Case No. 16-4345

IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

NEW DOE CHILD #1, ET AL.,

Plaintiffs-Appellants

v.

CONGRESS OF THE UNITED STATES, ET AL.,

Defendants-Appellees,

On Appeal from the United States District Court
for the Northern District of Ohio

AMICI CURIAE BRIEF OF MEMBERS OF CONGRESS, THE AMERICAN CENTER FOR LAW AND JUSTICE, AND THE COMMITTEE TO PROTECT THE NATIONAL MOTTO SUPPORTING APPELLEES AND AFFIRMANCE

LAURA B. HERNANDEZ*
AMERICAN CENTER FOR LAW & JUSTICE

JAY ALAN SEKULOW
Counsel of Record
STUART J. ROTH
AMERICAN CENTER FOR LAW & JUSTICE

* Not admitted in this jurisdiction

Attorneys for Amicus Curiae

CORPORATE DISCLOSURE STATEMENT

The ACLJ is a non-profit legal corporation dedicated to the defense of constitutional liberties secured by law. The ACLJ has no parent corporation and issues no stock.

TABLE OF CONTENTS

Page

CORPORATE DISCLOSURE STATEMENT ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

Interest of *Amici* 1

Argument 2

I. The National Motto Does in Fact Reflect the Historical Fact that this Nation Was Founded upon a Belief in God. 4

II. The First Amendment Does Not Compel the Redaction of All References to God Just to Suit Atheistic Preferences. 6

III. Appellants' Free Speech Claim Is Meritless. 9

IV. Appellants Lack Standing to Assert Free Exercise and RFRA Claims Because They Have Alleged No Legally Cognizable Injury. 12

CONCLUSION 15

TABLE OF AUTHORITIES *Page(s)*

Supreme Court Cases

Bowen v. Roy, 476 U.S. 693 (1986) 13

Church of the Holy Trinity v. United States, 143 U.S. 457 (1892)............................6

County of Allegheny v. ACLU, 492 U.S. 573 (1989) 3

Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1 (2004) 3, 9

Lujan v. Defs. of Wildlife, 504 U.S. 555 (1992) 13

Lynch v. Donnelly, 465 U.S. 668 (1984) 3, 6

Pleasant Grove City v. Summum, 555 U.S. 460 (2009) 2, 9–11

Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.,
547 U.S. 47 (2006)..9

Sch. Dist. v. Schempp, 374 U.S. 203 (1963) 3, 6

Steele Co. v. Citizens for a Better Env't, 523 U.S. 83 (1998).................................15

Texas v. Johnson, 491 U.S. 397 (1989) 12

Thompson v. W. States Med. Ctr., 535 U.S. 357 (2002)...11

Town of Greece v. Galloway, 134 S. Ct. 1811 (2014)...2

Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, 454 U.S. 464 (1982)................................. 14, 15

Van Orden v. Perry, 545 U.S. 677 (2005) 3

Walker v. Tex. Div., Sons of Confederate Veterans, Inc.,
135 S. Ct. 2239 (2015)...9

Wooley v. Maynard, 430 U.S. 705 (1977) 10

TABLE OF AUTHORITIES (cont'd) *Page(s)*

Zorach v. Clauson, 343 U.S. 306 (1952) 6–8

United States Court of Appeals Cases

ACLU v. Capitol Square Review & Advisory Bd., 243 F.3d 289 (6th Cir. 2001) (en banc) 3, 5

Aronow v. United States, 432 F.2d 242 (9th Cir. 1970) 3

Gaylor v. United States, 74 F.3d 214 (10th Cir. 1996) 3

Kidd v. Obama, 387 Fed. App'x. 2 (D.C. Cir. 2010) (per curiam) 3

Newdow v. Lefevre, 598 F.3d 638 (9th Cir. 2010) 3

Newdow v. Peterson, 753 F.3d 105 (2d Cir. 2014) (per curiam) 3, 11

Newdow v. U.S. Cong., 328 F.3d 466 (9th Cir. 2003) 8

O'Hair v. Murray, 588 F.2d 1144 (5th Cir. 1979) (per curiam) 3

Tarsney v. O'Keefe, 225 F.3d 929 (8th Cir. 2000) 14

Washegesic v. Bloomington Pub. Sch., 33 F.3d 679 (6th Cir. 1994) 13, 15

United States District Court Cases

Lambeth v. Bd. of Comm'rs, 321 F. Supp. 2d 688 (M.D.N.C. 2004) 3

Meyers v. Loudoun Cty. Sch. Bd., 251 F. Supp. 2d 1262 (E.D. Va. 2003) 3

O'Hair v. Blumenthal, 462 F. Supp. 19 (W.D. Tex. 1978) 3

Schmidt v. Cline, 127 F. Supp. 2d 1169 (D. Kan. 2000) 3

Statutes

18 U.S.C. § 331 (2012) 10

18 U.S.C. § 333 (2012) 10

Other Authorities

Abraham Lincoln, *The Gettysburg Address* (1863)..8

Douglas W. Kmiec, *Oh God! Can I Say That in Public?*,
17 Notre Dame J.L. Ethics & Pub. Pol'y 307 (2003)..5

Mayflower Compact (1620), *reprinted in* George Ernest Bowman,
The Mayflower Compact and Its Signers 15 (1920),
https://babel.hathitrust.org/cgi/pt?id=loc.ark:/13960/t5h99gm63;
view=1up;seq=19..8

Philip Hamburger, *Separation of Church and State* (2002) 5

The Declaration of Independence (U.S. 1776)..4

Thomas Jefferson, *A Bill for Establishing Religious Freedom*
(June 12, 1779) *reprinted in* 5 Founders' Constitution 77 5

Thomas Jefferson, *A Summary View of the Rights of British America*
(1774), *reprinted in Thomas Jefferson: Writings* 103
(Merrill D. Peterson ed., 1984)..4

Thomas Jefferson, *Notes on the State of Virginia* Q.XVIII (1782),
reprinted in Thomas Jefferson: Writings 123
(Merrill D. Peterson ed., 1984)..4

INTEREST OF *AMICI*[1]

Amici, United States Members of Congress, Senator James Lankford, Senator Roy Blunt, Senator Steve Daines, Senator James M. Inhofe, Senator Joe Manchin, Representatives Mark Walker, Robert Aderholt, Rick Allen, Brian Babin, Jim Banks, Diane Black, K. Michael Conaway, Kevin Cramer, Jeff Duncan, Bill Flores, Trent Franks, H. Morgan Griffith, Vicky Hartzler, Jeb Hensarling, Jody Hice, Richard Hudson, Bill Johnson, Walter Jones, Mike Kelly, Steve King, Doug Lamborn, Billy Long, Blaine Luetkemeyer, Tom McClintock, Steve Pearce, Robert Pittenger, John Ratcliffe, Todd Rokita, Keith Rothfus, Steve Russell, Pete Sessions, Tim Walberg, and Daniel Webster are currently serving in the One Hundred Fifteenth Congress.

Amicus, the American Center for Law and Justice (ACLJ), is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have argued in numerous cases involving First Amendment issues before the Supreme Court of the United States and other federal and state courts. *See, e.g.*,

---

[1] All parties consented to the filing of this amicus brief. No party's counsel in this case authored this brief in whole or in part. No party or party's counsel contributed any money intended to fund preparing or submitting this brief. No person, other than amici, their members, or their counsel contributed money that was intended to fund preparing or submitting this brief.

Pleasant Grove City v. Summum, 555 U.S. 460 (2009) (counsel for Petitioner); *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014) (counsel for Amicus Curiae).

This brief is also filed on behalf of the ACLJ's Committee to Protect the National Motto which consists of over 120,000 Americans who oppose Appellants' effort to strip the national motto from the Nation's currency.

Amici have dedicated time and effort to defending and protecting Americans' First Amendment freedoms. It is this commitment to the integrity of the United States Constitution and Bill of Rights that compels them to support affirmance of the district court's decision. While the First Amendment affords atheists complete freedom to disbelieve, it does not compel the federal judiciary to redact the national motto from the Nation's currency.

ARGUMENT

Appellants bootstrap Free Speech, Free Exercise and Religious Freedom Restoration Act (RFRA) claims onto the unanimously repudiated proposition that the National Motto is an unconstitutional government sponsorship of religion.[2]

---

[2] In ¶¶ 118-377 of their Amended Complaint, Appellants set forth factual allegations clearly tailored to an Establishment Clause Claim, which Appellants then do not assert.

Appellants' quarrel is essentially with a foundational principle of America. Just as the National Motto is constitutional under the Establishment Clause, it is also constitutional under the Free Exercise and Free Speech Clauses, as well as RFRA.

Dicta in several United States Supreme Court decisions establish that the National Motto is a constitutional acknowledgment of the Nation's religious heritage. *See, e.g.*, *Van Orden v. Perry*, 545 U.S. 677, 716 (2005) (Stevens, J., dissenting); *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 37 (2004) (O'Connor, J., concurring); *County of Allegheny v. ACLU*, 492 U.S. 573, 602–04, 673 (1989) (Opinions joined by all the Justices); *Lynch v. Donnelly*, 465 U.S. 668, 676 (1984); *Sch. Dist. v. Schempp*, 374 U.S. 203, 303 (1963) (Brennan, J., concurring).

Additionally, the lower courts are unanimous in holding that the inscription of the national motto on the nation's currency is constitutional. *Newdow v. Peterson*, 753 F.3d 105, 108 (2d Cir. 2014) (per curiam); *Newdow v. Lefevre*, 598 F.3d 638, 640 (9th Cir. 2010); *Kidd v. Obama*, 387 Fed. App'x. 2, 2 (D.C. Cir. 2010) (per curiam); *Gaylor v. United States*, 74 F.3d 214, 217–18 (10th Cir. 1996); *Aronow v. United States*, 432 F.2d 242, 243 (9th Cir. 1970); *O'Hair v. Blumenthal*, 462 F. Supp. 19, 19–20 (W.D. Tex. 1978), *aff'd sub nom. O'Hair v. Murray*, 588 F.2d 1144, 1144 (5th Cir. 1979) (per curiam); *cf. Lambeth v. Bd. of Comm'rs*, 321 F. Supp. 2d 688, 707 (M.D.N.C. 2004) (relying on currency cases to hold that displaying "In God We Trust" on a government building did not violate the Establishment Clause); *Meyers v. Loudoun Cty. Sch. Bd.*, 251 F. Supp. 2d 1262, 1274–75 (E.D. Va. 2003) (relying, in part, on currency cases to hold that displaying "In God We Trust" in a school building did not violate the Establishment Clause); *Schmidt v. Cline*, 127 F. Supp. 2d 1169, 1178 (D. Kan. 2000) (relying on currency cases to hold that displaying "In God We Trust" in a County Treasurers office did not violate the Establishment Clause).

In holding that Ohio's motto, "With God, all Things Are Possible," did not violate the Establishment Clause, this Court expressed its view in dicta that the national motto is also constitutional. *ACLU v. Capitol Square Review & Advisory Bd.*, 243 F.3d 289, 301 (6th Cir. 2001) (en banc).

I. The National Motto Does in Fact Reflect the Historical Fact that this Nation Was Founded upon a Belief in God.

Appellants dislike the fact that the nation's Founders based a national philosophy on a belief in Deity. The Declaration of Independence[3] and the Bill of Rights locate the source of inalienable rights in a Creator rather than in government precisely so that such rights cannot be stripped away by government. In 1782, Thomas Jefferson wrote, "[C]an the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are the gift of God? That they are not to be violated but with His wrath?" Thomas Jefferson, *Notes on the State of Virginia* Q.XVIII (1782), *reprinted in Thomas Jefferson: Writings* 123, 289 (Merrill D. Peterson ed., 1984).

While Jefferson certainly opposed state compulsion of religious observance,

---

[3] The Declaration of Independence recognizes that human liberties are a gift from God: "all men are created equal, that they are endowed by *their Creator* with certain unalienable Rights." *The Declaration of Independence* para. 2 (U.S. 1776) (emphasis added). Jefferson wrote further that the right to "dissolve the political bands" connecting the Colonies to England derives from Natural Law and "*Nature's God.*" *Id.* para. 1. The Founders also believed that God holds man accountable for his actions as the signers of the Declaration "appeal[ed] to the *Supreme Judge of the world* for the rectitude of [their] intentions." *Id.* para. 32. In 1774, Jefferson wrote that "The God who gave us life gave us liberty at the same time; the hand of force may destroy, but cannot disjoin them." Thomas Jefferson, *A Summary View of the Rights of British America* (1774), *reprinted in Thomas Jefferson: Writings* 103, 122 (Merrill D. Peterson ed., 1984).

he had "no objection to official acknowledgment of God." *ACLU v. Capitol Square Review & Advisory Bd.*, 243 F.3d 289, 301 (6th Cir. 2001) (en banc). Jefferson's *Bill for Establishing Religious Freedom* states that "Almighty God hath created the mind free, and manifested his Supreme will that free it shall remain . . . ." 243 F.3d at 301 (quoting Thomas Jefferson, *A Bill for Establishing Religious Freedom* (June 12, 1779) *reprinted in* 5 Founders' Constitution 77).

The Founders may have differed over the contours of the relationship between religion and government, but they never deviated from the conviction that "there was a necessary and valuable moral connection between the two." Philip Hamburger, *Separation of Church and State* 480 (2002).

The national motto simply echoes the principle found in the Declaration of Independence that our freedoms come from God and not the state. "Anchoring basic rights upon a metaphysical source is very much part of that structural separation [of powers], for without God, the law is invited to become god. This was well known to Rousseau and Marx who both complained that acknowledging God creates a competition or check upon the secular state." Douglas W. Kmiec, *Oh God! Can I Say That in Public?*, 17 Notre Dame J.L. Ethics & Pub. Pol'y 307, 312–13 (2003).

II. The First Amendment Does Not Compel the Redaction of All References to God Just to Suit Atheistic Preferences.

Appellants assert that the nation's currency must be purged of the national motto inscription to avoid a violation of their First Amendment rights. It is clear, however, from the Supreme Court's Establishment Clause jurisprudence that the First Amendment is not to be interpreted in a manner that would purge religion or religious reference from society. In 1892, the Supreme Court stated that "this is a religious nation." *Church of the Holy Trinity v. United States*, 143 U.S. 457, 470 (1892). The Court has discussed the historical role of religion in our society and concluded that "[t]here is an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789." *Lynch v. Donnelly*, 465 U.S. 668, 674 (1984). In *School District v. Schempp*, 374 U.S. 203 (1963), the Court recognized that "religion has been closely identified with our history and government." *Id.* at 212. Such recognition of the primacy of religion in the Nation's heritage is nowhere more affirmatively expressed than in *Zorach v. Clauson*, 343 U.S. 306 (1952):

> We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of

> its dogma. When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs. To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups. *That would be preferring those who believe in no religion over those who do believe*.

Id. at 313–14 (emphasis added). Appellants ask this Court to do exactly what the Supreme Court warned against in *Zorach*—prefer atheism over religion even to the extent of censoring the historical fact that the United States was founded upon a belief in God.

A decision invalidating the national motto on Free Speech and Free Exercise grounds would render constitutionally suspect a number of practices that traditionally have been considered an important part of American Society. For example, the practice of requiring public school students to learn and recite passages from foundational historical documents reflecting the Nation's religious heritage would be unconstitutional as "compelled speech" under Appellants' theory. The Mayflower Compact[4] and the Declaration of Independence, and the

---

[4] The Mayflower Compact, written by William Bradford in 1620, provides:

Gettysburg Address,[5] all contain religious references substantiating the fact that America's "institutions presuppose a Supreme Being." *Zorach*, 343 U.S. at 313; *see also Newdow v. U.S. Cong.*, 328 F.3d 466, 473 (9th Cir. 2003) (O'Scannlain, J., dissenting from denial of rehearing en banc) (If reciting the Pledge of Allegiance is truly "'a religious act' . . . then so is recitation of the

---

> *In the Name of God, Amen.* We whose Names are under-written, the Loyal Subjects of our dread Sovereign Lord, King James, by *the grace of God*, of Great Britain, France, and Ireland, King, Defender of the Faith, etc. Having undertaken, *for the glory of God, and advancement of the Christian Faith*, and the Honour of our King and Countrey, a Voyage to plant the first Colony in the Northern parts of Virginia; Do by these Presents, solemnly and mutually, *in the presence of God*, and one another, Covenant and Combine our selves together into a Civil Body Politick, for our better ordering and preservation, and furtherance of the ends aforesaid: and by virtue hereof to enact, constitute and frame such just and equal Laws, Ordinances, Acts, Constitutions and Officers, from time to time, as shall be thought most meet and convenient for the general good of the Colony; unto which we promise all due submission and obedience.

Mayflower Compact (1620), *reprinted in* George Ernest Bowman, *The Mayflower Compact and Its Signers* 15, 15 (1920) (emphasis added), https://babel.hathitrust.org/cgi/pt?id=loc.ark:/13960/t5h99gm63;view=1up;seq=19.

[5] President Lincoln declared "that this Nation, *under God*, shall have a new birth of freedom, and that Government of the people, by the people, for the people, shall not perish from the earth." Abraham Lincoln, *The Gettysburg Address* (1863) (emphasis added).

Constitution itself, the Declaration of Independence, the Gettysburg Address, the National Motto, or the singing of the National Anthem" (footnotes omitted)). As Justice O'Connor wrote, "it would be ironic indeed if this Court were to wield our constitutional commitment to religious freedom so as to sever our ties to the traditions developed to honor it." *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 44–45 (2004) (O'Connor, J., concurring).

III. Appellants' Free Speech Claim Is Meritless.

The inscription of the national motto on the nation's currency is government speech which cannot be imputed to Appellants, and which compels no one to say anything. *See Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 62 (2006) (No free speech violation where law schools not required to speak in support of military recruiters' access to law students; mere cooperation with military recruiters is not compelled speech); *Pleasant Grove City v. Summum*, 555 U.S. 460, 471, 473 (2009) (donated monument in public park is government speech where "there is little chance that an observer would fail to" understand that the government was speaking, and the government "effectively controlled the message" by exercising "final approval authority" over the message.); *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239, 2245 (2015)

("When government speaks, it is not barred by the Free Speech Clause from determining the content of what it says.")

The United States government exercises complete editorial control over contents of the nation's currency. *See e.g.*, 18 U.S.C. §§331, 333 (2012) (proscribing defacement of United States currency). That control "unmistakeably signifies to all [citizens] that the [government] intends the [currency] to speak on its behalf." *Summum*, 555 U.S. at 474. There is virtually no chance Appellants' use of currency would be interpreted as Appellants' speech. The inscription of the National Motto on currency is not compelled speech any more than speech on driver's licenses or Social Security cards is compelled speech.

In *Wooley v. Maynard*, 430 U.S. 705 (1977), both the majority and dissenting opinions rejected in dicta the notion that the National Motto on the Nation's currency implicates free speech rights.

> It has been suggested that today's holding will be read as sanctioning the obliteration of the national motto, "In God We Trust" from United States coins and currency. That question is not before us today but we note that currency, which is passed from hand to hand, differs in significant respects from an automobile, which is readily associated with its operator. Currency is generally carried in a purse or pocket and need not be displayed to the public. The bearer of currency is thus not required to publicly advertise the national motto.

Id. at 717 n.15; *see also id*. at 722 (Rehnquist, J., dissenting) ("The fact that an

atheist carries and uses United States currency does not, in any meaningful sense, convey any affirmation of belief on his part in the motto 'In God We Trust.'"); *cf. Newdow v. Peterson*, 753 F.3d 105, 109 (2d Cir. 2014) (per curiam).

Appellants argue that the question of whether speech is government speech or compelled speech should be a subjective determination within their control. See Appellants Br. at p. 40 (If plaintiffs feel they are "furthering the sentiment [of the national motto], it is part of their free speech right to make that determination.") Plaintiffs rely on a commercial speech case, *Thompson v. W. States Med. Ctr.,* 535 U.S. 357, 367 (2002) acknowledging the unremarkable proposition that in the marketplace of ideas, "the speaker and audience assess the value of the information presented." *Thompson* struck down a federal restriction on the advertising of compounded drugs as an unconstitutional restriction on commercial speech. *Id*. at 377. There was no question that the speech at issue was private and the case did not in any way involve the distinction between private and government speech.

Aside from its reliance on an irrelevant case, Appellants' argument would gut the Supreme Court's government speech jurisprudence establishing that government control over the message and the perception of the reasonable observer are core indicators of whether speech is private or governmental. *Compare Pleasant Grove City v. Summum*, 555 U.S. 460, 471, 473 (2009) (donated

monument in public park is government speech where "there is little chance that an observer would fail to" understand that the government was speaking, and the government "effectively controlled the message" by exercising "final approval authority" over the message), *with Texas v. Johnson*, 491 U.S. 397, 404 (1989) ("In deciding whether particular conduct possesses sufficient communicative elements to bring the First Amendment into play, we have asked whether '[a]n intent to convey a particularized message was present, and [whether] the likelihood was great that the message would be understood by those who viewed it.'").

No matter how much Appellants wish it otherwise, passing currency is not compelled speech because any reasonable observer understands that the message on national currency was government selected. There is therefore no likelihood, let alone a great one, that passing currency would be understood as Appellants' speech by those who receive the money. Appellants' free speech rights are intact and their claim should be dismissed.

IV. Appellants Lack Standing to Assert Free Exercise and RFRA Claims Because They Have Alleged No Legally Cognizable Injury.

Government expression on government-issued currency does not, in the absence of other governmental compulsion, inflict a legally cognizable injury

under RFRA and the Free Exercise Clause.[6] Although Appellants assert injury from having to "bear a religiously offensive message," *see e.g.*, Am. Compl. ¶¶ 32, 400, 440, their "injury" distills down to mere disagreement with the Government's chosen message. Appellants' RFRA and Free Exercise Clause claims are premised on nothing more than "offended observer standing," which though recognized in the Establishment Clause context, *see, e.g.*, *Washegesic v. Bloomington Pub. Sch.*, 33 F.3d 679, 682–83 (6th Cir. 1994), does not extend to RFRA and Free Exercise Clause claims.

Just as Appellants' Free Speech Clause claim fails because they are not compelled to say anything, their Free Exercise Clause and RFRA claims fail because Appellants have not alleged any governmental coercion to do, or refrain from doing, anything.[7] Appellants' "injury" is qualitatively indistinguishable from

---

[6] The "irreducible constitutional minimum of standing contains three elements": (1) injury-in-fact; (2) causation; and (3) redressability. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992).

[7] Plaintiffs do not allege, for example, that they are denied the receipt of government benefits for their refusal to use U.S. currency. *See, e.g. Bowen v. Roy*, 476 U.S. 693 (1986) (parents of a Native American child challenged the constitutionality of using social security numbers in the federal food stamp and AFDC programs). If Plaintiffs' injury is cognizable under Article III, there would be standing to bring Free Exercise claims any time someone objects on religious grounds to speech in other government-issued documents which are routinely

the injury suffered by taxpayers who object on religious grounds to certain government expenditures. Where there is no direct interference with religious conduct or belief, there is no taxpayer standing to assert Free Exercise claims. *See, e.g.*, *Tarsney v. O'Keefe*, 225 F.3d 929, 938 (8th Cir. 2000) (No direct Article III injury where government funding of abortion violates plaintiffs' religious convictions but does not otherwise interfere with plaintiffs' religious belief or practice). In fact, Appellants' injury in this case is even less than the injury alleged in *Tarsney*. There was no question that the Plaintiffs in *Tarsney* were compelled to pay taxes and that some of their money was used to subsidize activity to which they objected on religious grounds. Here, Appellants do not allege that the government compels them to carry currency,[8] and they do not allege any other direct government interference with their atheistic beliefs or practice.

Appellants' injury is no more than "the psychological consequence presumably produced by observation of conduct with which one disagrees." *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State*, 454 U.S.

---

carried on one's person, such as driver's licenses, passports, and social security cards.

[8] It is, of course, now possible to conduct the overwhelming majority of financial transactions without using currency.

464, 485 (1982). Such an injury is insufficient to establish Article III standing.[9] *Steele Co. v. Citizens for a Better Env't*, 523 U.S. 83, 107 (1998) ("psychic satisfaction . . . does not redress a cognizable Article III injury").

Because Appellants have alleged no direct government interference with their religious beliefs, they can show nothing more than offense, which is not a legally cognizable injury under the Free Exercise Clause and RFRA.

CONCLUSION

For the foregoing reasons, Amici respectfully ask this Court to affirm the District Court's judgment.

Respectfully Submitted,

/s/ Jay Alan Sekulow

---

[9] Although this Court has held that mere exposure to religious expression on government property is sufficient to confer standing in an Establishment Clause case, *see, e.g.*, *Washegesic v. Bloomington Pub. Sch.*, 33 F.3d. 679, 682–83 (6th Cir. 1994), Appellants do not assert an Establishment Clause claim. No court has held that mere offense at government speech is sufficient to confer standing to assert a Free Exercise Clause claim.

LAURA B. HERNANDEZ*
AMERICAN CENTER FOR LAW & JUSTICE

JAY ALAN SEKULOW
Counsel of Record
STUART J. ROTH
AMERICAN CENTER FOR LAW & JUSTICE

* Not admitted in this jurisdiction

Attorneys for Amici Curiae

CERTIFICATE OF COMPLIANCE

This brief complies with type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B). The brief contains 4,496 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word processing software in 14-pt Times New Roman font.

Dated: February 16, 2017

/s/ Jay A. Sekulow
Jay A. Sekulow
Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2017, I electronically filed a copy of the foregoing *Amici Curiae* Brief using the ECF System which will send notification of that filing to all counsel of record in this litigation. I also certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: February 16, 2017

/s/ Jay A. Sekulow
Jay A. Sekulow
Counsel for Amici Curiae