No. 18-583

In the Supreme Court of the United States

KENNETH WILLIAM MAYLE,

Petitioner,

–v–

UNITED STATES, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. § 2000bb et seq., provides that the government "shall not substantially burden a person's exercise of religion" unless that burden is the least restrictive means to further a compelling governmental interest. 42 U.S.C. §§ 2000bb-1(a) and (b). The questions presented are:

1. Whether the lower court's ruling violates the Supreme Court's precedents by improperly substituting its own view that carrying currency bearing a religious motto does not violate Petitioner's religion because Petitioner can hide the money in his pocket.

2. Whether RFRA allows the Government to force an individual to communicate and carry a religious message in violation of his sincerely held religious beliefs when the Government has not proven that this compulsion is the least restrictive means.

PARTIES TO THE PROCEEDINGS

Petitioner

- Kenneth William Mayle (-59).

Respondents

- United States Government,
- The Secretary of the Treasury Steven Mnuchin and United States Mint.

RULE 29.6 DISCLOSURE STATEMENT

The Petitioner is not a non-governmental corporation therefore a disclosure statement pursuant to this Court's Rule 29.6 is not required.

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PETITION FOR A WRIT OF CERTIORARI

Kenneth William Mayle respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit on this matter.

OPINIONS BELOW

The decision of the Court of Appeals is reprinted in the Appendix ("App.") at 1a. The District Court's opinion, case number 1:17-cv-03417 (Doc.24), is reprinted at App.10a.

JURISDICTION

The Court of Appeals entered its judgment on MAY 25th, 2018, and denied a petition for rehearing and rehearing en banc on August 6, 2018. (App.18a). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the following Constitutional and Statutory provisions:

- **U.S. Const. amend. I**

  Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

- **U.S. Const. amend. V**

  No person shall . . . be deprived of life, liberty, or property, without due process of law . . .

- **31 U.S.C. § 5112(d)(1)**
  The Law Regulating the United States Mint

  United States coins shall have the inscription "In God We Trust".

- **42 U.S.C. § 2000bb-1(b)**
  The Religious Freedom Restoration Act

  The Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

  (b) Exception

Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person:

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

- **42 U.S.C. 2000bb(a)(2)**
  The Religious Freedom Restoration Act

  (b) Purposes. The purposes of this chapter are—

  (1) to restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S.

INTRODUCTION

On July 30, 1956, Congress passed House Joint Resolution 396 (ch. 795, 70 Stat. 732), which established a National Motto. The 16 word resolution states "the national motto of the United States is hereby declared to be "In God we trust." Consequently, the Secretary of the Treasury must include the National Motto of "In God We Trust" on its coins and bills. 31 U.S.C. § 5112(d)(1).

Petitioner sued to remove the National Motto of "in God we trust" from the national currency because the law compels Petitioner, a Satanist who does not trust in any monotheistic God (13), to carry bills and coins bearing the words "in God We Trust." Although the law is a rule of general applicability, the government

cannot demonstrate that the National Motto furthers a compelling government interest, or that it is the least restrictive means of furthering that compelling governmental interest.

Petitioner's case was dismissed by the District Court because the Court improperly held that the use of religious symbols and slogans on the nation's currency was settled law. The Seventh Circuit denied Petitioner's appeal, failing to apply the Supreme Court's decisions in *Masterpiece Cakeshop, LTD., v. Colorado Civil Rights Commission* (June 4, 2018), and *Burwell v. Hobby Lobby*, 134 S.Ct. 2751 (2014). The Seventh Circuit proclaimed that the Supreme Court's ruling in *Masterpiece Cakeshop*, which was issued just one day after its decision, would not change the result of Petitioner's case, regardless of its outcome. This is an error. As a result, the decision is now in conflict with this Court's precedent.

Masterpiece Cakeshop involved compelled speech in violation of a person's sincerely held Christian religious views. This Court held that a tribunal must be neutral and not demonstrate a scintilla of animus against a person's religious beliefs. The Court remanded the case for further proceedings. Like the baker in *Masterpiece Cakeshop*, the appellate courts here did not defer to Petitioner's sincerely held religious beliefs in determining whether they were substantially burdened, nor did they identify a compelling government interest for printing "In God We Trust" on the currency.

The National Motto is, on its face, the affirmation of religious doctrine. Petitioner is entitled to the same rights as Christians who raise sincere objections

to government acts. Therefore, Petitioner files this Petition for Supreme Court review.

STATEMENT OF THE CASE

A. Factual Background

Petitioner Kenneth William Mayle is a non-theistic Satanist. Petitioner sued the Government for violating his First Amendment rights. His lawsuit challenged the inscription of the National Motto, consisting of the words "In God We Trust," as well as the Masonic symbols and weak cryptography related to "59" which by law must be included on all coins and bills. Petitioner argued that the words and symbols were a direct Government endorsement of a deity that advocates for the destruction of Satanism. (Complaint, Doc. 1) He argued that the Government's currency compels him to carry forth government messages proclaiming the existence of a "God" and professing "trust" in that God, with is anathema to Petitioner's beliefs. *Id.*

Despite the Petitioner's free exercise of religion is substantially burdened by carrying religious messages in order to make financial transactions, and there are financial penalties for using credit cards (fees and interest), debit cards (fees), and cryptocurrency (not recognized by federal government or available for daily transactions.) Petitioner is at times forced to violate his religious beliefs by using cash in situations where a credit card is not accepted. This puts Petitioner in no-win situation: use credit cards and pay the fees and interest which accrue when he uses

non-cash currency, or use bills and coins bearing messages which violate his beliefs. Petitioner's Complaint sought declaratory relief that the inscription of "In God We Trust" on the nation's coins and currency was unconstitutional.

The District Court, Judge Amy J. St. Eve presiding, granted the Government's motion to dismiss. (Order dated 9/29/2017) The District Court held that the use of religious symbols and slogans on the nation's currency was settled law. The Court held that the statutes allowing engraving and printing of religious symbols and currency burdened all citizens equally, regardless of religious faith. The Court held that the religious symbols and slogans were merely "ceremonial" and did not amount to compelled speech or endorsement of religion.

Petitioner appealed to the Seventh Circuit Court of Appeals. The Seventh Circuit upheld the District Court's decision, claiming that the words "in God We Trust" were not religious. The Seventh Circuit also dismissed Petitioner's argument that carrying the religious message was hostile to his sincerely held religious belief, contending that the message was fine as long as Petitioner concealed the money in his pocket, where no one could see it.

Petitioner files this Petition for a Writ of Certiorari because the lower court decisions demonstrated hostility to his sincerely held religious beliefs, in contravention of recent Supreme Court RFRA jurisprudence.

B. Procedural History

On May 5, 2017, Petitioner filed a Complaint against Defendants United States of America, the

United States Secretary of the Treasury, and the United States Mint for violating 42 U.S.C. §§ 2000bb through 2000bb-4, the Religious Freedom Restoration Act, the Equal Protection component of the Fifth Amendment's Due Process clause, the First Amendment's Free Speech Clause, and the First Amendment's Free Exercise Clause. Petitioner asked the Court to permanently enjoin the Government from engraving or printing "In God We Trust" on the currency.

Defendants filed a motion to dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6). On September 29, 2017, the District Court for the Northern District of Illinois granted the Defendants' motion to dismiss. (Case No. 17-CV-03417, Doc. 24) The District Court opinion held that "it is well-settled that the nation's motto "In God We Trust" on currency does not violate the Free Exercise Clause or RFRA." (Doc 24, p.2) The District Court also held that Plaintiff could not show he had a Free Speech claim because "[I]n the context of compelled speech, the Supreme Court, in dicta, rejected Plaintiff's argument approximately forty years ago." (Doc. 24, p.4) The Court also dismissed Plaintiff's Equal Protection and Enumerated Power claims. (Doc 24 p.2-3).

On October 26, 2017, Plaintiff filed a timely notice of appeal with the Seventh Circuit Court of Appeals, pursuant to 28 U.S.C. § 1291. Plaintiff raised three issues on appeal:

1. First, that he satisfied the requirements of both Article III and prudential standing because he suffered a cognizable injury because the government compelled him to carry and

transmit money that contains religious symbols that attack his Satanic faith.

2. Second, that the District Court erred by holding that his religion was not substantially burdened, and that religious messaging on the currency violated the First Amendment's longstanding prohibition against "compelled expression."

3. Third, the District Court erred by rejecting his Establishment Clause claim, because the National Motto "in God we trust" and the religious symbols have an esoteric and religious purpose to advance religion, fostering excessive entanglement with religion

On May 31, 2018, a three-judge panel affirmed the judgment of the District Court. On July 12, 2018, Plaintiff filed a Motion for Rehearing En Banc on two grounds:

1. First, that the decision conflicts with the Supreme Court's rulings in *Masterpiece Cakeshop, LTD., v. Colorado Civil Rights Commission*, which was decided on June 4, 2018, and *Burwell v. Hobby Lobby*, 134 S.Ct. 2751, 2770 (2014), which was decided on June 30, 2014.

2. Second, Plaintiff contended the decision was in conflict with recent precedent of the Supreme Court, which substantially broadened the free exercise of religion since the cases that the District Court relied upon were decided.

The Petition for Rehearing was denied on August 8, 2018.

REASONS FOR GRANTING THE PETITION

Certiorari is warranted for three reasons. First, the decision below conflicts with *Masterpiece Cakeshop, Hobby Lobby* and this Court's other precedents, which make clear that courts cannot second-guess a plaintiff's sincere religious belief that taking a particular action would violate his religion. Sup. Ct. R. 10(c).

Second, the decisions below reflect confusion regarding the proper test for a "substantial burden" on religious exercise under RFRA, and the issue of the National Motto is not settled law.

Third, this case implicates a highly important issue of minority religious liberty that affects thousands of other non-monotheists in America, all of whom are targeted by the Government's National Motto of "In God We Trust" and its corresponding symbols.

I. THE DECISION BELOW CONFLICTS WITH *MASTERPIECE CAKESHOP*, *HOBBY LOBBY*, AND THIS COURT'S OTHER PRECEDENTS, WHICH MAKE CLEAR THAT COURTS CANNOT SECOND-GUESS A PLAINTIFF'S SINCERE RELIGIOUS BELIEF THAT TAKING A PARTICULAR ACTION WOULD VIOLATE HIS RELIGION

The First Amendment prohibits speech compulsions as well as speech restrictions. "The right to speak and the right to refrain from speaking are complementary components of the broader concept of

'individual freedom of mind.'" *Wooley v. Maynard*, 430 U.S. at 714 (quoting *West Va. State Bd. of Ed. v. Barnette*, 319 U.S. 624, 637 (1943)). Laws interfering with a person's religious beliefs and practices were therefore subject to the highest level of judicial scrutiny. This Court's jurisprudence emphasizes that laws burdening religious exercise should be reviewed with strict scrutiny. *Sherbert v. Verner*, 374 U.S. 398, 400 (1963); *Wisconsin v. Yoder*, 406 U.S. 205 (1972). Only laws that pursue government "interests of the highest order . . . can overbalance legitimate claims to the free exercise of religion." *Yoder* at 215.

In the decades after *Sherbert* and *Yoder*, the Supreme Court retreated from this rigorous protection of religious freedom. *See e.g., Bowen v. Roy*, 476 U.S. 693, 696 (1986); *Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439 (1988); *Employment Division v Smith*, 494 U.S. 872 (1990). To restore the proper balance between individual religious belief and government action, Congress enacted the Religious Freedom Restoration Act (RFRA), stating that the compelling interest test as set forth in prior federal court rulings like *Sherbert* and *Yoder* was the appropriate "test for striking sensible balances between religious liberty and competing prior governmental interests." *See* 42 U.S.C. § 2000bb(a)(2), 2000bb(a)(4)-(5) (2006). Congress stated that it intended restore "the compelling interest test as set forth in *Sherbert v. Verner* and *Wisconsin v. Yoder* and to guarantee its application in all cases where free exercise of religion is substantially burdened." *Id.*

RFRA prohibits the government from (1) substantially burdening a person's exercise of religion,

"even if the burden results from a rule of general applicability," unless (2) the government demonstrates that application of the burden to the person is "in furtherance of a compelling governmental interest" and (3) "is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1(b).

The Seventh Circuit's decision in the case at bar conflicts with the Supreme Court's rulings in *Masterpiece Cakeshop, LTD., v. Colorado Civil Rights Commission*, 584 U.S. ___ (2018), which was decided one day after Petitioner's case, as well as *Burwell v. Hobby Lobby*, 134 S.Ct. 2751, 2770 (2014) (June 30, 2014). In *Hobby Lobby*, this Court held that religious believers must decide for themselves whether an act "is connected" to illicit conduct "in a way that is sufficient to make it immoral." 134 S.Ct. at 2778. The connection between contraceptives, insurance policies, and corporate directors may seem tenuous, but this Court still held that a corporation could have a religious belief that contraceptives were against the directors' religion. The U.S. government had to accommodate their viewpoint.

Masterpiece Cakeshop was reversed and remanded because "[t]he neutral and respectful consideration to which [the baker] was entitled was compromised here, however. The Civil Rights Commission's treatment of his case has some elements of a clear and impermissible hostility toward the sincere religious beliefs that motivated his objection." 584 U.S. ___ (2018) (Slip. Op. at 12).

This hostility manifested itself at hearings before the Colorado Civil Rights Commission, an adjudicatory

body that had jurisdiction to decide the civil rights claim. *Id.* at 14. The baker believed that "creating a wedding cake for a same-sex wedding would be equivalent to participating in a celebration that is contrary to his own most deeply held beliefs." *Id.* at 3. The lower courts erred by not deferring to the baker's interpretation of what was against his religion. Ultimately, "it is not, as the Court has repeatedly held, the role of the State or its officials to prescribe what shall be offensive." *Id.* at 16 (citations omitted.)

In *Masterpiece Cakeshop*, this Court reiterated the sanctity of a person's conscience in matters of faith, no matter how against majority opinion those views happen to be. Although the baker's religious views of not condoning same sex marriage go against the current grain-same sex marriage was legalized by this Court in all 50 states-this Court demanded that a state tribunal authorized to investigate the baker's denial of a public accommodation give his religious views due deference.

Petitioner is a Satanist whose sincerely held religious beliefs must be given the same level of deference given to the Christians who sued to avoid baking a cake and providing insurance coverage that included contraceptives. Nevertheless, the Seventh Circuit rejected Petitioner's argument that U.S. currency forced him to carry an explicitly Christian and monotheistic message on the grounds that, "no one walking down the street who saw Mayle would have the faintest idea what Mayle had in his pocket—currency or plastic payment cards or perhaps just a smart phone." (Opinion at p.5). In so ruling, the Seventh Circuit applied a test to Petitioner's moral crisis that is com-

pletely at odds with RFRA as interpreted by *Masterpiece Cakeshop* and *Hobby Lobby*.

Like the Colorado Civil Rights Commission in *Masterpiece Cakeshop*, the Seventh Circuit's panel decision demonstrates hostility toward Petitioner's belief and a refusal to accept that carrying money with the inscription "In God We Trust" and its symbols offends Petitioner's conscience. The opinion characterizes Petitioner as a "self-described" Satanist, indicating a degree of judgment about his stated religious beliefs and description. In addition, the panel decision proclaimed that Petitioner suffered no harm because he could hide the money in his pocket.

In essence, the Seventh Circuit incorrectly ruled that Petitioner, a non-Christian, is not entitled to the same level freedom of conscience, thought, and religion as the baker in *Masterpiece Cakeshop* who opposed same sex marriage or the corporate directors who disagreed with contraception in the *Hobby Lobby* case. Neither the First Amendment nor RFRA require a person's beliefs to be anything other than "self-professed." The courts cannot arrogate to themselves the ability to decide whether a person's religious objections are sincere.

A. Government Neutrality

This Court faulted the Colorado Civil Rights Commission for not proceeding in a manner that is "neutral and tolerant" of the baker's religious beliefs, finding that "[f]actors relevant to the assessment of governmental neutrality include "the historical background of the decision under challenge, the specific series of events leading to the enactment or official

policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decisionmaking body." Slip Op. at 17, citing *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 540 (1993). Accordingly, the Colorado Commission gave "every appearance," *id.*, at 545, of adjudicating the baker's religious objection to a gay wedding cake based on a negative normative "evaluation of the particular justification" for his objection and the religious grounds for it. *Id.*, at 537.

When these factors are applied to Petitioner's case, it is clear that his religious claims have not been treated with neutrality or tolerance in the District Court or the Seventh Circuit. Petitioner's claim is viewed in the context of the negative normative evaluation of his minority religion. The District Court declined to give him the right to reply to the government's response, and also cancelled a hearing with no notice.

The Seventh Circuit panel presumed that the Petitioner suffered no harm because he can hide the cash bearing religious messages in his pocket. He is not presumed to be entitled to the same level freedom of conscience, thought, and religion that litigants like the corporate directors of *Hobby Lobby* were afforded. The only thing that mattered in *Hobby Lobby* was that the directors of the corporation had religious beliefs about fertilization of eggs that overrode the government's laws that women should be given access to reproductive health care.

As this Court wrote in *Masterpiece Cakeshop*,

> "[i]t hardly requires restating that government has no role in deciding or even sug-

> gesting whether the religious ground for Phillips' conscience-based objection is legitimate or illegitimate. On these facts, the Court must draw the inference that Phillips' religious objection was not considered with the neutrality that the Free Exercise Clause requires."

Slip Op. at 17.

In other words, the government had no right to judge whether Phillips' anti-gay marriage beliefs were legitimate, ill-considered, or even if they were implicated by mixing ingredients for a cake. All that mattered was that the government show fealty to his interpretation of Christianity. The same is true for Petitioner's claim that he cannot carry money bearing Christian religious doctrine and symbols because it offends his faith.

B. The Historical Reasons for the National Motto

The Seventh Circuit Court opinion rewrites history in an attempt to promote Christian religion and monotheism generally. It even goes so far as to say that "the motto was placed on U.S. currency to celebrate our tradition of religious freedom, as compared with the communist hostility to religion." [cite]

This is of course nothing but today's spin on yesterday's bigotry toward non-Christian religions, especially Satanism. Who gets to decide that yesterday's bigotry has faded from words like "In God We Trust" and that the motto and its symbols are now celebrating religious freedom? Justice O'Connor, who gave her blessing to benedictions and invocations and religious slogans? Or is the determination to be made by the

people forced to carry the message? The case law is clear that it is the latter—the individual (or the corporate person)—who has the freedom to declare what government laws and symbols mean to them personally. The Court's recent jurisprudence has contempt for government bureaucrats when they act without due deference for Christian beliefs. All Petitioner is asking is for the courts to recognize that the Constitution makes no legal distinction between the status of a Christian and a Satanist (even if its currency does). Ultimately, it is not "just as accurate" to say the motto "In God We Trust" was placed on the currency to celebrate religious freedom. It is an error to claim that Petitioner should literally just pocket the money and bear slogans that attack his faith.

II. THE DECISIONS BELOW REFLECT CONFUSION REGARDING THE PROPER TEST FOR A "SUBSTANTIAL BURDEN" ON RELIGIOUS EXERCISE UNDER RFRA, AND THE ISSUE OF THE NATIONAL MOTTO IS NOT SETTLED LAW

Contrary to the District Court's holding, it is not settled law that the National Motto does passes muster Free Exercise Clause or RFRA. The Supreme Court has never ruled on the legality of the National Motto on U.S. currency or whether it runs afoul of RFRA. The circuit court cases cited by the District Court were decided prior to the Supreme Court's recent jurisprudence broadening the scope of religious freedom under RFRA. In addition, the lower courts relied on precedent involving the burdens the National Motto placed on atheist activists, rather than whether the Motto burdens the conscience of polytheists, agnostics, and Satanists.

A. The Dicta in *Wooley v. Maynard* is Not Controlling

The District Court also erred by basing its decision on a statement the Supreme Court made, in *dicta*, that including the National Motto on U.S. currency was not compelled speech. The District Court cited *Wooley v. Maynard*, 430 U.S. 705, 717 n. 15 (1977), which held that mandating the government message "Live Free or Die" on state license plates violated the First Amendment rights of Jehovah's Witnesses. Although the 1977 Supreme Court did express an opinion about U.S. currency in a footnote, dicta, by its very definition, are judicial opinions expressed by the judges on points that do not necessarily arise in the case. The validity of the National Motto was not tested by *Wooley v. Maynard.*

B. The *Newdow* Cases Are Not Binding Precedent on Petitioner's RFRA Claim

The panel decision cites precedent holding that printing the motto "In God We Trust" on the currency is constitutional and that it passes constitutional muster under every Establishment Clause test, citing the Ninth Circuit's decision *Newdow v. Lefevre*, 598 F.3d 638, 645-46 (9th Cir. 2010) which "held that it is well-settled that the motto on currency does not violate RFRA or the Free Exercise or Free Speech Clauses, because the motto has no theological import." The phrase "no theological import" is a reference to Ceremonial Deism, a judicially-created construct that allows the government to prefer and promote Christianity and other monotheistic religions, they say, without running afoul of the Constitution. Ceremonial Deism is a judicial doctrine which transubstantiates the gov-

ernment's favored religious beliefs into something that the courts claim have zero religious content and zero meaning.

The theory first appeared in a dissent in *Lynch v. Donnelly*, 465 U.S. 668 (1984), when Justice Brennan suggested that such phrases could be protected from Establishment Clause scrutiny because they have lost significant religious content and are now simply things that are said and printed to add empty pomp and circumstance of special occasions. Justice O'Connor picked up the thread in *County of Allegheny v. ACLU*, 492 U.S. 573 (1989), which involved the constitutionality of a local government's Christmas displays. Justice O'Connor declared that "Practices such as legislative prayer or opening Court sessions with 'God save the United States and this honorable Court' serve the secular purposes of 'solemnizing public occasions' or expressing 'confidence in the future.'" Neither legislative prayers or invocations of God in court sessions were before the Court, yet Justice O'Connor proclaimed them constitutional based on the belief that a prayer was apparently not a prayer. Against this Orwellian backdrop, courts like the Ninth Circuit in *Newdow* were off and running, quickly using the concept of Ceremonial Deism to grant the government broad powers to promote its favorite religions.

(i) Petitioner Does Not Need to Show an Establishment Clause Violation

Lower courts are confused about the interplay between the Establishment Clause, RFRA and Free Exercise. In *Newdow v. Lefevre*, the Ninth Circuit imposed a requirement that the atheist plaintiffs show an Establishment clause violation in order to pro-

ceed. The Court said mandating the words "In God We Trust" on the currency could not possibly have burdened Newdow's religious exercise unless the phrase itself was a "purely religious dogma" and constituted a governmental establishment of religion. *Id.* at 644-465. In doing so, the Court relied on the case of *Aronow v. United States*, 432 F.2d 242 (9th Cir. 1970), the law mandating that "the inscription 'In God We Trust' . . . shall appear on all United States currency and coins."

The Ninth Circuit held that the National Motto was not an establishment clause violation, because it was patriotic, not religious, and that it had no coercive purpose to aid religion. *Id.* at 243. The Ninth Circuit therefore held that *Aronow* meant the words "In God We Trust" could not cause a substantial burden on religious belief under RFRA. *Lefevre*, 598 F.3d at 644-645.

The Ninth Circuit completely missed the mark. RFRA, as enacted and interpreted by the courts, does not say that courts must inquire about whether a practice is a State endorsement of religion which violates the Establishment clause. In fact, RFRA was enacted explicitly to protect people whose religious beliefs conflicted with laws of general applicability, such as laws mandating the words "In God We Trust" be placed on U.S. currency, which still exacted a burden on the free exercise of religion. *See* 42 U.S.C. § 2000bb(a)(2), which recites Congress' findings that "laws "neutral" toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise." The *Newdow v. Lefevre* decision flies in the face of this legislation, and would require

all courts to mandate that there be an Establishment clause violation in every case involving RFRA, which is contrary to Congress' intent to protect religious belief from laws of neutral applicability.

Moreover, *Newdow v. Lefevre* would have been decided differently after *Hobby Lobby*. The Ninth Circuit held that carrying money inscribed with the phrase "In God We Trust" did not violate any "purely religious dogma" such that it was considered immoral by the atheists, but in *Hobby Lobby*, the Supreme Court warned federal courts not to engage in this analysis. The Court wrote that "federal courts have no business addressing" the question of "whether the religious belief asserted in a RFRA case is reasonable." *Hobby Lobby*, 134 S.Ct. at 2777. If this same case were contested today, the Ninth Circuit could not look at whether Michael Newdow's atheist beliefs were reasonable. The Court could not find that the atheists' were unreasonable to assert that carrying money with "In God We Trust" was immoral, just because the phrase itself is not purely religious dogma.

(ii). *Newdow v. Peterson* Improperly Applied RFRA's Substantial Burden Test

In *Newdow v. Peterson*, 753 F.3d 105 (2nd Cir. 2014), the Second Circuit held that plaintiffs' RFRA claim failed because plaintiffs' religion or lack thereof was not substantially burdened. *Id.* at 108-109. In considering whether the National Motto of "In God We Trust" was a substantial burden, the Second Circuit considered whether the law was compelled speech, but ignored the other burdens that Newdow asserted. *Id.* The Court did not consider whether the words "In God We Trust" burdened the atheist's religious exercise,

instead focusing on whether Newdow could hide the money from public view. The Court explained that the statute authorizing the inscription on the currency was different than the law in *Wooley v. Maynard*, 430 U.S. 705 (1977), which compelled the plaintiff to have a license plate with the message "Live Free or Die." The Court's distinction was that the political message on the license plate was displayed openly, whereas money was usually concealed inside a pocket, wallet or purse. *Peterson*, 753 F.3d at 109.

Under the Court's logic, since Newdow could hide the money from the public, it did not force him "proclaim a viewpoint contrary to his own." 753 F.3d at 109. RFRA protections are more broad than protection from compelled speech.

Although Newdow was concerned about the burden of carrying a message he believed was immoral, he also cited other burdens that the Second Circuit ignored, such as carrying currency that forced him to continually confront a phrase that was the antitheses of his personal beliefs. *Id.* at 108-09. In addition, Newdow argued that bearing money with the words "In God We Trust" forced atheists to proselytize for religion. *Id.* The Court did not address this argument. As a result, *Newdow v Peterson* rests on shaky ground, because it did not consider the many ways that the plaintiffs' religious exercise was substantially burdened because of the currency. (The Seventh Circuit also failed to consider all the ways Petitioner's free exercise was burdened, ignoring Petitioner's argument that the cost of credit card processing fees forced him to pay a penalty for not using cash, as well as the

reality that using cards exposes Petitioner to security breaches.)

The *Hobby Lobby* decision would overrule *Peterson.* In *Hobby Lobby*, the Obama administration argued that buying health insurance that would cover a drug that would prevent or end a pregnancy was simply too attenuated to prevent the abortion from being attributed to the plaintiffs. *Id.* at 1777-78. Contrast this with *Peterson*, where the Second Circuit not only evaluated the reasonableness of the atheists' beliefs, it actually found their beliefs unreasonable. *Peterson*, 753 F.3d at 108-09. The *Peterson* Court found that money, as it is hidden from view and often changes hands, could not be associated with the person who uses it. This certainly contradicts the holding of *Hobby Lobby*, where the idiosyncratic religious beliefs of corporations (that they would be associated with a hypothetical non-pregnancy or abortion through the coverage of health insurance) were given total deference.

Moreover, a proper consideration of the burdens associated with the currency shows that Petitioner has no less burdensome alternative. Petitioner can only use U.S. currency. He cannot use cryptocurrency or cards. The entity which controls the religious messaging on the currency is the Respondent. Petitioner in essence has a dilemma that represents the other side of *Masterpiece Cakeshop*—what would happen if the only available baker refused to bake a cake for a same sex couple on religious grounds? In such a case, the couple would have no viable alternative for buying a wedding cake. This is Petitioner's situation: he must use U.S. currency, but the people responsible for U.S.

currency are actively hostile to Petitioner's religious beliefs and are empowered to force Petitioner to yield to their religious interpretation.

III. THIS CASE IMPLICATES A HIGHLY IMPORTANT ISSUE OF MINORITY RELIGIOUS LIBERTY THAT AFFECTS THOUSANDS OF OTHER NON-MONOTHEISTS IN AMERICA, ALL OF WHOM ARE TARGETED BY THE GOVERNMENT'S NATIONAL MOTTO OF "IN GOD WE TRUST" AND ITS CORRESPONDING SYMBOLS

Hobby Lobby involved the sincerely held Christian religious beliefs of a corporation's directors. *Masterpiece Cakeshop* potentially gives Christians a right to refuse public accommodations to same sex couples. People who practice minority faiths, particularly those whose beliefs are not effectively Abrahamic ("Yaldaboathic"), are left to wonder whether their views are also guaranteed constitutional protection.

Satanism is certainly not the government's favorite religion. Animus against Satanism and anyone associated with Satan has coursed through American history from before independence right up to modern times. The Seventh Circuit decision in the case at bar proclaims that "In God We Trust" (59) aka "JESUS CHRIST" (59) is just an official way of saying that the United States has a historical involvement with religious freedom. This is deeply misleading and ahistorical. To believe that "In God We Trust" has been inoculated from its meaning through repetition, the Court has to ignore and whitewash America's history of religious persecution against Christianity's self-professed enemy, Satan.

The history of "religious freedom" advocates and Satanism starts with the Salem Witch Trials, which resulted in the execution of dozens of women suspected of consorting with the Christian Devil. It continues with the Satanic Panic cases of the 1980's and 1990's, when children brainwashed by parents and psychologists concocted theories of abuse at the hands of allegedly Satanist caregivers, sending innocent people to prison. And it extends into our modern landscape in criminal cases such as the prosecution of the West Memphis Three, which sent three innocent people to death row because they listened to "satanic" music and wore black clothing. These are just three well-known episodes out of hundreds of examples of bigotry and discrimination against Satanists.

The National Motto became law after two years of campaigning by politicians to include references to Christianity in the Pledge of Allegiance and the nation's currency, most significantly including President Eisenhower. "In this way we are reaffirming the transcendence of religious faith in America's heritage and future," Eisenhower said during a Flag Day speech in 1954, specifically referencing the Pledge. "In this way we shall constantly strengthen those spiritual weapons which forever will be our country's most powerful resource in peace and war."

The National Motto as spiritual warfare is something which Satanists are well-acquainted with, and RFRA compels the government to stop. The law requiring "in God we Trust" to be inscribed on U.S. currency substantially burdens Petitioner's religious beliefs. The Government has made no showing whatsoever that the law substantially furthers any

government interest, let alone a compelling one. The inscription is also not the least restrictive means of furthering any compelling governmental interest.

IV. THE SEVENTH CIRCUIT IMPROPERLY DISMISSED PETITIONER'S EQUAL PROTECTION CLAIM BY APPLYING RATIONAL BASIS SCRUTINY TO "IN GOD WE TRUST" RATHER THAN STRICT OR HEIGHTENED SCRUTINY

The Supreme Court held in *Bolling v. Sharpe*, 347 U.S. 497 (1954) that the Due Process Clause of the Fifth Amendment imposes various equal protection requirements on the federal government. Petitioner argued that the "In God We Trust" inscription discriminated against people who do not believe in a monotheistic God. The Seventh Circuit held that the National Motto did not discriminate against people of other faiths because "the motto's placement on currency is related to at least one legitimate governmental objective—acknowledging an aspect of our nation's heritage." (*See* Opinion at p. 9.)

The Fifth and Fourteenth Amendments are interpreted in consonance with each other. The Equal Protection Clause of the Fourteenth Amendment commands that no state shall "deny to any person within its jurisdiction the equal protection of the laws," U.S. Const. amend. XIV, which essentially is a direction that all persons similarly situated should be treated alike, *Plyler v. Doe*, 457 U.S. 202, 216, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982). When a statute classifies by race, alienage, or national origin, we subject the legislative action to "strict scrutiny and [it] will be sustained only if [it is] suitably tailored to serve a compelling state interest"; "[t]hese factors are

so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985). Heightened scrutiny is appropriate when government action interferes with a person's fundamental rights, such as freedom of speech or religion. *See Eby-Brown Co., LLC v. Wisconsin Dep't of Agric.*, 295 F.3d 749, 754 (7th Cir. 2002).

The Seventh Circuit declined to apply strict or heightened scrutiny to Petitioner's claim, incorrectly holding that the law was neutral and therefore subject only to rational basis scrutiny. To do so, the Court ignored the actual text of the National Motto ("In God We Trust") as well as the historical reasons the Government felt compelled to add the text. Government religious expressions are not neutral. A law requiring all people to submit to a full-face photograph for the purpose of a driver's license is neutral, although it may have a significant impact on men and women of certain faiths who cover their face and hair. However, a law with a reference to a specific Christian God is not neutral with respect to people who practice other religions, or to distinctions made between people of different faiths in their religious identities. The lower courts hold that the Government has a legitimate reason for the National Motto, that it acknowledges a part of the country's "heritage." But what historical heritage is being acknowledged? The Salem Witch Trials? Petitioner's Complaint outlined numerous instances of anti-Satanist persecution and detailed the ways that "In God We Trust" is an affront to his personal beliefs.

His Equal Protection claim should have been decided using strict or heightened scrutiny.

CONCLUSION

Today, courts have asked Satanists to simply accept the following: "in God We Trust" doesn't mean what you think it means. Just trust us." As Petitioner has shown, people of minority faiths have historical reasons not to "just trust" the government interpretations on matters of faith. The First Amendment and now RFRA profess the contrary; Petitioner is not required to trust government pronouncements on matters of religion and conscience. The words "In God We Trust" are a rebuke to freedom of religion and the constitutional principles embodied in RFRA. For the foregoing reasons, Petitioner requests that this Court grant his Petition for Writ of Certiorari. The Court may wish to consider summary reversal of the decision of the Seventh Circuit Court of Appeals.

Respectfully submitted,

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