IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

CASE NO. 5:16-cv-59 (BYP)

NEW DOE CHILD #1 *et al.*,

Plaintiffs,

v.

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

Defendants.

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Michael Newdow
Pro hac vice
2985 Lakeshore Blvd
Upper Lake, CA 95485
(626) 532-7694
NewdowLaw@gmail.com

Thomas M. Horwitz
Ohio Bar #0062323
1991 Crocker Road, Suite 600
Westlake, OH 44145
(440) 892-3331
tmh@horwitzlpa.com

Attorneys for Plaintiffs

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

WEBSITES

INTRODUCTION

Despite the repeated declarations by the Supreme Court that Atheists merit the same respect as any other group that adheres to a specific religious view,[1] they remain severely disenfranchised in this nation. Thus, when Atheistic religious rights come into play, the (Christian) Monotheistic majority has a tendency to disregard (or even affirmatively deny) that small minority's ability to enjoy the freedoms that the majority so fervidly desires for itself.

That fervid desire was seen when Congress passed the Religious Freedom Restoration Act (RFRA), ensuring that – absent a compelling interest on the part of the federal government, and laws narrowly tailored to serve that interest – every individual has the right to freely exercise his or her religious beliefs without any governmentally-imposed substantial burden. This statute was passed in response to the decision in *Employment Div. v. Smith*, 494 U.S. 872 (1990), in which the Supreme Court eliminated the strict scrutiny standard that had previously been required when free exercise claims were at issue.

The federal government has substantially burdened the ability of the Atheistic plaintiffs in this case to practice their Atheism. This is because whenever they wish to purchase an item at a garage sale (or hold such a sale themselves), buy fruit at a farmer's market, use a laundromat, leave a tip for a hotel attendant, or get change from one of these or myriad other transactions,

[1] "The touchstone for our analysis is the principle that the 'First Amendment mandates governmental neutrality ... between religion and nonreligion.'" *McCreary County v. ACLU*, 545 U.S. 844, 860 (2005) (citation omitted); "A secular state establishes neither atheism nor religion as its official creed." *Allegheny County v. Greater Pittsburgh ACLU*, 492 U.S. 573, 610 (1989); "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); "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 G-d as against those religions founded on different beliefs." *Torcaso v. Watkins*, 367 U.S. 488, 495 (1961) (notes omitted).

they are forced to bear on their persons religious dogma that espouses what is the complete opposite of their most basic religious tenet. Furthermore, as has been intended by Defendants, they must proselytize that religious message.

Among the plaintiffs is also a devout Jewish individual who firmly believes in G-d's existence. The practice of his Judaism includes the notion that it is sinful to participate in any activity that involves the printing and/or the destruction of G-d's written name.[2] Accordingly, this plaintiff has been forced to either not partake in the important benefits that stem from the use of the nation's legal tender or to sin.

To be put in these positions by the government (where one either has to forgo an important benefit or violate a sincere religious belief) without the government having a compelling interest is a classic RFRA violation. Government has no compelling interest in placing G-d's name (or other religious dogma) on the nation's money. The Court, therefore, should deny Defendants' Motion to Dismiss.

[2] Out of respect for that individual's belief system – and so that he can fully participate in this litigation – all of Plaintiffs' filings will use the "G-d" designation.

ARGUMENT

Defendants, after accurately introducing Plaintiffs and their claims, start their "Summary of the Argument" by stating, "Plaintiffs' claims hinge on their assertion that the Motto is a religious message, ignoring the Supreme Court's repeated teaching that it is not." Doc. 9 (Defendants' Motion to Dismiss) at 12. Defendants are wrong on both accounts. Taking the second contention first, Plaintiffs are unaware of any case where the Supreme Court has taught that the "In G-d We Trust" phrase is not a religious message, and they invite Defendants to point out such a case in their Reply Brief. What occasional members of the Supreme Court have (rarely) indicated is that they personally view the motto as a permissible religious "reference." But it is still religious.[3]

Either way, Plaintiffs' claims do not hinge on how the Supreme Court (or any other court) sees the "In G-d We Trust" phrase. On the contrary, "[r]epeatedly and in many different contexts, we have warned that courts must not presume to determine ... the plausibility of a religious claim." *Employment Div. v. Smith*, 494 U.S. 872, 887 (1990).[4] In other words, "[i]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or

[3] In pondering the constitutionality of the motto, Justice Brennan repeatedly suggested that "In G-d We Trust" "*may* not offend the [Establishment] clause if it "Ceased to Have Religious Meaning," *Abington v. Schempp*, 374 U.S. 203, 303 (1963) (Brennan, J., concurring) (emphasis added). *See also Marsh v. Chambers*, 463 U.S. 783, 818 (1983) (Brennan, J., dissenting) (noting that he "*might* well adhere to the view … that such mottos are consistent with the Establishment Clause … because they have lost any true religious significance. 374 U.S., at 303-04 (BRENNAN, J., concurring) (emphasis added); *Lynch v. Donnelly*, 465 U.S. 668, 716 (1984) (Brennan, J., dissenting) (stating the motto "can best be understood … as a form of ceremonial deism … hav[ing] lost through rote repetition any significant religious content." However, he carefully prefaced this statement with, "While I remain uncertain about these questions, … ." *Id*. Of note is that, in *Abington*, he wrote that "I suspect there would be intense opposition to the abandonment of that motto." 374 U.S. at 303. He was undoubtedly correct about that, and – judging by the essentially universal highly religious affiliations of those who have already voiced such opposition, it seems clear that the motto has not lost "any significant religious content" at all.

[4] Of course, it should not be too difficult to accept the plausibility of Plaintiffs' "religious claim," since it is simply that "G-d" means "G-d."

the validity of particular litigants' interpretations of those creeds." *Hernandez v. Commissioner*, 490 U.S. 680, 699 (1989). Phrased alternatively, the determination of religious beliefs "is not to turn upon a judicial perception ...; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Review Board, Ind. Empl. Sec. Div.*, 450 U.S. 707, 714 (1981). In fact, "to inquire into the significance of words and practices … would tend inevitably to entangle the State with religion in a manner forbidden by our cases." *Widmar v. Vincent*, 454 U.S. 263, 269 n.6 (1981).

Accordingly, even if this Court accepts the bizarre argument that the high court believes "In G-d We Trust" is not about trusting in G-d,[5] it doesn't matter. What matters – especially in a RFRA challenge – is what Plaintiffs believe those words mean. And, to the Atheist plaintiffs[6] in this case, the meaning of "In G-d We Trust" is that "We" (i.e., Americans) trust in G-d. As it pertains to them, that claim is a falsehood, which their tenets preclude them from perpetuating.

In fact, for the Atheist plaintiffs, it is a double falsehood, since it not only repudiates their most fundamental religious belief, but it suggests that (solely due to their religious tenets) they are second-class citizens, which is not how they see themselves at all. For the religious Jew, participating in carrying the physical manifestation of that statement is a sin. Thus, for all the plaintiffs, bearing such a statement is a substantial burden upon the exercise of their religion that can be avoided only by forgoing an important governmental benefit, i.e., the ability to engage in everyday commerce, using the sole legal tender produced for that purpose by Defendants.

---

[5] At least one justice has clearly contradicted Defendants' claim in this regard: "[W]ords such as 'G-d' have religious significance." *Van Orden v. Perry*, 545 U.S. 677, 695 (2005) (Thomas, J., concurring). Furthermore, if "[t]he declaration that our country is '"one Nation under G-d"' necessarily 'entail[s] an affirmation that G-d exists,'" *id*. at 696 (citation omitted), so, too, must the declaration that "In G-d We Trust."

[6] Plaintiffs in this case have self-identified as Atheists, Agnostics, Secular Humanists and more. For ease of use, "Atheist Plaintiffs" will be used in this Opposition to refer to all "non-believers."

According to Defendants:

> A substantial burden exists where the government coerces individuals to violate their religious beliefs, conditions receipt of an important benefit upon conduct proscribed by their faith, or denies such a benefit because of conduct mandated by religious belief. None of these has occurred here. Indeed, contrary to Plaintiffs' position, the Motto does not represent a religious dogma or constitute governmental sponsorship of religion. Moreover, even if Plaintiffs could establish a substantial burden, their claims must still be dismissed because the statutes they challenge are neutral laws of general applicability and, in any event, they satisfy strict scrutiny.

Doc. 9 at 12-13. Plaintiffs will use Defendants' framework in this Opposition, demonstrating how Plaintiffs, under that framework, should prevail in this litigation. In so doing, the Court will see that Defendants' Motion to Dismiss must be denied.

A. Defendants Have Violated Plaintiffs' RFRA and Free Exercise Rights

(1) Defendants Substantially Burden Plaintiffs' Religious Exercise

"Sir Thomas More … , venerated by Catholics as Saint Thomas More,"[7] felt it was so important not to bear the message that the King of England was superior to the Pope that he "chose" beheading rather than take the Oath of Supremacy.[8] Although there is obviously significantly less of a burden on Plaintiffs here, their burden (i.e., being unable to use the nation's legal tender without violating their religious tenets) is still substantial. Arguably, it rises to a level of "coercion," for the cost of not being able to use coins and currency bills (in terms of lost commercial opportunities and extra expenses) is surely greater than "three pence":

> In Madison's view, government should not "force a citizen to contribute three pence only of his property for the support of any one establishment." This Madisonian prohibition does not depend on the amount of property conscripted for sectarian ends. Any such taking, even one amounting to "three pence only," violates conscience.

[7] Wikipedia, *Thomas More*, https://en.wikipedia.org/wiki/Thomas_More.
[8] *Id*.

Ariz. Christian Sch. Tuition Org. v. Winn, 563 U.S. 125, 141 (2011) (citations and internal quotation marks omitted). Similarly, the coercive pressure upon Plaintiffs is at least as great as existed for the minute or so (on at most a few occasions per lifetime) that students and parents were coerced to listen to a prayer at a public school graduation ceremony in *Lee v. Weisman*, 505 U.S. 577 (1992), or as was foisted upon students exposed to prayers (which they could readily have avoided) before high school football games in *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000). But even if the coercion does not rise to that level, Defendants have "condition[ed] receipt of an important benefit upon conduct proscribed by their faith." Doc. 9 at 12-13.

If they attend a local baseball game, for instance, and wish to buy a bag of peanuts, Plaintiffs either have to violate their religious tenets or not make the purchase. If they wish to have a garage sale, they cannot do as others do and simply accept a ten dollar bill. If they are at an RV Park and wish to do their laundry, the coin-operated washer or dryer is unavailable to them. Leaving tips, using public transportation, driving on a toll road, putting quarters into a parking meter, shopping at a flea market, making purchases at stores with minimum credit card limits, frequenting street vendors, paying baby sitters, participating in fund-raisers, stopping by at bake sales and on and on, Plaintiffs repeatedly have to choose between violating their religious tenets or forgoing opportunities.

"A substantial burden exists where the government … conditions receipt of an important benefit upon conduct proscribed by their faith" Doc. 9 at 12-13. Defendants have conditioned the receipt of an important benefit – i.e., the ability to use the coins and currency bills they produce – upon conduct proscribed by the Atheist plaintiffs (i.e., bearing on their persons a religious claim they find to be false and offensive, as well as proselytizing that message) and by the Jewish plaintiff (i.e., bearing any man-made impression of G-d's name).

In the event that Defendants wish to contend that the ability to freely use the nation's money is not an important benefit, their own statements belie the argument. According to Defendant Jeppson's U.S. Mint website, for example, one of the "primary mission[s] of the United States Mint is to serve the American people by manufacturing and distributing circulating ... coins."[9] When government announces it is seeking "to serve the American people," the service it is providing is undoubtedly an important benefit. Similarly, "[t]o produce United States currency notes that function flawlessly in commerce"[10] is among the strategic goals of Defendant Olijar's Bureau of Engraving and Printing. The agencies of the United States Government rarely have strategic goals that do not provide important benefits to the nation's citizens.

Above all, Congress clearly intended to provide a means to facilitate commerce when it statutorily decreed that "United States coins and currency ... are legal tender for all debts, public charges, taxes, and dues." 31 U.S.C. § 5103. Due to Defendants' inscriptions of "In G-d We Trust" on all "coins and currency," Plaintiffs have to engage in "conduct proscribed by [their] religious faith" in order to use any of that legal tender. Thus, they are deprived of the important benefit (i.e., facilitated commerce) intended by § 5103.

Nothing in Defendants' Motion to Dismiss contradicts this obvious conclusion. On the contrary, the Supreme Court cases that Defendants cite bolster Plaintiffs' contentions. *See, e.g.*, Doc. 9 at 11-12 ("A substantial burden exists '[w]here the state ... put[s] substantial pressure on an adherent to modify his behavior and violate his beliefs,'" citing *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 717–18 (1981)); *id*. at 12 ([G]overnment action does ... constitute a substantial burden if it ... den[ies individuals] the 'rights, benefits, and privileges enjoyed by

[9] United States Mint, *About the United States Mint*, http://www.usmint.gov/about_the_mint/.
[10] Bureau of Engraving and Printing, *2014 CFO Report*, at 16, http://www.bep.gov/images/2014_CFO_report_combined_updated.pdf.

other citizens,'" citing *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 449 (1988)). Thus, Defendants' entire argument is comprised of (i) their own baseless *ipse dixits* (*e.g.*, "[T]here is no governmental coercion, pressure, or deprivation of rights." Doc. 9 at 19.), (ii) the baseless *ipse dixits* from those "[f]ive courts of appeals" (*e.g.*, "Plaintiffs do not 'face ... [a] stark choice between a basic benefit and a core belief,'" *id*. at 20 (citing *Newdow v. Peterson*, 753 F.3d 105, 109 (2d Cir. 2014))), and (iii) straw men ("Plaintiffs cite no law compelling their participation in commerce or requiring them to use bills and coins instead of, for example, checks, debit cards, or credit cards that do not bear the phrase that Plaintiffs find offensive." Doc. 9 at 19.

Asserting that Plaintiffs (or any other individuals) "cite no law compelling their participation in commerce" makes about as much sense as asserting that they "cite no law compelling them to breathe." As for the fact that "checks, debit cards, or credit cards" can be used, the Treasury still manufactures coins and currency because that legal tender is often far more convenient to use than other payment methods. In other words, an important benefit comes from using coins and currency. Moreover, as noted above, "checks, debit cards, or credit cards" are not accepted in an assortment of situations. Thus, Plaintiffs are placed in the position of either bearing and proselytizing the "In G-d We Trust" message or forgoing desired commerce.

The added claim that there is no burden because money is "'not publicly displayed,'" Doc. 9 at 20 (citing *Peterson*, 753 F.3d at 109 (citing *Wooley v. Maynard*, 430 U.S. 705, 717 n.15 (1977))), rings similarly hollow, and eviscerates what, for most people, is the essence of true religious belief. One need not "publicly display" a sincerely held view of G-d (whether that view concerns "His" existence or non-existence) in order for that view to have profound meaning. In fact, public displays of religion are, by some, specifically frowned upon. *See Matthew* 6:1-5.

Millions keep crucifixes in the privacy of their bedrooms, wear St. Christopher medals under their clothing, or drink sacramental tea behind closed doors. Surely, were the government to interfere with those practices, no one would make the meritless claim that no substantial burden is involved because the given activities are not publicly displayed.

Defendants' final argument (in their attempt to have this Court deny Plaintiffs' protections under RFRA) is that "[t]he Motto's 'legitimate secular purposes of solemnizing public occasions, expressing confidence in the future, and encouraging the recognition of what is worthy of appreciation in society,' are sufficiently compelling," Doc. 9 at 21 (citation omitted), to overcome Plaintiffs' free exercise rights. This inane contention will be addressed below. *See infra* p. 15.

(2) The Motto Represents a Religious Dogma and Constitutes Governmental Sponsorship of Religion

RFRA anticipates "neutral" statutes: "[L]aws 'neutral' toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise." 42 U.S.C. § 2000bb(a)(2). Thus, this case is unique, with Plaintiffs poised to prevail at the outset, which Defendants apparently realize inasmuch as they, *sua sponte*, have felt the need to include the claim that "the Motto does not represent a religious dogma or constitute governmental sponsorship of religion" within their Motion. Doc. 9 at 13.

In the "normal" RFRA situation, the complained-of effects upon the exercise of religion arise solely out of the spin that the given plaintiffs place upon otherwise secular statutes or regulations. In this case, however, the situation is completely different. As will now be shown, the statutes are facially religious, and the history consists of a 150-year parade of purely religious purposes, intentions and explanations for placing "In G-d We Trust" on the nation's money.

According to Justice Scalia, "when the language of the statute is plain, legislative history is irrelevant." *Zedner v. United States*, 547 U.S. 489, 510 (2006) (Scalia, J., concurring). Others on the high court, however, disagree: "The plain meaning of the statute's words, enlightened by their context and the contemporaneous legislative history, can control the determination of legislative purpose." *Edwards v. Aguillard*, 482 U.S. 578, 594 (1987). This circuit seems to follow that latter approach:

> We employ a three-step framework to interpret the scope of a statute: "'first, a natural reading of the full text; second, the common-law meaning of the statutory terms; and finally, consideration of the statutory and legislative history for guidance.'"

Doe v. Salvation Army in the United States, 685 F.3d 564, 569 (6th Cir. 2012). In this case, however, it makes no difference. The text, the common-law meaning and the statutory and legislative history all come to the same conclusion: "In G-d We Trust" means just what it says.

The language of the two key statutes in this case is "United States coins shall have the inscription 'In G-d We Trust,'" 31 U.S.C. § 5112(d)(1), and "United States currency has the inscription 'In G-d We Trust' in a place the Secretary decides is appropriate," 31 U.S.C. § 5114(b). The word "in" is a preposition "used to indicate location or position within something."[11] Although Merriam-Webster has three definitions for "G-d," it appears that:

> [T]he perfect and all-powerful spirit or being that is worshipped especially by Christians, Jews, and Muslims as the one who created and rules the universe

was and is the one appropriate for the motto.

"You and I and another or others" is appropriate for "We," although in the context of 36 U.S.C. § 302 ("'In G-d we trust' is the national motto."), speaking as it does of "the national motto," it seems fair to say that it is referring to all Americans.

[11] http://www.merriam-webster.com/. (All definitions are from this website.)

Finally, there is the verb "trust." That word has three potential definitions according to Merriam-Webster:

(1) To believe that someone or something is reliable, good, honest, effective, etc.
: To have confidence in (someone or something),

(2) To believe that something is true or correct; and/or

(3) To hope or expect that something is true or will happen.

Plaintiffs are fine with these definitions and assume for the purposes of this Opposition that neither Defendants nor the Court will disagree. Accordingly, the three just-referenced statutes indicate that all Americans believe in the perfect and all-powerful spirit or being that is worshipped especially by Christians, Jews, and Muslims as the one who created and rules the universe, and that they all believe or hope that that entity is good, honest, effective, true and correct.

For the Atheist plaintiffs[12] in this case, such a statement is exclusionary and categorically false. Although they rightfully have a strong sense of American identity and citizenship, they definitely do **not** trust in G-d. On the contrary, they believe G-d is a man-made concept that is **not** true or correct. Although such a fiction – as is true for all fictions – can have beneficial effects, the Atheist plaintiffs believe that honest appraisals and empirical data are far more effective in achieving positive outcomes, and that history has shown that the dangers which often accompany trust in G-d are far too grave to even entertain credence in such a being.

[12] Again, "Atheist plaintiffs" is being used to include all Atheists, Agnostics, Secular Humanists, etc. It includes all plaintiffs except the plaintiff presented in Doc. 8 at 42-43 (¶ 47), whose objections to "G-d" on the money stem from his religious tenets that equate involvement in an activity where G-d's written or inscribed name will ultimately be destroyed as acting sinfully.

Having demonstrated that the text, on its own, reveals that "In G-d We Trust" is religious dogma, realizing that the common-law meaning of G-d in Anglo-American history has always been as provided by Merriam-Webster, *see supra* p. 10, and recognizing that the inscription of that phrase on every coin and currency bill is indubitably sponsorship of religion, Plaintiffs have already provided what is necessary for the Court to deny Defendants' Motion to Dismiss. However, in view of the other quotation provided, *see supra* p. 10, Plaintiffs will present an analysis of the legislative history of the statutes (which only more deeply cements the just-noted conclusions).

The body of Plaintiffs' Complaint, Doc. 8, is unassailable in the fact that those four words were initially, and have ever since remained, consistent with the dictionary definitions just provided. The additional information in Docs. 8-3 and 8-4 further corroborates this conclusion. In fact, it would seem that only lawyers and judges – in an environment where (i) Atheists are politically disenfranchised, and (ii) (Christian) Monotheists wish to perpetuate the favoritism for their religious views that they and their predecessors have managed to impose (despite the first sixteen words of the Bill of Rights) – would even consider making the argument that "In G-d We Trust" does not represent a religious dogma or constitute governmental sponsorship of religion. To appreciate that this is absolutely correct, one can simply ponder the constitutionally indistinguishable "In Jesus We Trust" or "In Mohammed We Trust" being inscribed on every coin and currency bill. Surely, were the United States to codify either of those mottos, no one would seriously argue that the given phrase "does not represent a religious dogma" or "is not governmental sponsorship of religion."

(3) The Challenged Statutes are Not Neutral Laws of General Applicability

In view of the foregoing, 31 U.S.C. § 5112(d)(1) and 31 U.S.C. § 5114(b) are clearly not neutral laws of general applicability. They are laws that turn some individuals into political insiders and others into political outsiders, directly in contrast to the commands of the Supreme Court:

> 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," 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."

Allegheny, 492 U.S. at 595 (citations omitted). Accordingly, Defendants' actions appear to grossly violate the Establishment Clause in addition to RFRA and the Free Exercise Clause. Nonetheless, this circuit is bound by *ACLU of Ohio v. Capitol Square Review & Advisory Bd.*, 243 F.3d 289 (6th Cir. 2001) (en banc), which means that the Establishment Clause, by legal command, is not violated by the "In G-d We Trust" inscriptions within this judicial district.

That fact, however, does not answer the question of whether the challenged statutes are neutral laws of general applicability. Certainly, they do not seem to be so in view of the information provided in Plaintiffs' Complaint, Doc. 8, which was not presented to the *Capitol Square* en banc panel. Nor do the statutes appear to be neutral laws of general applicability under *McCreary County v. ACLU*, 545 U.S. 844 (2005), which was decided four years after the *Capitol Square* decision was released.

In *McCreary*, the Supreme Court wrote:

> The touchstone for our analysis is the principle that the "First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion."

Id. at 860 (citation omitted). Obviously, as between people who trust in G-d, and people (such as the Atheist plaintiffs here) who do no such thing (believing instead that trusting in any G-d is a foolish, misguided and dangerous exercise), it is simply impossible to seriously contend that the mandatory monetary inscriptions of "In G-d We Trust" are "neutral." Similarly, as is readily recognized by even a brief review of the Complaint, there is no semblance of neutrality seen among the actors responsible for the arrival and persistence of that religious phrase.

In addition to this lack of neutrality, the statutes also fail the "general applicability" mandate. "Neutrality and general applicability are interrelated, and, as becomes apparent in this case, failure to satisfy one requirement is a likely indication that the other has not been satisfied." *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 531 (1993). Again, the facts in the Complaint can be relied upon, as they document not only that the "In G-d We Trust" language was promulgated to espouse (Christian) Monotheistic belief, but that it was intended to denigrate Atheism as well. *See, e.g.*, Doc. 8 at 64 (¶ 169) (Rep. James noting "The fool hath said in his heart 'there is no G-d'"); *id*. at 65 (¶ 174) (Rep. Moore expressing a view that there was a "challenge" from Atheists); *id*. at 65 (¶ 175) (Rep. Sheppard depicting the situation as a conflict between general society and "infidels"); *id*. at 65 (¶ 176) (Rep. Edwards suggesting that an Atheist "has no right in high office"); *id*. at 69 (¶ 199) (Rep. Bennett claiming that "the sentiment of trust in G-d is universal," thus revealing completely blindness even to the existence of Atheists among his constituency); *id*. at 77 (¶ 248) (Sen. Rabaut placing the incredibly bigoted statement, "An atheistic American … is a contradiction in terms," into the Congressional Record).

(4) The Challenged Statutes Do Not Satisfy Strict Scrutiny

As mentioned previously, Defendants claim that there is a compelling interest in having the "In G-d We Trust" motto because it is necessary for "'solemnizing public occasions, expressing confidence in the future, and encouraging the recognition of what is worthy of appreciation in society.'" Doc. 9 at 21 (citation omitted). According to Defendants, these interests suffice to overcome Plaintiffs' free exercise rights.

Those interests are so bland, they would gut the strict scrutiny standard of all force were they to be accepted. Furthermore, history shows that, to whatever degree those interests are important at all, they do not require "In G-d We Trust" on the money. After all, the nation did quite well during its first 75 years, prior to the invention of the "In G-d We Trust" phrase. Moreover, most countries in the world have never placed religious dogma on their coins and currency, and they seem to be doing just fine, too, without any apparent loss of solemnization, confidence or encouragement.

As for the claim that "the inscription of the Motto on U.S. currency tersely and with dignity expresses these sentiments, making the statutes that Plaintiffs challenge the least restrictive means of doing so," Doc. 9 at 21, it appears that Defendants have failed to recall the Supreme Court's message that "[t]he least-restrictive-means standard is exceptionally demanding." *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2780 (2014). Moreover, they have focused on the word "least" (applying that to the attributes of the governmental action) rather than on the word "restrictive" (applying that to the intrusion upon the individual's basic liberties). *See also* 42 U.S.C. § 2000bb-1 ("Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden *to the person* … is the least restrictive means of furthering [a] compelling governmental interest." (Emphasis added.))

Accordingly, even if Defendants can get this Court to accept the absurd notion that mawkish and completely subjective notions such as "solemnizing public occasions, expressing confidence in the future, and encouraging the recognition of what is worthy of appreciation in society" are "compelling interests" under strict scrutiny, the fact is that there are far less restrictive means of serving those interests. For instance, Defendants can place "In G-d We Trust**ed**" on the motto, and Plaintiffs will likely have no objection. Adding those two letters will highlight the "historical" aspect of belief in G-d that Defendants and their amici allege is their focus, and it will turn the current unconstitutional "endorsement" into a permissible "reference" (as they contend is all that they are after).

Of course, Defendants will never agree to that, because – as everyone is fully aware – all their purported justifications are shams. They are after now what they have been after ever since the prose was first devised: to declare "[t]he trust of our people in G-d," Doc. 8 at 56 (¶ 121); to "declare our trust in G-d; in Him who is the 'King of kings and Lord of lords,'" *id.* (¶ 127); to provide "an evidence to all the nations of the world that the best and only reliance for the perpetuation of the republican institution is upon a Christian patriotism, which, recogniz[es] the universal fatherhood of G-d," *id.* at 63 (¶ 160); to "furnish[] a lesson … that this is a Christian nation … [and] the world already understands that we are a Christian, G-d-fearing, G-d-loving people," *id.* (¶ 162); to have those "across the ocean … know of the existence of the Saviour of the world," *id.* at 164 (¶ 168); to declare "not only to our people at home, but to all peoples, and to all nations, all over the world, that ours is a nation with a firm and steadfast faith in G-d," *id.* at 66 (¶ 177); to teach about "[t]he ignominious cross" and "the body of the Nazarene;" *id.* at 67 (¶ 184); to demonstrate that "the sentiment of trust in G-d is universal," *id.* at 69 (¶ 197); to reveal "that the vast majority of our people accept the basic tenets of the Christian faith," *id.* at

70 (¶ 200); to "indicat[e] our belief in the existence of G-d," 72 (¶ 217); to"[r]eflect[] a basic recognition that there is a divine authority in the universe to which this Nation owes homage." *id*. at 85 (¶ 298); to "recognize the blessings of the Creator," *id*. at 86 (¶ 302); to "remind[] us that faith in our creator is the most important American value of them all." *id*. at 86 (¶ 302); to show "American trust in the Christian deity," *id*. at 89 (¶ 322(b)); to reinforce that "the proper role of civil government as under the authority and protection of the Lord, *id*. at 90 (¶ 323); to remind people that "'[w]ithout G-d, there could be no American form of government, nor, an American way of life,'" *id*. at 90 (¶ 328); to show that "[w]e as Americans believe our rights are from G-d. It is in G-d we trust," *id*. at 92 (¶ 336); "to reaffirm that G-d is G-d and in G-d do we trust," *id*. at 92 (¶ 337); to emphasize that "our faith in G-d must remain steadfast," *id*. at 93 (¶ 344); and more.

The interest in espousing the "In G-d We Trust" verbiage may be "compelling" to the (Christian) Monotheists who have always been behind that phrase, and, if so, Plaintiffs sincerely encourage them to exercise their Free Exercise and RFRA rights to further that espousal. Those rights, however, do not grant them the power to use "the power, prestige and financial support of government," *Engel v. Vitale*, 370 U.S. 421, 431 (1962), towards those ends. In fact, as the full *Engel* quote makes clear, avoiding such an espousal – of any religious ideology – is the compelling interest on the part of our 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.

Id.

B. Defendants Have Violated Plaintiffs' Free Speech Rights

In 1943, the Supreme Court (reversing itself from a decision made just three years earlier) held that a ten-year-old Jehovah's Witness child could not be expelled from public school for quietly following his family's religious teachings. Justice Murphy wrote in his concurrence that "[t]he right of freedom of thought and of religion as guaranteed by the Constitution against State action includes both the right to speak freely and the right to refrain from speaking at all." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 645 (1943) (Murphy, J., concurring). Moreover, he continued, "[o]fficial compulsion to affirm what is contrary to one's religious beliefs is the antithesis of freedom of worship." *Id.* at 646.

Three and a half decades later, another Jehovah's Witness was before the high court. This time it was because of an objection to being forced to exhibit "Live Free or Die" on his license plate, which he felt was contrary to his Jehovah's Witness principles. *Wooley v. Maynard*, 430 U.S. 705 (1977). The Court made it clear that "the State's interest ... to disseminate an ideology ... cannot outweigh an individual's First Amendment right to avoid becoming the courier for such message." *Id.* at 717. Thus, "[w]e have sustained First Amendment challenges to allegedly compelled expression [when] an individual is obliged personally to express a message he disagrees with, imposed by the government." *Johanns v. Livestock Mktg. Ass'n*, 544 U.S. 550, 557 (2005).

In the instant case, the fundamental religious tenet of the Atheist plaintiffs is that G-d does not exist. Yet they are forced to proselytize what they believe is a message completely at odds with that sincere religious belief. This proselytization was (and remains) one of the purposes for placing "In G-d We Trust" on the money. *See, e.g.*, Doc. 8 at 102 (¶¶ 405 and 406); *id*. at 103 (¶¶ 407, 408, 410, 411 & 412).

Because "governments cannot compel citizens to support positions with which they disagree," *Kidwell v. City of Union*, 462 F.3d 620, 624 (6th Cir. 2006), Plaintiffs' Free Speech rights are violated.

C. Defendants Have Violated Plaintiffs' Equal Protection Rights

Defendants contend that the statutes at issue in this case "apply equally to all." Doc. 9 at 8. Yet one group of individuals (i.e., (Christian) Monotheists) have their religious views supported and have no infringement upon their religious exercise when they use the nation's legal tender, and another group (i.e., Atheists) have their religious views disregarded (at best) and have their religious exercise substantially burdened when they use the nation's legal tender. That is hardly a situation where the statutes "apply equally."

This analysis find support in *Allegheny County*, where the plurality opinion noted that the religion clauses "are recognized as guaranteeing religious liberty *and equality* to 'the infidel, the atheist, or the adherent of a non-Christian faith.'" 492 U.S. at 590 (emphasis added). Similarly, *Allegheny* spoke approvingly of Justice O'Connor's "endorsement" test from *Lynch v. Donnelly*, which inherently has the earmarks of an equal protection analysis:

> [A]ny endorsement of religion [i]s "invalid," 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."

492 U.S. at 595 (citation omitted).

As with all fundamental constitutional rights, strict scrutiny must be applied to determine if there is adequate justification on the part of government for its abrogation of those rights. Both of the rights involved here – to have one's religious choices shown equal respect by government, and to have equal ability to use the nation's legal tender – are "of fundamental importance, and

since the [governmental activity] here significantly interferes with the exercise of [those] right[s], we believe that 'critical examination' of the state interests advanced in support of the classification is required." *Zablocki v. Redhail*, 434 U.S. 374, 383 (1978). As already pointed out, Defendants are unable to meet that "strict scrutiny" burden. *See supra* pp. 15-17. For this reason as well as the others already supplied, Defendants' Motion to Dismiss should be denied.

CONCLUSION

> [T]o condition the availability of benefits upon [an individual's] willingness to violate a cardinal principle of her religious faith effectively penalizes the free exercise of her constitutional liberties.
>
> *Sherbert v. Verner*, 374 U.S. 398, 406 (1963).

Defendants produce literally tens of billions of coins and currency bills each year. That legal tender allows individuals to engage in everyday commerce in a facile manner. This is an important benefit to those individuals. However, by mandating the inscription of the purely religious words, "In G-d We Trust" on every one of those coins and currency bills, Defendants have conditioned the receipt of that important benefit upon conduct proscribed by each Plaintiff's faith. This is a clear violation of RFRA and the Free Exercise Clause. Accordingly, Defendants' Motion to Dismiss should be denied.

Michael Newdow
Pro hac vice
2985 Lakeshore Blvd
Upper Lake, CA 95485
(626) 532-7694
NewdowLaw@gmail.com

Thomas M. Horwitz
Ohio Bar #0062323
1991 Crocker Road, Suite 600
Westlake, OH 44145
(440) 892-3331
tmh@horwitzlpa.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2016, I electronically filed a copy of the foregoing PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS. Assumedly, notice of this filing will be sent via email to all parties by operation of the Court's electronic filing system.

/s/ - Michael Newdow, Attorney for Plaintiffs

CERTIFICATE OF TRACK ASSIGNMENT

Pursuant to Local Civil Rule 7(f), I hereby certify that this case has not yet been assigned to a track. For Certificate of Compliance purposes, it is being assumed that the case will be assigned to the "standard track."

/s/ - Michael Newdow, Attorney for Plaintiffs

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS adheres to the twenty (20) page limitation for "standard track" documents set forth in Local Civil Rule 7(f).

/s/ - Michael Newdow, Attorney for Plaintiffs