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March 12, 2010: “In God We Trust” Upheld by the Ninth Circuit

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Title: "In God We Trust" Upheld by the Ninth Circuit

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3/12/2010—Yesterday, a 3-judge panel of the Ninth Circuit Court of Appeals upheld the constitutionality of the national motto in a challenge brought by Michael Newdow, who also brought an earlier challenge to the Pledge of Allegiance that the Supreme Court dismissed in 2004 on the ground that he lacked standing (the Ninth Circuit in that case had held that recitation of the Pledge in public school violates the Establishment Clause). Yesterday's case decided very little since the panel dismissed the challenge simply based on *Aronow v. U.S.*, which is binding circuit precedent from 1970. The majority opinion by Judge Carlos Bea quoted the *Aronow* precedent as follows: "It is quite obvious that the national motto and the slogan on coinage and currency 'In God We Trust' has nothing whatsoever to do with the establishment of religion. Its use is of a patriotic or ceremonial character and bears no true resemblance to a governmental sponsorship of a religious exercise.* * *It is not easy to discern any religious significance attendant the payment of a bill with coin or currency on which has been imprinted 'In God We Trust' or the study of a government publication or document bearing that slogan.... While 'ceremonial' and 'patriotic' may not be particularly apt words to describe the category of the national motto, it is excluded from First Amendment significance because the motto has no theological or ritualistic impact. As stated by the Congressional report, it has 'spiritual and psychological value' and 'inspirational quality.'"This language is consistent with the thoughtless "ceremonial deism" approach that upholds quite a lot of religious language and imagery despite the Supreme Court's promise since 1947 of government neutrality between religion and irreligion. The assertion that references to God have no religious meaning is silly. Obviously, religious believers fight for these references because they are understood to have precisely such meaning. Nonbelievers like Newdow oppose them for the same reason.To resolve the crisis of the Establishment Clause it will be necessary to interpret God language and other religious language in a way that both honors the clear religious meaning that is present and at the same time delineates a secular message in the same language. And these two meanings will have to be related.I believe the higher law tradition allows precisely such a harmonizing approach.