No. 19-

IN THE
Supreme Court of the United States

NEW DOE CHILD #1, ET AL.;

Petitioners,

v.

THE UNITED STATES OF AMERICA, ET AL.;

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

(1) Whether Congress violates the Establishment Clause when it makes laws respecting an establishment of Monotheism, thus perpetuating and exacerbating the political disenfranchisement of Atheists (i.e., the nation's most politically disenfranchised "protected class"). Specifically, in this case, whether Congress may mandate the inscription of "In God We Trust" on every coin and currency bill manufactured by the Department of the Treasury.

(2) Whether Congress violates the equal protection component of the Fifth Amendment's Due Process Clause when it mandates the inscription of "In God We Trust" on every coin and currency bill manufactured by the Department of the Treasury.

(3) Whether Petitioners' rights under the Religious Freedom Restoration Act of 1993 (RFRA) are violated when the only coins and currency bills that are legal tender are required by Congress to be inscribed with "In God We Trust," thus forcing Petitioners (who are Atheists) to bear and proselytize that Monotheistic message.

LIST OF ALL PARTIES

(1) Plaintiffs

a. Individuals

(1) NEW DOE CHILD #1
(2) NEW DOE CHILD #2
(3) NEW DOE CHILD #3
(4) NEW DOE PARENT
(5) NEW ROE CHILD
(6) NEW ROE PARENT
(7) NEW BOE CHILD
(8) NEW BOE PARENT
(9) NEW POE CHILD
(10) NEW POE PARENT
(11) NEW COE CHILD #1
(12) NEW COE CHILD #2
(13) NEW COE CHILD #3
(14) NEW COE PARENT
(15) GARY LEE BERGER
(16) MARIE ALENA CASTLE
(17) CHARLES DANIEL CHRISTOPHER
(18) PATRICK ETHEN
(19) BETTY GOGAN
(20) THOMAS GOGAN
(21) ROGER W. KAYE
(22) CHARLOTTE LEVERETTE
(23) DR. JAMES B. LYTTLE
(24) KYLE PETTERSEN-SCOTT
(25) ODIN SMITH
(26) ANDREA DAWN SAMPSON
(27) ERIC WELLS

b. Organizations

(1) ATHEISTS FOR HUMAN RIGHTS (AFHR)
(2) SALINE ATHEIST & SKEPTIC SOCIETY

(2) Defendants

(1) THE UNITED STATES OF AMERICA
(2) STEVEN MNUCHIN, SECRETARY OF THE TREASURY[1]
(3) DAVID J. RYDER, DIRECTOR, UNITED STATES MINT[2]
(4) LEONARD R. OLIJAR, DIRECTOR, BUREAU OF ENGRAVING AND PRINTING;

CORPORATE DISCLOSURE STATEMENT

For none of the Organizational Plaintiffs is there a parent or publicly held company owning 10% or more of the corporation's stock. No member of any Organizational Plaintiff has issued shares or debt securities to the public.

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[1] Defendant Mnuchin has been substituted for his predecessor pursuant to Fed. R. App. P. 43(c)(2).
[2] Defendant Ryder has been substituted for his predecessor pursuant to Fed. R. App. P. 43(c)(2).

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BASIS FOR JURISDICTION

On August 28, 2018, the United States Court of Appeals for the Eighth Circuit filed its decision affirming the district court's grant of Defendants' Motion to Dismiss. Plaintiffs' motion for a panel rehearing and rehearing en banc was denied in an order dated November 26, 2018. By writ of certiorari, this Court has jurisdiction under 28 U.S.C. § 1254(1) to review a court of appeals decision.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; …"

U.S. Const. amend. V:

> No person shall … be deprived of life, liberty, or property, without due process of law; …

STATUTORY PROVISIONS INVOLVED

31 U.S.C. §5112(d)(1): "United States coins shall have the inscription 'In God We Trust'. …"

31 U.S.C. §5114(b): "United States currency has the inscription 'In God We Trust' in a place the Secretary decides is appropriate. …"

The Religious Freedom Restoration Act of 1993 (RFRA), 107 Stat. 1488, 42 U.S.C. § 2000bb *et seq*. is set out in the Appendix at App. 58-64.

STATEMENT OF THE CASE

For the first seventy-five years of its existence, the United States minted money that was secular. In 1864, however, due to what Defendants themselves acknowledge was "increased religious sentiment,"[3] the phrase "In God We Trust" was first inscribed on an American coin.[4] According to the official report of the Mint Director at the time, that inscription was clearly and unequivocally intended to demonstrate this nation's trust in Jesus Christ:

> We claim to be a Christian nation. Why should we not vindicate our character by honoring the God of Nations, in the exercise of our political Sovereignty as a Nation? Our national coinage should do this. Its legends and devices should declare our trust in God; in him who is the "King of kings and Lord of lords." … Let us reverently acknowledge his sovereignty, and let our coinage declare our trust in God.[5]

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[3] U.S. Dep't of the Treas., *About: History of 'In God We Trust'*, https://www.treasury.gov/about/education/pages/in-god-wetrust.aspx (last visited Feb. 16, 2019).

[4] *Id*.

[5] *Report of the Director of the Mint*, in *Report of the Secretary of the Treasury … Year Ending June 30, 1863* 190-91 (1863), *available at* fraser.stlouisfed.org/docs/publications/treasar/AR_TREASURY_1863.pdf.

Ninety-one years after that first non-secular coin was minted, Congress mandated that every coin and currency bill must bear the "in God We Trust" inscription.[6] Congress subsequently explained that the purpose and intended effect of that motto (along with the newly-added words, "under God," in the Pledge of Allegiance) was to "witness our faith in Divine Providence."[7] The mandate to have "In God We Trust" on the money has remained in place ever since.

Petitioners are Atheists. As such, they fervidly disagree with the religious idea that people should trust in God. On the contrary, their sincere religious belief is that trusting in any God is misguided. Thus, by mandating the inscription of facially religious text (i.e., "In God We Trust") on every coin and currency bill, Defendants have turned Petitioners – among whom are nine children – into "political outsiders" on the basis of their most fundamental religious tenet. Moreover, Defendants have conditioned receipt of the important benefit of using the nation's sole "legal tender" upon conduct proscribed by Petitioners' Atheism (i.e., upon Petitioners' personally bearing – and proselytizing – a religious message that is directly contrary to the central idea that underlies their religious belief system).

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[6] Act of July 11, 1955, ch. 303, Pub. L. 84-140, 69 Stat. 290 (now codified at 31 U.S.C. §§ 5112(d)(1) and 5114(b)).

[7] Architect of the Capitol, *The Prayer Room in the United States Capitol*, H.R. Doc. No. 234, at 5 (1956).

Maintaining that these circumstances violate their constitutional rights under the Establishment Clause and the equal protection component of the Due Process Clause, as well as their statutory rights under RFRA, Petitioners, pursuant to 28 U.S.C. §§ 1331, 1346(a)(2), and 1361 (as well as 42 U.S.C. § 2000bb-1(c)), filed this lawsuit on Dec. 15, 2015 in the U.S. District Court for the District of Minnesota. *See* District Court Doc. 1. The District Court granted Defendants' Rule 12(b)(6) motion to dismiss on Dec. 5, 2016, *see* Appendix at App. 39-56, and, on Aug. 28, 2018, the Court of Appeals affirmed, *see* Appendix at App. 1-31. A petition for panel rehearing and rehearing en banc was denied on Nov. 26, 2018. *See* Appendix at App. 35-36.

REASONS FOR GRANTING THE PETITION

I. THIS CASE IS THE PERFECT VEHICLE TO BRING CLARITY TO THE SUPREME COURT'S ESTABLISHMENT CLAUSE JURISPRUDENCE

> This Court's Establishment Clause jurisprudence is undoubtedly in need of clarity.

Mount Soledad Mem'l Ass'n v. Trunk, 567 U.S. 944, 944 (2012) (Alito, J., statement respecting the denial of the petitions for writs of certiorari),

> It is difficult to imagine an area of the law more in need of clarity.

Utah Highway Patrol Ass'n v. Am. Atheists, Inc., 565 U.S. 994, 1007 (2011) (Thomas, J., statement respecting the denial of the petitions for writs of certiorari).

For two reasons, the "clarity" missing from this Court's Establishment Clause jurisprudence will likely be found by granting certiorari in this case. First, the case is simple: the government has declared as its national motto a clearly exclusionary religious claim, and it has mandated the dispersal of that motto on what is arguably the most ubiquitous tangible messenger in American society: its money. Second, because the motto is a frank endorsement of belief in God, the Court will be forced to directly confront its frequent conflation of "religion" and "Monotheism," which Petitioners believe is the main reason for the confusion in this legal arena.

II. THE COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT: DOES THE CONSTITUTION PERMIT THE DISREGARD OF DEVOUT ATHEISTS?

> A prime part of the history of our Constitution … is the story of the extension of constitutional rights and protections to people once ignored or excluded.

United States v. Virginia, 518 U.S. 515, 557 (1996).

In 1993, Justice Ginsburg addressed the verbiage on this Court's bar certificates. District Court Doc. 27-1 at 2. According to the Justice, "'a few new members of our bar who are not of a Christian faith request[ed] deletion of the words "in the year of our Lord" from their admission certificates.'" *Id.* Justice Ginsburg "attached a letter from a California lawyer who objected to the wording because its reference to the Gregorian calendar means that 'our Lord' is understood to be Jesus Christ." *Id*.

The Justice's advocacy resulted in change, and an option now exists for bar members to have certificates without "in the year of our Lord."[8]

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[8] U.S. Supreme Court, *Instructions for Admission to the Bar,* https://www.supremecourt.gov/bar/barinstructions.pdf.

Justice Ginsburg recently recalled her quest:

> And one of my colleagues (whose name I will not disclose) said, "'in the year of our Lord' was good enough for Brandeis. It was good enough for Cardozo. It was good enough for Frankfurter. It was good enough even for Goldberg." And, before he got to Fortas, I said, "It is not good enough for Ginsburg."[9]

Among the noteworthy aspects of this episode is that there had been 106 justices prior to Justice Ginsburg,[10] 95% of whom were not Jewish. Thus, the fact that it was a Jewish justice who raised this matter is statistically significant. Similarly, that the colleague only referenced the Court's Jewish justices indicates his understanding that there are inherent biases and sensitivities in everyone, and those who are personally affected are far more likely to see the harms that circumstances bring about. Additionally, those who are unaffected may be totally blind to those harms. As a result, biases may arise that can (and often do) interfere with reaching principled decisions. As Justice Blackmun wrote, "bias [in] this Court according to the religious and cultural backgrounds of its Members … [would be] intolerable." *Allegheny County v. Greater Pittsburgh ACLU*, 492 U.S. 573, 614 n.60 (1989).

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[9] Adas Israel Congregation, *Supreme Court Justice Ruth Bader Ginsburg at Adas Israel*, YouTube (Feb. 2, 2018), https://www.youtube.com/watch?v=kJ1X_kF1x0o (view at 20:05 - 20:30).

[10] U.S. Supreme Court, *About the Court: Justices 1789 to Present,* https://www.supremecourt.gov/about/members_text.aspx (last visited Feb. 18, 2019).

Regrettably, such "intolerable" bias has worked its way into the Court's jurisprudence on multiple occasions, resulting in decisions that are "utterly revolting," *Korematsu v. United States*, 323 U.S. 214, 242 (1944) (Murphy, J., dissenting). Fortunately, they are eventually recognized as "wrong the day [they were] decided." *See Trump v. Hawaii*, 138 S. Ct. 2392, 2423 (2018) ("*Korematsu* was gravely wrong the day it was decided," referring to the decision upholding the internment of Japanese-Americans solely based on their ancestry). *See also Planned Parenthood v. Casey*, 505 U.S. 833, 863 (1992) ("[W]e think *Plessy* was wrong the day it was decided," referring to *Plessy v. Ferguson*, 163 U.S. 537 (1896), which held that separate but equal railroad coaches for Blacks and Whites were constitutional).

These cases – all involving issues of equal protection – consistently highlighted a worrisome dynamic: the decision-makers were never of the disenfranchised minority class to which those being discriminated against belonged. Thus, there were no Asian-American justices in *Korematsu* and no Black justices in *Plessy*. Similarly, there were no women justices deciding that it was permissible for Illinois to deny Myra Bradwell the right to practice law because she was female, *see Bradwell v. Illinois*, 83 U.S. 130 (1873), and there were no ("out-of-the-closet") gay justices deciding that a state could punish a homosexual couple for having consensual relations in the privacy of their bedroom, *Bowers v. Hardwick*, 478 U.S. 186 (1986). *See also Pace v. Alabama*, 106 U.S. 583 (1883) (no justices in interracial marriages deciding that fornication penalties can be increased if the accused are of different races); *Fong Yue Ting v. United States*, 149 U.S. 698 (1893) (no Chinese (or Chinese-American – or African-American, for that matter) justices deciding that only White witnesses can testify in cases involving the

immigration status of Chinese individuals); *Minersville School District v. Gobitis*, 310 U.S. 586 (1940) (no Jehovah's Witness justices deciding that a 10-year-old Jehovah's Witness child can be expelled from school for standing respectfully but (due to his family's sincerely-held religious beliefs) not saluting the flag). Had *Gobitis* not been reversed by *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943), what lesson would this Court have been teaching Jehovah's Witness children for the past seven and a half decades? What lesson would it have been teaching the non-Jehovah's witnesses in the society shared with those children? What lesson is "under God" in the Pledge of Allegiance, "In God We Trust" on the walls of their classrooms,[11] and "In God We Trust" on every coin and currency bill teaching the nine children in this case and their non-Atheistic classmates?

The self-reinforcement of equal protection violations needs to be emphasized. As children mature in an environment where a minority is disenfranchised, especially when that disenfranchisement is declared whenever the national motto is displayed, they learn that it is an acceptable status quo to have "outsiders, not full members of the political community, and … insiders, favored members of the political community" *Lynch v. Donnelly*, 465 U.S. 668 (1984). Those who are favored then become inured to the harmful nature and the discriminatory effects of the disenfranchisement. That is why the discrimination persists, and it explains why, in this nation, Catholics were discriminated against for nearly two centuries, why Blacks could be officially segregated until only a few generations ago, and why the

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[11] *Cf. Stone v. Graham*, 449 U.S. 39 (1980) (posting of the Ten Commandments on classroom walls violates the Establishment Clause.)

injuries being discussed in this Petition will be pooh-poohed by many of those who read its words. They will look to the analogies with racial discrimination and dismiss them as inappropriate hyperbole. But that dismissal will also only be a consequence of the fact that they have become accustomed to such an egregious constitutional violation as **"In God We Trust" being deemed the national motto**, to be inscribed on every monetary instrument manufactured by the nation's Mint and its Bureau of Engraving and Printing. When those children become senators, congressmen, presidents and members of the Supreme Court, they will (as has been the case with past senators, congressmen, presidents and members of the Supreme Court) have no hesitation in perpetuating and even increasing the official Monotheism and anti-Atheism that currently exists. It is for the members of this Court to end this very vicious cycle.

Until 1908 the law in the District of Columbia called for boring through the tongue, burning the letter "B" into the forehead, and, ultimately, death for blaspheming (including denying the existence of) Jesus or God. *District of Columbia v. Robinson*, 30 App. D.C. 283, 289 (1908). Although apparently never enforced, the very fact that there was such a law in a federal jurisdiction reveals the degree of disenfranchisement of non-Christians that has existed in this nation. Fortunately, for Jews, Muslims and other non-Christian Monotheists, that governmental disenfranchisement has since been eliminated. For Atheists, however, the disenfranchisement has actually been amplified. This amplification took a giant leap during the Cold War era, when our politicians sought to distinguish the United States and its democratic institutions from the totalitarianism of the Soviet Union. Rather than contrasting our religious freedom with our

rival's intrusions into its citizens' personal religious beliefs, however, our legislators opted to extol the virtues of Monotheism and denigrate Atheism.

In so doing, our legislators abandoned our founders' conception of religious liberty and took a step towards Soviet-style totalitarianism. Governmental endorsement of any religious ideology – be it the Catholicism espoused by the Spanish government during the Inquisition, the Atheism set forth by the Soviet Union in middle of the 20th century, the Sunni Islamic teachings currently deemed sacred by the Taliban in Afghanistan, or the Monotheism touted by the government of the United States today – is completely contrary to the text and the ideals that underlie the first two clauses in our Bill of Rights. Thus, in the 1950s, what our nation actually did was turn its back on its constitutional principles and join the Soviets in having "the power, prestige and financial support of government … placed behind a particular religious belief." *Engel v. Vitale*, 370 U.S. 421, 431 (1962).

The resulting exacerbation of the favoritism for Monotheism is astonishing. Between the start and the end of the decade from 1950 to 1960, the number of religious entries in the Congressional Record increased by a factor of **five thousand percent!** *See* District Court Doc. 10-3. Meanwhile, just from 1952 to 1956, Congress and/or the President:

(1) Instituted a National Day of Prayer (to God),[12]

[12] Act of April 17, 1952, Pub. L. 82-324, ch. 216, 66 Stat. 64 (now codified at 36 U.S.C. § 119).

(2) Constructed a prayer room in the Capitol Building,[13]

(3) Intruded "under God" into the Pledge of Allegiance[14] (as "Onward Christian Soldiers" played at the official ceremony[15]),

(4) Altered the Military Code of Conduct to require each soldier to "trust in my God and in the United States of America,"[16]

(5) Celebrated a new religious postage stamp (with "In God We Trust" inscribed),[17]

(6) Mandated the inscription of "In God We Trust" on every coin and currency bill,[18] and

(7) Replaced the secular *de facto* national motto "E Pluribus Unum" with an official, facially religious claim: "In God we trust."[19]

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[13] H.R. Con. Res. 60, 83d Cong. (1953).
[14] Act of June 14, 1954, Pub. L. 83-396, ch. 297, § 7, 68 Stat. 249 (currently codified at 4 U.S.C. § 4).
[15] 100 Cong. Rec. 8617 (1954).
[16] *Executive Order 10631—Code of Conduct for Members of the Armed Forces of the United States* (Aug 17, 1955),. *See also* 3 C.F.R. § 266 (1955).
[17] *"In God We Trust" – New Postage Stamp to Carry Message to World*, The Gideon, May 1954, at 24, 25.
[18] Act of July 11, 1955, *supra* note 6, at 4.
[19] Act of July 30, 1956, Pub. L. 84-851, ch. 795, 70 Stat. 732 (now codified at 36 U.S.C. § 302).

The upshot of these last two activities was that an inclusive motto that celebrated our nation's diversity was replaced by a phrase that excludes people based on their religious ideologies. Moreover, by flooding society with tens of billions of monetary instruments destined for the pockets of virtually every individual within our borders, our government ensured that the exclusionary religious message was continuously and pervasively reinforced.

Of note is that this unabashedly pro-Monotheistic bias was voiced without hesitation by officials from all three branches of government. Senator Ferguson of Michigan, for instance, characterized the "In God We Trust" inscription over the door to the Senate chamber as "recogniz[ing] that we believe there is a Divine Power, and that we, our children, and children's children should always recognize it."[20] President Eisenhower proclaimed that:

> Recognition of the Supreme Being is the first, the most basic, expression of Americanism. Without God, there could be no American form of government, nor an American way of life.[21]

And Chief Justice Warren spoke publicly of the United States as "a Christian land governed by Christian principles."[22]

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[20] 100 Cong. Rec. 7833 (1954) (statement of Sen. Ferguson).

[21] Dwight D. Eisenhower, *Remarks Recorded for the "Back-to-God" Program of the American Legion*, Feb. 20, 1955, www.presidency.ucsb.edu/ws/index.php?pid=10414 (last visited Feb. 16, 2019).

[22] *Eisenhower Joins in a Breakfast Prayer Meeting*, N.Y. Times, Feb. 5, 1954, A10.

It was not just favoritism for Monotheism that was heard. Explicit denigration of Atheism was expressed as well. Congressman Louis C. Rabaut, for example, placed into the Congressional Record that "An atheistic American … is a contradiction in terms."[23] Equally egregious was the action of U.S. District Court Judge J. Frank McLaughlin, who denied citizenship to an applicant because "the atheist philosophy upon which petitioner predicates his position demonstrates a lack of attachment to the United States Government's first principle: a belief in a Creator." *Petition of Plywacki*, 115 F. Supp. 613, 614 (D. Haw. 1953).

As might be expected, these biased religious statements and actions perpetrated by our governmental agents were not without support from the citizenry. Thus, 60% of the population felt it was proper to deny Atheists the right to express their religious views in a speech, an equal number favored removing all books on Atheism from the public libraries, and 84% believed that Atheists should be prohibited from teaching in colleges or universities.[24] In 1958, more than three-quarters of the population stated they would not vote for an otherwise qualified candidate for President if that person were an Atheist.[25] Seven years later, 27% of the population felt that Atheists should not even be allowed to vote![26]

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[23] 100 Cong. Rec. 1700 (1954) (statement of Rep. Rabaut).

[24] Samuel Stouffer, *Communism, Conformity, and Civil Liberties: A Cross Section of the Nation Speaks Its Mind* 32-33 (1955) (citing a joint survey conducted in 1954 by Gallup and the Nat'l Op. Res. Ctr. of the Univ. of Chi.).

[25] *Id.*

[26] Am. Inst. of Pub. Op., Gallup Poll conducted July 21, 1965.

Although it has diminished mildly, gross anti-Atheism persists to this day. As but one example, in eight states – representing 22% of the United States population – there currently exist **constitutional provisions** that specifically deny to Atheists the right to hold public office.[27] To be sure, those provisions have been legal nullities since this Court decided *Torcaso v. Watkins*, 367 U.S. 488 (1961). Yet the fact that those provisions remain in all eight of those state constitutions is extraordinary.

That no legislature has removed any of those state constitutional provisions might be contrasted with the aftermath of *Loving v. Virginia*, 388 U.S. 1 (1967), where racial bias against people in mixed-race marriages (and against Blacks), rather than religious bias against Atheists, was being fostered. When *Loving* (which voided

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[27] Ark. Const. art. XIX, § 1 ("No person who denies the being of a God shall hold any office in the civil departments of this State, nor be competent to testify as a witness in any court."); Md. Const. art. XXXVII ("That no religious test ought ever to be required as a qualification for any office of profit or trust in this State, other than a declaration of belief in the existence of God."); Miss. Const. art. XIV, § 265 ("No person who denies the existence of a Supreme Being shall hold any office in this state."); N.C. Const. art. VI, § 8 ("The following persons shall be disqualified for office: First, any person who shall deny the being of Almighty God."); Pa. Const. art. I, § 4 ("No person who acknowledges the being of a God and a future state of rewards and punishments shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this Commonwealth."); S.C. Const. art. XVII, § 4 ("No person who denies the existence of a Supreme Being shall hold any office under this Constitution."); Tenn. Const. art. IX, § 2 ("No person who denies the being of God, or a future state of rewards and punishments, shall hold any office in the civil department of this state."); Tex. Const. art. I, § 4 ("No religious test shall ever be required as a qualification to any office, or public trust, in this State; nor shall any one be excluded from holding office on account of his religious sentiments, provided he acknowledge the existence of a Supreme Being.").

all anti-miscegenation statutes) was decided, six states had constitutional provisions that prohibited Whites from marrying non-Whites. *Loving*, 388 U.S. at 6 n.5. With this Court asserting that it will "eliminate all official … sources of invidious racial discrimination," *id.* at 10, and stand firmly against "measures designed to maintain White Supremacy," *id.* at 11, the people and legislators of those six states joined in and eliminated every one of those unconstitutional clauses.[28]

In other words, after *Loving* (where facially, at least, the law treated Blacks and Whites completely equally), all remaining state constitutional provisions that ran counter to this Court's holding were annulled and removed. Thus, throughout the nation, the White Supremacism that was previously endorsed by state constitutional provisions was eradicated. Meanwhile, in the aftermath of *Torcaso* (where the law was as flagrantly unequal as can be, denying to Atheists – solely on the basis of their religious beliefs – the right to serve as notaries public), not one of the eight states with "measures designed to maintain [Monotheistic] supremacy" has, in fifty-eight years, shown an iota of effort to remove its brazen endorsement of belief in God. Petitioners contend that this difference in result between the governmental support for racial equality and the lack thereof in terms of religious equality is largely a reflection of this Court's unwillingness to "eliminate all official … sources of invidious religious discrimination." On the contrary, what is seen is virtual silence as justices make such extraordinary contentions as the Constitution "permits the disregard of devout atheists," *McCreary County v. ACLU*, 545 U.S. 844, 893 (2005) (Scalia, J.,

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[28] R.A. Lenhardt, *Beyond Analogy: Perez v. Sharp, Antimiscegenation Law, and the Fight for Same-Sex Marriage*. 96 Calif. L. Rev. 839, 853 n.91 (2008).

dissenting), and Atheists are incapable of solemnizing public occasions. *Lynch v. Donnelly,* 465 U.S. 668, 692-93 (1984) (O'Connor, J., concurring).[29] The lower courts (and the rest of the nation) need to know whether Atheists are or are not protected by the Constitution.

Atheists, in 2019, must navigate a society where:

(1) "[N]ot only [are] atheists … less accepted than other marginalized groups but … attitudes toward them have not exhibited the marked increase in acceptance that has characterized views of other racial and religious minorities over the past forty years,"[30]

(2) Fewer people would vote for a generally well-qualified Atheist than for a member of any other religious minority.[31] A full 43% say they would not vote for such a person,[32]

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[29] In her *Lynch* concurrence, Justice O'Connor contended that Monotheistic governmental activities such as the "printing of 'In God We Trust' on coins … serve, in the only ways reasonably possible in our culture, the legitimate secular purposes of solemnizing public occasions, expressing confidence in the future, and encouraging the recognition of what is worthy of appreciation in society." 465 U.S. at 692-93 (O'Connor, J., concurring).

[30] Penny Edgell et al., *Atheists as "Other": Moral Boundaries and Cultural Membership in American Society*, 71 Am. Soc. Rev. 211, 212 (2006).

[31] Jeffrey M. Jones, *Atheists, Muslims See Most Bias as Presidential Candidates*, Gallup (June 21, 2012), www.gallup.com/poll/155285/Atheists-Muslims-Bias-Presidential-Candidates.aspx (citing a poll conducted June 7-10, 2012).

[32] *Id*.

(3) An incredible 42% of the general population view nonbelievers as incapable of being moral,[33] and

(4) Atheists are thought to be less trustworthy than rapists![34]

This demeaning opinion is so pervasive that it is even reflected in our language: "godless" has "wicked; evil; sinful" as one of its two definitions. Is it truly appropriate for these individuals to have all this negativity cast upon them simply because they have concluded that the current evidence is inadequate to support belief in a supernatural being? Why should such rational skepticism generate such ill will? And, more importantly, when will the federal courts stop sanctioning the governmental behaviors that support and perpetuate that negativity among the population at large?

There are nine child plaintiffs in this case, and some "have to count money for math." District Court Doc. 34-6 at 4. The "In God We Trust" message on that money tells them that, due to their Atheism, "I have to believe [in God] too or I am not a good student and classmate and a dumb kid and bad person." *Id*. The child petitioner who wrote those words continued:

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[33] Gregory A. Smith, *A Growing Share of Americans Say It's Not Necessary to Believe in God to Be Moral*, Pew Res. Ctr., FactTank, Oct. 16, 2017, http://www.pewresearch.org/fact-tank/2017/10/16/a-growing-share-of-americans-say-its-not-necessary-to-believe-in-god-to-be-moral/.

[34] Will M. Gervais et al., *Do You Believe in Atheists? Distrust Is Central to Anti-Atheist Prejudice*, 101 J. of Personality & Soc. Psychol. 1189, 1195-96 (2011).

> The government won't give me money that doesn't have god things on them, so I have to use their god money and say it is my money, that says things I don't believe in, and forces me to give this message I don't believe in to other people when I give them my money. The government is asking me to pretend that I believe it, they are asking me to lie just so I can use their god money and help them spread a message about a god I don't believe in. The government shouldn't make kids and grown ups says things they don't mean and do bad things that are not right. That is not a good government to make kids like me lie when we are always supposed to tell the truth. I am telling the truth. I am just a good kid who doesn't believe or trust in a god. … I wish the government would try and do the right thing and fix it so kids like me aren't forced to lie when we use money that says we trust in a god when we don't. I would rather not handle this money at all until they remove in god we trust, but I have no choice … .
>
> Please ask the government to stop making kids lie or have everyone hate them as punishment.

Id. Another child petitioner stated:

> [W]hen I'm called on for being an Atheist, they would bring up that topic and say that if god wasn't real then why does the

> government put him on money. It seems like they view it that Christians are better than everyone else and the whole "freedom of religion" thing isn't acted upon.
>
> …
>
> It also is like I'm advertising something I don't believe in, like carrying a bible around and saying I'm an Atheist. It makes me feel like a liar and my parents always taught me that it is wrong to lie about what you believe in.

Id. at 5. A seven-year-old wrote the following:

> My daddy wants me to be proud of my beliefs, but that is very hard when my classroom has a plaque on the wall that lies. It says that I should trust God. The kids in my class want me to believe the way they do and sometimes they bully me. They point at the plaque and laugh at me and even point at their money in the lunch line. I just want people to like me, so I have started to pretend to believe in their God. It feels like I am not given a choice.

Id. at 6.

The placement of "In God We Trust" on the money has real effects on real children. In *Brown v. Bd. of Education*, 347 U.S. 483, 488 (1954), this court struck down "the so-called 'separate but equal' doctrine

announced by this Court in *Plessy v. Ferguson*" because being considered as different "solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." 347 U.S. at 494. If that is the case for children treated as "equal," it surely must be the case for children treated as "unequal," especially when that inequality comes with an official stamp of inferiority, evil, and exclusion proclaimed by the federal government on every single coin and currency bill that government forces them to handle should they simply want to make a cash purchase for an ice cream cone or get an allowance.

Petitioners recognize that some will be alienated by the comparison to *Brown*, for Atheists have never been enslaved, lynched, etc. Also, because they have no identifying physical attributes, Atheists don't have to fear being pulled over for "driving while Atheist," or being shunned or discriminated against when they simply walk in a room. But the fact that another minority has suffered (or continues to suffer) greater harms does not diminish the harms suffered by Atheists. Moreover, there are no laws that facially favor Whites. Laws facially favoring Monotheists are pervasive and huge. "In God We Trust" isn't just a phrase that is seen now and again. It is the national motto: an expression of pure Monotheistic supremacy required to be placed on every one of the tens of billions of coins and currency bills produced each year.

Recognizing (once more) that many will immediately close their minds to the coming examples, Petitioners will point out that the following do, in fact, replicate **exactly** what has occurred with Monotheism and Atheists. The only difference is that, unlike White Supremacism, Monotheistic Supremacism – due largely to governmental activity – remains acceptable to the nation's majority.

With that introduction, Petitioners invite those reading this document to recall that the Framers were, for the most part, just as White, male, and Protestant Christian as they were Monotheistic. Thus, simple substitutions of the corresponding racial, gender and religious verbiage when considering the essence of Petitioners' argument will hopefully lead to a grant of this Petition so that "the strength of those universal principles of equality and liberty [can] provide[] the means for resolving [the existing] contradictions between principle and practice."[35] Would any member of this Court permit any of the following:

(1) The intrusion of "under the Male gender" into the Pledge of Allegiance,

(2) A requirement that each soldier agree to "trust in Jesus and in the United States of America,"[36]

(3) Create a race-laced postage stamp (touting "In the Caucasian Race We Trust"),[37]

(4) Mandate the inscription of "In Male Dominion We Trust" on every coin and currency bill,[38]

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[35] Clarence Thomas, *An Afro-American Perspective: Toward a "Plain Reading" of the Constitution -- The Declaration of Independence in Constitutional Interpretation*. 1987 How. L.J. 691, 702 (1987).

[36] *Executive Order 10631—Code of Conduct for Members of the Armed Forces* (Aug 17, 1955), https://www.presidency.ucsb.edu/documents/executive-order-10631-code-conduct-for-members-the-armed-forces-the-united-states. *See also* 3 C.F.R. 266 (1955).

[37] *"In God We Trust" – New Postage Stamp to Carry Message to World*, The Gideon, May 1954, at 24, 25.

[38] Act of July 11, 1955, *supra* note 6, at 4.

(5) Replace the secular *de facto* national motto "E Pluribus Unum" with an official claim: "In Protestant Christianity we trust,"[39]

and then repeatedly reaffirm that motto over the ensuing decades?

To be sure, the many who support official Monotheism will argue that they are only working for "good," since (to them) belief in God is positive and beneficial. But that viewpoint is logically indistinguishable from the viewpoint of Male Chauvinists, those who believe in a hierarchy of races, and devout Protestant Christians, all of whom also believe that their given brand of supremacism provides the greatest benefit to our society. The only difference is that our society has, at long last, ended official governmental favoritism for men, the White race, and Protestant Christianity, whereas unquestionable Monotheistic Supremacism continues to be promoted by our governments.

Kindness and charity are no less part and parcel of Atheism than they are of Monotheism, and belief in God is no more necessary than a Y-chromosome, white skin, or the King James Bible to distinguish good from evil. Unless this Court ends the flagrant governmental preference for belief in God (and the implicit concomitant denigration of Atheism), the organizations, adults and children bringing this case will spend the rest of their lives – as they have spent their lives so far – as second-class citizens.

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[39] Act of July 30, 1956, *supra* note 19, at 8.

Perhaps demonstrating more forcefully than any other way the abject difference between how government approaches disenfranchisement of Atheists and those of other "protected classes" is the comparison between Senate Concurrent Resolution 96 (passed in 2006) and House Resolution 431 (passed the following year) commemorating the 40th anniversary of this Court's decision in *Loving v. Virginia* (discussed *supra* at 14-16). In terms of structure, the two resolutions are identical: a series of "Whereas" clauses looking at the nation's history are followed by a conclusion.

Among the clauses selected for the Senate's resolution to reaffirm the national motto were:

> (1) "[I]n 1694, the phrase 'God preserve our Carolina and the Lords [sic] Proprietors' was engraved on the Carolina cent;"[40]
> (2) The Declaration of Independence referred to a "Creator" and to "divine Providence;"[41]
> (3) "[T]he phrase 'In God We Trust' first appeared on a coin of the United States in 1864;"[42] and
> (4) "[I]n 1955, the phrase 'In God We Trust' was designated as a mandatory phrase to be included on all currency and coins of the United States."[43]

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[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.*

The clauses deemed appropriate in the House resolution commemorating *Loving*'s 40th anniversary included:

> (1) "[T]he first anti-miscegenation law in the United States was enacted in Maryland in 1661;"[44]
> (2) "[T]he Supreme Court held in *Pace v. Alabama* that anti-miscegenation laws were consistent with the equal protection clause of the 14th Amendment as long as the punishments given to both white and black violators are the same;"[45]
> (3) There was a proposed constitutional amendment in 1912 "prohibiting interracial marriage;"[46] and
> (4) In 1948, "38 States still forbade interracial marriage, and 6 did so by State constitutional provision."[47]

Thus, in the two resolutions, there is remarkable similarity among the "Whereas" clauses, which basically recite the history of advocacy for Monotheism (in S. Con. Res. 96) and of advocacy for anti-miscegenation (in H. Res. 431). The conclusions, however, could not have been more disparate.

Recognizing that the nation's anti-miscegenation statutes arose due to the pervasive White Supremacism of our past (and that the enumerated historical facts provide evidence of that White Supremacism), our representatives in 2007 celebrated the fact that this Court had put an end to yet one more relic of institutionalized racial bigotry.

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[44] H. Res. 431, 110th Cong. (2007).
[45] S. Con. Res. 96, 109th Cong. (2006).
[46] *Id.*
[47] *Id.*

The unanimous *Loving* opinion characterized Virginia's anti-miscegenation law as being "directly subversive of the principle of equality," 388 U.S. at 12, and (forty years later in H. Res. 431) Congress praised that assessment.

The Senate's commemoration of the 50th anniversary of the formal adoption of the "In God We Trust" motto, unfortunately, shows that laws "directly subversive of the principle of equality" still hold sway when the issue is Monotheism. Interestingly, the anti-miscegenation law in Virginia was **not** "directly subversive" of the equality principle. On the contrary, it was **in**directly subversive of that principle, since both races were prohibited from (and were penalized identically for) marrying a partner from the other race. Virginia's so-called "Racial Integrity Act" was subversive of the principle of equality because (as seven of eight Supreme Court justices refused to admit just prior to the onset of the 20th century) at times the "real meaning" of legislation is nothing more than what those with political power at times choose to believe – i.e., that they are superior, and others are "inferior and degraded," on the basis of characteristics such as race (or religion). *See Plessy v. Ferguson*, 163 U.S. 537, 560 (1896) (Harlan, J., dissenting).

The Eighth Circuit, at the conclusion of its opinion, actually cited to S. Con. Res. 96. The panel did so to support its claim that the motto exists for "the Government's legitimate goal of honoring religion's role in American life and in the protection of fundamental rights." *New Doe Child #1*, 901 F.3d at 1028. In two ways, that claim, by itself, demonstrates Monotheistic Supremacism. First, the judges overlooked the purely religious nature of what the Senate determined to be "the concept embodied in that motto,"[48] i.e., that:

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[48] S. Con. Res. 96, 109th Cong. (2006).

(1) "the proper role of civil government is derived from the consent of the governed, who are endowed by their Creator with certain unalienable Rights;"[49] and

(2) "the success of civil government relies firmly on the protection of divine Providence."[50]

Both parts of that "concept" require a belief in God and are, therefore, explicitly Monotheistic.

The second demonstration of the Eighth Circuit's Monotheistic Supremacism is more subtle, but also more pernicious. Where the opinion speaks of "honoring religion's role in American life," what it is really alluding to is "honoring Monotheism's role in American life." Of course, that facially sounds much more discriminatory and exclusionary (as well as unconstitutional) than the former version. In fact, it sounds like governmental favoritism for one particular religious view over another … which is, of course, precisely what it is. No one should fault the Eighth Circuit, however, for committing that Monotheistic Supremacist faux pas, since it is one that this Court has engaged in repeatedly. For instance, in *McCreary County* – a case that stands as forcefully as any for the equal respect that government is obligated to show towards all lawful religious views – the authors of the various opinions also fell prey to this unseemly practice. Justice O'Connor wrote, "The Religion Clauses … protect adherents of all religions, as well as those who believe in no religion at all," *McCreary County*, 545 U.S. at 884 (O'Connor, J, concurring), as if an Atheist is some sort of

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[49] *Id.*
[50] *Id.*

orphan in terms of his or her Religion Clause protections. Would any justice ever say that "[t]he Religion Clauses … protect adherents of all religions, as well as those who are Catholic?" Would that not be grossly offensive to Catholics everywhere? Yet, if history is to be the key, the hatred and disregard of Catholics during the founding era (and for more than a century after) was easily the equal of the hatred and disregard of Atheists today.[51]

Even Justice Souter, who throughout his tenure as a Supreme Court justice was steadfast in his efforts to have the First Amendment's Religion Clauses fully and equally protect all lawful religious views, wrote (as the author of the *McCreary County* majority opinion) that:

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

545 U.S. at 860. Petitioners submit that the last clause of this quote is a consequence of the "acceptable status quo" discussed *supra* at 8. Under our Constitution, Atheism is just as much "religion" as is any other system of belief that has opinions – positive or negative – related to any God or gods. Thus, to use "nonreligion" as a synonym for Atheism and "religion" as a synonym for Monotheism is to demonstrate the extent to which Monotheistic Supremacism has become an "acceptable status quo" in this land of supposed religious freedom and equality for every individual.

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[51] *See*, *generally*, Michael Newdow, *Question to Justice Scalia: Does the Establishment Clause Permit the Disregard of Devout Catholics?* 38 Cap. U. L. Rev. 409 (2009) [hereinafter *Question to Justice Scalia*].

This stealth move appears again in the Eighth Circuit's opinion, where it is claimed that the words "In God We Trust" "shed light on the historical understandings of religion's role in American life." *New Doe Child #1*, 901 F.3d at 1022. Even ignoring the fact that the present tense used in that motto proclaims a current religious view rather than one that is historic,[52] the reality is that it is not "religion's role" in anything that is being touted. Rather, it is "Monotheism's role," and (again) the substitution of "religion" for "Monotheism" is nothing but a ploy – whether conscious or not – to have the government reflect Monotheistic Supremacism.

With 98% of our "Founding Fathers" adhering to some form of Protestant Christianity,[53] having "In Protestant Christianity We Trust" on all the money would also, under the Eighth Circuit's logic, "shed light on the historical understanding of religion's role in American life." *New Doe Child #1*, 901 F.3d at 1022. It seems unlikely that many Catholics, Jews, or other non-Protestant Monotheists would agree with that assessment. Rather, they would almost certainly protest the inherent insult brought about by seeing their religious beliefs excluded from the national motto, while finding themselves having to bear and proselytize the majority's contrary beliefs every time they spend or receive a coin or currency bill.

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[52] If it were history with which the motto's advocates were truly concerned, "In God We Trusted" would have been chosen.

[53] *Religious Affiliation of the Founding Fathers of the United States of America*, http://www.adherents.com/gov/Founding_Fathers_Religion.html (last visited Feb. 17, 2019).

The legislature's "goal" in choosing "In God We Trust" to be the nation's motto was not to honor "religion's role in American life," but to honor the role of one specific subset of religion – i.e., Monotheism. This Court can use this case to expose and highlight that key fact so that true religious equality and freedom can thrive under an Establishment Clause jurisprudence that is no longer devoid of the clarity it has been missing for so long.

This case would also be an excellent one to ensure that the claim made by the Eighth Circuit – i.e., that a "historical practices and understandings" analysis is now to be used when Establishment Clause violations are alleged – is correct. Petitioners would first point to Justice Blackmun's statement in *Allegheny County v. Greater Pittsburgh ACLU*, 492 U.S. 573, 605 (1989):

> "The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982). There have been breaches of this command throughout this Nation's history, but they cannot diminish in any way the force of the command.

Similarly, Justice Brennan's counsel that "the historical record is at best ambiguous, and statements can readily be found to support either side of the proposition," *Abington School District v. Schempp*, 374 U.S. 203, 237 (1963) (Brennan, J., concurring), is important to bear in mind, especially since our judges and justices seem to be exceedingly one-sided in their use of that record when the endorsement of Monotheism is at issue. For instance, the

fact that George Washington, at the request of Congress, proclaimed a day of Thanksgiving has been mentioned by those wishing to uphold governmental espousals of Monotheism in at least eight Supreme Court opinions. *See Town of Greece v. Galloway*, 572 U.S. 565, 579-80 (2014); *Van Orden v. Perry*, 545 U.S. 677, 686-87 (2005); *Van Orden v. Perry*, 545 U.S. 677, 686-87 (2005) (Scalia, J., concurring); *McCreary County v. ACLU*, 545 U.S. 844, 893 (2005) (Scalia, J., dissenting); *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 27 (2004) (Rehnquist, C.J., concurring); *Lee v. Weisman*, 505 U.S. 577, 634-35 (1992) (Scalia, J., dissenting); *Wallace v. Jaffree*, 472 U.S. 38, 100-101 (1985) (Rehnquist, J., dissenting); *Lynch v. Donnelly*, 465 U.S. at 675; 465 U.S. at 692-93 (O'Connor, J., concurring). Yet Petitioners have been unable to find a single case noting that John Adams attributed his failure to be re-elected to a second term to his call for a day of fasting and humiliation: "The National Fast, recommended by me turned me out of Office. … This Principle is at the Bottom of the Unpopularity of national Fasts and Thanksgivings."[54] The ex-President stated powerfully and succinctly: "Nothing is more dreaded than the National Government meddling with Religion."[55]

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[54] Letter from John Adams to Benjamin Rush (June 12, 1812), *available at* https://founders.archives.gov/documents/Adams/99-02-02-5807 (last visited Feb. 24, 2019).

[55] *Id*. The ex-President also wrote, "A general Suspicion prevailed that the Presbyterian Church was ambitious and aimed at an Establishment as a National Church. I was represented as a Presbyterian and at the head of this political and ecclesiastical Project. The Secret Whisper ran through them all the sects "Let us have Jefferson, Madison, Burr, any body, whether they be Philosophers, Deists, *or even Atheists*, rather than a Presbyterian President." *Id*. (emphasis added).

Another example of the one-sidedness judges and justices bring to bear in challenges to the Establishment Clause is the discussion of the reenactment by the First Congress of the Northwest Territory Ordinance, 1 Stat. 50 (1789). That statute contained in its Article III that "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." *Id*. at 52. Petitioners are uncertain why this statute is thought to have great significance, especially since (i) there is no mention of "God," (ii) the history of its passage shows little legislative concern with its religious aspects, and (iii) whatever religious aspects were brought within the document were mostly diluted or deleted in the states that were subsequently formed within that territory.[56] Nonetheless, the 1789 passage of that ordinance has been cited to show the permissibility of governmental-endorsed Monotheism by justices in at least seven opinions. *McCreary County v. ACLU*, 545 U.S. 844, 887 (2005) (Scalia, J., dissenting); *City of Boerne v. Flores*, 521 U.S. 507, 539 (1997) (Scalia, J., concurring); *City of Boerne v. Flores*, 521 U.S. 507, 554 (1997) (O'Connor, J., dissenting); *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 862 (1995) (Thomas, J., concurring); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 400 (1993) (Kennedy, J., concurring); *Wallace v. Jaffree*, 472 U.S. 38, 100 (1985) (Rehnquist, J., dissenting); *Engel v. Vitale*, 370 U.S. 421, 443 n.9 (1962) (Douglas, J., concurring).

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[56] See *Question to Justice Scalia*, *supra* at 29, note 51 (38 Cap. U. L. Rev. at 46-52).

Those citations to the Northwest Territory Ordinance can be contrasted with what is arguably THE most probative historical fact in regard to the intent and understanding of the First Congress. To begin with, it is the very first statute of the United States of America, which, in itself, commands attention. Entitled *An Act to regulate the Time and Manner of administering certain Oaths*[57] (hereinafter "Oath Act"), it specifically has to do with the first "religion clause" in the Constitution: Article VI, clause 3, which states that every federal and state legislative, executive and judicial official is required to take an oath, "but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States." *Id*.

The history of that Oath Act is that there were, of course, no legislators to create an oath until the government came into being, and the government could not come into being until there were legislators who took an oath. Thus, meeting in New York City, the members of the House of Representatives took their oaths in a format that mirrored that of the State of New York, namely:

> I, A B, a Representative of the United States in the Congress thereof, do solemnly swear (or affirm, as the case may be) in the presence of Almighty GOD, that I will support the Constitution of the United States. So help me God."[58]

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[57] Act of June 1, 1789, ch. 1, § 1, 1 Stat. 23–24 (1789).
[58] 1 Annals of Cong. 101 (Joseph Gales ed., 1834).

Recognizing that this oath was temporary and that deliberations were required in order to choose a permanent oath, it was "*Ordered*, That leave be given to bring in a bill to regulate the taking the oath or affirmation prescribed by the sixth article of the Constitution; and that Messrs. WHITE, MADISON, TRUMBULL, GILMAN, AND CADWALADER, do prepare and bring in the same."[59] Although there is no record of this committee's deliberations, there is record that the deliberations were made pursuant to "the third clause of the sixth article of the Constitution" (i.e., the article containing the "no religious test" language).[60] Following the command of that clause, the two references to God – which had already been recited by the first congressional oath-takers – were affirmatively removed. This bears repeating: **THE VERY FIRST LAW OF THE UNITED STATES, PROMULGATED PURSUANT TO THE CONSTITUTION'S NO RELIGIOUS TEST CLAUSE, INVOLVED THE AFFIRMATIVE REMOVAL OF THE TWO REFERENCES TO GOD THAT WERE IN THE OATH ALREADY TAKEN BY MEMBERS OF THE FIRST CONGRESS.** After being approved in both houses of Congress, President Washington, on June 1, 1789, signed into law "Statute I," which set forth a completely secular oath of office:

> I, A. B. do solemnly swear or affirm (as the case may be) that I will support the Constitution of the United States.[61]

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[59] *Id*.
[60] *Id*.
[61] Act of June 1, 1789, ch. 1, § 1, 1 Stat. 23–24 (1789).

Incredibly, this extraordinarily on-point historical fact has apparently **never** been mentioned by any federal or state court in any Establishment Clause case!

Also up for consideration (should the Court grant certiorari) is the neutrality principle, alluded to in more than forty of this Court's majority opinions.[62] As already

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[62] *See Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2020 (2017); *Van Orden v. Perry*, 545 U.S. 677, 684 (2005); *McCreary County v. ACLU*, 545 U.S. 844, 860 (2005); *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005); *Zelman v. Simmons-Harris*, 536 U.S. 639, 652 (2002); *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 114 (2001); *Tangipahoa Parish Bd. of Educ. v. Freiler*, 530 U.S. 1251, 1254 (2000); *Mitchell v. Helms*, 530 U.S. 793, 809 (2000); *Agostini v. Felton*, 521 U.S. 203, 234 (1997); *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 839 (1995); *Bd. of Educ. v. Grumet*, 512 U.S. 687, 696 (1994); *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1, 8 (1993); *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 533 (1993); *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384, 393 (1993); *Bd. of Educ. of Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 251 (1990); *Jimmy Swaggart Ministries v. Board of Equalization*, 493 U.S. 378, 384 (1990); *Hernandez v. Comm'r, 490 U.S. 680*, 712 (1989); *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 13 (1989); *Bowen v. Kendrick*, 487 U.S. 589, 609 (1988); *Corporation of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 335 (1987); *Hobbie v. Unemployment Appeals Com.*, 480 U.S. 136, 145 (1987); *School Dist. v. Ball*, 473 U.S. 373, 382 (1985); *Wallace v. Jaffree*, 472 U.S. 38, 60 (1985); *Mueller v. Allen*, 463 U.S. 388, 398-99 (1983) ("a program ... that neutrally provides state assistance to a broad spectrum of citizens is not readily subject to challenge under the Establishment Clause."); *Bob Jones Univ. v. United States*, 461 U.S. 574, 604 (1983); *Larkin v. Grendel's Den*, 459 U.S. 116, 125 (1982); *Larson v. Valente*, 456 U.S. 228, 246 (1982); *Widmar v. Vincent*, 454 U.S. 263, 274 (1981); *Thomas v. Review Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707, 720 (1981); *McDaniel v. Paty*, 435 U.S. 618, 629 (1978); *Wolman v. Walter*, 433 U.S. 229 (1977); *Buckley v. Valeo*, 424 U.S. 1, 92 (1976); *Meek v. Pittenger*, 421 U.S. 349, 372 (1975); *Johnson v. Robison*, 415 U.S. 361, 385 (1974); *Comm. for Public Educ. &*

mentioned, neutrality has been deemed "the touchstone" for analyzing Establishment Clause challenges. *McCreary County*, 545 U.S. at 860. Clearly, as between those who trust in God and those who believe that trusting in God is totally misguided, it is impossible to seriously contend that a national motto that states "In God We Trust" – placed on every one of the tens of billions of coins and currency bills produced each year by the government – is "neutral." Accordingly, under the neutrality "touchstone," the "In God We Trust" inscriptions are unquestionably unconstitutional. The fact that three judges of the Eighth Circuit ruled in a contrary manner suggests that a grant of certiorari is necessary so that the lower courts can either be told that neutrality is no longer a key factor in Establishment Clause cases or be instructed on the meaning of the word "touchstone."

Religious Liberty v. Nyquist, 413 U.S. 756, 792-93 (1973); *Norwood v. Harrison*, 413 U.S. 455, 472 (1973); *Wisconsin v. Yoder*, 406 U.S. 205, 220 (1972); *Tilton v. Richardson*, 403 U.S. 672, 688 (1971); *Lemon v. Kurtzman*, 403 U.S. 602, 618 (1971); *Gillette v. United States*, 401 U.S. 437, 449 (1971); *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); *Sherbert v. Verner*, 373 U.S. 398, 409 (1963); *Everson v. Bd. of Educ.*, 330 U.S. 1 (1947).

CONCLUSION

Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

Respectfully submitted,

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