

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

-----oo0oo-----

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

Plaintiff,

NO. CIV. S-05-2339 FCD PAN

v.

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

Defendants.

_____ /

-----oo0oo-----

This matter is before the court on defendants' motions to
dismiss.¹ Plaintiff, the Rev. Dr. Michael A. Newdow, opposes the
motions. For the reasons set forth below,² defendants' motions
to dismiss are GRANTED.

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).

1 **BACKGROUND**

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

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

27
28 ³ This legislation was enacted in 1956, and is referred
to by plaintiff as the "Act of 1956." (FAC ¶ 138).

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

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

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

11 **STANDARD**

12 A complaint will not be dismissed under Fed. R. Civ. P.
13 12(b)(6) "unless it appears beyond doubt that plaintiff can prove
14 no set of facts in support of his [or her] claim that would
15 entitle him [or her] to relief." Yamaguchi v. Dep't of the Air
16 Force, 109 F.3d 1475, 1480 (9th Cir. 1997) (quoting Lewis v. Tel.
17 Employees Credit Union, 87 F.3d 1537, 1545 (9th Cir. 1996)).

18 "All allegations of material fact are taken as true and construed
19 in the light most favorable to the nonmoving party." Cahill v.
20 Liberty Mut. Ins. Co., 80 F.3d 336, 337-38 (9th Cir. 1996).

21 Given that the complaint is construed favorably to the
22 pleader, the court may not dismiss the complaint for failure to
23

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

26 ⁵ In his opposition, plaintiff does not address
27 defendants' motions to dismiss his claims under the Equal
28 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
25 Atheism, and a social environment where prejudice is perpetuated
26 against Atheists share the same causation deficiencies.

27 Additionally, plaintiff has attached considerable
28 documentation to his complaint, and, in his opposition, engages
in extensive discussion of personal experiences and encounters to
demonstrate that American culture and the national motto are
often identified with belief in Christianity or monotheism.
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

1 process.” (Opp’n at 42). This argument runs counter to the
2 Supreme Court’s broad interpretation of Congress’ immunity under
3 the Clause. “If the mere allegation that a valid legislative act
4 was undertaken for an unworthy purpose would lift the protection
5 of the Clause, then the Clause simply would not provide the
6 protection historically undergirding it.” Eastland, 421 U.S. at
7 508-09; see also Newdow v. U.S. Congress, 328 F.3d 466, 484 (9th
8 Cir. 2003), rev’d on other grounds sub nom., Elk Grove Unified
9 Sch. Dist. v. Newdow, 542 U.S. 1 (2004).

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

17 **III. Establishment Clause**

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

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

28 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
25 /s/ Frank C. Damrell Jr.
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.