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 THE BRIEF OF *AMICUS CURIAE* AMERICAN CENTER FOR LAW AND JUSTICE

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INTRODUCTION

In its Brief *Amici Curiae* of United States Members of Congress, the American Center for Law and Justice, and the Committee to Protect the National Motto in Support of Defendants' Motion to Dismiss, the ACLJ describes itself as "an organization dedicated to the defense of constitutional liberties secured by law." ECF No. 35 at 5. This self-description, however, is rather different from the one given on the organization's website: the ACLJ "is a d/b/a for Christian Advocates Serving Evangelism, Inc.," and a "religious corporation" seeking donations "in defense of persecuted Christians." *See* http://www.aclj.org/donate (last visited on June 30, 2016). Thus, while asserting that "In G-d We Trust" depicts a "national philosophy,"[1] ECF No. 35 at 7, the ACLJ in reality provides yet another example of what led Congress to mandate the inscriptions of that phrase in the first place: (Christian) Monotheists seeking to have government (of all) espouse a religious view consonant with their own particular religious ideology.

This explains why the ACLJ ignores the virtually endless list of original source documents which irrefutably reveal that "In G-d We Trust" was placed on the money for purely religious purposes.[2] Rather, Amici hope to sway this Court by citing to current commentators who, also, desire to see their (Christian) Monotheism touted by government.[3] Perhaps more to the point is that the ACLJ also ignores the text of RFRA, which notes that the first listed purpose of that legislation was "to restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened." 42 U.S.C. § 2000bb(b)(1).

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[1] "'Concepts concerning G-d or a supreme being of some sort are manifestly religious . . . . [and] do not shed that religiosity merely because they are presented as a philosophy … .'" *Edwards v. Aguillard*, 482 U.S. 578, 599 (1987) (Powell, J., concurring) (citation omitted).
[2] *See, e.g.*, ECF No. 36 (Plaintiffs' Opposition to Defendants' Motion to Dismiss) at 20-21.
[3] *See, e.g.*, ECF No. 35 at 7-8 (citing Profs. Hamburger and Kmiec).

Although this case does not allege any Establishment Clause violation, the ACLJ's reference to that clause – and its argument that the courts have "unanimously repudiated [the] proposition that the National Motto is an unconstitutional government sponsorship of religion," ECF No. 35 at 6 – immediately brings to mind such other circumstances where equal protection principles have been "unanimously repudiated." *See, e.g.*, *Bradwell v. Illinois*, 83 U.S. 130 (1873) (denying women the right to practice law); *Plessy v. Ferguson*, 163 U.S. 537 (1896) (denying blacks the right to ride in railroad cars reserved for whites); *Minersville School District v. Gobitis*, 310 U.S. 586 (1940) (denying Jehovah's Witnesses the right to quietly follow their religious tenets). In other words, the history of our nation has clearly revealed that our politicians and judges are capable of remarkable bigotry and prejudice, as well as a revolting[4] willingness to trample upon constitutional principle. The question in this case is simply whether Amici can join with Defendants to convince this Court to place its name alongside those others who have furthered that shameful history.

If the ACLJ were a d/b/a for Caucasian Advocates Serving Evangelism, Inc., described as a "racial integrity corporation" that asked its visitors to "[d]onate today in defense of persecuted Caucasians," no one would deny the racist intentions behind citing to Jefferson's *Notes on the State of Virginia* for the proposition that "the blacks ... are inferior to the whites in the endowments both of body and mind."[5] Nor would anyone deem that to be advocacy for our "national philosophy." In going through the *Notes*, the ACLJ could well have chosen the statement that "it does me no injury for my neighbor to say there are twenty G-ds, or no G-d. It neither picks my pocket nor breaks my leg,"[6] or "It is error alone which needs the support of

[4] *See Korematsu v. United States*, 323 U.S. 214, 242 (1944) (Murphy, J., dissenting).
[5] Thomas Jefferson, *Notes on the State of Virginia* 213 (D. Carlisle, 8th Am. ed. 1801).
[6] *Id*. at 235.

government. Truth can stand by itself,"[7] or "Millions of innocent men, women and children, since the introduction of Christianity, have been burnt, tortured, fined, imprisoned."[8] Why was that history slighted? The ACLJ could well have focused upon the primacy of treating all lawful religious views with equal respect, as is reflected in the first sixteen words of the Bill of Rights. Instead, however, Amici chose to highlight "the primacy of [(Christian) Monotheism] in the Nation's heritage." ECF No. 35 at 8. The reason is as obvious as it is religious.

ARGUMENT

I. The National Motto Does in Fact Reflect the Persistence of the Very Infirmity Against Which the Religion Clauses Were Aimed

After Justice Douglas wrote, "We are a religious people whose institutions presuppose a Supreme Being," *Zorach v. Clauson*, 343 U.S. 306, 313 (1952), he saw how others had been misapplying his words. Thus, citing specifically to his *Zorach* quote, he stated:

> [I]f a religious leaven is to be worked into the affairs of our people, it is to be done by individuals and groups, not by the Government. This necessarily means, *first*, that the dogma, creed, scruples, or practices of no religious group or sect are to be preferred over those of any others; ... . The idea, as I understand it, was to limit the power of government to act in religious matters, not to ... restrict the freedom of atheists or agnostics.

McGowan v. Maryland, 366 U.S. 420, 563-64 (1961) (Douglas, J., dissenting) (citation omitted). Furthermore, he stated that "government [is] to have no interest in theology or ritual." *Id*. at 564. These ideas were reiterated the following year in *Engel v. Vitale*, 370 U.S. 437, 443 (1962) (Douglas, J., concurring). To see the ACLJ using the Zorach quotation without reference to these specific later clarifications by the quotation's author reveals that their sole guiding force is to attain their desired religious outcome, truth or constitutional principle be damned.

[7] *Id*. at 337.
[8] *Id*.

In *Engel*, the Court also explained how, in England, "[p]owerful groups representing some of the varying religious views of the people struggled among themselves to impress their particular views upon the Government," 370 U.S. at 426, and how our nation's founders decided to eliminate that dynamic by having "all religious groups ... placed on an equal footing so far as the State was concerned," *id*. at 428. To suggest that inscribing "In G-d We Trust" on every one of the nation's coins and currency bills places those who believe in G-d on an "equal footing" with those who deny G-d's existence is ludicrous.

II. The First Amendment Compels the Redaction of All Religious Endorsements That Interfere with the Free Exercise of Religion

Utilizing the standard specious mischaracterization of religious endorsements as religious "references," the ACLJ attempts to have this Court gloss over that critical distinction. Would mandatory inscriptions of "In Jesus We Trust" be deemed a mere "religious reference?" ECF No. 35 at 8. How about "In the Male Gender We Trust?" If the ACLJ were doing business as "Caucasian Advocates Serving Segregation, Inc." and announced that it is a "racial integrity corporation" seeking donations "in defense of persecuted whites," would anyone for a second believe that that group's advocacy for "In Caucasians We Trust" was meant merely to be an "acknowledgment of the Nation's racial heritage."[9]

It is especially extraordinary to see the ACLJ trivializing Plaintiffs' RFRA claim, contending that "they have alleged no legally cognizable injury," ECF No. 35 at 11, and that "their 'injury' distills down to mere disagreement with the Government's chosen message," *id.* According to Amici, "Plaintiffs' RFRA and Free Exercise Clause claims are premised on nothing

[9] *See* ECF No. 35 at 6 n.1 (claiming "In G-d We Trust" is an "acknowledgment of the Nation's religious heritage.").

more than 'offended observer standing,' which ... does not extend to RFRA and Free Exercise Clause claims." *Id*. Yet while making this argument against Plaintiffs – who object to the government requiring them, in order to engage in everyday commerce, to bear on their persons a religious message that contradicts their core belief – the ACLJ has simultaneously been supporting drugstore owners who object to the government requiring them, in order to engage in their commerce, to sell a product that violates one of their core beliefs.[10] This is the case even though (i) Plaintiffs (unlike the drugstore owners) have no public duty to serve others, (ii) the imposition on Plaintiffs' rights of conscience is immediate and palpable (whereas the drugstore owners will never know if any given sale ever results in the unwanted outcome), and (iii) there will be no infringement upon the rights of others when the government provides Plaintiffs with the relief they request (whereas as those wishing to purchase a medication they need will be turned away when the drugstore refuses to stock Plan B). Why are the claims of the drugstore owners' not "mere disagreement with the Government's chosen message," "premised on nothing more than 'offended observer standing?'"

This abject absence of principle, where the outcome is to be based on nothing more than the desires of the given decision maker, is exactly what was wrong with *Bradwell*, *Plessy*, and *Gobitis*. It is the reason why panels of women, of blacks, or of Jehovah's Witnesses would never have ruled as the all-male, all-white, and all-"mainstream"-Protestant courts ruled in those odious cases. The ACLJ seeks to have this Court rule in the shadow of that reprehensible legacy. That effort should be strongly resisted.

[10] *See* http://aclj.org/religious-liberty/an-ominous-sign-scotus-turns-down-religious-freedom-case (ACLJ supporting drugstore owner who refused to offer Plan B contraceptive due to that owner's religious beliefs).

III. Plaintiffs' Claims Fall Squarely Within the Ambit of the Free Exercise Clause

The Supreme Court's seminal Free Exercise case is *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1973). In that case, the Court wrote:

> In addressing the constitutional protection for free exercise of religion, our cases establish the general proposition that a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice. 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. A law failing to satisfy these requirements must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest.

Id. at 531-32. In determining whether a statute is neutral (and of general applicability), "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." *Id*. at 533.

Clearly, there is no secular meaning from the language: "In G-d We Trust" is a patently, purely and exclusively religious statement. Nor is it any less religious contextually. As the Complaint demonstrates beyond any question – with primary source material not only from the 1860s (when the phrase was formulated), ECF No. 8 at 55-60, but from 1908 when the nation erupted in anger over its removal (from just one single coin among the many that, at the time, bore the religious verbiage), *id*. at 60-68, and from the debates in the 1950s when the codification explicitly mandating its appearance on every coin and currency bill took place, *id*. at 68-73 (*see also* ECF No. 8-3 and 8-4) – the context of the "In G-d We Trust" motto was religious.

Lukumi was a unanimous opinion, with every justice agreeing that government must remain neutral in matters of religion when free exercise concerns arise. As Justice Souter wrote, "our cases have used [a requirement for governmental neutrality] as shorthand to describe ... what the [Free Exercise] Clause commands." 508 U.S. at 560 (Souter, J., concurring) (citing six cases). Thus, even accepting as valid precedent (as this Court must) that "In G-d We Trust" is permissible under the Establishment Clause, *see ACLU of Ohio v. Capitol Square Review & Advisory Bd.*, 243 F.3d 289 (6th Cir. 2001) (en banc), the Supreme Court's Free Exercise Clause precedent mandates a decision in Plaintiffs' favor. This is because:

(1) No one can seriously maintain that (as between those who hold the religious view that there is an all-powerful G-d and those who hold the religious view that G-d is an absolute fiction) "In G-d We Trust" is in any manner "neutral;"[11]

(2) Accordingly, strict scrutiny must be applied:

> A law burdening religious practice that is not neutral or not of general application must undergo the most rigorous of scrutiny. To satisfy the commands of the First Amendment, a law restrictive of religious practice must advance interests of the highest order and must be narrowly tailored in pursuit of those interests. The compelling interest standard that we apply once a law fails to meet the *Smith* requirements is not water[ed] . . . down but really means what it says.

Lukumi, 508 U.S. at 546 (citations and internal quotation marks omitted);

(3) There is no compelling interest in having any specific ancillary verbiage on the money; and

(4) Even if there were a compelling interest, "In G-d We Trust" would not be the least restrictive means of serving that interest.

[11] Of note is that nowhere in the *Capitol Square* opinion was the issue of neutrality ever considered.

IV. Plaintiffs' Claims Fall Squarely Within RFRA's Ambit

According to the ACLJ Brief, Plaintiffs have alleged no injury that is "legally cognizable ... under ... RFRA." ECF No. 35 at 13. While making this claim, however, Amici never bother to examine (or even discuss) RFRA's text, which indicates that the opposite is true.

RFRA was promulgated in response to "*Employment Division v. Smith*, 494 U.S. 872 (1990), [in which] the Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion." 42 U.S.C. § 2000bb(a)(4). Thus, as explicitly stated in the statute, "[t]he purposes of this chapter are—

> **(1)** to restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened; and
>
> **(2)** to provide a claim or defense to persons whose religious exercise is substantially burdened by government."

42 U.S.C. § 2000bb(b). Yet not once in the ACLJ Brief is *Sherbert* or *Yoder* ever mentioned. Rather, the only pre-*Smith* Free Exercise case alluded to by Amici is *Bowen v. Roy*, 476 U.S. 693 (1986), ECF No. 35 at 12 n.6, which was **not** one of the cases that treated Free Exercise in the manner sought by Congress when it implemented RFRA.

This specious tactic – to have the Court deny Plaintiffs their rights under RFRA by alluding to cases that were **not** behind Congress's efforts – was used by Defendants, as well, in their Reply Brief (ECF No. 37). They, too, made no mention whatsoever of *Sherbert* and *Yoder* (i.e., the cases RFRA explicitly exists to emulate). Rather, *Bowen* was again alluded to, along with *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439 (1998). *See* ECF No. 37 at 8, 9, 10, 11 and 12. That Amici and Defendants would ignore the two cases that are specifically named in RFRA and latch on to two cases that are nowhere to be found in that statute reveals perhaps better than anything else the baseless foundation upon which their RFRA arguments rest.

Although the failure to examine *Sherbert* and *Yoder* is, by itself, inexcusable, the illicit nature of the ACLJ's (and Defendants') approach is further highlighted by the fact that *Bowen* and *Lyng* were seen as being contrary to *Sherbert* and *Yoder* as RFRA was being formulated. For instance, in the hearings before the Senate, Douglas Laycock discussed RFRA's stated purpose of "'restor[ing] the compelling interest test as set forth in *Sherbert v. Verner* and *Wisconsin v. Yoder.*'" *A Bill to Protect the Free Exercise of Religion: Hearing Before the Comm. on the Judiciary,* 102d Cong. 78 (1992) (statement of Prof. Douglas Laycock) (citing "§ 2(b)(1).") He then pointed specifically to *Bowen* and *Lyng* as cases where that test was not applied. *Id*. at 79 n.18. In arguing that the Supreme Court, in *Smith*, reneged on its promise to "not approve a judicial standard that 'relegates a serious First Amendment value to the barest level of minimum scrutiny that the Equal Protection Clause already provides,'" Nadine Strossen and Robert Peck of the ACLU cited *Hobbie v. Unemployment Appeals Comm'n*, 480 U.S. 136, 141-42 (1987), with the internal quote coming from *Bowen v. Roy*, 476 U.S. 693, 727 (1986) (O'Connor, J., concurring in part, dissenting in part). *Id.* at 184 n.18. To those testifying about "the Need for Additional Native American Religious Freedom Legislation," *id*. at 243, *Lyng* was inextricably linked to *Smith*, with the basic problem referred to as "the *Smith* and *Lyng* crisis," *id.* at 249.

Equally baseless are the arguments made by the ACLJ in their footnote 6 (ECF No. 35 at 12). To claim that "Plaintiffs do not allege, for example, that they are denied the receipt of government benefits" is to not only miss the entire point of the Complaint, but to show no understanding of the reason for having a Mint and a Bureau of Engraving. Legal tender that individuals can conveniently use to buy and sell items and services is a huge benefit that has been part and parcel of the nation's economy since the Treasury Department, in the 1790s, first began manufacturing coins (all of which were devoid of religious verbiage). Even accepting,

arguendo, that "[i]t is ... now possible to conduct the overwhelming majority of financial transactions without using currency," ECF No. 35 at 12 n. 7, the suggestion that government may deprive a segment of the population of a benefit that the people of this nation spend billions of dollars on annually to "[s]erve the American people" is as arrogant as it is discriminatory.[12]

Interestingly, a virtually identical argument was made by Defendant Lew's Treasury Department less than a decade ago, when visually impaired individuals argued "that the Treasury Department's failure to design and issue paper currency that is readily distinguishable to the visually impaired violates section 504 of the Rehabilitation Act, 29 U.S.C. § 794." *Am. Council of the Blind v. Paulson*, 525 F.3d 1256, 1259 (D.C. Cir. 2008). Then-Secretary Henry Paulson "contend[ed] that because the visually impaired have developed coping mechanisms for using paper currency, whether by relying on third parties, purchasing expensive computer equipment, or folding corners of paper currency in a particular manner to distinguish denominations, they are not denied meaningful access under section 504." *Id*. at 1269. As in the instant case, "[t]he Secretary also note[d] that the use of credit cards affords an alternative means for the visually impaired to engage in commerce." *Id*. (*Cf.* Defendants' Motion to Dismiss, ECF No. 9 at 19 ("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.").)

[12] *See* U.S. Mint, *FY 2016 President's Budget* (Feb. 2, 2015), https://www.treasury.gov/about/budget-performance/CJ16/25.%20Mint%20FY%202016%20CJ.pdf (revealing that the U.S. Mint's Mission Statement is "Serve the American people by manufacturing, and distributing circulating, precious metal, and collectible coins and national medals, and providing security over assets entrusted to us.").

The D.C. Circuit squarely rejected this notion, writing, "The Secretary's argument is analogous to contending that merely because the mobility impaired may be able either to rely on the assistance of strangers or to crawl on all fours in navigating architectural obstacles, they are not denied meaningful access to public buildings." 525 F.3d at 1269 (citations omitted).

Also relevant is that – just as Plaintiff's here have refuted claims of a need for the "In G-d We Trust" inscriptions by noting that "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," Pls.' Opp'n to Defs.' Motion to Dismiss, ECF No. 36 at 19 – the panel in *Paulson* wrote, "Although the Bureau stated that tactile features could reduce the useful life of currency, other currencies continue to use them." 525 F.3d at 1271 (citations omitted). In fact, "because other currency systems accommodate the needs of the visually impaired, the Secretary's burden in demonstrating that implementing an accommodation would be unduly burdensome is particularly heavy." *Id*. at 1272.

In any event, the *Paulson* appellate decision affirmed the District Court's grant of partial summary judgment in favor of the visually impaired plaintiffs. As a result, there have been ongoing efforts on the part of the Treasury Department to meet the District Court's demands for accommodation. The Department's status report from earlier this year shows that "adding a raised tactile feature to each Federal Reserve note" is one of the approaches being considered. Addendum A (USDC-DC Case No. 1:02-cv-00864, ECF No. 139 at 1). Additionally, there is a coming "redesign of U.S. currency." Inasmuch as removing the "In G-d We Trust" inscriptions from each coin and currency bill entails no greater effort than occurs each January when the year of production is altered, acting in accordance with RFRA should be anything but "unduly burdensome" for the Mint and the Bureau of Engraving and Printing.

V. The Burdens on Plaintiffs' Free Exercise Rights Are No Less Burdensome than Those of Other Successful RFRA Plaintiffs

Although Amici (and Defendants) trivialize the burdens upon Plaintiffs that stem from the "In God We Trust" inscriptions, their doing so is merely a sign of their myopia and disrespect for religious belief systems that do not accord with their own. Surely, the "Christian Advocates Serving Evangelism, Inc.," would never contend that they had "no legally cognizable injury," ECF No. 35 at 11, were they forced to bear "Jesus is a Myth" and proselytize that message every time they wished to buy an ice cream or leave a tip. Moreover, Amici's viewpoint does not square with the case law. For Plaintiff Clayman, at least, they must realize that handling coins and currency inscribed with G-d's name is as Monotheistically sinful as working on the Sabbath was in *Sherbert v. Verner*, and such handling violates his RFRA rights as much as trimming a beard did in *Holt v. Hobbs*, 135 S. Ct. 853 (2015), or (even possibly) participating in the abortion of a fetus did in *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014). So, too, is the burden on Plaintiff Clayman's religious exercise as great as it was for the church members in *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006), when they were precluded from receiving communion through their sacramental tea.

For the Atheist (and other non-believer) Plaintiffs, the burden is just as great, and the fact that it is not based upon some command from a deity should have no bearing on this assessment. That is the underlying basis of Plaintiffs' Equal Protection claim, since – in regard to their rights to have their religious views also respected by the government they are "similarly situated." See *Bible Believers v. Wayne Cty.*, 805 F.3d 228, 256-57 (6th Cir. 2015). As has been stated, "'government may not favor religious belief over disbelief.'" *Allegheny County v. Greater Pittsburgh ACLU*, 492 U.S. 573, 593 (1989) (Blackmun, J., plurality opinion) (citation omitted).

VI. Plaintiffs' Free Speech Claim Follows Directly from True Supreme Court Precedent

Recognizing the bind they are in, Amici twist and conflate governmental speech, private speech, religious speech, coercion and religious exercise in the hope that it can get this Court to rule that the mandatory monetary "In G-d We Trust" inscriptions do not violate Plaintiffs' Free Speech rights. Unfortunately for them – but fortunately for this nation founded on truth, equality and constitutional principles – their claims ooze confusion and are directly contradicted by unequivocal Supreme Court holdings.

No one disagrees that the inscriptions are government speech. Of course, in the Sixth Circuit, "In G-d We Trust" does not mean in G-d we (Americans) trust, so the Court cannot acknowledge the obvious Establishment Clause violation. But it certainly does not follow from *ACLU of Ohio v. Capitol Square Review & Advisory Bd.* that the rest of the First Amendment must be eviscerated. This is especially the case when multiple Supreme Court opinions speak directly to circumstances similar to the one at issue here.

In *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943), the government wished to have its public school students recite the Pledge of Allegiance each day. Two Jehovah's Witness children, following the religious precepts under which they were raised, refused to make the required recitations and were expelled as a result. In one of the most magnificent decisions in its history, the Supreme Court ruled that "a Bill of Rights which guards the individual's right to speak his own mind [cannot be] left ... open to public authorities to compel him to utter what is not in his mind." *Id*. at 634. Can that same Bill of Rights, therefore – which, in a separate provision, explicitly guards the individual's right to hold his own religious beliefs – be left open to public authorities to compel him to bear and proselytize a religious message that is not in his heart?

The ACLJ responds by arguing that "[t]here is virtually no chance Plaintiffs' use of currency would be interpreted as Plaintiffs' speech. The inscription of the National Motto on currency is not compelled speech any more than speech on driver's licenses or Social Security cards is compelled speech." ECF No. 35 at 10. Conveniently, one's license plate was left out of this short list, for the Supreme Court has heard that case and decided it in a matter completely contrary to what Amici allege. In *Wooley v. Maynard*, 430 U.S. 705, 717 (1977), the Court explicitly declared 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." Especially when those who have been behind the "In G-d We Trust" inscriptions repeatedly indicated that their intention was to have the bearers of the money proselytizing the religious message they carried (*see, e.g.*, ECF No. 8 at 102 (¶¶ 405 and 406) and at 103 (¶¶ 407, 408, 410, 411 and 412)), the contention that "Plaintiffs' free speech rights [remain] intact," ECF No. 35 at 11, is untenable.

Paying no heed to the fact that "the Free Exercise Clause ... has never meant that a majority could use the machinery of the State to practice its beliefs," *Abington School District v. Schempp*, 374 U.S. 203, 226 (1963), the ACLJ wishes to have the government continue to espouse the (Christian) Monotheistic view to which it adheres. While it contorts tangential dicta to have this Court join in that effort, clear and unequivocal on-point statements (such as "[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)), ought not be ignored.

CONCLUSION

"[T]he question that RFRA presents [is] whether the [governmental activity] imposes a substantial burden on the ability of the objecting parties to conduct business in accordance with *their religious beliefs*." *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2778 (2014) (emphasis in original). The answer in this case is clear: Yes, it does. The governmental inscriptions of "In G-d We Trust" on every coin and currency bill place Plaintiffs in the position of either forgoing an important benefit or violating a sincere religious belief. With no compelling interest justifying that governmental activity, Defendants have not met their burden under strict scrutiny. The Court, therefore, should deny Defendants' Motion to Dismiss.

The ACLJ Brief should be seen for what it is: An attempt by a "religious corporation" (comprised of "Christian Advocates Serving Evangelism") to maintain the federal government's proclamations of those Christian Advocates' exclusionary religious view that there is a G-d (in which Amici trust). Viewed in that light, the ACLJ's support for Defendants' Motion to Dismiss only further Plaintiffs' cause.

Again, Defendants' Motion should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2016, I electronically filed a copy of the foregoing PLAINTIFFS' OPPOSITION TO THE BRIEF OF *AMICUS CURIAE* AMERICAN CENTER FOR LAW AND JUSTICE. 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