2016

How Including "In God We Trust" on United States Currency Violates the Religious Freedom Restoration Act and the Free Exercise Clause

Broc Gullett

How Including "In God We Trust" on United States Currency Violates the Religious Freedom Restoration Act and the Free Exercise Clause

by

Broc Gullett

Submitted in partial fulfillment of the requirements of the
King Scholar Program
Michigan State University College of Law
Under the direction of
Professor Frank Ravitch
Spring, 2016

INTRODUCTION

Congress enacted 36 U.S.C. § 186, "An Act to provide that all United States Currency shall bear the inscription 'In God We Trust'"[1] (hereinafter referred to as the "Inscription Mandate" or the "Mandate") in 1955, and it has been a source of divisiveness ever since. Consequently, many Atheists, humanists, and other secular groups have challenged the Inscription Mandate as unconstitutional.[2] The obvious approach has been to allege that the Mandate violates the Establishment Clause of the First Amendment because the government is endorsing Christianity, or, at the very least, a monotheistic God.[3] Courts have consistently dismissed such challenges, reasoning that by inscribing "In God We Trust" on currency, the United States has not shown a preference for any particular religion but has simply paid homage to its religious history.[4] However, since Congress passed the Religious Freedom Restoration Act (RFRA)[5] in 1994, challengers have started claiming that the Inscription Mandate violates RFRA. Still, so far, these challenges have also failed because courts have found claimants' beliefs to be unreasonable.[6]

Nevertheless, there are still strong arguments that the Inscription Mandate violates RFRA and the First Amendment. The Supreme Court held in *Burwell v. Hobby Lobby* that courts have

---

[1] Act of July 11, 1955, ch. 303, Pub. L. 84-140, 69 Stat. 290. The Act is now codified at 31 U.S.C. §§ 5112(d)(1), 5114(b).
[2] *See* Elizabeth Platt, *Atheist Challenges "In God We Trust" . . . Again*, COLUMBIA LAW SCHOOL: PUBLIC RIGHTS PRIVATE CONSCIENCE PROJECT (May 3, 2016), http://blogs.law.columbia.edu/publicrightsprivateconscience/2016/01/15/atheist-challenges-in-god-we-trust-again/ (discussing the various challenges to the Inscription Mandate.
[3] *See id.*
[4] *See, e.g.*, *Newdow v. Peterson*, 753 F.3d 105 (2d Cir. 2014).
[5] 42 U.S.C. § 2000bb (1994).
[6] *See Newdow*, 753 F.3d at 107-10 (finding in favor of the defendants in the most recent challenge to the Inscription Mandate).

"no business" inquiring into the reasonableness of a RFRA plaintiff's professed belief.[7] Moreover, the Court in *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah* explained that a law violates the Free Exercise Clause for lack of religious neutrality when the motivation for the law is hostility toward a particular religion.[8] Thus, there are two distinct reasons the Inscription Mandate violates the law: (1) Firstly, based on the low bar the Court set for RFRA plaintiffs under *Hobby Lobby*, the Inscription Mandate causes a substantial burden under RFRA[9]; (2) secondly, under *Lukumi Babalu*, the Mandate violates the Free Exercise Clause[10] for lack of religious neutrality because it was motivated by hostility for Atheism during the Cold War.

Part I of this Article provides a brief overview of courts' analyses of previous challenges to the Inscription Mandate. Part II provides the jurisprudential development of the Free Exercise Clause and RFRA. Part III argues that the Inscription Mandate creates a substantial burden under RFRA—based in large part on the Court's holding in *Hobby Lobby*. Part IV illustrates *Lukumi Babalu* and provides the framework for analyzing whether a law violates the Free Exercise Clause for a lack of neutrality. And Part V argues the Inscription Mandate lacks neutrality and therefore violates the Free Exercise Clause because its passage was motivated by hostility for Atheism during the Cold War.

I. PREVIOUS ATTEMPTS TO ELIMINATE THE INSCRIPTION MANDATE

There have been some attempts to have the inscription of "In God We Trust"

[7] 134 S.Ct. 2751 (2014).
[8] 508 U.S. 520. 540 (1993).
[9] I will not address RFRA's compelling interest or least restrictive means prongs because the first and most important showing for challengers to make is the substantial burden.
[10] I will not address the compelling interest or narrowly tailored prongs that would be triggered with a finding that the Inscription Mandate lacks neutrality. The purpose of this Article is simply to show the initial infringement, an obstacle which plaintiffs are yet to overcome.

removed from U.S. currency.[11] Michael Newdow, a prominent advocate for the interests of Atheists and other secular thinkers, plans to bring a lawsuit in every federal circuit, hoping that at least one of the circuits will agree with his position that U.S. currency should not bear such inscription.[12] So far, he has lost these cases in the Ninth and Second Circuits, where he has generally argued that the Inscription Mandate violates the Establishment Clause, the Free Exercise Clause, and RFRA.[13]

In *Newdow v. Lefevre*, Newdow sued the federal government under the Establishment Clause and RFRA.[14] Newdow represented the First Amendmist Church of True Science (FACTS), the members of which are Atheists '"whose religious beliefs are specifically and explicitly based on the idea that there is no god.'"[15] Newdow argued that having "In God We Trust" as our national motto and requiring its inscription on currency violates the Establishment Clause and RFRA.[16] Newdow argued that because FACTS prohibits members from carrying currency bearing the motto "In God We Trust," such inscription on U.S. currency substantially burdened any religious exercise adherents tried to conduct that required cash payments—for example, the "purchase of church attire, ingredients for the church libation, and books for the church library; travel for religious

[11] *See Newdow v. Lefevre*, 598 F.3d 638 (9th Cir. 2010); *Newdow v. Peterson*, 753 F.3d 105 (2d Cir. 2014); Complaint, *New Doe Child #1 v. The Congress of the United States*, (N.D. Ohio 2016) (5:16-cv-00059).
[12] See Hermant Mehta, *Michael Newdow Has Filed Another Lawsuit to Remove "In God We Trust" from U.S. Currency*, PATHEOS: FRIENDLY ATHEIST, (May 3, 2016), http://www.patheos.com/blogs/friendlyatheist/2016/01/12/michael-newdow-has-filed-another-lawsuit-to-remove-in-god-we-trust-from-u-s-currency/.
[13] *See Lefevre*, 598 F.3d at 641; *Peterson*, 753 F.3d at 107-08. In January of this year, Newdow sued once again—this time in the Sixth Circuit—but the court is yet to adjudicate this action. *See* Complaint, *New Doe Child #1 v. The Congress of the United States*, (N.D. Ohio 2016) (5:16-cv-00059).
[14] *Lefevre*, 598 F.3d at 641.
[15] *Id.* at 640-41.
[16] *Id.* at 640.

purposes to locations that require cash payments; and rais[ing] funds through cash donations."[17] The district court dismissed the action for failure to state a claim.[18]

Affirming the district court, the Ninth Circuit Court of Appeals dismissed the action in its entirety for failure to state a claim.[19] The Ninth Circuit explained that Newdow's Establishment Clause claim was foreclosed by *Aronow v. United States*[20]—a case in which the Ninth Circuit held that the inscription of "In God We Trust" on U.S. currency "is of a patriotic and ceremonial character and bears no true resemblance to a governmental sponsorship of religious exercise."[21] Finally, the court dismissed Newdow's RFRA claim, reasoning—rather perplexingly—that there could only be a substantial burden if the motto represents purely religious dogma that constitutes a government endorsement of religion.[22] Because the endorsement question was already foreclosed by *Aranow*, the court held that Newdow's RFRA claim was also foreclosed.[23]

In *Newdow v. Peterson*, Newdow once again sued to have the inscription of "In God We Trust" removed from U.S. currency.[24] This time, Newdow made claims under the Establishment Clause, the Free Exercise Clause, and RFRA.[25] Newdow and other secular plaintiffs claimed that using the currency violated their religious beliefs because it attributed to them a perceived falsehood and forced them to proselytize.[26] The Second Circuit found no Establishment Clause violation, reasoning that the Inscription Mandate

---

[17] *Id.* at 645.
[18] *Id.* at 639-40.
[19] *Id.*
[20] 432 F.2d 242 (9th Cir. 1970).
[21] *Id.* at 243.
[22] *Id.*
[23] *Lefevre*, 598 F.3d at 646.
[24] *Newdow v. Peterson*, 753 F.3d 105 (2d Cir. 2014).
[25] *Id.* at 106.
[26] *Id.* at 109.

is not an endorsement of religion, but a '"reference to our religious heritage.'"[27] Next, the court combined the Free Exercise claim with the RFRA claim, thereby providing no analysis of how the motto may violate the Free Exercise Clause.[28] The court found no substantial burden under RFRA,[29] reasoning that the "carrying of currency, which is fungible and not publicly displayed, does not implicate concerns that its bearer will be forced to proclaim a viewpoint contrary to his own."[30]

While Newdow has so far failed in two attempts at having "In God We Trust" removed from U.S. currency, there is still hope. Circuits other than the Second and Ninth may be more receptive to Newdow's arguments. Moreover, there is a strong argument that the Court has overruled the decisions of the Second and Ninth Circuits with its holding in *Hobby Lobby*.[31] But first, this Article must digress.

II. THE FREE EXERCISE CLAUSE AND RFRA

An explanation of the historical progression and current state of Free Exercise jurisprudence is required before explaining why "In God We Trust" should be removed from U.S. currency. The First Amendment to the United States Constitution protects individuals' freedom of religious exercise.[32] While the Free Exercise Clause originally provided robust protection for religious exercise, that protection eroded until 1990, when the Court held in *Employment Division v. Smith* that rules of general applicability burdening religious exercise are constitutional so long as they pass rational basis

[27] *Id.* at 108 (quoting *Lynch v. Donnelly*, 465 U.S. 668, 676 (1984).
[28] *Id.* at 108-09.
[29] *Id.* at 109.
[30] *Id.* at 109-10.
[31] 134 S.Ct. 2751 (2014) (holding that courts have "no business" looking into the reasonableness of a RFRA claimant's beliefs).
[32] U.S. CONST. Amend. I.

review.[33] In response to this erosion, Congress passed RFRA in 1994, which provided that any law substantially burdening one's religious exercise can only be justified if the government shows that the challenged law is the least restrictive means of advancing a compelling government interest.[34]

A. Free Exercise Cases

In *Sherbert v. Verner*, the Supreme Court held that laws burdening religious exercise should be reviewed with strict scrutiny.[35] After Adell Sherbert lost her job because her newfound religion prohibited her from working on Saturdays,[36] South Carolina rejected her application for unemployment benefits, reasoning that she failed to accept "suitable" employment that was offered to her.[37] When Sherbert's challenge to this decision reached the Supreme Court, the Court explained that when "the purpose or effect of a law is to impede the observance of one or all religions or is to discriminate invidiously between religions, that law is constitutionally invalid even though the burden may be characterized as being only indirect."[38] The Court held that South Carolina's disqualification burdened Sherbert's religious rights by forcing her to abandon one of the precepts of her religion to receive the benefits.[39] Because the Court found no compelling interest when it reviewed the statute with strict scrutiny, it held that the statute was unconstitutional.[40]

---

[33] 494 U.S. 872, 890 (1990).
[34] 42 U.S.C. §§ 2000bb (1994).
[35] *Sherbert*, 374 U.S. at 400.
[36] *Id.* at 401.
[37] *Id.*
[38] *Id.* at 404.
[39] *Id.* The Court further held that the Unemployment Statute was discriminatory because it provided an exception that prevented workers from being disqualified if they refused to work on Sundays. *Id.*
[40] *Id.* at 407-08.

In 1972, the Court further bolstered constitutional protection for religious exercise with its decision in *Wisconsin v. Yoder*.[41] In *Yoder,* Amish plaintiffs challenged a Wisconsin statute that made high-school attendance compulsory because they believed high-school attendance was contrary to the Amish religion and way of life.[42] Specifically, they believed that sending their children to high school would expose them to danger of condemnation by the church community and that it would endanger their own salvation and the salvation of their children.[43] The Court re-affirmed that strict scrutiny applied to laws burdening religious exercise, stating that "only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion."[44] The Court recognized the feared impact of making attendance mandatory for high school children—that is, although attending secondary school did not directly conflict with the Amish religion, it would have a substantial negative impact on the core values of the Amish community.[45] The Court therefore granted the parents an exemption from the law.[46] Significantly, the Court did not find a burden to religion based on any coercion by the Wisconsin law; rather, the Court recognized the indirect negative effects that public schooling had on the values and culture of the Amish religion.[47]

In 1972, the Court in *Bowen v. Roy* began retreating from its application of strict scrutiny for laws burdening religious exercise.[48] In *Bowen,* Stephen Roy and his family were denied certain welfare benefits when they refused to provide a social security number for their two-year-

[41] 406 U.S. 205 (1972)
[42] *Id.* at 209.
[43] *Id.*
[44] *Id.* at 215.
[45] *Id.* at 218.
[46] *Id.* at 209.
[47] *Id.*; *see* S. Alan Ray, Lyng v. *Northwest Cemetery Protective Association: Government Property Rights and the Free Exercise Clause*, 16 HASTING CONST. L.Q. 483, 500 (1989).
[48] 476 U.S. 693 (1986) (discussing the Court's analysis in *Yoder*).

old daughter, claiming that assigning her a social-security number conflicted with their Native American beliefs.[49] The Court departed from the rights-protective standard from *Sherbert* and announced the "coercion test," which required a claimant proceeding under the Free Exercise Clause to demonstrate that the government compelled or coerced the claimant into acting inconsistent with the claimant's religious beliefs.[50] The Court then held that Roy could not prevail on challenging the government's use of a social security number to identify his daughter because the practice constituted the government's "internal affairs" and therefore had no effect on Roy's freedom to exercise his religion.[51] In dicta, the Court nudged Free Exercise jurisprudence even further from the strict scrutiny featured in *Sherbert*, explaining that a non-discriminatory law, neutral and uniform in its application, passes constitutional scrutiny if it is a "reasonable means of promoting a legitimate public interest."[52]

Finally, in *Employment Division v. Smith*, the Court significantly limited the reach of the strict scrutiny featured in *Sherbert*.[53] In *Smith*, an Oregon statute denied welfare benefits to two members of the Native American Church because they had ingested peyote during a religious ceremony.[54] Writing for the Majority, Justice Scalia announced that *Sherbert* does not apply to laws of general applicability; put differently, the Court announced that *Sherbert* does not apply

---

[49] *Bowen v. Roy*, 476 U.S. 693, 696 (1986).
[50] *Id.* at 700 ("The Free Exercise Clause affords an individual protection against certain forms of governmental compulsion; it does not afford an individual a right to dictate the conduct of the Government's internal procedures.").
[51] *Id.* at 699-700.
[52] *Id.* at 707-08. The pendulum swinging away from protection of religious freedom, the Court took it a step further in *Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439 (1988), by holding that free exercise challenges to the government land-use decisions required application of the coercion test set forth in Bowen. *See also* Jonathan Knapp, Making Snow in the Desert: Defining a Substantial Burden under RFRA, 36 ECOLOGY LAW QUARTERLY 259, 273 (2009).
[53] 494 U.S. 872 (1990).
[54] *Id.* at 874.

to laws that are not "aimed at the promotion or restriction of religious beliefs."[55] Finding that the law in question was a law of general applicability, the Court held that the Constitution did not require a religious exemption for the two Native American plaintiffs.[56] While the Court attempted to distinguish, rather than overrule *Sherbert*, the dramatic departure from constitutional protection of religious rights prompted a strong response from Congress.[57]

The decision in *Smith* was met with much condemnation.[58] For example, in an open letter, Professors Edward M. Gaffney, Douglas Laycock, and Michael W. McConnell called the decision a "sweeping disaster for religious liberty."[59] Congressman Stephen J. Solarz admonished the decision, stating, "With the stroke of a pen, the Supreme Court has virtually removed religious freedom from the Bill of Rights."[60] Kim Yelton—then-director of government relations of Americans United for Separation of Church and State—opined, "There's really no such thing as free exercise (of religion) anymore . . . ."[61] And Rabbi David N. Saperstein said the decision was "the most dangerous attack on our civil rights in this country since the Dred Scott decision in the 1850s declared that blacks were not fully human beings."[62] In response to the

---

[55] *Id.* at 879, 884-85.
[56] *Id.* at 890.
[57] See Knapp, *supra* note 52, at 273.
[58] James E. Ryan, Note, *Smith and the Religious Freedom Restoration Act: An Iconoclastic Assessment*, 78 VA. L. REV. 1407, 1409 (1992).
[59] Edward M. Gaffney, Douglas Laycock & Michael W. McConnell, An Open Letter to the Religious Community, First Things, March 1991, at 44, 44.
[60] Religious Freedom Restoration Act of 1990: Hearings on H.R. 5377 Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary, 101st Cong., 2d Sess. 18 (1990).
[61] Robert P. Hey, House to Weigh Bill on Worship, Christian Sci. Monitor, Sept. 26, 1990, at 8 (quoting Kim Yelton).
[62] Ed Briggs, *Rabbi Deplores Supreme Court Trend on Freedom of Worship*, WASH. POST, Oct. 26, 1991, at B6 (quoting Rabbi David N. Saperstein).

overwhelming criticism, four years after *Smith*, Congress enacted the RFRA, which effectively reversed the Court's decision in *Smith*.[63]

B. Enter RFRA

The Religious Freedom Restoration Act begins with congressional findings and explanations of RFRA's purpose.[64] Congress explained in RFRA that the Court was incorrect in *Smith* because laws of general applicability may burden religious exercise just as egregiously as laws intended to burden religious exercise.[65] Congress further explained that "the compelling interest test as set forth in prior federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests."[66] Finally, Congress stated that the purpose of RFRA was to 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."[67]

The substantive provisions of RFRA essentially restore the strict scrutiny featured in *Sherbert*.[68] Specifically, 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."[69] However, RFRA does not include a definition of "substantial burden"; rather, the accompanying House and Senate Reports state that

[63] *See* Knapp, *supra* note 52, at 278.
[64] *See* Knapp, *supra* note 52, at 279.
[65] 42 U.S.C. §§ 2000bb(a)(2), 2000bb(a)(4)-(5) (2006).
[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] *Id.*

the Judiciary Committee expected courts to look to Free Exercise cases decided before *Smith* to determine whether a claimant's religious practice was substantially burdened.[70]

B. *Hobby Lobby*

The recent Supreme Court case of *Burwell v. Hobby Lobby* illuminates the current meaning of "substantial burden" under RFRA. In *Hobby Lobby*, three for-profit, closely held corporations, along with individuals who owned those corporations, sued the Secretary of Health and Human Services and other government officials under RFRA.[71] The plaintiffs sought declaratory and injunctive relief from regulations imposed by the Patient Protection and Affordable Care Act (ACA).[72] Believing that life begins at conception and that abortion is morally wrong, the plaintiffs alleged that the mandate requiring them to provide health insurance covering abortion-inducing drugs substantially burdened their religious exercise under RFRA.[73]

The Court had "little trouble" concluding that the ACA mandate caused a substantial burden under RFRA.[74] The Court explained that because the mandate forced the plaintiffs to purchase health insurance that covered drugs that could result in the destruction of an embryo, the mandate demanded the plaintiffs engage in conduct that seriously violated their religious beliefs.[75] The defendants and the dissent argued that the mere act of providing insurance was sufficiently attenuated—and therefore not immoral—because the insurance coverage would not itself result in the destruction of an

[70] Senate Comm. On the Judiciary, Religious Freedom Restoration Act of 1993, S. Rep. No. 111, 103rd Cong., 1st Sess., at 8-9 (1993) [hereinafter Senate Report]; House Comm. On the Judiciary, Religious Freedom Restoration Act of 1993, H. Rep. No. 88, 103d Cong., 1st Sess. at 6 (1993).
[71] *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2759 (2014).
[72] *Id.*
[73] *Id.*
[74] *Id.* at 2775.
[75] *Id.*

embryo and that such destruction would only occur if an employee chose to take advantage of the insurance and use it for a so-called abortion.[76] However, the Court rejected this argument, emphasizing that courts must not presume to determine the plausibility of a particular belief.[77] The Court thus found that it had to accept the plaintiffs' belief that the insurance coverage was sufficiently connected to the destruction of an embryo such that the act of providing the health insurance was immoral and therefore a substantial burden.[78]

Thus, Free Exercise jurisprudence has come full circle. While the Free Exercise Clause used to provide robust protection for religious exercise, that protection was greatly diminished in *Smith*. However, Congress's enactment of RFRA restored great protection for religious exercise, and the Court's decision in *Hobby Lobby* bolstered its protection even more. Consequently, RFRA is now a powerful tool that Atheists can use to argue for the removal of "In God We Trust" from U.S. currency.

III. The Inscription Mandate Causes a Substantial Burden

The Inscription Mandate substantially burdens the religious exercise of Atheists and other non-monotheists under RFRA. The Ninth Circuit misanalysed Newdow's RFRA claim in *Newdow v. Lefevre* because it required an Establishment Clause violation as a threshold finding.[79] Moreover, the Second Circuit misanalysed Newdow's RFRA claim in *Newdow v. Peterson* because it found that a lack of any compelled speech meant there could be no substantial burden.[80] Further, the Supreme Court's holding in *Hobby*

[76] *Id.* at 2777.
[77] *Id.* at 2778.
[78] *Id.*
[79] *Newdow v. Lefevre*, 598 F.3d 638, 644-45 (2010).
[80] *Newdow v. Peterson*, 753 F.3d 105, 108-109 (2d Cir. 2014).

Lobby effectively overrules both of these decisions because it prohibits courts from looking into the reasonableness of RFRA claimants' professed beliefs.[81]

A. *Newdow v. Lefevre*

In *Newdow v. Lefevre*, the Ninth Circuit did not apply RFRA's framework but instead required an Establishment Clause violation as a prerequisite to a RFRA violation.[82] The court determined that the phrase could not have burdened Newdow's religious exercise unless it was a "purely religious dogma" and constituted a governmental establishment of religion.[83] However, the court had already held in *Arronow*—a prior Establishment Clause case—that the phrase's inscription on U.S. currency is not an establishment of religion.[84] The court therefore held that *Arranow* foreclosed the possibility that the inscription of the phrase was an establishment of religion, and it followed—the court reasoned—that the inscription did not cause a substantial burden under RFRA.[85]

Contrary to the court's reasoning, no part of RFRA suggests that courts should look into whether a challenged practice constitutes the government's endorsement of religion. On the contrary, the impetus for RFRA was the need for protection from laws of general applicability—or, laws having nothing to do with religion—that nonetheless burden religious exercise.[86] Thus, the Ninth Circuit egregiously erred by holding that a lack of an Establishment Clause violation foreclosed Newdow's RFRA claim.[87] Indeed,

---

[81] *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751, 2778 (2014).
[82] *Newdow v. Lefevre*, 598 F.3d 638, 644-45 (2010).
[83] *Id.* at 646.
[84] *Aronow v. United States*, 432 F.2d 242 (9th Cir. 1970).
[85] *Lefevre*, 598 F.3d at 644-45.
[86] 42 U.S.C. §§ 2000bb.
[87] *Lefevre*, 598 F.3d at 644-46.

the Ninth Circuit's logic would create a framework where an Establishment Clause violation would be a threshold requirement for a RFRA challenge, which is certainly not what Congress envisioned when it enacted RFRA.

Moreover, the Supreme Court implicitly overruled *Lefevre* in *Hobby Lobby*.[88] The court in *Lefevre* found that plaintiffs carrying money inscribed with the phrase "In God We Trust" was not immoral—and therefore not a substantial burden to their religious exercise—because it was not "purely religious dogma."[89] However, in *Hobby Lobby*, the Supreme Court explained that "federal courts have no business addressing" the question of "whether the religious belief asserted in a RFRA case is reasonable."[90] Based on this principle, the Ninth Circuit had "no business" addressing whether Newdow's beliefs were reasonable. The court therefore erred when it determined that Newdow's belief—that it was immoral to use currency inscribed with "In God We Trust"—was unreasonable because the phrase was not purely religious dogma.

B. *Newdow v. Peterson*

In *Newdow v. Peterson*, the Second Circuit erred because it erroneously imported compelled-speech doctrine into its substantial-burden analysis.[91] The court focused its substantial-burden analysis on whether the law compelled speech—or, whether using currency inscribed with the phrase "In God We Trust" compelled plaintiffs to adopt the phrase as their own.[92] Rather than looking at whether the Inscription Mandate burdened religious exercise, the court compared it to the statute featured in *Wooley v. Maynard*—a case where the Supreme Court

[88] *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751, 2778 (2014).
[89] *Lefevre*, 598 F.3d at 644-46.
[90] *Hobby Lobby*, 134 S.Ct. at 2777.
[91] *Newdow v. Peterson*, 753 F.3d 105, 108-109 (2d Cir. 2014).
[92] *Id.*

held that a statute requiring the phrase "Live Free or Die" on license plates violated the First Amendment because it compelled the plaintiffs to profess a political message with which they disagreed.[93] The second circuit distinguished *Wooley*, explaining that unlike a license plate, money is usually carried in a user's pocket and not displayed to the public.[94] The court thus held that carrying the currency was not a substantial burden because it did not force Newdow to "proclaim a viewpoint contrary to his own."[95] The court was wrong to find that no compelled speech meant no substantial burden, as the protections RFRA offers are much broader than mere protection from compelled speech.

In focusing its brief analysis on compelled speech, the court failed to address all of the plaintiffs' arguments and failed to properly apply RFRA's framework.[96] Specifically, focusing on the public's perception of plaintiffs, the court did not consider the personal effect that the currency had on those carrying the money—namely, carrying money was a practice inconsistent with their religion because it forced them constantly to encounter a phrase that was the antitheses of their religion.[97] Moreover, the court did not so much as attempt to address Newdow's argument that using the money forced Atheists to proselytize.[98] Thus, the Second Circuit erred because it failed to address various ways in which the plaintiffs' religious exercise was substantially burdened.

Further, the Supreme Court's *Hobby Lobby* decision implicitly overruled *Peterson*.[99] In *Hobby Lobby*, the government argued that buying health insurance that covers abortion-inducing

[93] 430 U.S. 705 (1977).
[94] *Peterson*, 753 F.3d at 109.
[95] *Id.*
[96] *Id.* at 108-09.
[97] *Id.*
[98] *Id.*
[99] *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 1751 (2014).

drugs is sufficiently attenuated to prevent the abortion from being attributed to the plaintiffs.[100] The Court rejected this argument, reasoning that courts have "no business" looking into the reasonableness of a religious belief.[101] Similarly, in *Peterson*, not only did the court inquire into the reasonableness of the plaintiffs' beliefs, but the court's holding hinged on its finding that plaintiffs' beliefs were unreasonable.[102] Similar to the government's erroneous argument in *Hobby Lobby*, the court found that because money constantly changes hands and is typically hidden away in a purse or pocket, it is not "readily associated" with a person using it.[103] With such a tenuous association, the court reasoned, there are no concerns that the bearer of such currency "will be forced to proclaim a viewpoint contrary to his own."[104] The court thus erred because its reasoning is analogous with the government's erroneous reasoning in *Hobby Lobby*.

RFRA is one of the most likely means of having "In God We Trust" removed from U.S. currency. While two courts have already held that the Inscription Mandate does not substantially burden the religious exercise of Atheists, these courts misanalysed the substantial burden prong.[105] Moreover, *Hobby Lobby* makes the reasoning the courts used to dismiss the claims untenable.[106] In any case, in addition to violating RFRA, the Inscription Mandate also violates the Free Exercise Clause because it lacks religious neutrality.

IV. NEUTRALITY AND THE FREE EXERCISE CLAUSE

[100] *Id.* at 1777-78.
[101] *Id.*
[102] *Peterson*, 753 F.3d at 108-09.
[103] *Id.* at 109.
[104] *Id.*
[105] *See supra* Part III.
[106] *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 1751 (2014)

A law violates the Free Exercise Clause if it lacks religious neutrality.[107] The Supreme Court found in *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah* that city ordinances violated the Free Exercise Clause because they were motivated by hostility for the Santeria religion.[108] To come to this conclusion, the Court looked at the face of the ordinances, the effect of the ordinances, and the overall context in which the ordinances were passed.[109] The Court held that the ordinances were unconstitutional because their lack of neutrality violated the Free Exercise Clause.[110]

A. *Lukumi Babalu* Factual Background

In *Lukumi Babalu*, the Church of Lukumi Babalu Aye practiced the Santeria religion.[111] The religion teaches devotion to the "orishas," which are spirits that aid and energize individuals to fulfill their individual destiny from God.[112] One of the principal forms of devotion is an animal sacrifice.[113] Consequently, those practicing Santeria sacrifice animals—including chickens, pigeons, doves, ducks, guinea pigs, goats, sheep, and turtles—at various significant life events.[114]

In April of 1987, the Church of the Lukumi Babalu Aye leased land in the city of Hialeah, Florida.[115] The Church announced that it was planning to construct a house of

---

[107] *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993).
[108] *Id.*
[109] *Id.* at 533 ("There are, of course, many ways of demonstrating that the object or purpose of a law is the suppression of religion or religious conduct.").
[110] *Id.* at 541 ("In sum, the neutrality inquiry leads to one conclusion: The ordinances had as their object the suppression of religion.").
[111] *Id.* at 524.
[112] *Id.*
[113] *Id.*
[114] *Id.* at 525 (Santeria practitioners use animal sacrifice "at birth, marriage, and death rites, for the cure of the sick for the initiation of new members and priests, and during an annual celebration").
[115] *Id.* at 526.

worship, school, cultural center, and museum.[116] Having faced religious persecution in Cuba, the leader of the Church announced his plan to bring the practice of the Santeria faith and its ritual of animal sacrifice out into the open.[117] Though the process was somewhat difficult, the Church completed the process of obtaining the necessary permits and licensure by early August of 1987.[118]

Many members of the Hialeah community found the prospect of a Santeria church practicing in their community disturbing.[119] The city council of Hialeah held an emergency public session on June 9, 1987, where it began taking legislative action restricting animal sacrifice in the community.[120] It adopted Resolution 87–66, which stated that the citizens had a "concern" that "certain religions may propose to engage in practices which are inconsistent with public morals, peace or safety."[121]

In September of 1987, the city council passed substantive ordinances that effectively prohibited animal sacrifices by those practicing Santeria.[122] Ordinance 87–52 defined "sacrifice" as "to kill, torment, torture, or mutilate an animal in a public or private ritual or ceremony not for the primary purpose of food consumption."[123] Then, declaring animal sacrifice was inconsistent with public policy,[124] the city council adopted Ordinance 87–71, which provided that "[i]t shall be unlawful for any person, persons,

---

[116] *Id.*
[117] *Id.*
[118] *Id.*
[119] *Id.*
[120] *Id.*
[121] *Id.* Hialeah also declared "its commitment to a prohibition against any and all acts of any and all religious groups which are inconsistent with public morals, peace or safety." *Id.*
[122] *Id.*
[123] *Id.*
[124] *Id.* ("[T]he sacrificing of animals within the city limits is contrary to the public health, safety, welfare and morals of the community.").

corporations or associations to sacrifice any animal" within Hialeah city limits.[125]

B. *Lukumi Babalu*: the Court's Neutrality Analysis

In response to the Ordinances, the Church sued the City of Hialeah and other city officials under 42 U.S.C. § 1983, alleging violations of their rights under the Free Exercise Clause.[126] When the case finally reached the Supreme Court of the United States in 1993, the Court explained that a law that lacks religious neutrality can only be justified if it is narrowly tailored to advance a compelling governmental interest.[127] The Court then went on to analyze the neutrality of the ordinances in question.[128]

The Court First explained some key differences that set the Free Exercise Clause apart from the Establishment Clause.[129] Establishment Clause cases tend to address "governmental efforts to benefit religion or particular religions, and so have dealt with a question different . . . from the issue here."[130] Meanwhile, the Court explained, "[a]t a minimum, the protections of the Free Exercise Clause pertain if the law" is the result of hostility toward a particular religion or "discriminates against some or all religious beliefs."[131]

Thus, the core question for the Court was whether the motivation for the ordinances was hostility for the religion of Santeria.[132] The Court explained that there are

---

[125] *Id.*
[126] *Id.* at 531.
[127] *Id.*
[128] *Id.*
[129] *Id.*
[130] *Id.* at 534.
[131] *Id.*
[132] *Id.* The Court also had to address the compelling interest and narrowly tailored prongs featured in strict scrutiny, but this Article focuses only on the initial infringement. *Id.* at 546 *(*"A law burdening religious practice that is not neutral or not of general application must undergo the most rigorous of scrutiny.").

"many ways of demonstrating that the object or purpose of a law is the suppression of religion."[133] To start, the Court explained that it was unclear whether the ordinances were facially discriminatory—while they contained the words "sacrifice" and "ritual," which are known to carry a religious connotation, the Court explained that the words could also be interpreted to have a secular meaning.[134] However, the Court then explained that facial neutrality is not determinative because the Free Exercise Clause "forbids subtle departures from neutrality" and "covert suppression of particular religious beliefs."[135]

The Court next looked at the effect of the ordinances.[136] The Court explained that an adverse impact does not always indicate impermissible targeting of a religion and explained that sacrificing animals does implicate "concerns unrelated to religious animosity," such as suffering of animals and health hazards.[137] However, the Court found that the Ordinances narrowly prohibited animal sacrifices practiced in the Santeria religion, but not other animal killings or kosher slaughter.[138] Thus, the Court explained, the ordinances do exhibit animus toward the religion of Santeria because they create what is effectively a "religious gerrymander."[139]

Finally, the Court explained that it could find guidance in its equal protection cases when determining whether the object of a law is neutral under the Free Exercise

---

[133] *Id.* at 533.
[134] *Id.* at 534.
[135] *Id.* at 535.
[136] *Id.*
[137] *Id.*
[138] *Id.* at 536 ("The definition excludes almost all killings of animals except for religious sacrifice, and the primary purpose requirement narrows the proscribed category even further, in particular by exempting kosher slaughter.").
[139] *Id.*

Clause.[140] Namely, "[r]elevant evidence includes, among other things, 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."[141] Looking at this evidence, the Court found that the ordinances were enacted "'because of,' not merely 'in spite of' their suppression of religious practice."[142]

The Court looked at a variety of factors in reaching this conclusion. The taped minutes of the city council's meetings exhibited "significant hostility" by residents: A councilman stated that devotees of the Church '"are in violation of everything this country stands for,'" while another councilman stated that "'[t]he Bible says we are allowed to sacrifice an animal for consumption . . . but for any other purposes, I don't believe that the Bible allows that."[143] Various other city officials made similar comments: The chaplain of the Hialeah police department said that Santeria was a sin, '"foolishness,' 'an abomination to the Lord,' and the worship of 'demons,'" and he advised, 'We need to be helping people and sharing with them the truth that is found in Jesus Christ.'"[144] The city attorney said, "'This community will not tolerate religious practices which are abhorrent to its citizens.'"[145] Finally, the Court noted that Hialeah made "no attempt to address the supposed problem before its meeting in June 1987."[146] After reviewing all the evidence, the Court concluded that the object of the ordinances was the "suppression of

[140] *Id.* at 540 (citing *Walz v. Tax Comm'n of New York City*, 397 U.S. 664, 696 (1970)).
[141] *Id.* at 540.
[142] *Id.* at 541.
[143] *Id.*
[144] *Id.* at 542.
[145] *Id.*
[146] *Id.* at 541.

religion" because the overall pattern indicated "animosity to Santeria adherents and their religious practices," and it therefore held that the ordinances violated the Free Exercise Clause.[147]

V. THE INSCRIPTION MANDATE LACKS NEUTRALITY

Like the ordinances in *Lukumi Babalu*, the Inscription Mandate violates the Free Exercise Clause[148] because it lacks religious neutrality.[149] The Mandate is discriminatory on its face because it invokes religious propaganda by use of words that cannot reasonably be read as secular. It is discriminatory in its effect because it denigrates and systematically proselytizes Atheists and other non-monotheists. Finally, the historical events giving rise to the enactment of the Mandate demonstrate that its enactment was motivated by hostility for Atheism.

A. The Inscription Mandate Lacks Neutrality on its Face

In this case, the Inscription Mandate lacks religious neutrality on its face because it mandates the use of the phrase "In God We Trust."[150] In *Lukumi Babalu*, the Court found that while the words "sacrifice" and "ritual" generally had a religious connotation, it was unclear whether the ordinances containing these words were facially

[147] *Id.* at 542.
[148] Again, I will not be analyzing whether the government has a compelling interest or whether the Inscription Mandate is narrowly tailored to advance that compelling interest. However, it seems clear there would be no compelling interest, as the Nation functioned without the Inscription Mandate for almost 200 years.
[149] *Id.*
[150] 31 U.S.C. § 5112 (d)(1) ("The United States coins shall have the inscription 'In God We Trust.'"); § 5114(b) ("United States currency has the inscription 'In God We Trust' in a place the Secretary decides is appropriate.").

discriminatory because the words could also have a secular meaning.[151] Therefore, the Court was unable to come to a clear conclusion about whether the ordinances lacked facial neutrality.[152] However, unlike the words "sacrifice" and "ritual," the phrase "In God We Trust" cannot reasonably be read to have a secular meaning. While one could argue that "God" does not refer to Christianity or any other specific religion, it is undeniable that it alludes to, at a minimum, a God featured in a monotheistic religion, rather than a polytheistic religion or a religion that believes in no God. Furthermore, the phrase taken as a whole not only references God, but also insinuates that "we"—presumably citizens in the United States who use this money—trust in that God. The use of "God" along with an allusion to a belief in that God removes the possibility of construing the phrase as secular. Because "In God We Trust" has an undeniably religious meaning, the Inscription Mandate lacks neutrality on its face.

B. The Inscription Mandate Lacks Neutrality in its Effect

The effect of the Inscription Mandate is further evidence that it lacks religious neutrality. In *Lukumi Babalu*, the Court found that the effect of the ordinances—a religious gerrymander that narrowly prohibited animal sacrifice by those practicing Santeria—was evidence that the motivation of the ordinances was animus for the Santeria religion.[153] In this case, the effect of the Inscription Mandate indicates that it lacks religious neutrality in two distinct ways. First, it has helped to perpetuate American society's denigration for Atheists. Second, the Mandate actively proselytizes Atheists and other non-monotheists.

---

[151] *Lukumi Babalu*, 508 U.S. at 527.
[152] *Id.* ("The words 'sacrifice' and 'ritual' have a religious origin, but current use admits also of secular meanings.").
[153] *Id.*

While the effect of Mandate is not as concretely discriminatory as the ordinances in *Lukumi Babalu,* it nonetheless perpetuates "symbolic boundaries that clearly and sharply exclude Atheists in both private and public life."[154] As a result,[155] more than half of all Americans view Atheists unfavorably,[156] and, in fact, American society finds Atheists to be less trustworthy than rapists.[157] Interestingly, since 1958—just three years after the Mandate was enacted—acceptance for Atheism has not increased as much as acceptance of other racial and religious minorities.[158] While it is impossible to identify a direct, causal link between the Mandate and a lack of acceptance for Atheism as compared to other racial and religious minorities, it is not a hasty inference to conclude that the inscription of "In God We Trust" on all United States currency has contributed to the lack of progress.[159] The negative effect that the Mandate has had on the public's view of Atheists is evidence that it lacks neutrality.

Not only does the Inscription Mandate affect the public's view of Atheism, but it burdens Atheists' religious exercise by pressuring them toward Christianity. The effect of the Mandate is to constantly remind all those who use U.S. currency that Americans trust in God. Constant affirmation in a belief in God works to alienate and suppress people practicing religions with tenets inconsistent with a belief in a single, patriarchal God.

---

[154] Penny Edgell et al., *Atheists as "Other": Moral Boundaries and Cultural Membership in American Society*, 71 AM. SOC. REV. 211, 212 (2006).
[155] Obviously, this is not the only cause of the argued result. *Id.*
[156] Pew Forum on Religious & Pub. Life, Public Expresses Mixed Views of Islam, Mormonism (Sept. 25, 2007), http://pewforum.org/Public-Expresses-Mixed-Views-of-Islam-Mormonism (last visited on May 2, 2016).
[157] 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).
[158] *See* Edgell, *supra* note 154, at 212.
[159] The motivation for a statute can be determined "from both direct and circumstantial evidence." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 540 (1993).

While the repressive effect of the Statute is not as tangible or egregious as the effect of the ordinances in *Lukumi Babalu*, it nonetheless demonstrates the nefarious intent to suppress the beliefs of Atheists, polytheists, or those who otherwise disagree with the phrase. Thus, the proselytizing effect of the Mandate is evidence that it lacks neutrality.

C. Contextual Evidence Shows a Lack of Neutrality

The historical events leading up to and surrounding Congress's passage of the Inscription Mandate are the most compelling evidence showing hostility for Atheism. In *Lukumi Babalu,* the Court explained that when determining whether a law is neutral, courts should conduct an "equal protection mode of analysis" that includes a look at "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."[160] The historical context that engendered the first inclusion of "In God We Trust" on U.S. coins demonstrates a hostility for Atheism.[161] Thereafter, the series of events that led to the Mandate's enactment consisted of escalations of hostility for Atheism and communism at the peak of the Cold War. Finally, the legislative record and contemporaneous statements made by the decisionmaking body make it abundantly clear that animus and hostility for Atheism were the primary motivation for enacting the Inscription Mandate. Therefore, like in *Lukumi Babalu*, the Mandate violates the Free Exercise Clause because it lacks religious neutrality.

A. History of "In God We Trust" on U.S. Currency.

[160] *Id.* at 541.
[161] *See infra* subsection A. *History of "In God We Trust on U.S. Currency*.

Pro-Christian and anti-Atheist sentiments after the Civil War were the impetus for first placing the words "In God We Trust" on U.S. coins. In 1861, Secretary of the Treasury Salmon P. Chase received many letters urging a recognition of God on the coins.[162] Rev. M.R. Watkinson—calling himself a "Minister of the Gospel"—wrote seeking "the recognition of the Almighty God in some form in our coins."[163] Rev. Watkinson noted to Mr. Chase, "You are probably a Christian," and he claimed that recognition of God on U.S. coins was important to "relive us from the ignominy of heathenism."[164] Rev. Watkinson also explained, "From my heart I have felt our national shame in disowning God as not the least of our present national disasters."[165] Thereafter, a chain of correspondences unfolded that culminated in the Coinage Act of 1865, which provided:

> And be it further enacted, That, in addition to the devices and legends upon the gold, silver, and other coins of the United States, it shall be lawful for the director of the mint, with the approval of the Secretary of the Treasury, to cause the motto "In God we trust" to be placed upon such coins hereafter to be issued as shall admit of such legend thereon.[166]

Thus, after 1865, the the director of the mint had the discretion to have coins engraved with "In God We Trust," but the inscription was not mandatory.[167]

Years later, in 1905, when President Theodore Roosevelt attempted to have the phrase removed from U.S. currency, the public's hostile response illuminated the true meaning behind the phrase. Roosevelt considered the inscription of the phrase "an

---

[162] H.R. Rep. No. 662, at 2 (1955).
[163] *Id.*
[164] *Id.*
[165] *Id.*
[166] An Act to Authorize the Coinage of Three-Cent Pieces (Coinage Act of 1865), 13 Stat. 518 (1865).
[167] *Id.*

inartistic intrusion and not required by law."[168] President Roosevelt supported omission of the phrase, stating, "[T]o put such a motto on coins not only does no good, but does positive harm."[169] President Roosevelt's sentiments were met with great hostility in the form of protests from various religious leaders, organizations, and individuals across the country.[170] For example, one clergyman stated, "I have never heard of any body of men who believe in the sacred principles of patriotism passing resolutions asking to have the sentiment removed, but from my childhood I have heard the blatant protests of infidels and unbelievers against this custom."[171] The public outcry demonstrates that the motto's inscription represented pro-Christian, anti-Atheist sentiments, even before the divisive events of the Cold War.

B. Context of the Cold War

While the understood meaning behind the inscription at its inception and nascent years is relevant, more significant are the events related to the Cold War that unfolded contemporaneous to the Inscription Mandate's passage. The Court in *Lukumi Babalu* found great evidence of hostility for Santeria in "contemporaneous statements made by members of the decisionmaking body"[172] that exhibited "animosity to Santeria adherents and their religious practices."[173] Similarly, during the Cold War, American governmental and social leaders made a great push to distinguish the United States from the Soviet Union.[174] They did so by vilifying Atheist

[168] TED SCHWARZ, A HISTORY OF UNITED STATES COINAGE 228 (1980).
[169] Letter from Theodore Roosevelt to William Boldly (November 11, 1907), reprinted in Schwarz, *supra* note 168, at 230.
[170] *The Motto on Coinage*, 87 THE OUTLOOK 707, (1907).
[171] *The President and the Motto on Our Coins*, 44 CURRENT LITERATURE 68, 68 (Jan.-June 1908).
[172] *The Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 540 (1993).
[173] *Id.* at 542.
[174] DIANNE KIRBY, RELIGION AND THE COLD WAR 2 (2003).

communism while glorifying the Christianity associated with capitalism. The marginalization of Atheism came in various forms—including policy documents, public statements by various leaders, and the passage of various religiously charged statutes.

The Soviet Union, established by the Bolsheviks in 1924, sought to promote Atheism while suppressing Christianity.[175] Indeed, the Soviet Union had, as an ideological objective, the elimination of religion[176] and sought to replace it with universal Atheism.[177] Consequently, the Soviet Union confiscated religious property from its citizens, harassed and ridiculed believers, and advanced Atheism in schools.[178] After WWII, the Soviet Union was expanding its reach by establishing Marxist-Leninist—and thus Atheist—governments in countries such as Bulgaria, Czechoslovakia, East Germany, Poland, Hungary, and Romania.[179] Furthermore, Marxist–Leninists had taken over all of mainland China by 1950.[180]

Meanwhile, in the West, the defeat of Nazi tyranny buttressed the widely held view that the United States was a righteous nation, under God.[181] A sense of a crusading mission became one of America's most powerful forms of ideological force in American culture after the war.[182] No one in the West seriously challenged America's presentation of itself as a Christian, God-fearing nation, despite the separation of church and state

---

[175] Arto Luukkanen (1994). The Party of Unbelief. Helsinki: Studia Historica.
[176] Kowalewski, David (October 1980). "Protest for Religious Rights in the USSR: Characteristics and Consequences". Russian Review 39 (4): 426–441. doi:10.2307/128810.
[177] Ramet, Sabrina Petra. (Ed) (1993). Religious Policy in the Soviet Union. Cambridge University Press. p. 4.
[178] REVELATIONS FROM THE RUSSIAN ARCHIVES, ANTI-RELIGIOUS CAMPAIGNS, http://www.loc.gov/exhibits/archives/anti.html.
[179] DIANNE KIRBY, RELIGION AND THE COLD WAR 2 (2003).
[180] *Id.*
[181] *Id.*
[182] *Id.*

mandated in the First Amendment to the United States Constitution.[183] Consequently, the ensuing conflict with the Soviet Union during the Cold War was a particularly Christian endeavor, rooted in the belief that America was morally right and that the Soviet communists were evil.[184]

Indeed, Western leaders sought to create a "Western Doctrine" to be used to combat the growing global appeal of communism.[185] Leaders saw Marxist–Leninist Atheism as a focus for undermining the appeal of communist doctrine.[186] This was especially true when it a came to breeding contempt for communism in the eyes of the poor—for whom communism was naturally attractive economically—because the poor were likely to take comfort and consolation in religion.[187] As anti-communist rhetoric focused on Christian ideals, combined with an emphasis on democracy and freedom, anti-communism took on a doctrinal status that claimed moral superiority in its religious component as opposed to the moral inferiority associated with communism and Atheism.[188] Consequently, Marxist–Leninist Atheism became an ideological vulnerability for communism from the West's religio-political perspective.[189]

Evidence of the United States' hostility toward Atheism is manifested by various government action before and during the Cold War.[190] Cold War document NSC 68,

---

[183] *Id.*
[184] *Id.*
[185] *Id.*
[186] *Id.*
[187] *Id.*
[188] *Id.*
[189] *Id.*
[190] *See* Andrew J. Rotter, *Christians, Muslims, and Hindus: Religion and U.S.-South Asian Relations, 1947–1954*, 24 DIPLOMATIC HISTORY 593, 596 (2000) (discussing America's relations with the Soviet Union).

created by the United States in 1950, marked the beginning of serious arms escalations.[191] However, rather than beginning with an introduction summarizing the geopolitical situation at the time, NSC 68 began "with the vision of an apocalyptic struggle between American good and Soviet evil."[192] NSC 68 stated that America wanted to defeat the 'fanatic faith' of Communism by mobilizing a superior 'spiritual counter-force', awakening the 'latent spiritual energies of free men everywhere."[193] Moreover, many monographs on U.S. policy featured the word "crusade" in their titles, including crusades in China, the Philipines, Vietnam, and Korea.[194]

Similar to the pro-Christian, anti-Santeria statements made by city council members in *Lukumi Babalu*,[195] members of Congress explicitly declared their allegiance to Christianity and hostility for Atheism. Senator Edward Martin proclaimed in 1950 that "America must move forward with the atomic bomb in one hand and the cross in the other."[196] In 1954, Representative Louis C. Rabaut placed in the Congressional Record that "[a]n [A]theistic American . . . is a contradiction in terms,"[197] and he later stated that "[w]e cannot afford to capitulate to the [A]theistic philosophies of godless men."[198] Representative Peter Rodino stated in 1954 that the religious motto expresses that "we wish now, with no ambiguity or reservation, to place ourselves under the rule and care of God."[199] Representative Hugh J. Addozio explained in 1954 that "our citizenship is of no

---

[191] DIANNE KIRBY, RELIGION AND THE COLD WAR 1-2 (2003).
[192] *Id.* at 2.
[193] *Id.* at 2.
[194] *See* Rotter, *supra* note 190, at 596.
[195] *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 541 (1993).
[196] *Id.*
[197] 100 Cong. Rec. 1700 (1954) (statement of Rep. Rabaut).
[198] 100 Cong. Rec. 8156 (1955) (statement of Rep. Rabaut).
[199] 100 Cong. Rec. 7764 (1954) (statement of Rep. Rodino).

real value . . . unless we can open our souls before God."[200] And Representative Charles Wolverton wrote in 1954 that those who deny God spread "forces of evil."[201]

John Foster Dulles, appointed Secretary of State by President Eisenhower in 1952, was one of the most overtly religious government leaders.[202] Christianity was embedded into Dulles life, as his father was a minister at the First Presbyterian Church in Watertown, New York, and he, himself, came close to becoming a minister.[203] As Secretary of State, he clung tightly to the idea that Christianity provided the universal, moral law that formed the basis of American political institutions and foreign policy.[204] Dulles believed that, in light of the Cold War, the United States needed to rededicate itself to God's will, which was to spread democracy—"Christians," after all, "are not negative, supine people," said Dulles.[205] Dulles also criticized the USSR, claiming that it adhered to a "materialistic creed which denies the existence of moral law. It denies that men are spiritual beings. It denies that there are any such things as eternal verities."[206] He stated in a 1950 radio address, "We need have no remorse. Also we need not despair. We have acted as God gave us to see the right."[207]

Even President Dwight Eisenhower helped perpetuate this religious divisiveness. When Eisenhower accepted the Republican nomination for president in 1952, he said, "[Y]ou have summoned me . . . to lead a great crusade—for freedom in America and

---

[200] 100 Cong. Rec. 7765 (1954) (statement of Rep Addonizio).
[201] 100 Cong. Rec. 14919 (1954) (statement of Rep. Wolverton).
[202] Rotter, *supra* note 190, at 598.
[203] *Id.*
[204] *Id.*
[205] *Id.*
[206] *Id.*
[207] *Id.* at 599.

freedom in the world.[208] He also participated in the American Legion's "Back-to-God" crusade, where he stated: "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."[209] When the first stamp containing the words "In God We Trust" was introduced by way of a 15-minute television and radio program, President Eisenhower, Secretary of State John Foster Dulles, and Postmaster General Arthur E. Summerfield participated, along with leaders from the Jewish, Catholic, and Protestant religions.[210]

During the time when hostility toward Atheism was at its peak, Congress undertook a series of legislative action related to recognizing "God" in different contexts. In 1952, Congress instituted a National Day of Prayer.[211] In June of 1954, with "Onward Christian Soldiers" playing at the official bill-signing ceremony, "Under God" was added to the previously secular Pledge of Allegiance.[212] Congress added the words "under God" to the Pledge of allegiance. In 1955, Congress made inclusion of the words "In God We Trust" mandatory on all United States coinage and currency.[213] And, in 1956, Congress replaced "E Pluribus Unum" with "In God We Trust" as the national motto of the United

[208] *Id.* at 596.
[209] Dwight D. Eisenhower, Remarks Recorded for the "Back-to-God" Program of the American Legion, Feb. 20, 1955, http://www.presidency.ucsb.edu/ws/index.php?pid=10414.
[210] "In God We Trust" – New Postage Stamp to Carry Message to World, The Gideon, May 1954, at 24, 25.
[211] Act of April 17, 1952, Pub. L. 82-324, ch. 216, 66 Stat. 64 (now codified at 36 U.S.C. § 119 (2012)).
[212] Act of June 14, 1954, Pub. L. 83-396, ch. 297, § 7, 68 Stat. 249.
[213] Act of July 11, 1955, ch. 303, Pub. L. 84-140, 69 Stat. 290.

States.[214]

Thus, similar to the evidence in *Lukumi Babalu*, there is overwhelming evidence that the Inscription Mandate was motivated by hostility for Atheism. In *Lukumi Babalu*, the Court found that the actions, statements, and overall disposition of the Hialeah community allowed only one conclusion—that the Ordinances were motivated by hostility for Santeria.[215] Similarly, contextual evidence that hostility for Atheism was the motivation for the Inscription Mandate comes in the following forms: a long history of American hostility for Atheism, hostile statements made by lawmakers and other high-ranking government leaders, hostility manifested in various government policy documents, and a series of religiously charged statutes passed contemporaneously with the Inscription Mandate. This pervasive evidence of hostility for Atheism, along with the fact that the Mandate is facially discriminatory and discriminatory in its effect, makes it undeniable that the Inscription Mandate lacks neutrality and therefore violates the Free Exercise Clause.

CONCLUSION

Moving forward, it is difficult to see how the Inscription Mandate could survive both a RFRA challenge and also a challenge to its neutrality under the Free Exercise Clause. The Court in *Hobby Lobby* ended the practice of courts evaluating the substance of RFRA claimants' beliefs. Therefore, when an Atheist claims that carrying money inscribed with "In God We Trust" substantially burdens her religious exercise, courts can no longer tell her she is wrong. Moreover, applying the framework provided by the court in *Lukumi Babalu*, a court should find

[214] Act of July 30, 1956, Pub. L. 84-851, ch. 795, 70 stat. 732 (now codified at 36 U.S>C. § 302 (2012).
[215] *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 541 (1993).

that the Inscription Mandate was motivated by hostility for Atheism during the Cold War and that it therefore violates the Free Exercise Clause.