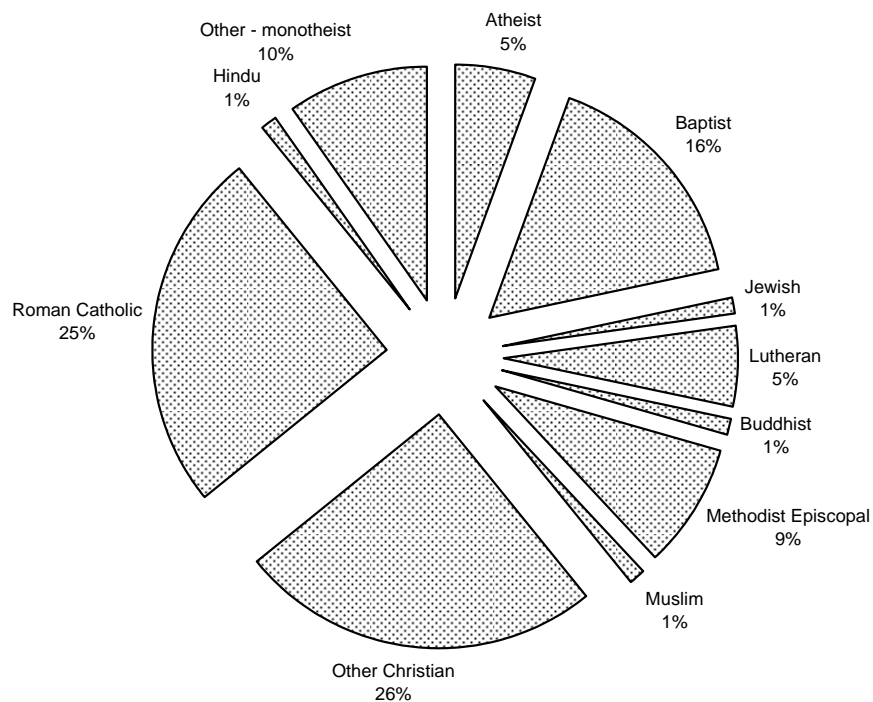
ALL MONOTHEISTS



**Citizens excluded (apr.):
29,000,000 (10%)**

**CONSTITUTIONALLY, MONOTHEISM IS JUST AS SECTARIAN
AS IS ANY OTHER DENOMINATION**

ALL AMERICANS



**Citizens excluded:
0 (0%)**

APPENDIX L

**TWENTY-EIGHT OF THIRTY SUPREME COURT JUSTICES HAVE WRITTEN
OPINIONS CONTAINING PRINCIPLED STATEMENTS INCONSISTENT WITH A
MOTTO COMPRISED OF THE WORDS, “IN GOD WE TRUST”**

A Lexis search of United States Supreme Court cases has been performed. For every justice appointed since 1925, opinions in cases involving the Establishment Clause were sought. Of the forty justices, ten were excluded because they authored no such opinions. Twenty-eight of the remaining thirty – including six of the seven justices currently sitting with more than one year tenure – provided principled dicta supporting Plaintiff’s case. Taken together, these citations leave no doubt as to the manifest unconstitutionality of “In God We Trust.”

Justice Black:

“[N]either a State nor the Federal Government ... can constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.” Torcaso v. Watkins, 367 U.S. 488, 495 (1961)

Justice Blackmun:

“[T]he Constitution mandates that the government remain secular, rather than affiliate itself with religious beliefs or institutions, precisely in order to avoid discriminating among citizens on the basis of their religious faiths.” Allegheny County v. Greater Pittsburgh ACLU, 492 U.S. 573, 610 (1989)

Justice Brennan:

“[A]n important concern of the effects test is whether the symbolic union of church and state effected by the challenged governmental action is sufficiently likely to be perceived by adherents of the controlling denominations as an endorsement, and by the nonadherents as a disapproval, of their individual religious choices.” Grand Rapids School District v. Ball, 473 U.S. 373, 390 (1985)

Justice Breyer:

“[The Religion Clauses] seek to ‘assure the fullest possible scope of religious liberty and tolerance for all.’ They seek to avoid that divisiveness based upon religion that promotes social conflict, sapping the strength of government and religion alike.” Van Orden v. Perry, 125 S. Ct. 2854, 2868 (2005) (Breyer, J., concurring) (citations omitted).¹

Chief Justice Burger:

“The Constitution decrees that religion must be a private matter for the individual, the family, and the institutions of private choice” Lemon v. Kurtzman, 403 U.S. 602, 625 (1971)

Justice Clark:

“[The Court] has consistently held that the [Establishment] clause withdrew all legislative power respecting religious belief or the expression thereof.” Abington School District v. Schempp, 374 U.S. 203, 222 (1963)

Justice Douglas:

“Our individual preferences, however, are not the constitutional standard. The constitutional standard is the separation of Church and State.” Zorach v. Clausen, 343 U.S. 306, 314 (1952)

Justice Fortas:

“Government in our democracy, state and national, must be neutral in matters of religious theory, doctrine, and practice. It may not be hostile to any religion or to the advocacy of no-religion; and it may not aid, foster, or promote one religion or religious theory against another or even against the militant opposite. The First Amendment mandates governmental neutrality between religion and religion and between religion and nonreligion.” Epperson v. Arkansas, 393 U.S. 97, 103-104 (1968)

Justice Frankfurter:

“Certainly the affirmative pursuit of one’s convictions about the ultimate mystery of the universe and man’s relation to it is placed beyond the reach of law. Government may not interfere with organized or individual expression of belief or disbelief.” Minersville School District v. Gobitis, 310 U.S. 586, 593 (1940)

¹ That Justice Breyer then ruled against the plaintiff in Van Orden is certainly interesting, likely demonstrating how personal religious predilection can blind people to their own biases. Would Justice Breyer ever have said to Rosa Parks, for example, that having her sit in the back of the bus was okay because “40 years passed in which the presence of [racial segregation on buses], legally speaking, went unchallenged?” Van Orden v. Perry, 125 S. Ct. 2854, 2870 (2005). Would he ignore the manifest disenfranchisement of blacks as he did with the manifest disenfranchisement of Atheists? “I am not aware of any evidence suggesting that this was due to a climate of intimidation.” See APPENDICES B, C, D and E.

Justice Ginsberg:

“A prime part of the history of our Constitution ... is the story of the extension of constitutional rights and protections to people once ignored or excluded.” United States v. Virginia, 518 U.S. 515, 557 (1996)

Justice Goldberg:

“The fullest realization of true religious liberty requires that government neither engage in nor compel religious practices, that it effect no favoritism among sects or between religion and nonreligion, and that it work deterrence of no religious belief.” Abington School District v. Schempp, 374 U.S. 203, 305 (1963) (concurring opinion)

Justice Harlan:

“[T]he State cannot ‘constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can [it] aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.’ ... Neutrality and voluntarism stand as barriers against the most egregious and hence divisive kinds of state involvement in religious matters.” Walz v. Tax Commission, 397 U.S. 664, 695 (1970) (separate opinion)

Justice Jackson:

“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion ... If there are any circumstances which permit an exception, they do not now occur to us.” West Virginia Board of Education v. Barnette, 319 U.S. 624, 642 (1943)

Justice Kennedy:

“The First Amendment’s Religion Clauses mean that religious beliefs and religious expression are too precious to be either proscribed or prescribed by the State.” Lee v. Weisman, 505 U.S. 577, 589 (1992).

Justice Marshall:

“It is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants’ interpretations of those creeds.” Hernandez v. Commissioner, 490 U.S. 680, 699 (1989)

Justice Murphy:

“[T]he protection of the Constitution must be extended to all, not only to those whose views accord with prevailing thought but also to dissident minorities who energetically spread their beliefs.” Jones v. City of Opelika, 316 U.S. 584, 611-12 (1942) (dissenting opinion)

Justice O'Connor:

“[W]hen [government] acts it should do so without endorsing a particular religious belief or practice that all citizens do not share.” Wallace v. Jaffree, 472 U.S. 38, 76 (1985)

Justice Powell:

“A proper respect for both the Free Exercise and the Establishment Clauses compels the State to pursue a course of ‘neutrality’ toward religion.” Committee for Public Education & Religious Liberty v. Nyquist, 413 U.S. 756, 792-93 (1973)

Chief Justice Rehnquist:

“The Establishment Clause of the First Amendment, applied to the States through the Fourteenth Amendment, prevents a State from enacting laws that have the “purpose” or “effect” of advancing or inhibiting religion.” Zelman v. Simmons-Harris, 536 U.S. 639, 648-49 (2002)

Justice O. Roberts:

“In the realm of religious faith, ... sharp differences arise. [There] the tenets of one man may seem the rankest error to his neighbor.” Cantwell v. Connecticut, 310 U.S. 296, 310 (1940)

Justice Rutledge:

“The [First] Amendment’s purpose was not to strike merely at the official establishment of a single sect, creed or religion, outlawing only a formal relation such as had prevailed in England and some of the colonies. Necessarily it was to uproot all such relationships. But the object was broader than separating church and state in this narrow sense. It was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion.” Everson v. Board of Education, 330 U.S. 1, 31-32 (1947 (dissenting opinion))

Justice Scalia:

“The government may not compel affirmation of religious belief ... or lend its power to one or the other side in controversies over religious authority or dogma.” Employment Div. v. Smith, 494 U.S. 872, 877 (1990)

Justice Souter:

“The general principle that civil power must be exercised in a manner neutral to religion” Board of Education of Kiryas Joel v. Grumet, 512 U.S. 687, 704 (1994)

Justice Stevens:

“The importance of that principle does not permit us to treat this as an inconsequential case involving nothing more than a few words of symbolic speech on behalf of the political majority. For whenever the State itself speaks on a religious subject, one of the questions that we must ask is ‘whether the government intends to convey a message of endorsement or disapproval of religion.’” Wallace v. Jaffree, 472 U.S. 38, 60-61 (1985)

Justice Stewart

“[P]olitical fragmentation and division along religious lines [is] one of the principal evils against which the Establishment Clause was intended to protect.” Meek v. Pittenger, 421 U.S. 349, 372 (1975)

Justice Stone:

“[C]areful scrutiny of legislative efforts to secure conformity of belief and opinion by a compulsory affirmation of the desired belief, is especially needful if civil rights are to receive any protection.” Minersville School District v. Gobitis, 310 U.S. 586, 606 (1940) (dissenting opinion)

Chief Justice Warren:

“If the purpose or effect of a law is ... to discriminate invidiously between religions, that law is constitutionally invalid even though the burden may be characterized as being only indirect.” Braunfeld v. Brown, 366 U.S. 599, 607 (1961)

Justice White:

“Lemon’s ‘purpose’ requirement aims at preventing the relevant governmental decisionmaker - in this case, Congress - from abandoning neutrality and acting with the intent of promoting a particular point of view in religious matters.” Corporation of Presiding Bishop v. Amos, 483 U.S. 327, 335 (1986)

APPENDIX M

THE SUPREME COURT HAS ISSUED AN OVERWHELMING NUMBER OF PRINCIPLED STATEMENTS DEMONSTRATING THAT “IN GOD WE TRUST” AS OUR MOTTO AND ON OUR MONEY IS UNCONSTITUTIONAL

The following is a sampling of approximately 200 instances of dicta, which – when applied to “In God We Trust” – support Plaintiff’s contention that the challenged governmental use of this phrase was and is unconstitutional. They should be kept in mind when considering the rare, unprincipled dictum suggesting that the phrase might comport with the Constitution’s mandates. It also should be noted that there are many, many more instances – Plaintiff hopes that this listing suffices to make his point here.

In order to keep the focus on the words, the authors and the cases are not included. Plaintiff can provide these missing items if deemed necessary by the Court.

“[A]s the state cannot forbid, neither can it perform or aid in performing the religious function. The dual prohibition makes that function altogether private. It cannot be made a public one by legislative act. This was the very heart of Madison’s Remonstrance, as it is of the Amendment itself.”

“[A]s with the freedom of thought and speech of which Mr. Justice Cordozo spoke in Palko v. Connecticut, 302 U.S. 319 - it is accurate to say concerning the principle that a government must neither establish nor suppress religious belief.”

“[I]f there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought - not free thought for those who agree with us but freedom for the thought that we hate.”

“[I]t is only by wholly isolating the state from the religious sphere and compelling it to be completely neutral, that the freedom of each and every denomination and of all nonbelievers can be maintained.”

“[N]o American should at any point feel alienated from his government because that government has declared or acted upon some ‘official’ or ‘authorized’ point of view on a matter of religion.”

“[N]o particular religious sect or society ought to be favored or established, by law, in preference to others” (quoting Rhode Island’s State Constitution)

“[N]o preference shall ever be given by law to any religious establishments or modes of worship.” (quoting Pennsylvania’s State Constitution)

“[O]rdering an instrumentality of the State to support religious evangelism with direct funding ... is a flat violation of the Establishment Clause.”

“[O]ur cases have prohibited government endorsement of religion, its sponsorship, and active involvement in religion, whether or not citizens were coerced to conform.”

“[O]ur judicial opinions have refrained from drawing invidious distinctions between those who believe in no religion and those who do believe. The First Amendment has lost much if the religious follower and the atheist are no longer to be judicially regarded as entitled to equal justice under law.”

“[R]eligions supported by government are compromised just as surely as the religious freedom of dissenters is burdened when the government supports religion.”

“[R]eligious exercises are not constitutionally invalid if they simply reflect differences which exist in the society from which the school draws its pupils. They become constitutionally invalid only if their administration places the sanction of secular authority behind one or more particular religious or irreligious beliefs.”

“[T]he attitude of government toward religion must be one of neutrality.”

“[T]he central meaning of the Religion Clauses of the First Amendment ... is that all creeds must be tolerated, and none favored. The suggestion that government may establish an official or civic religion as a means of avoiding the establishment of a religion with more specific creeds strikes us as a contradiction that cannot be accepted.”

“[T]he concept of neutrality ... does not permit a State to require a religious exercise even with the consent of the majority of those affected.”

“[T]he Constitution ... demands that the State not take action that has the primary effect of advancing religion.”

“[T]he Constitution mandates that the government remain secular, rather than affiliate itself with religious beliefs or institutions, precisely in order to avoid discriminating among citizens on the basis of their religious faiths.”

“[T]he Constitution’s authors sought to protect religious worship from the pervasive power of government. The history of many countries attests to the hazards of religion’s intruding into the political arena or of political power intruding into the legitimate and free exercise of religious belief.”

“[T]he core rationale underlying the Establishment Clause is preventing ‘a fusion of governmental and religious functions.’”

“[T]he dogma, creed, scruples or practices of no religious group or sect are to be preferred over those of any others.”

“[T]he Establishment Clause ... forbids the State to employ its facilities or funds in a way that gives any church, or all churches, greater strength in our society than it would have by relying on its members alone. Thus, the present regimes must fall under that clause for the

additional reason that public funds, though small in amount, are being used to promote a religious exercise. Through the mechanism of the State, all of the people are being required to finance a religious exercise that only some of the people want and that violates the sensibilities of others.”

“[T]he Establishment Clause ... is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce non-observing individuals or not.”

“[T]he First Amendment’s purpose of requiring on the part of all organs of government a strict neutrality toward theological questions”

“[T]he government’s use of religious symbols is unconstitutional if it effectively endorses sectarian religious belief.”

“[T]he great purposes of the Constitution do not depend on the approval or convenience of those they restrain.”

“[T]he individual’s freedom of conscience [is] the central liberty that unifies the various Clauses in the First Amendment.”

“[T]he mere appearance of a joint exercise of legislative authority by Church and State provides a significant symbolic benefit to religion in the minds of some by reason of the power conferred.”

“[T]he State may not espouse a religious message.”

“[T]here is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect.”

“[T]his Court ... has found that the First and Fourteenth Amendments afford protection against religious establishments far more extensive than merely to forbid a national or state church.”

“[T]hough the First Amendment does not allow the government to stifle prayers which aspire to these ends, neither does it permit the government to undertake that task for itself.”

“[The Court] has consistently held that the [Establishment] clause withdrew all legislative power respecting religious belief or the expression thereof.”

“[The] essence [of the constitutional protections of religious freedom] is freedom from conformity to religious dogma.”

“[V]iewpoint discrimination occurs when government allows one message while prohibiting the messages of those who can reasonably be expected to respond.”

“[W]e have staked the very existence of our country on the faith that complete separation between the state and religion is best for the state and best for religion.”

“[W]e must not confuse the issue of governmental power to regulate or prohibit conduct motivated by religious beliefs with the quite different problem of governmental authority to compel behavior offensive to religious principles.”

“A central lesson of our decisions is that a significant factor in upholding governmental programs in the face of Establishment Clause attack is their neutrality towards religion.”

“absolute equality before the law, of all religious opinions and sects ... The government is neutral, and, while protecting all, it prefers none, and it disparages none.”

“Any spark of love for country which may be generated in a child or his associates by forcing him to make what is to him an empty gesture and recite words from him contrary to his religious beliefs is overshadowed by the desirability of preserving freedom of conscience to the full. It is in that freedom and the example of persuasion, not in force and compulsion, that the real unity of America lies.”

“Any use of such coercive power by the state to help or hinder some religious sects or to prefer all religious sects over nonbelievers or vice versa is just what I think the First Amendment forbids. In considering whether a state has entered this forbidden field the question is not whether it has entered too far but whether it has entered at all.”

“As a result, the public school system of Champaign actively furthers inculcation in the religious tenets of some faiths, and in the process sharpens the consciousness of religious differences at least among some of the children committed to its care. These are consequences not amenable to statistics.”

“As we have repeatedly recognized, government inculcation of religious beliefs has the impermissible effect of advancing religion.”

“At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs”

“Certainly the affirmative pursuit of one’s convictions about the ultimate mystery of the universe and man’s relation to it is placed beyond the reach of law. Government may not interfere with organized or individual expression of belief or disbelief.”

“Courts above all must be neutral, for [t]he law knows no heresy, and is committed to the support of no dogma, the establishment of no sect.”

“evenhanded treatment to all who believe, doubt, or disbelieve”

“For just as religion throughout history has provided spiritual comfort, guidance, and inspiration to many, it can also serve powerfully to divide societies and to exclude those whose beliefs are not in accord with particular religions or sects that have from time to time achieved dominance. The solution to this problem adopted by the Framers and

consistently recognized by this Court is jealously to guard the right of every individual to worship according to the dictates of conscience while requiring the government to maintain a course of neutrality among religions, and between religion and non-religion.”

“Government [may not] foster the creation of political constituencies defined along religious lines.”

“Governmental approval of religion tends to reinforce the religious message ... and, by the same token, to carry a message of exclusion to those of less favored views.”

“Here we have such a small minority entertaining in good faith a religious belief, which is such a departure from the usual course of human conduct, that most persons are disposed to regard it with little toleration or concern. In such circumstances careful scrutiny of legislative efforts to secure conformity of belief and opinion by a compulsory affirmation of the desired belief, is especially needful if civil rights are to receive any protection.”

“History teaches us that there have been but few infringements of personal liberty by the state which have not been justified ... in the name of righteousness and the public good, and few which have not been directed ... at politically helpless minorities.”

“I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should ‘make no law respecting an establishment of religion or prohibiting the free exercise thereof,’ thus building a wall of separation between church and State.”

“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.”

“In sum, the history which our prior decisions have summoned to aid interpretation of the Establishment Clause permits little doubt that its prohibition was designed comprehensively to prevent those official involvements of religion which would tend to foster or discourage religious worship or belief.”

“In the words of Jefferson, the clause against establishment of religion by law was intended to erect ‘a wall of separation between Church and State.’”

“It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way which ‘establishes a [state] religion or religious faith, or tends to do so.’”

“It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends [of compulsory unification of opinion] by avoiding these beginnings.”

“Madison and his coworkers made no exceptions or abridgements to the complete separation they created. Their objection was not to small tithes. It was to any tithes whatsoever.”

“Neither the National Government nor, under the Due Process Clause of the Fourteenth Amendment, a State may, by any device, support belief or the expression of belief for its own sake, whether from conviction of the truth of that belief, or from conviction that by the propagation of that belief the civil welfare of the State is served, or because a majority of its citizens, holding that belief, are offended when all do not hold it.”

“No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion.”

“Not simply an established church, but any law respecting an establishment of religion is forbidden.”

“Of course, giving sectarian religious speech preferential access to a forum close to the seat of government (or anywhere else for that matter) would violate the Establishment Clause ...”

“Official compulsion to affirm what is contrary to one’s religious beliefs is the antithesis of freedom of worship ...”

“One of our basic rights is to be free of taxation to support a transgression of the constitutional command that the authorities ‘shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.’”

“Our country has become strikingly multireligious as well as multiracial and multiethnic. This fact, perhaps more than anything one could write, demonstrates the wisdom of including the Establishment Clause in the First Amendment.”

“‘Primary among those evils’ against which the Establishment Clause guards ‘have been sponsorship, financial support, and active involvement of the sovereign in religious activity’”

“Public funds may not be used to endorse the religious message.”

“reflects nothing more than the governmental obligation of neutrality in the face of religious differences”

“Should government choose to incorporate some arguably religious element into its public ceremonies, that acknowledgment must be impartial; it must not tend to promote one faith or handicap another; and it should not sponsor religion generally over nonreligion. Thus, in a series of decisions concerned with such acknowledgments, we have repeatedly held that any active form of public acknowledgment of religion indicating sponsorship or endorsement is forbidden.”

“Th[e First] Amendment requires the state to be a neutral in its relations with groups of religious believers and non-believers ...”

“The basic purpose of the religion clause of the First Amendment is to promote and assure the fullest possible scope of religious liberty and tolerance for all and to nurture the conditions which secure the best hope for attainment of that end.”

“The cause of the conflict is the State’s apparent approval of a religious or anti-religious message. Our Constitution wisely seeks to minimize such strife by forbidding state-endorsed religious activity.”

“the command of the First Amendment that the Government maintain strict neutrality, neither aiding nor opposing religion.”

“The constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion.”

“The Court today does only what courts must do in many Establishment Clause cases - focus on specific features of a particular government action to ensure that it does not violate the Constitution.”

“The day that this country ceases to be free for irreligion it will cease to be free for religion - except for the sect that can win political power.”

“The design of the Constitution is that preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere, which itself is promised freedom to pursue that mission.”

“The essence of the religious freedom guaranteed by our Constitution is therefore this: no religion shall either receive the state’s support or incur its hostility. Religion is outside the sphere of political government.”

“The essential inquiry in each case, as expressed in our prior decisions, is whether the challenged state aid has the primary purpose or effect of advancing religion or religious education or whether it leads to excessive entanglement by the State in the affairs of the religious institution.”

“The Establishment Clause withdrew from the sphere of legislative concern and competence a specific, but comprehensive, area of human conduct: man’s belief or disbelief in the verity of some transcendental idea and man’s expression in action of that belief or disbelief. Congress may not make these matters, as such, the subject of legislation, nor, now, may any legislature in this country.”

“The ‘establishment of religion’ clause of the First Amendment means at least this: Neither a state nor the Federal Government ... can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can ...force him to profess a belief or disbelief in any religion.”

“The First Amendment ... was one of twelve proposed on September 25, 1789, to the States by the First Congress after the adoption of our Constitution. Ten were ratified. They were intended to be and have become our Bill of Rights. By their terms our people have a

guarantee that so long as law as we know it shall prevail, they shall live protected from the tyranny of the despot or the mob. None of the provision of our Constitution is more venerated by the people or respected by legislatures and the courts than those which proclaim for our country the freedom of religion and expression.”

“The First Amendment’s Religion Clauses mean that religious beliefs and religious expression are too precious to be either proscribed or prescribed by the State.”

“The Free Exercise Clause protects against governmental hostility which is masked as well as overt.”

“The fullest realization of true religious liberty requires that government neither engage in nor compel religious practices, that it effect no favoritism among sects or between religion and nonreligion, and that it work deterrence of no religious belief.”

“The government must be neutral when it comes to competition between sects. It may not thrust any sect on any person. It may not make a religious observance compulsory.”

“The great condition of religious liberty is that it be maintained free from sustenance, as also from other interferences, by the state. For when it comes to rest upon that secular foundation it vanishes with the resting.”

“The history of governmentally established religion, both in England and in this country, showed that whenever government had allied itself with one particular form of religion, the inevitable result had been that it had incurred the hatred, disrespect and even contempt of those who held contrary beliefs”

“The idea, as I understand it, was to limit the power of government to act in religious matters, not to limit the freedom of religious men to act religiously nor to restrict the freedom of atheists or agnostics.”

“The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect.”

“the protection of the Constitution must be extended to all, not only to those whose views accord with prevailing thought but also to dissident minorities who energetically spread their beliefs.”

“The Religion Clauses prohibit the government from favoring religion”

“The spiritual mind of man has thus been free to believe, disbelieve, or doubt, without repression, great or small, by the heavy hand of government.”

“the State is constitutionally compelled to assure that the state-sponsored activity is not being used for religious indoctrination.”

“The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment

exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion.”

“The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One’s right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.”

“There cannot be the slightest doubt that the First Amendment reflects the philosophy that Church and State should be separated. And so far as interference with the ‘free exercise’ of religion and an ‘establishment’ of religion are concerned, the separation must be complete and unequivocal. The First Amendment within the scope of its coverage permits no exception: the prohibition is absolute.”

“There is an ‘establishment’ of religion in the constitutional sense if any practice of any religious group has the sanction of law behind it.”

“These same precedents caution us to measure the idea of a civic religion against the central meaning of the Religion Clauses of the First Amendment, which is that all creeds must be tolerated, and none favored. The suggestion that government may establish an official or civic religion as a means of avoiding the establishment of religion with more specific creeds strikes us as a contradiction that cannot be accepted.”

“This case, rather, involves the noncontroversial principle, repeated in *Smith*, that formal neutrality and general applicability are necessary conditions for free exercise constitutionality.”

“to bar not only prohibitions of religious exercise fueled by the hostility of the majority, but prohibitions flowing from the indifference or ignorance of the majority as well.”

“We are here concerned with a vital question involving the very foundation of our civilization. Centuries ago our forefathers fought and died for the principles now contained in the Bill of Rights of the Federal and New Jersey Constitutions. It is our solemn duty to preserve these rights and to prohibit any encroachment upon them.”

“we have repeatedly held that any active form of public acknowledgment of religion indicating sponsorship or endorsement is forbidden.”

“We have time and again held that the government generally may not treat people differently based on the God or gods they worship, or don’t worship.”

“We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma.”

“We think that by using its public school system to encourage recitation of the Regents’ prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment Clause.”

“What our Constitution indispensably protects is the freedom of each of us, be he Jew or Agnostic, Christian or Atheist, Buddhist or Freethinker, to believe or disbelieve, to worship or not worship, to pray or keep silent, according to his own conscience, uncoerced and unrestrained by government.”

“When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain. But the purposes underlying the Establishment Clause go much further than that. Its first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and degrade religion.”

“Where the government’s operation of a public forum has the effect of endorsing religion, even if the governmental actor neither intends nor actively encourages that result, ... the Establishment Clause is violated.”

“Where we have tested for endorsement of religion, the subject of the test was either expression by the government itself, ... or else government action alleged to discriminate in favor of private religious expression or activity.”

“While our institutions reflect a firm conviction that we are a religious people, those institutions by solemn constitutional injunction may not officially involve religion in such a way as to prefer, discriminate against, or oppress, a particular sect or religion.”

“While the Free Exercise Clause clearly prohibits the use of state action to deny the rights of free exercise to anyone, it has never meant that a majority could use the machinery of the State to practice its beliefs.”

“[A]n important concern of the effects test is whether the symbolic union of church and state effected by the challenged governmental action is sufficiently likely to be perceived by adherents of the controlling denominations as an endorsement, and by the nonadherents as a disapproval, of their individual religious choices. The inquiry into this kind of effect must be conducted with particular care when many of the citizens perceiving the governmental message are children in their formative years.”

“[D]isplays of this kind inevitably have a greater tendency to emphasize sincere and deeply felt differences among individuals than to achieve an ecumenical goal. The Establishment Clause does not allow public bodies to foment such disagreement.”

“[I]f government is to remain scrupulously neutral in matters of religious conscience, as our Constitution requires, then it must avoid those overly broad acknowledgments of religious practices that may imply governmental favoritism toward one set of religious beliefs.”

“[T]he effect of the religious freedom Amendment to our Constitution was to take every form of propagation of religion out of the realm of things which could directly or indirectly be made public business and thereby be supported in whole or in part at taxpayers’ expense. That is a difference which the Constitution sets up between religion and almost every other subject matter of legislation, a difference which goes to the very root of religious freedom.”

“[T]he endorsement test captures the essential command of the Establishment Clause, namely, that government must not make a person’s religious beliefs relevant to his or her standing in the political community by conveying a message “that religion or a particular religious belief is favored or preferred.”

“[T]he government’s sponsorship of prayer at the graduation ceremony is most reasonably understood as an official endorsement of religion and, in this instance, of theistic religion.”

“[T]he judgment of the Establishment Clause is that neutrality by the organs of government on questions of religion is both possible and imperative.”

“[T]he longstanding constitutional principle [is] that government may not engage in a practice that has the effect of promoting or endorsing religious beliefs.”

“[T]he religious liberty so precious to the citizens who make up our diverse country is protected, not impeded, when government avoids endorsing religion or favoring particular beliefs over others.”

“[T]he State cannot ‘constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can (it) aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.’ In the vast majority of cases the inquiry, albeit an elusive one, can end at this point. Neutrality and voluntarism stand as barriers against the most egregious and hence divisive kinds of state involvement in religious matters.”

“[U]nder the Religion Clauses government is generally prohibited from seeking to advance or inhibit religion.”

“[W]hen [government] acts it should do so without endorsing a particular religious belief or practice that all citizens do not share.”

“a principle at the heart of the Establishment Clause, that government should not prefer one religion to another, or religion to irreligion.”

“[W]hen ... officials participate in or appear to endorse the distinctively religious elements of this otherwise secular event, they encroach upon First Amendment freedoms. For it is at that point that the government brings to the forefront the theological content of the holiday, and places the prestige, power, and financial support of a civil authority in the service of a particular faith.”

“A secular state, it must be remembered, is not the same as an atheistic or antireligious state. A secular state establishes neither atheism nor religion as its official creed.”

“Allegheny County ... has conveyed a message of governmental endorsement of Christian beliefs. This the Establishment Clause does not permit.”

“Although a distinct jurisprudence has enveloped each of these Clauses, their common purpose is to secure religious liberty. See Engel v. Vitale, 370 U.S. 421, 430 (1962). On these principles the Court has been and remains unanimous.”

“Although Establishment Clause jurisprudence is characterized by few absolutes, the Clause does absolutely prohibit government-financed or government-sponsored indoctrination into the beliefs of a particular religious faith.”

“But it is not enough that the government restrain from compelling religious practices: It must not engage in them either.”

“An Establishment Clause standard that prohibits only “coercive” practices or overt efforts at government proselytization, but fails to take account of the numerous more subtle ways that government can show favoritism to particular beliefs or convey a message of disapproval to others, would not, in my view, adequately protect the religious liberty or respect the religious diversity of the members of our pluralistic political community. Thus, this Court has never relied on coercion alone as the touchstone of Establishment Clause analysis.”

“But, the First Amendment, in its final form, did not simply bar a congressional enactment establishing a church; it forbade all laws respecting an establishment of religion. Thus, this Court has given the Amendment a ‘broad interpretation . . . in the light of its history and the evils it was designed forever to suppress. . . .’ Everson v. Board of Education, supra, at pp. 14-15. It has found that the First and Fourteenth Amendments afford protection against religious establishment far more extensive than merely to forbid a national or state church.”

“candor requires us to admit that this Alabama statute was intended to convey a message of state encouragement and endorsement of religion.”

“Clearly freedom of belief protected by the Free Exercise Clause embraces freedom to profess or practice that belief”

“Compulsory attendance upon religious exercises went out early in the process of separating church and state, together with forced observance of religious forms and ceremonies.”

“Each value judgment under the Religion Clauses must therefore turn on whether particular acts in question are intended to establish or interfere with religious beliefs and practices or have the effect of doing so.”

“First and foremost, [Justice O’Connor’s Lynch] concurrence squarely rejects any notion that this Court will tolerate some government endorsement of religion. Rather, the concurrence recognizes any endorsement of religion as “invalid,” id., at 690, because it “sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community,”

“I know of no principle under the Establishment Clause, however, that permits us to conclude that governmental promotion of religion is acceptable so long as one religion is not favored. We have, on the contrary, interpreted that Clause to require neutrality, not just among religions, but between religion and nonreligion.”

“If government is to be neutral in matters of religion, rather than showing either favoritism or disapproval towards citizens based on their personal religious choices, government cannot endorse the religious practices and beliefs of some citizens without sending a clear message to nonadherents that they are outsiders or less than full members of the political community.”

“If the primary end achieved by a form of regulation is the affirmation or promotion of religious doctrine - primary, in the sense that all secular ends which it purportedly serves are derivative from, not wholly independent of, the advancement of religion - the regulation is beyond the power of the state.”

“In barring the State from sponsoring generically theistic prayers where it could not sponsor sectarian ones, we hold true to a line of precedent from which there is no adequate historical case to depart.”

“In my opinion the Establishment Clause should be construed to create a strong presumption against the display of religious symbols on public property.⁷ There is always a risk that such symbols will offend nonmembers of the faith being advertised as well as adherents who consider the particular advertisement disrespectful.”

“In New York the teacher who leads in prayer is on the public payroll; and the time she takes seems minuscule as compared with the salaries appropriated by state legislatures and Congress for chaplains to conduct prayers in the legislative halls. Only a bare fraction of the teacher’s time is given to reciting this short 22-word prayer, about the same amount of time that our Crier spends announcing the opening of our sessions and offering a prayer for this Court. Yet for me the principle is the same, no matter how briefly the prayer is said, for in each of the instances given the person praying is a public official on the public payroll, performing a religious exercise in a governmental institution.”

“It is not a question of religion, or of creed, or of party; it is a question of declaring and maintaining the great American principle of eternal separation between Church and State.” (quoting Elihu Root, Addresses on Government and Citizenship, 137, 140)

“It is indeed true that there are certain tensions inherent in the First Amendment itself, or inherent in the role of religion and religious belief in any free society, that have shaped the doctrine of the Establishment Clause, and required us to deviate from an absolute adherence to separation and neutrality. Nevertheless, these considerations, although very important, are also quite specific, and where none of them is present, the Establishment Clause gives us no warrant simply to look the other way and treat an unconstitutional practice as if it were constitutional.”

“it seems dangerous to validate what appears to me a clear religious preference.”

“Nearly half a century of review and refinement of Establishment Clause jurisprudence has distilled one clear understanding: Government may neither promote nor affiliate itself with any religious doctrine or organization, nor may it obtrude itself in the internal affairs of any religious institution. The application of these principles to the present case mandates the decision reached today by the Court.”

“Our cases disclose two limiting principles: government may not coerce anyone to support or participate in any religion or its exercise; and it may not, in the guise of avoiding hostility or callous indifference, give direct benefits to religion in such a degree that it in fact “establishes a [state] religion or religious faith, or tends to do so.”

“our cases do not require a plaintiff to demonstrate that a government action necessarily promotes religion, but simply that it creates such a substantial risk.”

“Our decisions under the Establishment Clause prevent government from supporting or involving itself in religion.”

“Our task is, as always, to decide only whether the challenged provisions of a law comport with the United States Constitution.”

“People who share a common religious belief or lifestyle may live together without sacrificing the basic rights of self-governance that all American citizens enjoy, so long as they do not use those rights to establish their religious faith. Religion flourishes in community, and the Establishment Clause must not be construed as some sort of homogenizing solvent that forces unconventional religious groups to choose between assimilating to mainstream American culture or losing their political rights.”

“Resolve that neither the state nor the nation, nor both combined, shall support institutions of learning other than those sufficient to afford every child growing up in the land the opportunity of a good common school education, unmixed with sectarian, pagan, or atheistical dogmas. Leave the matter of religion to the family altar, the church, and the private school, supported entirely by private contributions. Keep the church and state forever separated.” (quoting President Grant’s ‘The President’s Speech at Des Moines,’ 22 Catholic World 433, 434-35 (1876))

“secular and religious authorities must not interfere with each other’s respective spheres of choice and influence.”

“Separation is a requirement to abstain from fusing functions of Government and of religious sects, not merely to treat them all equally.”

“Separation means separation, not something less. Jefferson’s metaphor in describing the relation between Church and State speaks of a ‘wall of separation,’ not of a fine line easily overstepped. The public school is at once the symbol of our democracy and the most pervasive means for promoting our common destiny. In no activity of the State is it more vital to keep out divisive forces than in its schools, to avoid confusing, not to say fusing, what the Constitution sought to keep strictly apart. ‘The great American principle of eternal separation’ – Elihu Root’s phrase bears repetition-is one of the vital reliances of our Constitutional

system for assuring unities among our people stronger than our diversities. It is the Court's duty to enforce this principle in its full integrity. We renew our conviction that 'we have staked the very existence of our country on the faith that complete separation between the state and religion is best for the state and best for religion.'

"Should government choose to incorporate some arguably religious element into its public ceremonies, that acknowledgment must be impartial; it must not tend to promote one faith or handicap another; and it should not sponsor religion generally over nonreligion. Thus, in a series of decisions concerned with such acknowledgments, we have repeatedly held that any active form of public acknowledgment of religion indicating sponsorship or endorsement is forbidden."

"State governments, like the Federal Government, have been required to refrain from favoring the tenets or adherents of any religion or of religion over nonreligion, ... and from establishing programs which unnecessarily or excessively entangle government with religion."

"The [First] Amendment's purpose was not to strike merely at the official establishment of a single sect, creed or religion, outlawing only a formal relation such as had prevailed in England and some of the colonies. Necessarily it was to uproot all such relationships. But the object was broader than separating church and state in this narrow sense. It was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion."

"the bedrock Establishment Clause principle that, regardless of history, government may not demonstrate a preference for a particular faith"

"the challenged public school programs operating in the religious schools may impermissibly advance religion in three different ways. First, the teachers participating in the programs may become involved in intentionally or inadvertently inculcating particular religious tenets or beliefs. Second, the programs may provide a crucial symbolic link between government and religion, thereby enlisting - at least in the eyes of impressionable youngsters - the powers of government to the support of the religious denomination operating the school."

"The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another."

"The Constitution decrees that religion must be a private matter for the individual, the family, and the institutions of private choice"

"The Court must take care to speak and act in ways that allow people to accept its decisions on the terms the Court claims for them, as grounded truly in principle, not as compromises with social and political pressures having, as such, no bearing on the principled choices that the Court is obliged to make. Thus, the Court's legitimacy depends on making legally principled decisions under circumstances in which their principled character is sufficiently plausible to be accepted by the Nation."

“The endorsement test does not preclude government from acknowledging religion or from taking religion into account in making law and policy. It does preclude government from conveying or attempting to convey a message that religion or a particular religious belief is favored or preferred. Such an endorsement infringes the religious liberty of the nonadherent, for “[w]hen the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion in plain.”

“the established principle that the government must pursue a course of complete neutrality toward religion.”

“The First Amendment put an end to placing any one church in a preferred position. It ended support of any church or all churches by taxation. It went further and prevented secular sanction to any religious ceremony, dogma, or rite.”

“The First Amendment requires that a statute must be invalidated if it is entirely motivated by a purpose to advance religion.”

“Those in office must be resolute in resisting importunate demands and must ensure that the sole reasons for imposing the burdens of law and regulation are secular. Legislators may not devise mechanisms, overt or disguised, designed to persecute or oppress a religion or its practices. The laws here in question were enacted contrary to these constitutional principles, and they are void.”

“The freedom to worship as one pleases without government interference or oppression is the great object of both the Establishment and the Free Exercise Clauses.”

“The fundamental source of constitutional concern here is that the legislature itself may fail to exercise governmental authority in a religiously neutral way.”

“The general principle deducible from the First Amendment and all that has been said by the Court is this: that we will not tolerate either governmentally established religion or governmental interference with religion.”

“The general principle that civil power must be exercised in a manner neutral to religion”

“The Government’s argument gives insufficient recognition to the real conflict of conscience faced by the young student. The essence of the Government’s position is that, with regard to a civic, social occasion of this importance, it is the objector, not the majority, who must take unilateral and private action to avoid compromising religious scruples, hereby electing to miss the graduation exercise. This turns conventional First Amendment analysis on its head. It is a tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice.”

“The imperatives of separation and neutrality are not limited to the relationship of government to religious institutions or denominations, but extend as well to the relationship of government to religious beliefs and practices.”

“The importance of that principle does not permit us to treat this as an inconsequential case involving nothing more than a few words of symbolic speech on behalf of the political majority. For whenever the State itself speaks on a religious subject, one of the questions that we must ask is “whether the government intends to convey a message of endorsement or disapproval of religion.”

“The lessons of the First Amendment are as urgent in the modern world as in the 18th century, when it was written. One timeless lesson is that, if citizens are subjected to state-sponsored religious exercises, the State disavows its own duty to guard and respect that sphere of inviolable conscience and belief which is the mark of a free people. To compromise that principle today would be to deny our own tradition and forfeit our standing to urge others to secure the protections of that tradition for themselves.”

“the potential for conflict ‘inheres in the situation,’ and because of that the State is constitutionally compelled to assure that the state-supported activity is not being used for religious indoctrination.”

“The matter is not one of quantity, to be measured by the amount of money expended. Now as in Madison’s day it is one of principle, to keep separate the separate spheres as the First Amendment drew them; to prevent the first experiment upon our liberties; and to keep the question from becoming entangled in corrosive precedents. We should not be less strict to keep strong and untarnished the one side of the shield of religious freedom than we have been of the other.”

“the principles of separation and neutrality help assure that essentially religious issues, precisely because of their importance and sensitivity, not become the occasion for battle in the political arena.”

“the respect for religious diversity that the Constitution requires.”

“The simultaneous endorsement of Judaism and Christianity is no less constitutionally infirm than the endorsement of Christianity alone.”

“There are, of course, many ways of demonstrating that the object or purpose of a law is the suppression of religion or religious conduct. To determine the object of a law, we must begin with its text, for the minimum requirement of neutrality is that a law not discriminate on its face. A law lacks facial neutrality if it refers to a religious practice without a secular meaning discernible from the language or context.”

“This principle against favoritism and endorsement has become the foundation of Establishment Clause jurisprudence, ensuring that religious belief is irrelevant to every citizen’s standing in the political community.”

“We do not hold that Sunday legislation may not be a violation of the ‘Establishment’ Clause if it can be demonstrated that its purpose - evidenced either on the face of the legislation, in conjunction with its legislative history, or in its operative effect - is to use the State’s coercive power to aid religion.”

“We repeat and again affirm that neither a State nor the Federal Government can constitutionally force a person ‘to profess a belief or disbelief in any religion.’ Neither can constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.”

“When a statute is challenged as impinging on freedom of speech, freedom of the press, or freedom of worship, those historic privileges which are so essential to our political welfare and spiritual progress, it is the duty of this Court to subject such legislation to examination, in the light of the evidence adduced, to determine whether it is so drawn as not to impair the substance of those cherished freedoms in reaching its objective.”

“When public school officials, armed with the State’s authority, convey an endorsement of religion to their students, they strike near the core of the Establishment Clause. However “ceremonial” their messages may be, they are flatly unconstitutional.”

“When the government arrogates to itself a role in religious affairs, it abandons its obligation as guarantor of democracy.”

“When the government puts its imprimatur on a particular religion, it conveys a message of exclusion to all those who do not adhere to the favored beliefs.”

“While in small communities of comparatively homogeneous religious beliefs, the need for absolute separation presented no urgencies, elsewhere the growth of the secular school encountered the resistance of feeling strongly engaged against it. But the inevitability of such attempts is the very reason for Constitutional provisions primarily concerned with the protection of minority groups.”

“[T]he State may not favor or endorse either religion generally over nonreligion or one religion over others.”

“What distinguishes the rule of law from the dictatorship of a shifting Supreme Court majority is the absolutely indispensable requirement that judicial opinions be grounded in consistently applied principle.”

“When the government acts with the ostensible and predominant purpose of advancing religion, it violates that central Establishment Clause value of official religious neutrality, there being no neutrality when the government’s ostensible object is to take sides.”

“[S]crutinizing purpose does make practical sense, as in Establishment Clause analysis, where an understanding of official objective emerges from readily discoverable fact, without any judicial psychoanalysis of a drafter’s heart of hearts.”

“[T]he government may not favor one religion over another, or religion over irreligion.”

“[T]he goal of the Clauses is clear: to carry out the Founders’ plan of preserving religious liberty to the fullest extent possible in a pluralistic society.”

APPENDIX N

1994 SURVEY ON AMERICAN VIEWS OF THE MOTTO

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 94-S-1345

ANNE N. GAYLOR; ANNIE LAURIE GAYLOR; DANIEL E. BARKER; GLENN V. SMITH; JEFF BAYSINGER; LORA ATTWOOD; THE FREEDOM FROM RELIGION FOUNDATION, INC.; and THE COLORADO CHAPTER OF THE FREEDOM FROM RELIGION FOUNDATION, INC.,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA; THE DEPARTMENT OF THE TREASURY; LLOYD W. BENTSEN, SECRETARY OF THE TREASURY; and MARY ELLEN WINTHROW, TREASURER OF THE UNITED STATES;

Defendants.

AFFIDAVIT OF SHARON R. CHAMBERLAIN

I, Sharon R. Chamberlain, being duly sworn, do hereby make the following affidavit:

1. I am the President and sole owner of Chamberlain Research Consultants. I have been in the polling business since 1988.
2. Chamberlain Research Consultants (CRC) is an independent, full-service market research firm. We are located at 4801 Forest Run Road in Madison, Wisconsin and have been in

business since 1988. The firm has been solely owned by me since June of 1990; prior to that, it was a branch of Matousek and Associates, where I was a partner.

3. Wisconsin Interviewing Services (WIS) is the field service owned by CRC. The field service includes a phone bank and focus group facility. WIS is responsible for the actual collection of data. CRC is responsible for research design and analysis. CRC/WIS employs approximately six full-time and 25 to 50 part-time people at any given time.

4. CRC/WIS clients include: school districts, utility companies, political candidates, lobbyists, restaurants and food manufacturers, trade associations, ad agencies and design firms, marketing firms, insurance companies, government agencies, law firms, new product developers, newspapers, and radio stations.

5. CRC was contracted by the Freedom From Religion Foundation, Inc. to conduct a poll on the use of the phrase "In God We Trust" as seen on U.S. currency. The poll was conducted with 900 adults across the nation. The number of surveys was chosen to provide a sufficient margin of error, in other words, approximately $\pm 3\%$.

6. CRC purchased a random sample telephone list from Scientific Telephone Samples (STS) in California for use in this study. STS was instructed by CRC to draw the numbers proportionately to population across all 50 states. The sample was generated so that unlisted phone numbers were not excluded from the sample.

7. Quotas were set for gender based on the most recent U.S. Census data available (1990: 52% female, 48% male). The gender constraints were placed on the sample because past experience has shown us that the proportion of women who answer

the telephone is higher than the actual proportion of women in the population.

8. The poll was in the field May 18-23, 1994. All surveys were conducted from a supervised phone bank. Over 10% of the interviews were monitored by a supervisor through our special phone system, and/or called back for transcription verification. Over 10% of the keying-in data entry was also verified.

9. Among the employees of CRC and WIS who assisted with this survey, in addition to me, were: Janeen Potts, Interim Field Service Director; Rob Padley, Supervisor; Ryan Randall, Supervisor; and Nicole Wyrembeck, Senior Analyst.

10. Attached as Exhibit A is the survey form with raw data, exact questions and their responses.

11. This poll establishes that the majority of those surveyed believe that the phrase "In God We Trust" is religious, as opposed to non-religious, and endorses a belief in God. As for endorsing religion over atheism, almost 11% of the respondents did not choose yes or no. Of those who did give an opinion, the majority agreed that the phrase does endorse religion over atheism.

12. The margin of error for this poll was $\pm 3.22\%$ at the 95% confidence level.

13. This poll was conducted in accordance with generally accepted standards in the industry.

Further, the affiant sayeth not.

Sharon R. Chamberlain

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Subscribed and sworn to before me this 14th day of September,
1994.

Jacklyn M. Sande
Notary Public

My commission expires: 2-19-97

MOTTO TEST: Raw Data

Job # 132
 May 18-23, 1994
 Sample Size = 900
 Margin of Error = $\pm 3.22\%$

Sex: Male Female
 48% 52%

Hello, this is _____ from Chamberlain Research. Tonight we're doing a one minute survey with people across the nation. Am I speaking with someone who is over the age of 18? (If not, ask to speak with someone who is, terminate if none)

The United States is currently working on redesigning US currency. The topic of my three questions is the motto "In God We Trust," as seen on US currency.

1. Is "In God We Trust" religious or non-religious?

Religious.....550
 61.1%

Non-religious.....271
 30.1%

DK.....79
 8.8%

2. Does "In God We Trust" endorse a belief in God?

Yes.....641
 71.2%

EXHIBIT A

No.....217
24.1%

DK.....42
4.7%

3. Does "In God We Trust" endorse religion over atheism?

Yes.....480
53.3%

No.....322
35.8%

DK.....98
10.9%

APPENDIX O

THE CASE OF WLADYSLAW PLYWACKI

The case of Wladyslaw Plywacki¹ demonstrates the blatant anti-Atheistic bias – seen even in federal officials – that pervaded American society during the 1950s, when the purely religious phrase, “In God We Trust,” was being mandated on all American money and codified as the nation’s motto.

Plywacki was a ten year old living in Poland when that country was invaded by Nazi Germany in 1939.² Because he and his family were Jewish, they were forced into ghettos by the Nazis (whose soldiers, it might be recalled, had belt buckles emblazoned with a motto not at all



dissimilar from the one at issue in the case at bar³). Subsequently, they were sent to the concentration camps. Enduring both, Plywacki lost more than a hundred family members, including his mother (who was murdered in a gas chamber) and his father (who was beaten to death in front of him by a concentration camp commander).

When the Allies bombed Dachau (where Plywacki had been transferred) in 1945, the teenager escaped. He eventually made his way to the United States, shortly after which he

¹ *Petition of Plywacki*, 107 F. Supp. 593 (1952), *rev'd* 205 F. 2d 423 (9th Cir. 1953).

² Raleigh L. *A saga of survival: 1957 OSU grad will return to tell of enduring the Holocaust*. Corvallis Gazette-Times. Monday, April 19, 2004.

³ As seen, Nazi buckles had “GOTT MIT UNS” (“God With Us”) inscribed in large letters, surrounding an eagle perched on a swastika. Accessed at <http://www.lewrockwell.com/vance/wwii-buckle.jpg> on May 2, 2006.

enlisted in the Air Force.⁴ There he served this country for four years, including time in Okinawa during the Korean War.⁵

Wishing to become an American citizen, Plywacki underwent the process for naturalization as required by United States statute. Upon the completion of that process, he received “a favorable recommendation.”⁶ A problem arose, however, when he was to take the oath of allegiance, which concluded with the words, “so help me God.” Understandably, Plywacki did not believe in any god, and “as an atheist he could not and would not take the oath of allegiance prescribed by Section 735 of Title 8, United States Code.”⁷

The issue came to a head when the Chief Judge for the United States District Court for the District of Hawaii – J. Frank McLaughlin – decided that an Atheistic religious view was inconsistent United States citizenship. Although Chief Judge McLaughlin noted that Plywacki had proposed a substitute oath,⁸ the jurist determined that “Wladyslaw Plywacki's petition for naturalization as a citizen of the United States must be and the same hereby is denied.”⁹

Because it typifies the religious bias that predominated during that era of McCarthyism, this case warrants a few observations. First, Judge McLaughlin made no secret about the fact that – to him – belief in God was one of “the principles which delicately support our free government.”¹⁰ In fact, during the naturalization ceremony, the Chief Judge singled Plywacki out in front of all his fellow applicants, solely because of his Atheism.¹¹ That, alone, should be sufficient to demonstrate the unconstitutional nature of the entire enterprise.

⁴ Raleigh L. A saga of survival: 1957 OSU grad will return to tell of enduring the Holocaust. Corvallis Gazette-Times. Monday, April 19, 2004.

⁵ *Id.*

⁶ 107 F. Supp., at 593.

⁷ *Id.*

⁸ “I Hereby Declare, and affirm in honor and sincerity, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to same; and that I take this obligation freely and without any mental reservations or purpose of evasion. In acknowledgement whereof I have hereunto affixed my signature.” 107 F. Supp., at 593.

⁹ *Id.*

¹⁰ *Id.*

¹¹ “Upon the convening of court and after petitioner hesitatingly, but with all others in the class, appeared to have taken a voir dire oath to answer truthfully all questions touching his petition for naturalization, the Examiner called the Court's attention to the fact that the petitioner as an atheist declined to take a prescribed oath of allegiance, and therefore the Examiner was not making any recommendation to the Court but merely inviting the Court's attention to the situation.

In relation to the instant case, Judge McLaughlin's justifications for denying Plywacki's citizenship are noteworthy as well. The Chief Judge explicitly referred to "the inscription of 'In God We Trust' upon the Liberty half-dollar and other United States coins" as showing that it's proper to deny fundamental liberties to Atheists. Furthermore, the remarkable similarity between Judge McLaughlin's *ipse dixit*:

[N]o constitutional question of freedom of religion is even remotely involved by an alien atheist seeking naturalization.¹²

and that of the Aronow court:

It 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.¹³

demands recognition.

With help from the ACLU, Plywacki appealed Chief Judge McLaughlin's decision to the Ninth Circuit Court of Appeals.¹⁴ There, with the government admitting error, the Ninth Circuit reversed the lower court's ruling in a one-sentence *per curiam* opinion. Thus, the case was remanded, with instructions to grant Plywacki's naturalization petition.¹⁵

By the time the case returned to Chief Judge McLaughlin's courtroom, Plywacki had moved to Oregon, and had requested that the matter be transferred to the District Court there.¹⁶ The Chief Judge recognized that "[t]he common good will be subserved ... by having a different judge come to grips with the legal problems arising from this record."¹⁷ Nonetheless, the Chief Judge expounded upon what he'd said and done a year earlier, displaying the arrogance¹⁸ found time and again among those whose religious beliefs have the backing of government.

"The Court called the petitioner forward and questioned him."

107 F. Supp., at 593.

¹² Id.

¹³ Aronow v. United States, 432 F.2d 242, 243 (9th Cir. 1970).

¹⁴ Atheist Wins on Appeal. American Civil Liberties Union-News. San Francisco, CA, May, 1953. Volume XVIII.

¹⁵ Petition of Plywacki, 205 F. 2d 423 (9th Cir. 1953).

¹⁶ Petition of Plywacki, 115 F. Supp. 613 (1953).

¹⁷ Id.

¹⁸ "[T]he Court takes a long step backwards to the days when Justice Brewer could arrogantly declare for the Court that 'this is a Christian nation.' Church of Holy Trinity v. United States, 143 U.S. 457, 471

Referring to the oath suggested by Plywacki, Chief Judge McLaughlin publicly and unapologetically denigrated the Petitioner's Atheism, writing that "To affirm by nothing that the truth is being asserted adds up in law, also, to nothing."¹⁹ To this jurist, an affirmation has no meaning unless it "concludes by affirming by reference to a Supreme Being," *id.*, and "[a]n affirmation by Wladyslaw Plywacki, a human being, that he is stating the truth provides no guarantee of veracity nor basis for a remedy in the event of falsity." *Id.* Further ensuring that no one should mistake his religious bigotry, this governmental official made the remarkable assertion that, "the atheist philosophy upon which petitioner predicates his position demonstrates a lack of attachment to the United States Government's first principle: a belief in a Creator."²⁰

To Judge McLaughlin, having Atheists live in this country would indicate that "the American philosophy of government has been materially changed,"²¹ and it would "touch our national fundamentals"²² were Atheists to exercise their liberties of conscience. According to this United States District Court judge, to deny that there exists a Supreme Being – i.e., to not agree with his religious view – is to reveal a "lack of attachment to the principles of our Nation,"²³ and to spawn "national damage."²⁴

It should be noted that this case was covered in Time Magazine. The article – situated in the periodical's "Religion" section – was immediately followed by a notice of "[a] bill to insert the words 'under God' in the U.S. pledge of allegiance to the flag."²⁵

(1892). Those days, I had thought, were forever put behind us." Lynch v. Donnelly, 465 U.S. 668, 717-18 (1984) (Brennan, J., dissenting).

¹⁹ 115 F. Supp., at 614.

²⁰ *Id.* Chief Judge McLaughlin was certainly not alone in this egregiously un-American outlook. Dwight D. Eisenhower – as President of the United States – would make an almost identical claim only two years later:

Recognition of the Supreme Being is the first, the most basic, expression of Americanism. Without God, there could be no American form of government, nor an American way of life.

Address of President Eisenhower during the American Legion's "Back to God" campaign in 1955, as cited in Marty Martin E. *Modern American Religion* (University of Chicago Press: Chicago; 1986), vol. 3., at 297.

²¹ 115 F. Supp., at 614.

²² *Id.*

²³ 115 F. Supp., at 615.

²⁴ *Id.*

²⁵ See this Appendix O, page 5, *infra*.

Petition of **PLYWACKI**.

No. 12393.

United States District Court for the District Hawaii.

107 F. Supp. 593; 1952 U.S. Dist. LEXIS 3850

October 17, 1952.

OPINIONBY: [**1]

MCLAUGHLIN

OPINION: [*593]

McLAUGHLIN, Chief Judge.

This petitioner for naturalization is a native and citizen of Poland. Petitioner was in the United States Air Force and prior to discharge in continental United States had been sent to Hawaii from the Far East for naturalization under Section 724(a) of Title 8, United States Code Annotated.

A few moments before the Naturalization Examiner was to present his petition to the Court with a favorable recommendation, the petitioner notified the Examiner that as an atheist he could not and would not take the oath of allegiance prescribed by Section 735 of Title 8, United States Code Annotated. Petitioner offered to take an alternative oath — not the one sanctioned by Section 735 supra designed for conscientious objectors by one composed by himself, as follows:

I Hereby Declare, and affirm in honor and sincerity, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of United States of America against all enemies, foreign and domestic; [**2] that I will bear true faith and allegiance to same; and that I take this obligation freely and without any mental reservations or purpose of evasion. In acknowledgement whereof I have hereunto affixed my signature.

Upon the convening of court and after petitioner hesitatingly, but with all others in the class, appeared to have

taken a voir dire oath to answer truthfully all questions touching his petition for naturalization, the Examiner called the Court's attention to the fact that the petitioner as an atheist declined to take a prescribed oath of allegiance, and therefore the Examiner was not making any recommendation to the Court but merely inviting the Court's attention to the situation.

The Court called the petitioner forward and questioned him. From his frank answers it clearly appeared that as an atheist he could not take the prescribed oath and he, of course, would not attempt to deceive the Court by taking the oath falsely.

Observing (a) the Declaration of Independence; (b) the inscription of "In God We Trust" upon the Liberty half-dollar and other United States coins; (c) decisions of the Supreme Court of the United States, such as *United States v. Macintosh*, 283 U.S. [**3] 605 at page 626, 51 S. Ct. 570, 75 L.Ed. 1302, and *United States v. Bland*, 283 U.S. 636, 51 S.Ct. 569, 75 L.Ed. 1319, holding that courts may not make bargains with those who seek the privilege of citizenship but must adhere to the precise terms of the legislative mandate; (d) that no constitutional question of freedom of religion is even remotely involved by an alien atheist seeking naturalization, and the sole question is whether the petitioner believes in all of the principles which delicately support our free government; and (e) that as recently as April 1952 the Supreme Court in *Zorach v. Clauson*, 343 U.S. 306 at page 313, 72 S.Ct. 679, at page 684, has not deemed it to be old fashioned to declare "We are a religious people whose institutions presuppose a Supreme Being", Wladyslaw Plywacki's petition for naturalization as a citizen of the United States must be and the same hereby is denied because of his inability to subscribe to a statutory oath of allegiance.

Wladyslaw PLYWACKI, Appellant, v. UNITED STATES of America, Appellee.

No. 13650.

United States Court of Appeals Ninth Circuit.

205 F.2d 423; 1953 U.S. App. LEXIS 2600

June 26, 1953.

COUNSEL: [**1]

Lawrence Speiser, of San Francisco, Cal., and
Thomas P. Gill, of Honolulu, Hawaii, for appellant.

A. William Barlow, U.S. Atty., and Winston C.
Ingman, Asst. U.S. Atty., both of Honolulu, Hawaii, for
appellee.

OPINION: [*423]

Before DENMAN, HEALY and ORR, Circuit Judges.

PER CURIAM.

On confession by the appellee of error herein, it is ordered that the judgment of the District Court in this cause be reversed, *107 F.Supp. 593*, that a judgment be filed and entered accordingly, and that the mandate of this court in this cause issue forthwith.

Petition of PLYWACKI

No. 12393

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII

115 F. Supp. 613; 1953 U.S. Dist. LEXIS 2456

October 23, 1953

COUNSEL: [*1]

John J. Kelleher, Naturalization Examiner, for the Government.

OPINIONBY:

McLAUGHLIN

OPINION:

[*613]

Heretofore this petition was denied because of the petitioner's refusal as an atheist to take the oath of allegiance prescribed by Congress. *Petition of Plywacki, D.C. 1952, 107 F.Supp. 593.*

An appeal was taken by petitioner to the Ninth Circuit Court of Appeals, with the assistance of the American Civil Liberties Union of Northern California. Although the Attorney General had not previously appeared and taken a position in this case, he did the astounding thing of appearing in the Court of Appeals and confessing error. Not noting that the Attorney General had nothing to confess as having induced error below, the Court of Appeals automatically reversed without examining the merits. *Plywacki v. United States, 1953, 205 F.2d 423.*

Before the reversal by the Court of Appeals, petitioner moved to Oregon and there attended Oregon State College. On May 26, 1953, petitioner executed a Form N-455, 'Application for Transfer of Petition for Naturalization', which on its face said that the petitioner had subscribed and sworn to his representations therein made before Edith Buckingham, [*2] a notary public of the State of Oregon, at Corvallis, Oregon, to wit:

Subscribed and sworn to before me by the above named petitioner at Corvallis, Oregon, this Twenty-sixth day of May, 1953.

Edith Buckingham (Signed) (Seal)

Notary Public for Oregon

My Commission Expires Apr. 7, 1957

This not being the first time that the petitioner ostensibly had taken an oath [*614] to preliminary or collateral matter while still professing atheism, noting again petitioner's inconsistency, the Court ordered the Immigration and Naturalization Service to investigate and report. On or about September 18, 1953, it did so, but as the notary had not been interviewed, a further investigation and report was ordered. From the two reports of August 20, 1953, and September 18, 1953, as supplemented October 5, 1953, it appears that the petitioner advised the investigator that he did not swear to his transfer application and the notary concurred. Indeed, the notary asserted that she never takes a person's oath as she 'figures it is up to them' and hence just observes the subscription.

Without withdrawing the pending transfer application under date of October 6, 1953, petitioner executed a new or [*3] second Form N-455 application, at the end of which he stated he 'subscribed and affirmed' the statements therein made before the same notary, and she signed her name, stated the term of her commission, and affixed her notarial seal. Appended is a separate statement reading:

I, Wladyslaw Plywacki, do solemnly affirm that the information provided by me on the Application for Transfer of Petition for Naturalization, Number 12393, on this sixth day of October, 1953, is the truth, the whole truth, and nothing but the truth.

Wladyslaw Plywacki (Signed)

Below this statement the notary again signed her name and affixed the date, her seal, and extent of her commission.

This second application for transfer comes to me approved October 9, 1953, be District Director Elmer E. Poston, for he has found petitioner does in fact have a bona fide residence in Oregon.

Opinion

Obviously petitioner's second transfer application does not comply with the Immigration and Naturalization Services's Regulation No. 334.17(a), Federal Register, December 19, 1952, which under 8 *U.S.C.* § 727, Sec. 327 of the Nationality Act of 1940, n1 has the force and effect of law. Indeed, petitioner's position as to [*4] this application has the same congenital defect as has his position upon his pending petition for citizenship. To affirm by nothing that the truth is being asserted adds up in law, also, to nothing. Few realize that an affirmation is allowed in lieu of an oath — a swearing — in deference to a person's religious beliefs and concludes by affirming by reference to a Supreme Being — witness the Society of Friends and Jehovah's Witnesses. See 28 *U.S.C.* §§ 453, 951, and 5 *U.S.C.* §§ 16, 21 and 21a and 21b. An affirmation by Wladyslaw Plywacki, a human being, that he is stating the truth provides no guarantee of veracity nor basis for a remedy in the event of falsity. Indeed, as before stated the atheist philosophy upon which petitioner predicates his position demonstrates a lack of attachment to the United States Government's first principle: a belief in a Creator, from whom the Founders proclaimed come man's unalienable rights subsequently guaranteed by the Constitution.

Despite petitioner's trifling with the legal process by today ostensibly taking an oath and then saying, in effect: 'I didn't mean it — I didn't do it — See, I affirm, by myself', being advised [*5] by District Director Poston that the petitioner in fact now resides in Oregon, the Court upon its own motion in the public interest will transfer the petition to the Oregon Federal court if it will accept the same.

It is obviously in the public interest to have judicially determined as speedily as possible whether by a quiet confession of error by the Executive the American philosophy of government has been materially changed.

The common good will be subserved also by having a different judge come to grips with the legal problems arising from this record. As they touch our national fundamentals, I would like to suggest [*615] that the Federal court in Oregon invite the Attorney General to appear, to file a brief, and present argument in defense of his position taken in the Circuit Court of Appeals for the Ninth Circuit — if he still adheres to it. Too, the size, shape and shadows of this case would seem to call for invited amicus help from the American Bar Association.

Should the ultimate result be that the Federal court in Oregon also decline to admit petitioner to citizenship either by a denial of his petition for lack of attachment to the principles of our Nation, [*6] or by its refusal to administer an oath or affirmation unknown to the law, petitioner then may utilize available appellate review procedures and thus obtain a decision on the merits by a higher court.

If, perchance, the result be otherwise, there is always the next case which may provide the appellate vehicle for a timely decision to repair the national damage, and in which the hope can be expressed that the lower court of appeals and that such court will look for itself beyond any confessed error into the merits of the controversy.

Order.

For the reasons above given, upon the Court's own motion it is hereby ordered and decreed that the petition for naturalization filed in this Court, being No. 12393, shall upon approval of such transfer by the United States District Court for the District of Oregon, be transferred to said court.

n1. See Immigration and Nationality Act, Sect. 332, 8 *U.S.C.A.* § 1443.



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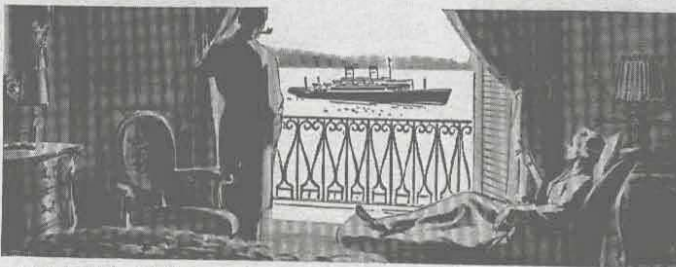
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RELIGION

Prophet's Honor

The people of India celebrate national holidays on the birthdays of Jesus Christ, Mohammed, Mahatma Gandhi, Guru Nanak (a Sikh religious leader) and the Hindu gods Rama and Krishna. Last week the Indian government added a new birthday to the list. The addition: Gautama Buddha, founder of the great religion which has successfully invaded China, Japan, Siam, Burma, Ceylon, but has fallen off in his native India.

Reforming Reform

One steaming July day in 1873, representatives of some 30 Jewish congregations met in Cincinnati to make a historic break with Orthodox Judaism. They



RABBI BERNSTEIN
Less defense and more religion.

formed themselves into a society to be known as the Union of American Hebrew Congregations, dedicated, as they saw it, to a newer, more contemporary vision of the Jewish faith. In Manhattan last week, U.S. Reform Judaism celebrated the 80th anniversary of this birthday.* More than 200 delegates from 465 Reform temples were on hand; the five-day conference of U.A.H.C. was the largest Jewish religious gathering in U.S. history.

The assembled rabbis and laymen had more than growth to be pleased about. In their own eyes, Reform has done much to wipe out the sense of deep separation from the rest of U.S. life which, they believe, long characterized the Jewish community. But recent years have seen a kind of reform of Reform—a movement away from a liberalism which was sometimes hardly distinguishable from Uni-

* Though the first U.S. Reform congregation was founded in Charleston, S.C. in 1841.

ME, MAY 4, 1953

tarianism. At last week's convention, Dr. Emanuel Gamoran, director of the Commission on Jewish Education, called for a deeper recognition of the Jewish past.

The Magic Formula. "Classical Reform," he said, "detached God from Israel, thinking that it could achieve a greater measure of sanctity by concentrating on the idea of God . . . The opposite was the result . . . We have only succeeded in breaking the magic formula which, throughout the centuries, served effectively to maintain the Jewish people as well as Judaism . . . We now realize that if our Jewish education is to be effective, it must begin with the Jewish people, [and] it must include Torah."

Rabbi Philip S. Bernstein of Temple Brith Kodesh in Rochester called for more religion in Reform Judaism, even though it be at the expense of social action. "Hitherto," he said, "we have concentrated on defending ourselves against bigots and supporting our brethren overseas . . . Now the American Jewish community is becoming free to give primacy to the task of making itself a strong moral force in this country."

The Will to Serve. Even more indicative of the new temper of Reform were the findings of a survey conducted by the National Federation of Temple Brotherhoods. Items:

¶ Three laymen in ten—and half the rabbis—now feel that their congregations should have more ritual and ceremony.

¶ There has been a marked increase in use of the ceremony of *bar mitzvah* to admit young men to full membership in the congregation.

¶ A substantial number of laymen (34%) report that they and their families now observe Passover for the traditional eight days.

So clearly did the survey indicate a revived interest in the old Jewish forms that its sponsors felt it necessary to point out that this was not to be interpreted as a swing to Orthodoxy: "It is not the will of God that dictates what the Reform Jews shall practice . . . but what the Reform Jew feels his will to serve God justifies him in doing . . . Reform is a religion of choice . . . Orthodoxy is a religion of divine command."

God's Country

Wladyslaw Plywacki, 24, had passed all his tests for U.S. citizenship with flying colors. Imprisoned for five years by the Nazis in his native Poland before he escaped to the U.S., he had served a hitch in Japan for his adopted country. He was an Air Force corporal stationed at Hickam Field, Honolulu when he came up before Federal Judge J. Frank McLaughlin to take the official oath and become an American:

"I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty . . . that I will support and defend the Consti-

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tution and laws of the United States of America . . . and that I take this obligation freely without any mental reservation or purpose of evasion . . ." But here Corporal Plywacki boggled. The next words were "So help me God." Wladyslaw Plywacki explained that he was an atheist, therefore could not in honesty use those words.

Judge McLaughlin directed Plywacki to take a coin out of his pocket. "What does it say on the back?" he demanded. When Plywacki had read the legend, "In God We Trust," Judge McLaughlin made a little speech.

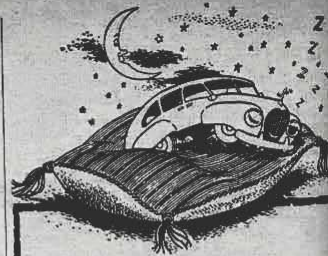
"Our Government is founded on a belief in God. You are asking for the privilege of being part of the Government, but you are apparently seeking admission on your own terms. If you are not willing to take the oath in good faith, the oath prescribed by the Congress of the United States, I cannot grant your petition."

The court immigration officer, surprised that the judge had not merely substituted an affirmation of allegiance permitted for those who object to oath-taking, suggested that, since Plywacki was about to leave for the States, the whole matter could be settled on the mainland. But Judge McLaughlin, a Roman Catholic, had his principles, too. He ruled Plywacki ineligible for citizenship.

Plywacki appealed to the ninth circuit court of appeals in San Francisco. His argument: "If a native-born citizen is entitled to freedom of religion, which would include the right not to believe in God, then a petitioner for naturalization has the same right." Last week the Justice Department in Washington told its office in Honolulu to "confess error," indicating that it would not support Judge McLaughlin's ruling in the appeals court. But Immigration Service lawyers have so far been unable to find a single direct precedent for a case like Plywacki's, and there remains the possibility that the court will be required to make a historic decision.

Judge McLaughlin, meanwhile, is sticking to his spiritual guns. "I appreciate the right of a person to be an atheist," he says. "But if you join an organization that has principles based on the existence of a Supreme Being—from the Declaration of Independence on down to the latest pronouncements by President Eisenhower on the importance of religion—you must abide by the rules of that organization."

. . . .
A bill to insert the words "under God" in the U.S. pledge of allegiance to the flag was introduced in the House of Representatives last week by Democratic Congressman Louis C. Rabaut of Michigan. Congressman Rabaut's amended pledge would 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." "Our country was born under God," said Rabaut, "and only [under God] will it live as a citadel of freedom."



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Community

A saga of survival: 1957 OSU grad will return to tell of enduring the Holocaust

By Lisa Raleigh
OSU News Service

Walter Plywaski did not arrive at Oregon State University as a typical undergraduate. Much of his youth had been spent in a Jewish ghetto in German-occupied Poland and later several Nazi concentration camps.

He last saw his mother when she was forced into a line that led to the gas chamber at Auschwitz, and later witnessed the fatal beating of his father at the hands of a camp commandant.

But Plywaski managed to stay alive, along with his adopted brother. He made his way into the United States, and then eventually to Oregon. In spring 1953, he enrolled at what then was known as Oregon State College and, four years later, earned a degree in electrical engineering.

In an extraordinary homecoming, Plywaski will be a featured speaker at this year's Holocaust Memorial Program. His free talk is scheduled for Monday at 7:30 p.m. in the LaSells Stewart Center.

This will be Plywaski's first visit to OSU since graduating 47 years ago — and his first opportunity to tell his remarkable story to the campus community.

The Lodz ghetto

Born Wladyslaw Plywacki in Lodz, Poland, in 1929, he was forced into the Lodz ghetto with his family at the age of 10.

"My immediate family managed to survive four years in the ghetto, but we lost approximately 40 other family members," Plywaski said. "Some were sent to extermination centers. Others died of starvation and disease. About 80 more extended family members also perished at Nazi hands, leaving no more Plywacki-named people in Poland by now, a name dating back to about 14th century."

The ghetto was actually worse than the concentration camps, Plywaski said.

"In the ghetto, we were still in family units and thus mothers had to watch their children and husbands starving to death," he explained. "All of that was nearly too surreal to bear. The camps were charnel houses — the suffering was normalized, isolated from its meaning. You expected nothing there."

Among those who quickly died in the ghetto were his maternal aunt and uncle, who were stricken with tuberculosis. Their son, Wlodzimierz (whose American name is now William, or Bill), was found sitting by the frozen body of his mother. Walter's family adopted him, and Bill became Walter's new brother.

"Miraculously, the two of us would never be separated in the events that were yet to come," Walter said.

In 1944, the Plywacki family was transported via freight car to the Auschwitz Birkenau death camp, where Walter's mother was immediately gassed because she was too weak to work. This would be the first of many concentration camps to which Walter was transferred, always accompanied by Bill.

For a while, the brothers were able to stay together with their father, Maks (Maksymiljan Jozef Plywacki), but

The boys, very young and still able to do physical labor, were then moved on to several other locations after that.

Escape from Dachau

Eventually, the two teenagers escaped from Dachau (Karlsfeld) during an Allied bombardment and appropriated a supply of German food, uniforms and weapons from a nearby cache. They then "marched off in the direction of the shooting," Walter said, explaining that they intentionally headed for the front line.

They were soon "captured" by U.S. troops.

"There were these soldiers with funny-looking uniforms and netting on their helmets, who indicated we should put our hands up," Walter recalled. "Bill and I were wearing our 'liberated' German uniforms under our striped camp pajama jackets and also pretended not to understand German so we would not be taken into a German POW compound. Now that would have been sick joke!

"A Polish-speaking sergeant soon figured out that we were camp escapees," he added, "and the Army unit took us in. We were given cut-down U.S. Army fatigue uniforms to replace the German ones."

They were then introduced to another unit where they became unofficial "mascots," and were provided with tailored U.S. Army dress uniforms complete with stripes of rank, as well as lessons in everything from American history to English to properly ironing a shirt. The U.S. soldiers also gave them their American names, Walter and Bill. (Their last name became more Americanized later n from Plywacki to Plywaski — during U.S. citizenship proceedings.)

By the end of 1945 the brothers were hoping to come to the United States together. But this dream was realized separately.

Bill came first, brought to Portland by an American man they met in Marseilles in early 1946. Walter stayed behind in France, partially because he did not trust this American.

As it turned out, the Portland man mistreated Bill. He did not allow the brothers to communicate and "Bill was basically his indentured servant," Walter claimed. A child service agency intervened, removing Bill from this situation and placing him with a new foster family on a dairy farm east of Portland.

Bill was also the first to enroll at OSU. After graduating from Franklin High School in Portland, he came to the university in 1949, joined the Phi Gamma Delta fraternity, became a founding member of the OSU ski team, and wrote a column for the Barometer called "Sitzmarks by Bill Plywaski." He earned his degree in chemical engineering in 1954.

A stowaway

Walter, meanwhile, arrived in the United States by stowing away on a freighter in 1947. Upon arriving in New York, he was detained on Ellis Island for six months by U.S. Immigration. Through the help of various people, Walter's entry was legalized by an Act of Congress and President Truman signed it.

After a year's work in Philadelphia as a "printer's devil," Walter joined the U.S. Air Force in 1948 and served four years, including an assignment as a radio maintenance chief on Okinawa during the Korean War. He eventually joined his brother in Oregon, and was invited to live with Bill's new family.

Attending Oregon State

With the goal of enrolling at OSU, Walter began working to establish residency in Oregon, doing both radio and TV repair work and logging. When he enrolled at OSU in spring 1953, he first majored in English literature, studying with OSU's most famous writer-in-residence, Bernard Malamud. However, Walter found that English lit "wasn't challenging enough" and switched to electrical engineering.

He had discovered a knack for electronics when still living in the Lodz ghetto. Because he had family connections, he was able to earn some extra food for work for the Elektriztaet Abteilung, rewinding electrical motors and alternators.

"There are privileges even in Hell," Walter said of this experience. "If you could get work, you could get some extra calories."

His brother Bill obtained work at the Metall Abteilung, operating lathes and other machine tools.

After OSU, Walter worked as an engineer for several defense contractors and for the National Oceanic and Atmospheric Administration, and later became a high-tech entrepreneur and consultant.

Bill went on to earn a Ph.D. in theoretical physics, but while on a fellowship at the prestigious International Center for Theoretical Physics in Trieste, Italy, discovered a passion for sailing. He went on to teach sailing and navigation, and became a marine-engineering consultant in areas such as charting, navigation and global positioning systems.

Today, both brothers live within a mile of each other in the foothills of the Rocky Mountains, above Boulder, Colo.

A chronology of Walter and Bill Plywaski's personal and career histories, as well as photos of their post-war days in France, is at <http://oregonstate.edu/dept/ncs/recent/releases.htm>.

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APPENDIX P

NON-GOVERNMENTAL USES OF THE MOTTO, “IN GOD WE TRUST”

It has been argued that the motto, “In God We Trust,” doesn’t endorse the notion that we (Americans) trust in God. The phrase, some contend, has simply been “woven into the fabric” of American society, and – as such – it has lost all religious meaning.

If this were correct, then one would expect to find some evidence attesting to that fact. In other words, those four words ought to be generally used in a nonreligious manner. In fact, as the following demonstrates, nothing could be further from the truth.

A. Books

Library catalogs and online literary listings have been searched for any and all books with the words “In God We Trust” in the title. The search resulted in 30 separate works, which are listed below in chronological order (by year of publication). It should be noted that of the 28 volumes for which information could be elicited, only one is not religious (a novel referring only to the motto being on the money). The vast majority (21) of the remaining 28 books advocate either for God-belief generally (7) or for Christianity in particular (14). One criticizes belief in God, and six reference religion in history or politics. Thus, 26 of the 27 – i.e., 96% – of the books with “In God We Trust” in the title reference religion.

It should also be noted that this religious use of the “In God We Trust” phrase is not limited to the 1950s, when Congress placed it on the money and established it as the nation’s motto. On the contrary, its use has increased exponentially over the past decade. Figure P-1, at page 6, infra.

- (1) Cousins, Norman. *In God We Trust: The Religious Beliefs and Ideas of the American Founding Fathers* (Harper: New York; 1958). Historical treatise, examining the “religious beliefs and ideas of the American founding fathers.”
- (2) Horton, Walter M. *The God we trust (Faith for Life)* (Judson: Valley Forge, Pennsylvania; 1960). Other titles by author include Realistic Theology and Contemporary Continental Theology.

- (3) Shepherd, Jean. *In God We Trust: All Others Pay Cash* (Doubleday: New York; 1966). Novel, with IGWT reference pertaining to money.
- (4) Rosasco, William S. *Musings: In God we trust* (University of West Florida Alumni Association: Pensacola, FL; 1980). Plaintiff was unable to ascertain any information about this book.
- (5) Robbins, Thomas and Dick, Anthony. *In Gods We Trust: New Patterns of Religious Pluralism in America* (Transaction Publishers: Somerset, NJ; 2nd Rev&Ex edition; 1990). "Over two dozen previously published articles explore sociological aspects of modern religious pluralism. The areas of discussion are the fundamentalist and evangelical revival, renewal in the mainline churches, New Age spiritual innovation, women's movements, and politics and civil religion." Revises and expands the first edition of 1980. Annotation c. Book News, Inc., Portland, OR." Accessed on May 3, 2006 at <http://search.barnesandnoble.com/bookSearch/isbnInquiry.asp?r=1&isbn=0887388000>).
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orientation." accessed on May 2, 2006 at
http://www.faithwalkpub.com/index.php?main_page=index.

- (30) Bender, Jon D. *In God We Trust: A Legacy for Creating Wealth and Abundance* (Authorhouse: Bloomington, IN; 2005). This tome is described as "a fictional book about a young boy who, through his sheer determination and an unshakable belief in God finds life's secrets for unimaginable success." Accessed at http://www.amazon.com/gp/product/customer-reviews/142089367X/ref=cm_cr_dp_pt/103-7910873-6275851?%5Fencoding=UTF8&n=283155&s=books on April 28, 2006.

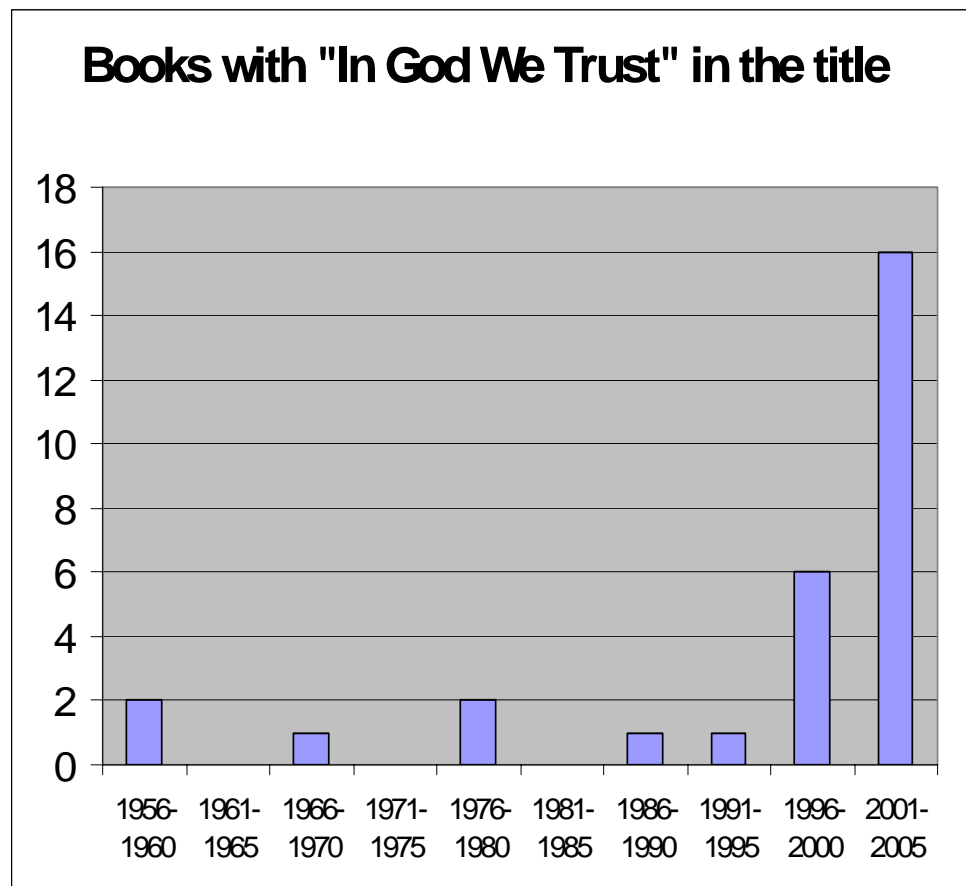


Figure P-1
 (Showing the increasing number of books with "In God We Trust" in the title.)

B. Other uses

Besides books, myriad other products and items that reference the motto. In fact, Plaintiff, without any preexisting knowledge whatsoever, was issued a program at a church service that had on its cover Defendants' motto, "In God We Trust," written under an open Bible, which was lying on an American flag. Pages 8-9 of this Appendix P.

This item is a stock item sold by Broadman & Holman, which describes itself as "a major publisher of Christian living, fiction, homeschool, youth, history, and other categories." A very similar pre-printed "bulletin" was encountered by Plaintiff at his work in El Paso, TX, where it was used in a religious, government-sponsored memorial service. That bulletin employed the nation's pledge of allegiance, rather than its motto, with the phrase, "one nation UNDER GOD" placed below a bald eagle in front of an American flag, with the words "Holy Bible" just above the Pledge excerpt. Pages 10-11 of this Appendix P.

The myriad other uses of "In God We Trust" found by Plaintiff have virtually all been purely religious, usually sold by Christian-based organizations. For example, The American Family Association (AFA) has an entire "In God We Trust" product line, consisting of a CD, a large magnet, and a poster (which can be purchased in sets of three, six, ten or twenty-five).¹ AFA describes itself as "America's Largest Pro-Family Action Site," and it has a number of subdivisions, including American Family Radio (which describes its purpose as "to inform Christians about what is happening in America. God had an additional reason for the stations — encouragement and inspiration to and for the body of Christ.");² AFR News (which "is a national Christian radio news service ... [whose] goal is to present the day's news from a Christian perspective.");³ AgapePress (which claims to provide "Reliable News from a Christian Source.");⁴ AFA Journal (which "will present a clear picture of what is happening in our culture from a Christian perspective.");⁵ and the Center for Law and Policy (which "responds to the requests of Christians for legal representation."⁶

¹ Accessed at https://store.afa.net/productcart/pc/viewCat_h.asp?idCategory=10.

² Accessed at <http://www.afr.net/newafr/about.asp>.

³ Accessed at <http://www.afr.net/newafr/afrnews.asp>.

⁴ Accessed at <http://www.agapepress.org/>.

⁵ Accessed at <http://www.afa.net/journal/subscribe.asp>.

⁶ Accessed at <http://www.afa.net/clp/>. All these websites accessed on May 3, 2006.





Boone's Chapel Baptist Church

**2301 CO RD 66
Prattville, AL 36067
(334) 365-4191
www.booneschapel.org**

Worship Service

April 30, 2006

Call to Worship

"Return To God"

Welcome

Hymn #411

"Tis So Sweet To Trust In Jesus"

Offertory Hymn #410

"It Is Well With My Soul"

Worship with Tithes & Offerings

Special Music

Adult Choir

Message

Judge Roy Moore

Invitation



**William Beaumont
Army Medical Center Chapel
Memorial Service**

1300

12 January 2006

ORGAN PRELUDE

Bart Kennedy

INVOCATION

CH (MAJ) Clay Davis

COMMANDER'S REMARKS

**COL James J. Leech
WBAMC Commander**

PSALM 23

Congregation

Reading #695 in Hymnal

EULOGY

MAJ Amanda Conley

SPECIAL POEM

Eric A. Sheeran

SPECIAL MUSIC

Bart Kennedy

SCRIPTURE READING

SGM (Ret.) John. L. Williams

MEDITATION

CH (CPT) Sung N. Kim

BENEDICTION

CH (CPT) Sung N. Kim

POSTLUDE

Bart Kennedy

The Band, Stryper has a CD entitled "In God We Trust" with a song of the same name. The chorus to that song goes as follows: "In God we trust. In Him we must believe. (He is the only way.) In God we trust. His Son we must receive. (Tomorrow's too late, accept Him today.)"⁷ According to the "official" Stryper website, "Stryper stands for Salvation Through Redemption Yielding Peace, Encouragement and Righteousness." A Bible verse - Isaiah 53:5 - sits under their logo.

In God We Trust - Praise Hymns Soundtrack (CD includes 7 versions of a song entitled "In God We Trust.") is available from WorshipMusic.com, which "offers one of the best values in Christian music. Our mission is simple: to increase worship on the earth!"⁸

An "In God We Trust" Video is published by Calvary Chapel and sold on Christianbook.com. The website description states, "You'll be drawn into the heart of corporate praise when you join believers in Denver, Colorado, as they lift their hands and voices to glorify God. Worship leaders Richie Furay, Brenda Harp, Billy Batstone and others lead "Joy in the Morning," "You Reached Down," the dynamic "I Shall Not Be Moved," and more."⁹ Christianbook.com's basic goal is "to offer customers the very best in Christian products at the best prices and with the best service around."¹⁰ Christianbook.com also offers an "In God We Trust" silk tie,¹¹ and the "bulletin" used by the church Newdow attended. See at pages 8-9 of this Appendix P.¹² Christianbook.com's basic goal is "to offer customers the very best in Christian products at the best prices and with the best service around."¹³

⁷ Accessed at a website called "Christian Lyrics Online" on May 3, 2006, at <http://www.christianlyricsonline.com/artists/stryper/in-god-we-trust.html>.

⁸ Accessed on May 4, 2006 at <http://www.worshipmusic.com/index.html>.

⁹ Accessed on March 31, 2006 at http://www.christianbook.com/Christian/Books/product?item_no=559930&netp_id=106080&event=ESRCN&item_code=WW.

¹⁰ Accessed on May 4, 2006 at <http://www.christianbook.com/html/cms/general/CompanyProfile.html>.

¹¹ Accessed on May 4, 2006 at http://www.christianbook.com/Christian/Books/product?item_no=100211&netp_id=272725&event=ESRCN&item_code=WW#curr.

¹² Accessed on May 4, 2006 at <http://www.christianbook.com/Christian/Books/curr>.

¹³ Accessed on May 4, 2006 at <http://www.christianbook.com/html/cms/general/CompanyProfile.html>.

An "In God We Trust" T-shirt (which has the Christian ichthus symbol with American Flag and In God We Trust phrase) is made by Living Epistles.¹⁴ Living Epistles states that "Our mission since 1983 has been to provide quality Christian witnessing tools to believers all over the country and the world, which communicate the Gospel of Jesus Christ and assist them in sharing their faith and building stronger community."¹⁵

Another conflation of God and Country is seen in the "In God I Trust" Baseball Cap, with the motto placed under the American Flag. This item is sold at besttoyou.com (Christian Gifts).¹⁶ "We at Best to You® ... truly look for items with messages that are Biblically based, and if the message isn't there, we know it's not meant to be a part of the Best to You® offer."¹⁷

Four different Rosary Cards – displaying images of Jesus and other Christian figures with the phrase In God We Trust – are also available,¹⁸ as are figurines titled "Glory - In God We Trust." These are comprised of angels with an American flag.¹⁹

An "In God We Trust" Flash Movie can be found on InterviewWithJesus.com. This video shows quotes from our founding fathers etc... promoting the relationship between God and our country.²⁰ InterviewWithJesus.com contains "Inspirational Presentations for Personal Enrichment, Worship Services, & Bible Studies."²¹

Plaintiff has on the order of 60 more religiously-based uses of the motto, which – if necessary – he can present at trial. Rare, indeed, are the uses of the motto which are not religiously-based.

¹⁴ Accessed on March 31, 2006 at www.livingepistlesstore.com/Merchant2/merchant.mv?Screen=PROD&Store_Code=LES&Product_Code=MAI2&Category_Code=MP).

¹⁵ Accessed on May 4, 2006 at <http://www.livingepistles.com/community.asp>.

¹⁶ Accessed on March 31, 2006 at http://www.besttoyou.com/cgi-bin/BestToYou.storefront/442f02d6007f66c49c4ec0a80ae806dd/Product/View/94335?wt_cat=SearchResults&wt_subcat=.

¹⁷ Accessed on May 4, 2006 at <http://www.besttoyou.com/cgi-bin/BestToYou.storefront/445a9973010b90369c4dc0a80a7306d9/UserTemplate/116>)

¹⁸ Accessed on May 4, 2006 at <http://www.rosarycard.net/jesus.jsp>.

¹⁹ Accessed on May 4, 2006 at http://www.gocollect.com/Catalog/product.aspx?id=99170&cat_id=3670.

²⁰ Accessed on May 4, 2006 at <http://www.interviewwithgod.com/patriotic/highband.htm>.

²¹ Accessed May 4, 2006 <http://www.interviewwithgod.com>.

APPENDIX Q

SAMPLING THE 109TH CONGRESS DEMONSTRATES THAT “IN GOD WE TRUST” HAS PURELY RELIGIOUS MEANING

The following sampling of the Congressional Record for the 109th Congress demonstrates that the motto is not “ceremonial,” “historical,” “an acknowledgement” or any other bogus claim used to justify Defendants’ constitutional violation. It’s purely religious.

[T]he people derive their power from the Almighty.

151 Cong. Rec. H442 (Tuesday, February 28, 2006 Remarks of Rep. Tom Price (GA). Rep. Price was following a statement by Rep. Virginia Foxx (NC), who had just noted that those who would “take the words ‘In God We Trust’ off of our money, [and] the words ‘Under God’ out of our pledge ... would take away our freedoms.”).

I thank God, the very God we see inscribed above the Speaker’s chair, where it says “In God we trust,” ... I am praying to that same God that it prevails in the Middle East.

151 Cong. Rec. H8916 (Tuesday, October 18, 2005 Rep. Remarks of Rep. Louie Gohmert (TX)).

Saying the Pledge of Allegiance is no more of a religious act than buying food with currency that reads “In God We Trust.” ... [T]he Bill of Rights is there to protect our God-given rights. ... I will close by saying this: God bless America.

151 Cong. Rec. S10183 (Monday, September 19, 2005 Remarks of Sen. George Allen (VA)).

[O]ne of our great American values ... is our common conviction that America is a nation that seeks the will and enjoys the protection of Divine Providence.

151 Cong. Rec. 10105 (Thursday, September 15, 2005 Remarks of Sen. Jim Talent (MO) (following remarks of Sen. Jim DeMint (SC)).

“One nation under God” is no more the establishment or endorsement of religion than our national motto, “in God we trust,” which is here above our door and above the Speaker’s chair on the other side of the Capitol; ... if we lose humility that comes with the belief in a creator, our children and grandchildren will inherit an arrogant nation that has little hope for the future.

151 Cong. Rec. S10104 (Thursday, September 15, 2006 Remarks of Sen. Jim DeMint (SC)).

I rise today to affirm that we are one Nation under God. ... [T]oday, U.S. District Judge Lawrence Karlton ruled that the pledge’s reference to one nation “under God” violates schoolchildren’s right to be “free from a coercive requirement to affirm God.” ... Will this judge also take away American schoolchildren’s milk money emblazoned with the words, “In God We Trust?” ... As President Eisenhower stated, God is America’s most powerful resource. ... Only under the watchful eye of God can all we hope for be accomplished and all we dream of come true.

151 Cong. Rec. E1837 (Wednesday, September 14, 2005 Remarks of Rep. Nick J. Rahall, II (WV)).

Loving God, bless all those who work for the U.S. House of Representatives. ... Renew this Nation in its trust of Your divine providence. ... For this Chamber proclaims what America prays: “In God we trust” now and forever. Amen.

151 Cong. Rec. H6385-86 (Monday, July 25, 2005 Prayer of House Chaplain Rev. Daniel P. Coughlin.).

Here in America, we have been so deeply blessed, and just as the words above the Speaker’s head say, in God we do trust. ... Mr. Speaker, God has blessed America, and with the youth and vitality as demonstrated in Green Acres Baptist Church, I know that we will in the future be blessed by God.

151 Cong. Rec. H5615 (Monday, July 11, 2005 Remarks of Rep. Louie Gohmert (TX)).

[A]bove the Speaker's chair in the people's house are boldly written the words "In God we trust." God. We, the House of Representatives, acknowledge God and have for over 200 years.

We can and must acknowledge God in public life and in a way that equally respects the Muslim, the Jew, the Christian, the Buddhist, and all people of faith. For when we do, God will continue to bless America.

151 Cong. Rec. H5261 (Tuesday, June 28, 2005 Remarks of Rep. Jeb Hensarling (TX)).

Our Nation has suffered through more than forty years of activist judges wandering in their anti-religion desert, a desert hostile to Christians and Jews and devoid of Constitutional boundaries. Let my people go! It will take another Moses to lead us out of the desert and back to the Promised Land of our Founding Fathers, a land wisely provided for and abundantly blessed by God.

151 Cong. Rec. E695 (Tuesday, April 19, 2005 Remarks of Rep. Lamar S. Smith (TX), citing the statement of Rep. Steve King (IA) from March 6, 2005).

At the end of your National Anthem, one finds these words: "Then conquer we must, when our cause it is just, And this be our motto: 'In God is our trust!' " America: may your trust always be in God and in none other.

151 Cong. Rec. E539 (Tuesday, April 5, 2005 Remarks of Rep. Mark E. Souder (IN), citing the statement of Pope John Paul II from October 8, 1995).

"[T]he fact [is] that Government derives its authority from God."

151 Cong. Rec. H991 (Tuesday, March 8, 2005 Remarks of Rep. Cliff Stearns (FL), citing United States Associate Justice Antonin Scalia's words during the "opening arguments" heard the previous week in the "two cases about the public display of the Ten Commandments").

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Civil Action No. 2:05-CV-2339-FCD-PAN

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

Plaintiff,

v.

THE CONGRESS OF THE UNITED STATES OF AMERICA;
PETER LEFEVRE, LAW REVISION COUNSEL;
THE UNITED STATES OF AMERICA;
JOHN WILLIAM SNOW, SECRETARY OF THE TREASURY;
HENRIETTA HOLSMAN FORE, DIRECTOR, UNITED STATES MINT;
THOMAS A. FERGUSON, DIRECTOR, BUREAU OF ENGRAVING AND PRINTING;

Defendants, and

PACIFIC JUSTICE INSTITUTE;

Intervenor-Defendant.

PLAINTIFF'S OPPOSITION TO THE FEDERAL DEFENDANTS' SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Date: June 16, 2006
Time: 10:00 a.m.
Judge: Hon. Frank C. Damrell, Jr.
Court: Courtroom 2

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Pursuant to the Court's Minute Order of May 10, 2006,¹ Plaintiff submits this
 2 Opposition to the Federal Defendants' Supplemental Memorandum (Document #49)
 (hereafter "FDSM") in support of their Motion to Dismiss.² Plaintiff incorporates by reference
 4 his previously filed briefing, and responds now to the "new" arguments raised in Defendants'
 Supplemental Memorandum.

8 **A. HARPER V. POWAY**

In footnote 5 of their Supplemental Memorandum, the Defendants "take this
 10 opportunity to respond to Plaintiff's Submission of Supplemental Authority, filed May 18,
 2006 (dkt. no. 47)." FDSM at 6 (n. 5). In doing so, they gloss over the "familiar general
 12 principles of Establishment Clause and Free Exercise Clause jurisprudence," FDSM at 6:23-
 25, that they, for the most part, continue to disregard. Accordingly, Plaintiff will first briefly
 14 address this authority – Harper v. Poway Sch. Dist.³ – which provides the proper overview for
 this circuit's analysis of the Establishment and Free Exercise Clause claims in this case.

16 **(1) Harper shows that Aronow is no longer controlling precedent**

18 Plaintiff previously wrote that "he expects that the Court here will likely feel
 compelled to follow Aronow."⁴ That expectation followed in part from what he perceived as
 20 uncertainty as to the choice of Establishment Clause test(s) being used in the Ninth Circuit,
 especially after the Supreme Court's decision in McCreary County v. ACLU, 125 S. Ct. 2722
 22 (2005).⁵ Harper – the first Ninth Circuit Establishment Clause case decided since McCreary –

¹ Document #45.

² Documents #24-25.

³ Harper v. Poway Sch. Dist., No. 04-57037, ___ F.3d ___, 2006 WL 1043082 (9th Cir. Apr. 20, 2006).

⁴ Plaintiff's Response to Federal Defendants' Motion to Dismiss (Document #39) at 2(7):30-31, referring to Aronow v. United States, 432 F.2d 242 (9th Cir. 1970).

⁵ Certiorari was granted in McCreary to answer, among other questions, "Whether the Lemon test should be overruled since the test is unworkable and has fostered excessive confusion in Establishment Clause jurisprudence." Accessed at <http://docket.medill.northwestern.edu/archives/001854.php> on May 31, 2006. Although the Supreme Court in McCreary unequivocally reaffirmed what Plaintiff here has steadfastly maintained – i.e., that neutrality is the key issue in the Establishment Clause aspect of the instant case ("The touchstone for our analysis is the principle that the 'First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.'" McCreary, 125 S. Ct. at 2733 (citation omitted)) – and indicated that a demonstrable purpose contrary

ends that uncertainty, and shows without question that this circuit interprets McCreary as calling for the Lemon test to be used primarily in the instant litigation. Application of Lemon, of course, leads immediately to invalidation of the motto and its use on the money, since it is simply impossible to deny that the actual purpose in placing “In God We Trust” onto the coins (and as the nation’s motto) was “to endorse” the purely religious notions that (a) there exists a God, and (b) that this nation – as a nation – places its trust in that purely religious entity.⁶

Harper, then, narrows the “hopeless disarray”⁷ of the Supreme Court’s Establishment Clause jurisprudence in the Ninth Circuit, informing us that McCreary’s principled pronouncements – such as “When the government acts with the ostensible and predominant purpose of advancing religion, it violates that central Establishment Clause value of official religious neutrality.” 125 S. Ct. at 2733 – are to be applied. As applied in this case, such pronouncements are clearly irreconcilable with Aronow. Because “where an intervening higher authority has issued an opinion that is clearly irreconcilable with our prior circuit precedent, a panel is free to act disregarding that precedent,” United States v. Plouffe, 445 F.3d 1126 (9th Cir. 2006) (citations omitted), Plaintiff withdraws any previous acquiescence to

to the principle of neutrality should render a law unconstitutional, *id.*, the endorsement of Lemon was nonetheless somewhat lukewarm. *See, e.g.*, 125 S. Ct. at 2732-33 (describing Lemon’s purpose prong – the test’s strongest – as a “seldom dispositive, element of our cases”).

⁶ From the original Christian minister’s letter requesting that “the recognition of Almighty God” be placed upon the nation’s coins (addressed to the Secretary of the Treasury, and stating, “You are probably a Christian”), First Amended Complaint (Document #44) (hereafter “FAC”) at 12:20-23, to the Secretary’s assertion in response (“The trust of our people in God should be declared on our national coins,” FAC at 13:3-4), to the Mint director’s official statement that “We claim to be a Christian nation ... [and] should declare our trust in God ... ‘the King of Kings and Lord of Lords,’” FAC at 14:24-29, the history is incontrovertible: the purpose of placing “In God We Trust” on our money was absolutely, thoroughly and wholly religious. It was meant to do nothing but endorse (Christian) Monotheism.

That the placement of the motto on the money was made for purely religious purposes is also seen by examining its history from the phrase’s first use on the 1864 two-cent piece through the Act of 1955 as well. In 1908 – in its report accompanying the first law mandating “In God We Trust” on the coins – the House noted that the subcommittee on the matter was “unanimous” in characterizing the United States as “a Christian nation,” and that the republic’s perpetuation required “a Christian patriotism, which recognize[s] the universal fatherhood of God.” FAC at 18:17-20. Similarly, the proceedings of the House committee that led to the report accompanying the 1955 Act, itself – which classified the motto among the “Religious Inscriptions on Coins in the United States,” FAC at 20:6-7 – showed that not a single committee member deemed the motto to be anything but religious.

⁷ “[O]ur Establishment Clause jurisprudence is in hopeless disarray.” Rosenberger v. University of Virginia, 515 U.S. 819, 861 (1995) (Thomas, J., concurring).

the Defendants' contention that Aronow (which was decided before the Lemon test was formulated) is controlling.

The effects of the use of the motto have been purely religious as well. See, at pages 7-8, infra. For this reason as well, Aronow – which never applied any serious analysis to either the purpose or the effects of the motto – should not be followed:

The purpose prong of the Lemon test asks whether government's actual purpose is to endorse or disapprove of religion. The effect prong asks whether, irrespective of government's actual purpose, the practice under review in fact conveys a message of endorsement or disapproval. **An affirmative answer to either question should render the challenged practice invalid.**

Lynch v. Donnelly, 465 U.S. 668, 690 (1984) (O'Connor, J., concurring) (emphasis added).

Defendants rely on the fact that "all previous courts have reached [the conclusion that] the national motto is fully consistent with the Constitution," FDSM at 6:27-28, to bolster their argument. Such jurisprudential history, however, is inconsequential in this context. What "all previous courts" have done is allow personal biases and desires to contravene clear constitutional principles. Even if this unfortunate explanation is erroneous, it again must be acknowledged that the Ninth Circuit now reads the Supreme Court's cases as requiring the Lemon test to be used. That being so, there is only one conclusion: Aronow was decided in error, and Plaintiff here must prevail.

(2) Harper's other points also show that Plaintiff must prevail

The other points made by Harper are equally important, and their application to the instant case also shows that the Defendants have violated their constitutional duties.

(i) Not only is a law claiming that "In God We Trust" not one that is "neutral" in terms of religion, but it does "'in a selective manner impose burdens only on conduct motivated by religious belief.'" Supplemental Authority (Harper) (Document #47) (hereafter "SA(H)") at 1(2):7-9.

(ii) Plaintiff has little choice but to use money that states "In God We Trust." Such use – as noted by those responsible for the placement of those words on those monetary instruments – is certainly an "affirmation" of the ideas that God exists and that

Respectfully submitted,

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APPENDIX 3A

SAMPLING OF JUSTICE O'CONNOR'S PRINCIPLED STATEMENTS¹

Agostini v. Felton, 521 U.S. 203, 223 (1997) (Majority opinion)

“As we have repeatedly recognized, government inculcation of religious beliefs has the impermissible effect of advancing religion.” At 223.

Rosenberger v. University of Virginia, 515 U.S. 819 (1995) (Concurring opinion)

“Neutrality, in both form and effect, is one hallmark of the Establishment Clause.” At 846.

Capitol Square Review & Advisory Bd. v. Pinette, 515 U.S. 753 (1995) (Concurring opinion)

“[W]hen the reasonable observer would view a government practice as endorsing religion, I believe that it is our duty to hold the practice invalid.” At 777.

“The [Establishment] Clause ... imposes affirmative obligations that may require a State, in some situations, to take steps to avoid being perceived as supporting or endorsing a private religious message.” At 777

Board of Education of Kiryas Joel v. Grumet, 512 U.S. 687, 717 (1994) (Concurring opinion)

“[I]t seems dangerous to validate what appears to me a clear religious preference.” At 717.

“The Religion Clauses prohibit the government from favoring religion.” At 717.

Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833 (1992) (Plurality opinion)

“The Court must take care to speak and act in ways that allow people to accept its decisions on the terms the Court claims for them, as grounded truly in principle, not as compromises with social and political pressures having, as such, no bearing on the principled choices that the Court is obliged to make. Thus, the Court’s legitimacy depends on making legally principled decisions under circumstances in which their principled character is sufficiently plausible to be accepted by the Nation.” At 865-66.

“The proper focus of constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant.” At 894

¹ All citations omitted.

Westside Community Bd. of Ed. v. Mergens, 496 U.S. 226 (1990) (Majority opinion)

“[T]here is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect.” At 250.

Allegheny County v. Greater Pittsburgh ACLU, 492 U.S. 573 (1989) (Concurring opinion)

“[T]he essential command of the Establishment Clause [is] that government must not make a person’s religious beliefs relevant to his or her standing in the political community by conveying a message ‘that religion or a particular religious belief is favored or preferred.’” At 627.

“If government is to be neutral in matters of religion, rather than showing either favoritism or disapproval towards citizens based on their personal religious choices, government cannot endorse the religious practices and beliefs of some citizens without sending a clear message to nonadherents that they are outsiders or less than full members of the political community.” At 627.

“An Establishment Clause standard that prohibits only ‘coercive’ practices or overt efforts at government proselytization, but fails to take account of the numerous more subtle ways that government can show favoritism to particular beliefs or convey a message of disapproval to others, would not, in my view, adequately protect the religious liberty or respect the religious diversity of the members of our pluralistic political community.” At 627-28.

“Historical acceptance of a practice does not in itself validate that practice under the Establishment Clause if the practice violates the values protected by that Clause, just as historical acceptance of racial or gender based discrimination does not immunize such practices from scrutiny under the Fourteenth Amendment.” At 630

“[T]he religious liberty so precious to the citizens who make up our diverse country is protected, not impeded, when government avoids endorsing religion or favoring particular beliefs over others.” At 631.

Lyng v. Northwest Indian Cemetery Protective Ass’n, 485 U.S. 439, 450 (U.S. 1988) (Concurring opinion)

“[T]his Court has repeatedly held that indirect coercion or penalties on the free exercise of religion, not just outright prohibitions, are subject to scrutiny under the First Amendment.” At 450.

Wallace v. Jaffree, 472 U.S. 38 (1985) (Concurring opinion)

“[T]he religious liberty protected by the Establishment Clause is infringed when the government makes adherence to religion relevant to a person’s standing in the political community.” At 69.

“The endorsement test ... does preclude government from conveying or attempting to convey a message that religion or a particular religious belief is favored or preferred.” At 70.

“[W]hen [government] acts it should do so without endorsing a particular religious belief or practice that all citizens do not share.” At 76.

Lynch v. Donnelly, 465 U.S. 668 (1984) (Concurring opinion)

“The Establishment Clause prohibits government from making adherence to a religion relevant in any way to a person’s standing in the political community.” At 687.

“Endorsement sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.” At 688.

“What is crucial is that a government practice not have the effect of communicating a message of government endorsement or disapproval of religion.” At 692.

“[C]ourts must keep in mind both the fundamental place held by the Establishment Clause in our constitutional scheme and the myriad, subtle ways in which Establishment Clause values can be eroded.” At 694.

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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 _____/

22 -----oo0oo-----

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

27 _____
28 ¹ Federal government defendants and defendant Pacific
Justice Institute ("PJI") filed separate motions to dismiss.

² 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. (1st 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. § 302,³ which provides that "In God We

³ 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 5114,⁴ 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.⁵

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

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

⁵ 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 collection⁶ (Id. ¶¶ 223-24); (5) he has been
26 and is forced to "proselytize" and "evangelize" on behalf of
27

28 ⁶ 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.'"⁷ In
 20 other words, plaintiff argues that the national motto reinforces
 21

22 ⁷ 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
 28 often identified with belief in Christianity or monotheism.
 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;⁸ (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.

27
28 ⁸ 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.⁹

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

27
28 ⁹ 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.¹⁰

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.

¹⁰ 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."¹¹ 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

27
 28 ¹¹ 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.¹² 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 ¹² 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.

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

JUDGMENT IN A CIVIL CASE

MICHAEL A NEWDOW,

CASE NO: 2:05-CV-02339-FCD-PAN

v.

**CONGRESS OF THE UNITED STATES OF
AMERICA, ET AL.,**

XX -- **Decision by the Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

**THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE
COURT'S ORDER OF 6/12/06**

Jack L. Wagner
Clerk of the Court

ENTERED: **June 12, 2006**

by: /s/ M. Price
Deputy Clerk

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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

Civil Action No. 2:05-cv-02339

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

Plaintiff,

v.

THE CONGRESS OF THE UNITED STATES OF AMERICA;
PETER LEFEVRE, LAW REVISION COUNSEL;
THE UNITED STATES OF AMERICA;
JOHN WILLIAM SNOW,* SECRETARY OF THE TREASURY;
HENRIETTA HOLSMAN FORE,* DIRECTOR, UNITED STATES MINT;
THOMAS A. FERGUSON,* DIRECTOR, BUREAU OF ENGRAVING AND
PRINTING;

Defendants.

NOTICE OF APPEAL

Notice is hereby given that The Rev. Dr. Michael A. Newdow, plaintiff in the above named case, hereby appeals to the United States Court of Appeals for the Ninth Circuit from an Order granting Defendants' Motion to Dismiss entered in this action on the 12th day of June, 2006.

/s/- Michael Newdow
Michael Newdow, Plaintiff

July 20, 2006

* - Each of these officials have since been replaced. Henry M. Paulson is the current Secretary of the Treasury, David A. Lebryk is Acting Director of the U.S. Mint, and Larry R. Felix is Director of the Bureau of Engraving and Printing.

APPEAL, CIVIL, CLOSED

**U.S. District Court
Eastern District of California - Live System (Sacramento)
CIVIL DOCKET FOR CASE #: 2:05-cv-02339-FCD-PAN**

(JFM) Newdow v. Congress of the United States of America, et al
Assigned to: Judge Frank C. Damrell, Jr
Referred to: Magistrate Judge Peter A. Nowinski
Cause: 28:1983 Civil Rights

Date Filed: 11/18/2005

Jury Demand: None

Nature of Suit: 440 Civil Rights: Other

Jurisdiction: U.S. Government Defendant

Plaintiff

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the Reverend - Doctor

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Date Filed	#	Docket Text
11/18/2005	<u>1</u>	COMPLAINT against all defendants, filed by Michael A Newdow.(Newdow, Michael) (Entered: 11/18/2005)
11/18/2005	<u>3</u>	CIVIL COVER SHEET by plaintiff Michael A Newdow. (Marciel, M) (Entered: 11/18/2005)
11/18/2005	<u>4</u>	SUMMONS ISSUED as to *Congress of the United States of America, Peter LeFevre, - - United States of America, John W Snow, Henrietta Holsman Fore, Thomas A. Ferguson* with answer to complaint due within *60* days. Attorney *Michael Newdow* *P.O. Box 233345* *Sacramento, CA 95823*. (Marciel, M) (Entered: 11/18/2005)
11/18/2005	<u>5</u>	CIVIL NEW CASE DOCUMENTS ISSUED (Attachments: # <u>1</u> Consent Forms # <u>2</u> VDRP Forms) (Marciel, M) (Entered: 11/18/2005)
11/30/2005	<u>6</u>	MOTION to INTERVENE by Pacific Justice Institute. Motion Hearing set for 1/13/2006 at 10:00 AM in Courtroom 2 (FCD) before Judge Frank C. Damrell Jr.. (Snider, Kevin) (Entered: 11/30/2005)
11/30/2005	<u>7</u>	DECLARATION of Brad Dacus in SUPPORT OF re <u>6</u> MOTION to INTERVENE. (Snider, Kevin) (Entered: 11/30/2005)
11/30/2005	<u>8</u>	MEMORANDUM/RESPONSE in SUPPORT re <u>6</u> MOTION to INTERVENE. (Snider, Kevin) (Entered: 11/30/2005)
11/30/2005	<u>9</u>	EXHIBIT <i>1 Proposed Responsive Pleading</i> by Pacific Justice Institute. (Snider, Kevin) (Entered: 11/30/2005)
11/30/2005	<u>10</u>	PROPOSED ORDER Proposed Order re <u>6</u> MOTION to INTERVENE. (Snider, Kevin) (Entered: 11/30/2005)
12/05/2005	<u>11</u>	RESPONSE to <u>6</u> MOTION to intervene by Pacific Justice Institute. (Newdow, Michael) Modified on 12/6/2005 (Dotson, B). (Entered: 12/05/2005)
12/14/2005	<u>12</u>	CERTIFICATE of SERVICE by Pacific Justice Institute <i>Personal Service</i> (Snider, Kevin) (Entered: 12/14/2005)
12/17/2005	<u>13</u>	CERTIFICATE of SERVICE by Michael A Newdow re <u>1</u> Complaint, <u>4</u> Summons, <i>Order requiring Joint Status Report</i> (Newdow, Michael) (Entered: 12/17/2005)
12/17/2005	<u>14</u>	CERTIFICATE of SERVICE by Michael A Newdow re <u>11</u> Response to Motion (Newdow, Michael) (Entered: 12/17/2005)
01/06/2006	<u>15</u>	ORDER signed by Judge Frank C. Damrell Jr. on 1/6/06 re: <u>6</u> Pacific Justice Institute Motion to Intervene - Applicant's motion to intervene as of right pursuant to Rule 24(a) is GRANTED and in the alternative, applicant's motion for permissive intervention is GRANTED. (Price, M) (Entered: 01/06/2006)

01/06/2006	<u>16</u>	NOTICE of APPEARANCE by Robert J Katerberg on behalf of Congress of the United States of America, Peter LeFevre, - - United States of America, John W Snow, Henrietta Holsman Fore, Thomas A. Ferguson (Katerberg, Robert) (Entered: 01/06/2006)
01/06/2006	17	RESERVICE OF DOCUMENTS: re <u>15</u> Order on Motion to Intervene, addressed to all parties to included newly appearing counsel Robert J. Katerberg on behalf of federal defendants. (Price, M) (Entered: 01/06/2006)
01/20/2006	<u>18</u>	STIPULATION and PROPOSED ORDER to Extend Time to Respond to Complaint and Set Briefing Schedule for Dispositive Motion by Congress of the United States of America, Peter LeFevre, United States of America, John W Snow, Henrietta Holsman Fore, Thomas A. Ferguson. (Katerberg, Robert) Modified on 1/23/2006 (Caspar, M). (Entered: 01/20/2006)
01/24/2006	<u>19</u>	STIPULATION and ORDER (schedule as submitted by the parties modified by the court) signed by Judge Frank C. Damrell Jr. on 1/24/06. Motions by federal dft due by 3/27/2006. Intv-Dft motion/joinder by 3/31/06. Opposition by 4/17/06. Reply by 4/28/06. Motion hearing set for 5/19/2006 at 10:00 AM in Courtroom 2 (FCD) before Judge Frank C. Damrell Jr. (Price, M) (Entered: 01/24/2006)
01/25/2006	<u>20</u>	JOINT STATUS REPORT by Michael A Newdow. (Newdow, Michael) (Entered: 01/25/2006)
02/10/2006	<u>21</u>	NOTICE of HEARING: Status Conference set for 5/19/2006 at 10:00 AM in Courtroom 2 (FCD) before Judge Frank C. Damrell Jr. to follow motion hearing alreay set. (Price, M) (Entered: 02/10/2006)
03/09/2006	<u>22</u>	NOTICE OF TEMPORARY ASSIGNMENT notifying parties that due to the retirement of Magistrate Judge Peter A. Nowinski, this action is temporarily reassigned to Magistrate Judge John F. Moulds. (Donati, J) (Entered: 03/09/2006)
03/27/2006	<u>23</u>	MOTION Leave to file the attached amici brief by Robert B. Aderholt, W. Todd Akin, American Center for Law and Justice, Roscoe G. Bartlett, Kevin Brady, John Campbell, Steve Chabot, Chris Chocola, K. Michael Conaway, Geoff Davis, Jo Ann Davis, Jim DeMint, Phil English, Tom Feeney, Virginia Foxx, Trent Franks, Scott Garrett, Phil Gingrey, Virgil H. Goode, Jr, Gil Gutknecht, J.D. Hayworth, Jeb Hensarling, Wally Herger, Bob Inglis, Ernest J. Istook, Jr, Bobby Jindal, Sam Johnson, Michael T. McCaul, Patrick T. McHenry, Sue Wilkins Myrick, Randy Neugebauer, Charlie Norwood, Mike Pence, Charles W. "Chip&q Pickering, Todd Russell Platts, Dana Rohrabacher, Paul Ryan, Jim Ryun, John B. Shadegg, Michael E. Sodrel, Mark E. Souder, Thomas G. Tancredo, Lee Terry, Todd Tiahart, Zach Wamp, Dave Weldon, Lynn A. Westmoreland, Roger F. Wicker. (Attachments: # <u>1</u> Amici brief attached to motion for leave to file amici brief)(Davert, Douglass) (Entered: 03/27/2006)
03/27/2006	<u>24</u>	DEFENDANT(S) MOTION to DISMISS by Congress of the United States of America, Peter LeFevre, - - United States of America, John W Snow, Henrietta Holsman Fore, Thomas A. Ferguson. Motion Hearing set for 5/19/2006 at 10:00 AM in Courtroom 2 (FCD) before Judge Frank C. Damrell Jr..

		(Attachments: # 1 Proposed Order)(Katerberg, Robert) Modified on 3/28/2006 (Marciel, M). (Entered: 03/27/2006)
03/27/2006	25	MEMORANDUM/RESPONSE in SUPPORT of <i>Federal Defendants' Motion to Dismiss</i> . (Katerberg, Robert) (Entered: 03/27/2006)
03/29/2006	26	PROPOSED ORDER Proposed Order re 23 MOTION Leave to file the attached amici brief. (Davert, Douglass) (Entered: 03/29/2006)
03/29/2006	27	PRO HAC VICE APPLICATION by American Center for Law and Justice for attorney Edward L. White III to appear Pro Hac Vice for Amicus American Center for Law and Justice. (Attachments: # 1 Proposed Order)(Thiel, Mark) (Entered: 03/29/2006)
03/29/2006	28	MOTION for Leave to Amicus Brief for 24 DEFENDANT(S) MOTION to DISMISS by Thomas More Law Center. (Attachments: # 1 Amicus Brief # 2 Proposed Order)(Thiel, Mark) Modified on 3/30/2006 (Marciel, M). (Entered: 03/29/2006)
03/29/2006	29	CORRECTED PRO HAC VICE APPLICATION by Thomas More Law Center for attorney Edward L. White to appear Pro Hac Vice. (Attachments: # 1 Proposed Order)(Thiel, Mark) Modified on 3/30/2006 (Marciel, M). Modified on 3/30/2006 (Price, M). (Entered: 03/29/2006)
03/31/2006	31	ORDER signed by Judge Frank C. Damrell Jr. on 3/31/06.granting 23 Motion fo file Amici Curiae Brief is GRANTED. The amici curiae brief filed as Attachment 1 to motion is deemed filed as of March 31, 2006. (Price, M) (Entered: 03/31/2006)
03/31/2006	32	PRO HAC VICE ORDER signed by Judge Frank C. Damrell Jr. on 3/31/06. re 29 Pro Hac Vice Application (MIS) - GRANTED. Added attorney Edward L White, III for Thomas More Law Center, Mark A. Thiel for Thomas More Law Center. (Price, M) (Entered: 03/31/2006)
03/31/2006	33	ORDER signed by Judge Frank C. Damrell Jr. on 3/31/06. 28 Motion to file amici curiae brief is GRANTED. The Amici Curiae Brief filed as Attachment A to the motion is deemed filed as of 3/31/06. (Price, M) (Entered: 03/31/2006)
03/31/2006		RECEIPT number 201 12036 for \$180.00 for Pro Hac Vice Application from Mark A. Thiel for Edward L. White. (Mena-Sanchez, L) (Entered: 03/31/2006)
03/31/2006	34	MOTION to DISMISS by Pacific Justice Institute. Motion Hearing set for 5/19/2006 at 10:00 AM in Courtroom 2 (FCD) before Judge Frank C. Damrell Jr.. (Snider, Kevin) (Entered: 03/31/2006)
03/31/2006	35	MEMORANDUM/RESPONSE in SUPPORT re 34 MOTION to DISMISS <i>COMPLAINT</i> . (Snider, Kevin) (Entered: 03/31/2006)
03/31/2006	36	JOINDER by Pacific Justice Institute in re 34 MOTION to DISMISS filed by Pacific Justice Institute,, 24 DEFENDANT(S) MOTION to DISMISS filed by - - United States of America,, John W Snow,, Congress of the United States of America,, Peter LeFevre,, Henrietta Holsman Fore,, Thomas A. Ferguson,, (Snider, Kevin) (Entered: 03/31/2006)

04/17/2006	38	RESPONSE in OPPOSITION <i>To Docket Entries #24, 25, 34 & 35 (defendants' Motion to Dismiss)</i> . (Newdow, Michael) Modified on 4/18/2006 (Marciel, M). (Entered: 04/17/2006)
04/18/2006	39	PLAINTIFF'S MOTION to CORRECT <i>Response to Defendant's Motion to Dismiss</i> by Michael A Newdow. Motion Hearing set for 5/19/2006 at 10:00 AM in Courtroom 2 (FCD) before Judge Frank C. Damrell Jr. (Attachments: # 1 Memorandum)(Newdow, Michael) Modified on 4/19/2006 (Marciel, M). (Entered: 04/18/2006)
04/18/2006	40	PLAINTIFF'S MOTION to CORRECT 38 Memorandum/Response in Opposition to Motion <i>to Dismiss</i> by Michael A Newdow. Motion Hearing set for 5/19/2006 at 10:00 AM in Courtroom 2 (FCD) before Judge Frank C. Damrell Jr. (Attachments: # 1 Proposed Order)(Newdow, Michael) Modified on 4/19/2006 (Marciel, M). (Entered: 04/18/2006)
04/20/2006	41	MINUTE ORDER: from CRD M. Price for Judge Frank C. Damrell Jr. on 4/20/06. 39 Pltf's Motion to Amend/Correct - GRANTED. Pltf's Corrected Response as attached to document #39 is deemed filed as of 4/18/06. (Price, M) (Entered: 04/20/2006)
04/27/2006	42	REPLY MEMORANDUM in support of 24 DEFENDANTS' MOTION to DISMISS. (Katerberg, Robert) Modified on 4/28/2006 (Marciel, M). (Entered: 04/27/2006)
04/27/2006	43	MEMORANDUM of Law in Reply to Opposition to Motion to Dismiss. (Snider, Kevin) Modified on 4/28/2006 (Marciel, M). (Entered: 04/27/2006)
05/09/2006	44	<i>First</i> AMENDED COMPLAINT against all defendants, filed by Michael A Newdow.(Newdow, Michael) (Entered: 05/09/2006)
05/10/2006	45	MINUTE ORDER: From CRD M. Price for Judge Frank C. Damrell, Jr. on 05/10/06. SET/RESET MOTION HEARING as to 34 MOTION to DISMISS, 24 DEFENDANT(S) MOTION to DISMISS: Motion Hearing set for 6/16/2006 at 10:00 AM in Courtroom 2 (FCD) before Judge Frank C. Damrell Jr. Plaintiff to file supplemental briefing by 5/15/06. Defendant to file response by 5/26/06. Plaintiff reply by 6/02/06.(Price, M) (Entered: 05/10/2006)
05/13/2006	46	BRIEF <i>PURSUANT TO THE COURT'S MAY 9, 2006 ORDER</i> by Michael A Newdow. (Newdow, Michael) (Entered: 05/13/2006)
05/18/2006	47	SUPPLEMENT by Michael A Newdow <i>Ninth Circuit case: Harper v Poway Unified School District</i> >. (Newdow, Michael) Modified on 5/19/2006 (Marciel, M). (Entered: 05/18/2006)
05/19/2006	48	NOTICE by Pacific Justice Institute re 46 Brief <i>No Revisions to Motion to Dismiss</i> (Snider, Kevin) (Entered: 05/19/2006)
05/26/2006	49	SUPPLEMENTAL MEMORANDUM in Support of 24 Defendants Motion to Dismiss. (Katerberg, Robert) Modified on 5/30/2006 (Donati, J). (Entered: 05/26/2006)
06/05/2006	50	RESPONSE in OPPOSITION to 24 Dft(s) Motion to Dismiss. (Newdow, Michael) Modified on 6/6/2006 (Yin, K). (Entered: 06/05/2006)

06/08/2006	51	REPLY to RESPONSE to MOTION (<i>Notice in Lieu of Supplemental Reply Memorandum</i>). (Katerberg, Robert) (Entered: 06/08/2006)
06/12/2006	52	MEMORANDUM and ORDER signed by Judge Frank C. Damrell Jr. on 6/12/06. 24 DEFENDANT(S) MOTION to DISMISS filed by United States of America, John W Snow, Congress of the United States of America, Peter LeFevre, Henrietta Holsman Fore, Thomas A. Ferguson - GRANTED. 34 MOTION to DISMISS filed by Pacific Justice Institute - GRANTED. ***Civil Case Terminated. CASE CLOSED.(Price, M) (Entered: 06/12/2006)
06/12/2006	53	CLERK'S JUDGMENT dated *6/12/06* pursuant to order signed by Judge Frank C. Damrell Jr. on 6/12/06. (Price, M) (Entered: 06/12/2006)
07/21/2006	54	NOTICE of APPEAL by Michael A Newdow. (Attachments: # 1 Supplement Form 6 Docketing Statement# 2 Supplement Transcript Designation Ordering Form# 3 Supplement District Court's Order of Dismissal# 4 Supplement District Court's Judgment)(Newdow, Michael) (Entered: 07/21/2006)
07/21/2006		RECEIPT number 202 16157 for \$455.00 for Appeal Filing Fee from Michael Newdow. (Brown, T) (Entered: 07/21/2006)
07/21/2006	56	APPEAL PROCESSED to Ninth Circuit re 54 Notice of Appeal, filed by Michael A Newdow. Filed dates for Notice of Appeal *7/21/2006*, Complaint *11/18/2005* and Appealed Order / Judgment *6/12/2006*. Court Reporter: *N/A*. *Fee Status: Paid on 7/21/2006 in the amount of \$455.00* ** (Attachments: # 1 Appeal Notice # 2 Certificate of Record) (Krueger, M) (Entered: 07/21/2006)
07/31/2006	57	USCA CASE NUMBER 06-16344 for 54 Notice of Appeal - ATY, filed by Michael A Newdow. (Matson, R) (Entered: 08/01/2006)

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