
**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

Civil Action No. .

OLGA PAULE PERRIER-BILBO;

Plaintiff,

v.

THE CONGRESS OF THE UNITED STATES OF AMERICA; THE UNITED
STATES OF AMERICA; L. FRANCIS CISSNA, DIRECTOR, U.S.
CITIZENSHIP AND IMMIGRATION SERVICES;

Defendants.

ORIGINAL COMPLAINT

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

Perrier-Bilbo v. The Congress of the United States

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CORPORATE DISCLOSURE STATEMENT

No corporate party to this action has any parent corporation or publicly held company that owns 10% or more of its stock.

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**“Congress shall make no law respecting an establishment of religion,
or prohibiting the free exercise thereof; ...”**

- U.S. Const. amend. I

For her Complaint in this action, Plaintiff Olga Paule Perrier-Bilbo alleges as follows:

NATURE OF CASE

1. Plaintiff in this action challenges the inclusion of the phrase “so help me God” in the United States Oath of Naturalization as set forth in 8 CFR 337.1.

JURISDICTION AND VENUE

2. This is a civil action claiming violations of 42 U.S.C. § 2000bb through § 2000bb-4 (2012), the Religious Freedom Restoration Act of 1993 (RFRA). As such, this Court has subject matter jurisdiction under 42 U.S.C. § 2000bb-1(c) and 28 U.S.C. § 1331.
3. This is a civil action claiming violations of the First and Fifth Amendments of the Constitution of the United States of America. As such, this Court has subject matter jurisdiction under 28 U.S.C. § 1331.
4. This action is founded in part upon the Constitution of the United States of America. As such, this Court has personal jurisdiction over Defendant United States of America under 28 U.S.C. § 1346(a)(2).
5. This action is in the nature of mandamus and seeks to compel the Congress of the United States of America, the United States of America, its agents and its officers to perform their duties owed Plaintiffs under RFRA and under the terms of the First and Fifth Amendments of the Constitution of the United States. As such, this Court has subject matter jurisdiction under 28 U.S.C. § 1361.

6. Defendants are each an officer or employee of the United States, an agency of the United States, or the United States. Plaintiff resides in and/or has a dwelling in this judicial district. Venue is therefore proper under 28 U.S.C. § 1391(e)(1)(C).
7. A substantial part of the events or omissions giving rise to this claim occurred, occur, or will occur in this judicial district. Venue is therefore proper under 28 U.S.C. § 1391(b)(2) and § 1391(e)(1)(B).

PARTIES

A. PLAINTIFF

8. Plaintiff Olga Paule Perrier-Bilbo is a resident of Scituate, Massachusetts. She is currently a citizen of France, but wishes to relinquish that citizenship and become a citizen of the United States. Accordingly, she has applied for naturalization. In fact, she has applied twice, and has had her application approved both times. However, because Defendants have placed her in the situation where, for religious reasons, she cannot comply with the terms of the oath of naturalization, she cannot obtain her citizenship.
9. The issue is that, pursuant to 8 U.S.C. § 1448(a), Plaintiff must participate in a public oath ceremony. That she very much wishes to do. However, the oath that will be administered ends with the religious phrase “so help me God.” 8 CFR 337.1(a). Because Plaintiff’s sincere religious beliefs specifically deny that there exists a God, Plaintiff cannot in good conscience include those words in her oath.
10. Plaintiff recognizes that she is permitted to omit the “so help me God” phrase pursuant to 8 CFR 337.1(b). However, Plaintiff takes oaths seriously, especially an oath as momentous as the one she will be taking to become a citizen of the United States of America. Because she will be swearing “to support the Constitution of the United States,” 8 U.S.C. § 1448(a)(1), and “to support and defend the Constitution and the laws of the United States,” 8 U.S.C. § 1448(a)(3), she cannot in good conscience participate in a ceremony that violates that constitution and those laws.

11. Plaintiff has read and studied the Constitution in her preparations for United States citizenship. She knows that the first ten words of the Bill of Rights explicitly state that “Congress shall make no law respecting an establishment of religion.” Her understanding of those words – and the history and the principles they reflect – is that “The government may not ... lend its power to one or the other side in controversies over religious ... dogma,” *Employment Div. v. Smith*, 494 U.S. 872, 877 (1990). There is no greater controversy over religious dogma than whether there exists any “God.”
12. By its very nature, an oath that concludes “so help me God” is asserting that God exists. *Cf. Van Orden v. Perry*, 545 U.S. 677, 695-96 (2005) (Thomas, J., concurring) (“[W]ords such as ‘God’ have religious significance. ... The declaration that our country is ‘one Nation under God’ necessarily entails an affirmation that God exists.”(Citation and internal quotations omitted.)). Accordingly, the current oath violates the first ten words of the Bill of Rights, and to participate in a ceremony which violates that key portion of the United States Constitution is not supporting or defending the Constitution as the oath demands.
13. Moreover, even if the current oath were constitutional, the government of the United States has rendered Plaintiff, on the basis of her sincerely held religious beliefs, unable to take the oath that all others take. This is unfair, demeaning and improper. Plaintiff is unwilling to start her new life as an American citizen in some second-class status solely because she chooses to follow her religious precepts. Under the principles of equal protection, she demands the right to experience the elation, the pride, the sense of camaraderie, and the sense of belonging, which comes from joining her fellow new citizens as an equal participant in the naturalization oath ceremony.

B. DEFENDANTS

14. Defendant the Congress of the United States of America is the branch of government granted all legislative powers under Article I, Section 1, of the United States Constitution.
15. Defendant The United States of America is the constitutionally established government of the United States of America.
16. Defendant L. Francis Cissna is being sued in his official capacity as the Director of the U.S. Citizenship and Immigration Services. He is “appointed by the President, by and with the advice and consent of the Senate.” 6 U.S.C. § 113(a)(1)(E). Pursuant to 6 U.S.C. § 271(a)(3), the Director “(A) shall establish the policies for performing such functions as are transferred to the Director by this section or this chapter or otherwise vested in the Director by law,” “(B) shall oversee the administration of such policies,” and “(D) shall establish national immigration services policies and priorities.”

BRIEF HISTORY OF AMERICAN RELIGIOUS FREEDOM

17. There is no reference to God in the Preamble to the United States Constitution.¹
18. Likewise, the text of the Constitution of the United States does not reference any deity. This is in striking contrast to the Articles of Confederation it replaced,² to the state constitutions then in existence,³ to the Declaration of Independence,⁴ and even to Virginia's Act for Religious Freedom.⁵
19. Moreover, the Constitution specifically states that "no religious test shall ever be required as a qualification to any office or public trust under the United States."⁶

¹ "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America." U.S. Const. pmb1.

² The Articles of Confederation (1781) referenced "the Great Governor of the World." *See* Art. XIII, *available at* avalon.law.yale.edu/18th_century/artconf.asp.

³ In four of the original thirteen colonies, governmental officials were required to be Protestant (New Jersey, Georgia, North Carolina and South Carolina). Delaware required its legislators to state, "I ... do profess faith in God the Father, and in Jesus Christ His only Son, and in the Holy Ghost, one God, blessed for evermore; and I do acknowledge the holy scriptures of the Old and New Testament to be given by divine inspiration." Pennsylvania similarly mandated adherence to Christianity ("I do believe in one God, creator and governor of the universe, the rewarder of the good and the punisher of the wicked. And I do acknowledge the Scriptures of the Old and New Testament to be given by Divine inspiration."), as did Massachusetts, New Hampshire and Maryland. Although the constitutions of New York and Virginia did not have religious test oaths, neither prohibited such a requirement. Only the federal constitution contained this unique notion. *All available at* Colonial Charters, Grants and Related Documents, http://avalon.law.yale.edu/subject_menus/statech.asp, and/or Center for Constitutional Studies Source Documents, <http://www.nhinet.org/ccs/docs.htm>.

⁴ The Declaration of Independence (1776) has four references to a supernatural power: "Nature's God," "their Creator," "the Supreme Judge of the World," and "Divine Providence." *See* <https://www.archives.gov/founding-docs/declaration-transcript>.

⁵ The Act, passed by Virginia's General Assembly on January 16, 1786, began: "Whereas, Almighty God hath created the mind free" Va. Code Ann. § 57-1 (2012). It also speaks of "the Holy author of our religion." *Id.*

⁶ U.S. Const. art. VI, cl. 3.

20. In other words, as James Madison (the “Father of the Constitution”⁷) wrote: “There is not a shadow of right in the general government to intermeddle with religion. Its least interference with it would be a most flagrant usurpation.”⁸
21. The “general government” intermeddles with religion when it places exclusionary religious verbiage in the oaths it sets forth. In keeping with that ideal, the only oath in the Federal Constitution – i.e., the oath to be recited by the President as he takes office – has no religious verbiage. Specifically, that oath lacks a “so help me God” phrase.⁹
22. Also lacking a “so help me God” phrase is the oath provided in the nation’s very first statute.¹⁰
23. The history of this act is extraordinary, for the “so help me God” phrase was not just not included. On the contrary, it was specifically removed from the template used in the oath’s creation.
24. On April 6, 1789, when a quorum was finally obtained in both houses of Congress, “leave [was] given to bring in a bill to regulate the taking the oath or affirmation prescribed by the sixth article of the Constitution.”¹¹

⁷ See White House, *James Madison*, <https://www.whitehouse.gov/1600/presidents/jamesmadison> (last visited Oct. 30, 2017).

⁸ 3 *The Debates in the Several State Conventions ... 1787* 330 (J. Elliot ed., 2d ed. 1836), available at press-pubs.uchicago.edu/founders/documents/amendI_religions49.html.

⁹ “Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:--‘I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.’” U.S. Const. art. II, § 1, cl. 8.

¹⁰ 1 Stat. 23 (1789), available at <https://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=001/llsl001.db&recNum=18> (enter p. 23).

¹¹ 1 Annals of Cong. 101 (1789) (J. Gales ed. 1834), <https://memory.loc.gov/cgi-bin/ampage?collId=llac&fileName=001/llac001.db&recNum=51> (enter p. 101).

25. Accordingly, the House members resolved to take an oath that essentially mirrored the oath taken at the time by the legislators of the State of New York (where the First Congress was meeting):

That the form of the oath to be taken by this House, as required by the third clause of the sixth article of the Constitution of the Government of the United States, be as followeth, to wit: “I, A B, a Representative of the United States in the Congress thereof, do solemnly swear (or affirm, as the case may be) **in the presence of Almighty GOD**, that I will support the Constitution of the United States. **So help me God.**”¹²

26. Consequentially, on April 8, 1789, this oath was subscribed to by thirty-four of the thirty-six House members who attended the Congress after arriving in New York.¹³

27. Despite this precedent, Congress subsequently reconsidered the oath. In fact, the oath was addressed in some manner sixteen times during that April and May.¹⁴

28. The result was a revised oath specified in “An Act to Regulate the Time and Manner of Administering Certain Oaths,” the nation’s first statute.¹⁵

29. This revised oath was identical to the oath taken April 8th except for three deleted phrases. The first deleted phrase was “a representative of the United States in the Congress thereof.” This was because the new oath would not only be required for our federal legislators, it would be mandatory for “the members of the several State Legislatures, and all executive and judicial officers of the several States”¹⁶ as well.

¹² *Id.* (emphases added).

¹³ *Id.* at 106.

¹⁴ Actions related to formulating the oath occurred on nine different occasions in the House (April 6, 14, 16, 20, 22, 25, 27 and May 6, with the Speaker signing the bill on May 21) and on seven different occasions in the Senate (April 28, 29 and May 2, 4, 5, 7, with the Vice President signing the bill on May 22).

¹⁵ 1 Stat. 23 (1789). *See supra*, page 6, n.10.

¹⁶ *Id.* at 24. A separate oath – also with no reference to God – was specified for Secretary of the Senate and the Clerk of the House of Representatives. *Id.*

30. The second deleted phrase was “in the presence of Almighty GOD.”
31. The third deleted phrase was the “[s]o help me God” phrase upon which this case is based.
32. Accordingly, signed into law on June 1, 1789, was “the oath or affirmation required” by the sixth article of the Constitution . . . : ‘I, A.B., do solemnly swear or affirm (as the case may be) that I will support the Constitution of the United States.’” In other words, **the very first statute of the government of the United States involved the specific and affirmative removal of the “[s]o help me God” phrase** from the oath of office to be taken by the members of Congress.¹⁷
33. This is not to say that no one sought an alternative governmental framework. Luther Martin – Maryland’s attorney general for 28 years (1778-1805) and one of that state’s delegates to the Constitutional Convention¹⁸ – complained about his colleagues’ failure to require “*a belief in the existence of a Deity*” as part of the oath to support the Constitution, arguing that “in a Christian country, it would be *at least decent* to hold out some distinction between the professors of Christianity and downright infidelity or paganism.”¹⁹
34. That Martin lost that debate is evidenced not only by the Oath Act (which, again, was the very first “law” promulgated by the United States government), but by the Bill of Rights.

¹⁷ As can be seen, that statute also removed the other reference to God in the oath that served as the initial template.

¹⁸ 3 *The Records of the Federal Convention of 1787*, at 172 (Max Farrand ed., 1911). Available at [http://memory.loc.gov/cgi-bin/ampage?collId=llfr&fileName=003/llfr003.db&recNum=2&itemLink=r?ammem/hlaw:@field\(DOCID+@lit\(fr0032\)\)%230030003&linkText=1](http://memory.loc.gov/cgi-bin/ampage?collId=llfr&fileName=003/llfr003.db&recNum=2&itemLink=r?ammem/hlaw:@field(DOCID+@lit(fr0032))%230030003&linkText=1) (enter 172).

¹⁹ *Id.* (enter 227) (*italics in original*).

35. Introduced into Congress by James Madison exactly one week after the Oath Act was signed into law, the suggested prose included:

The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed.”²⁰

36. Again, a desire to favor (Christian) Monotheism (and to limit the ideals of complete religious freedom and equality inherent in Madison’s words) was soon voiced. For instance, the esteemed physician and renowned statesman Benjamin Rush (who claimed that, in America, “the Christian religion should be preferred to all others,” and that “every family in the United States [should] be furnished at public expense ... with a copy of an American edition of the BIBLE.”²¹) wrote to John Adams, who – as Vice President – was President of the Senate (where the Bill of Rights would be debated).

37. Rush wrote:

Many pious people wish the name of the Supreme Being had been introduced somewhere in the new Constitution. Perhaps an acknowledgement may be made of his goodness or of his providence in the proposed amendments.²²

38. When the Bill of Rights was finalized, however, the language of the Religion Clauses ran completely counter to Rush’s request. The “Supreme Being” was nowhere introduced, nor was any acknowledgement made of “his goodness or of his providence.”

²⁰ 1 Annals of Cong. 451 (1789) (J. Gales ed., 1834), available at memory.loc.gov/cgi-bin/ampage?collId=llac&fileName=001/llac001.db&recNum=51 (enter p. 451).

²¹ Benjamin Rush, *A Plan of a Peace-Office for the United States*, in *The Selected Writings of Benjamin Rush* 20 (Dagobert D. Runes ed., 1947).

²² 1 Benjamin Rush, *Letters* 517 (L.H. Butterfield ed., 1951) (letter of June 15, 1789).

39. Rather, the principle of pure religious freedom – completely excluding that subject from the federal government’s purview, and protecting every individual in his or her religious exercise – was expressly set forth: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”²³
40. In other words, as was later expressed by Madison: “Every new & successful example ... of a perfect separation between ecclesiastical and civil matters, is of importance. ... [R]eligion & Govt. will both exist in greater purity, the less they are mixed together.”²⁴
41. The extraordinary reach of this principle can be seen in Madison’s consideration of the first census, which took place in 1790. To Madison, simply tallying the numbers of “those employed in teaching and inculcating the duties of religion”²⁵ was problematic. This was because “the general government is proscribed from interfering, in any manner whatever, in matters respecting religion; and it may be thought to do this, in ascertaining who, and who are not, ministers of the gospel.”²⁶
42. The separation principle was further illustrated in what has become known as the Treaty of Tripoli,²⁷ which the Senate approved unanimously less than six years after the Bill of Rights was ratified.

²³ U.S. Const. amend. I.

²⁴ James Madison, *To Edward Livingston* (letter of July 10, 1822), in 9 *The Writings of James Madison* 101-02 (Gaillard Hunt ed., 1910).

²⁵ James Madison, 1790, Papers, 13:16. Available at founders.archives.gov/documents/Madison/01-13-02-0017.

²⁶ *Id.*

²⁷ 8 Stat. 154. The treaty was officially entitled the “Treaty of Peace and Friendship.” Available at <http://memory.loc.gov/cgi-bin/ampage?collId=llsp&fileName=002/llsp002.db&recNum=23> (enter p. 19).

43. That treaty specifically stated that “the government of the United States of America is not in any sense founded on the Christian religion.”²⁸ Thus, when the treaty was signed on June 10, 1797, a specific component of the “supreme Law of the Land”²⁹ was that the nation lacked any Monotheistic foundation.
44. That those in the founding era intended to have the federal government stay out of the religion business was seen again when President John Adams, in 1798 and 1799, issued proclamations encouraging “solemn humiliation, fasting, and prayer” to God.³⁰
45. The response was a severe criticism:

Because there is nothing in the constitution giving authority to proclaim fasts ... Because prayer, fasting, and humiliation are matters of religion and conscience, with which government has nothing to do ... And Because we consider a connection between state and church affairs as dangerous to religious and political freedom and that, therefore, every approach towards it should be discouraged ...³¹

46. According to Adams himself:

The National Fast recommended by me turned me out of office. ... This principle is at the bottom of the unpopularity of national Fasts and Thanksgiving. Nothing is more dreaded than the National Government meddling with Religion.³²

²⁸ Id. (enter p. 155).

²⁹ U.S. Const. art. VI, cl. 2 (“This Constitution ... and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.”).

³⁰ John Adams, Proclamations of March 23, 1798, and March 6, 1799, in *A Compilation of the Messages and Papers of the Presidents, 1789-1897* 269, 285 (James D. Richardson ed., 1897).

³¹ Benjamin Franklin Bache, *Aurora*, May 9, 1798, as cited in Richard N. Rosenfeld, *American Aurora: A Democratic-Republican Returns* 113 (1998).

³² Letter from John Adams to Benjamin Rush (June 12, 1812), in *Old Family Letters: Copied from the Originals for Alexander Biddle*. Ser. A, at 392 (Alexander Biddle ed., 1892). Interestingly, after noting in that he had been “represented as a Presbyterian,” Adams wrote that his enemies were of the opinion that it would be better to have ““Jefferson, Madison, Burr, any body, whether they be Philosophers, Deists, **or even Atheists**, rather than a Presbyterian President.”” *Id.* (emphasis added).

47. Thus, it was an attempt to involve the government in religious activity that led to the only occasion in the first forty years of our nation's existence that the President was voted out of office after only one term.³³
48. The subsequent wails of those that bemoaned the lack of an official Monotheistic foundation for our nation further attests to the original understanding of the Constitution as one opposed to “the National Government meddling with Religion.”
49. Timothy Dwight, for instance, president of Yale College from 1795 to 1817, spoke of “*the sinful character of our nation*”³⁴ when he referred to the Framers' failure to invoke God's name. As Dwight accurately argued:
- We formed our Constitution without any acknowledgement of GOD; without any recognition of his mercies to us, as a people, of his government, or even of his existence. The Convention, by which it was formed, never asked, even once, his direction, or his blessing upon their labours. Thus we commenced our national existence under the present system, without GOD.³⁵
50. Not everyone, however, was complaining. In fact, Congress (i.e., the entity to whom the First Amendment is addressed) strongly supported the prohibition against the National Government “meddling with Religion.”
51. This can be seen in an 1830 report from a House committee that responded to a religious lobby's request to halt Sunday mail delivery.³⁶

³³ In 1829, Adams's son, John Quincy Adams became the next President to suffer that fate. See Chronological List of Presidents, First Ladies, and Vice Presidents of the United States, https://www.loc.gov/rr/print/list/057_chron.html (last visited Oct. 30, 2017).

³⁴ Timothy Dwight, *A Discourse in Two Parts: Delivered July 23, 1812, on the Public Fast, in the Chapel of Yale College* 46 (1812).

³⁵ *Id.*

³⁶ H.R. Rep. No. 271 (1830).

52. Alluding to both the Constitution’s Article VI Test Oath Clause and to the Religion Clauses of the First Amendment, the committee determined that the matter “does not come within the cognizance of Congress,”³⁷ because it “would constitute a legislative decision of a religious controversy.”³⁸
53. Referencing the history of religious intolerance in the world, the Report’s authors highlighted that the framers of our Constitution “evinced the greatest possible care in guarding against the same evil.”³⁹ In other words, halting Sunday mail delivery was an issue “involving the dearest rights of all – the rights of conscience.”⁴⁰
54. Noting that “Religious zeal enlists the strongest prejudices of the human mind,”⁴¹ the 1830 Congressmen highlighted that “[w]ith the exception of the United States, the whole human race ... is in religious bondage.”⁴² Thus, according to those congressmen, “the conclusion is inevitable, that the line cannot be too strongly drawn between Church and State.”⁴³

³⁷ *Id.* at 1.

³⁸ *Id.* at 2.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 3.

⁴² *Id.*

⁴³ *Id.*

STATEMENT OF THE FACTS OF THE CASE

55. Plaintiff Olga Paule Perrier-Bilbo was born in 1969 in Paris, France, on September 17 (which the people of the United States of America celebrate as Constitution Day).
56. She lived in Paris until August 2000, at which time she moved to Scituate, Massachusetts.
57. On April 4, 2002, Plaintiff became a permanent resident of the United States, and on December 29, 2004, she was issued a “green card.”
58. Greatly admiring the United States of America – including its people, its form of government, and its constitutional principles – Plaintiff decided in 2008 that she wished to become a citizen of this great nation.
59. Plaintiff then diligently worked to fulfill the requirements for naturalization.
60. Plaintiff developed “a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States.” 8 U.S.C. § 1423(a)(2).
61. Plaintiff also “attached [herself] to the principles of the Constitution of the United States.” 8 U.S.C. § 1427(a).
62. On September 18, 2008, Plaintiff submitted a completed Form N-400 (along with the necessary documents and her fee of \$675.00) to the U.S. Citizenship and Immigration Services (USCIS) agency.
63. On October 23, 2008, Plaintiff had her required “biometrics” taken.
64. On January 10, 2009, Plaintiff was interviewed by USCIS, answering questions about her application and background. She also passed her English and civics tests.

65. In doing so, Plaintiff demonstrated her “understanding of and attachment to the fundamental principles of the Constitution of the United States.” 8 U.S.C. § 1443(a).

66. Accordingly, Plaintiff received a Form N-652 granting her citizenship application.

67. Plaintiff then received a form N-445, indicating that she was scheduled to take the oath of citizenship on March 4, 2009.

68. The oath is set out in 8 CFR 337.1. It reads as follows:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.

69. Plaintiff’s sincere religious belief system includes the denial that there exists any “God.” Accordingly, in January 2009, she wrote to USCIS, explaining that she wished to take the oath without the religious phrase, “so help me God,” included.

70. USCIS contacted Plaintiff on April 8, 2009, stating that she could either participate in the oath ceremony and omit the “so help me God” language, or schedule a private oath ceremony where the government would not use that phrase.

71. In June 2009, Plaintiff received a letter dated June 4, 2009, from Donnell E. Key, Supervisor, Customer Assistance Office. Characterizing the “so help me God” phrase as a “religious reference,” Supervisor Key stated, “Your local office may be able to accommodate you, if they are able to gather a group who are requesting the modified oath, because of their religious training or beliefs.”

72. On August 12, 2009, Plaintiff traveled to the USCIS office in Boston to inquire about the status of her case.
73. In a letter dated August 14, 2009, Karen Anne Haydon, Field Office Director for the USCIS Boston Field Office, reviewed Plaintiff's circumstances. In that letter, Plaintiff was given "15 days in which to notify USCIS which of the options provided to you is acceptable. If you do not respond or decline to specify one of the options listed above, USCIS will reopen your case and deny your application for naturalization for lack of prosecution."
74. On or about August 27, 2009, Plaintiff's counsel, Michael Newdow ("Newdow") sent a letter to Director Haydon, informing the Director that he had been retained by Plaintiff and "that neither of the two options provided will satisfactorily resolve the problem." Newdow then suggested "a solution to this impasse. It is called abiding by the Constitution of the United States, and requires merely that the religious verbiage be removed from the oath, as the First Amendment mandates."
75. On or about November 3, 2009, having received no response to his August 27 letter, Newdow again wrote to Director Haydon, requesting an update. On or about January 11, 2010, still having received no response, Newdow again wrote to Director Haydon, requesting an update. This letter was sent certified, return receipt requested.
76. In a letter dated May 20, 2010 (i.e., nearly nine months after she was first apprised of Newdow's representation, and more than more than five months after Newdow's third letter to her), Director Haydon finally wrote back, acknowledging that her office had received Newdow's correspondences and was fully aware the Plaintiff had retained Newdow to provide legal counsel.

77. Apparently believing that the appropriate role of a Field Office Director is to wait nine months and then inform an applicant of a pertinent code section when it harms that individual but not to provide that information in a timely manner when it might benefit the applicant, Director Haydon cited “8 CFR. § 292.4 [which] states in pertinent part: ‘An appearance shall be filed on the appropriate form by the attorney or representative in each case.’”

78. Director Haydon continued, “The attorney who submitted the August 27, 2009 letter did not submit a Notice of Appearance as Attorney or Representative (Form G-28). Because the appropriate form was not submitted, that attorney did not properly notified [sic] USCIS of his representation of you pursuant to 8 CFR § 292.4.”

79. Thus, according to the Director, “because Mr. Newdow is not authorized to represent you before USCIS, his letter does not constitute a response to the USCIS’ notice of its intent to reopen your form N-400.”

80. Director Haydon next cited 8 CFR § 103.2(b)(13), declaring that “your Form N-400 is denied as abandoned. This decision is made without prejudice toward the filing of a new application in the future. It is noted that you may be eligible to apply for naturalization again at any time.”

81. Finally, Director Haydon concluded her letter by writing:

If you desire a review hearing on this decision pursuant to INA § 336, you must file a request for a hearing within **thirty days** of the date on this notice. If you do not request a hearing within the time allowed, this decision is **final**. A request for a hearing may be made on Form N-336 (with a fee of \$605.00) to the District Director of the USCIS office issuing this decision. A brief or other written statement in support of your request may be submitted with your Form N-336.

82. On or about May 28, 2010, Newdow completed a Form G-28 and mailed it to Plaintiff. That form was completed by Plaintiff and sent to USCIS shortly thereafter.
83. On or about June 7, 2010, a Request for a Hearing on a Decision in Naturalization Proceedings (Form N-336) was sent to USCIS, along with a request for a waiver of the \$605 fee. That request was based upon the fact that Director Haydon had been notified about Newdow's representation of Plaintiff three times over the course of nine months without ever acknowledging those notifications, and then denied Plaintiff's Form N-400 as abandoned, thus necessitating the Form N-336 and its associated fee.
84. In a letter dated June 14, 2010 Director Haydon – acting as judge and jury in a matter involving her own improper actions – denied the fee waiver request. Of note is that Director Haydon “cc’d” Newdow in that letter.
85. On or about July 1, 2010, Plaintiff wrote to Director Haydon, noting that no notification had been received in regard to Newdow's Form G-28 submission. Plaintiff also noted that Director Haydon had failed to notify her or Newdow of the need to file a Form G-28 (despite having received three letters from Newdow over the course of nine months). Accordingly, she requested that Director Haydon recuse herself from further decisions in her case, and that Director Haydon have her supervisor contact Newdow (or herself) regarding the handling of her application.
86. Having received no response from Director Haydon (or anyone else), Plaintiff – on or about September 3, 2010 – again wrote to her, again requesting that the matter be brought to Director Haydon's supervisor.
87. On that date as well, Newdow went online and sought help from USCIS by emailing them at cs@immigrationdirect.com.

88. From “Linda <cs@immigrationdirect.com>” came a response directing Newdow to call USCIS at 800-375-5283 for help in this matter.
89. Newdow called that number on September 13, 2010. Eventually he spoke with “Maria” (#G680589), who transferred him to “Lin.” After repeated explanations and requests – and after being informed that the office he was dealing with saw no evidence of a Form G-28 on file, Newdow was able to get “Lin” to place a referral (#ETC2561001570BOS) with the Boston Field Office. Newdow was told he should hear something “by the end of the month.”
90. On September 15, 2010, a notice was sent from USCIS indicating that the “inquiry has been referred to a supervisor.”
91. On January 11, 2011, with neither Plaintiff nor Newdow having heard from USCIS in three months, Newdow again called the 800-375-5283 number. From the phone tree that was provided, he was able to input a “receipt number” (“372*002245785”) and get the following recorded message:

On September 16, 2009, we mailed a notice to you on Form I-797, which requests additional evidence and/or information about your N-400 Application for Naturalization. Please follow the instructions on Form I-797, and submit the requested information. This case will be placed on hold until we receive the evidence or until the timeframe to submit the information expires. Once we receive the requested evidence or information, we will make a decision on the case and we will notify you by mail.

92. Newdow then spent hours more on the phone, making multiple attempts to get help. Eventually he spoke with an Officer Smith, who seemed very surprised, stating, “They should have updated this. ... This is amazing.” Then, again, “This is amazing.”

93. Officer Smith filed another referral, stating “[t]hat’s the only thing we can do.” He indicated in the referral (#WTC0111101387BOS) that this is the second request.
94. On or about January 11, 2011, Newdow filled out yet another Form G-28. He then mailed that form to Plaintiff for her completion. Plaintiff then submitted that Form G-28 to USCIS.
95. On January 14, 2011, a notice was sent by USCIS to Plaintiff. That notice referenced the fact that “On 01/11/2011 you, or the designated representative shown below, contacted us about your case.” No “designated representative” was listed in that notice, which stated also that “we are not able to extend the period for you to file an appeal” of the 5/20/2010 decision.
96. On March 7, 2011, Newdow again called the 800-375-5283 number. On that date he spoke with an Officer Martinez, who instructed Newdow to just send in another Form G-28.
97. Officer Martinez then transferred Newdow to “Supervisor Chavoya.” At Supervisor Chavoya’s extension there was only an answering machine. Newdow left a message asking to be contacted. Supervisor Chavoya never provided that contact.
98. On October 20, 2011, having heard no response from anyone at USCIS for months, Newdow again called the 800-375-5283 number. He once more checked on the case using the phone tree. Again, he heard the message noted *supra*, at ¶ 91.
99. Newdow then spoke with a Mr. Salango, who was very difficult to understand due to his accent. Eventually, Mr. Salango stated that the file was not in the Boston District, but at the National Records Center. Mr. Salango then transferred Newdow to a supervisor.

100. No one answered at that supervisor's extension. The voice of Officer Viscara (?spelling) came on the machine, and Newdow left another message asking to have his call returned.
101. On March 19, 2012, Newdow sent another letter (this time also signed by Plaintiff) to the Boston Field Office, requesting information on Plaintiff's case.
102. On April 25, 2012, Newdow received a letter from USCIS dated April 10, 2012. That letter indicated that USCIS considered Newdow to be the applicant, and made no reference to Plaintiff. It informed Newdow that **he** was "to appear for a Naturalization Oath Ceremony on: September 6, 2012."
103. Unable to obtain any progress in this interminable ordeal, Plaintiff had the option of filing a lawsuit or to again obtain a grant of citizenship by filing another Form N-400. She chose the latter option. Thus, in December 2014, Plaintiff filed a second Form N-400, this time paying \$680.00 in application fees.
104. That form was apparently received by USCIS on January 7, 2015 (with the filing still listed under the same USCIS number previously assigned to Plaintiff). One of the many Forms G-28 must have made its way into Plaintiff's file, since Newdow received from USCIS a copy of the receipt of the N-400 application. The words "Attorney Copy" were printed on that copy.
105. On February 6, 2015, Plaintiff again had her "biometrics" taken.
106. On June 16, 2015, USCIS scheduled an interview with Plaintiff, to be held on July 22, 2015. Notice was provided in a Form I-797C.
107. Pursuant to a request made by Plaintiff, that interview was canceled. It was then rescheduled for August 10, 2015.

108. On August 10, 2015, Plaintiff had her interview. After the interview, she received another Form N-652, informing her that her citizenship application had been granted.
109. On August 29, 2015, USCIS sent a Form N-445, indicating that Plaintiff was scheduled for another Naturalization Oath Ceremony, to be held on September 10, 2015.
110. USCIS subsequently sent Plaintiff a Form I-797C (“Notice of Action”), advising her that the September 10, 2015 Oath Ceremony was canceled “due to unforeseen circumstances.”
111. On December 6, 2015, President Obama announced that, “It is the responsibility of all Americans -- of every faith -- to reject discrimination. It is our responsibility to reject religious tests on who we admit into this country.”⁴⁴
112. On December 7, 2015, USCIS sent Plaintiff a notice for another interview to be held on December 23, 2015. On December 23, 2015, that interview was held. Newdow appeared at the interview by phone.
113. The issues regarding the “so help me God” phrase were discussed with a USCIS agent, who stated at the interview’s conclusion that the judge would be making a decision, and that Plaintiff would be notified when that decision was made.
114. On or about April 9, 2016, Plaintiff sent a letter to USCIS, asking for an update on her application. There was no response.
115. On or about April 11, 2016, Newdow sent another letter to the Boston Field Office. That letter was addressed to Kenneth J. Sherman, who apparently had replaced Ms. Haydon as the District #1 Director.

⁴⁴ *Address to the Nation by the President* (Dec. 6, 2015), available at <https://obamawhitehouse.archives.gov/the-press-office/2015/12/06/address-nation-president>.

116. In that letter, Newdow asked Director Sherman for guidance on how to satisfy Plaintiff's obligation to support and defend the Constitution of the United States by taking the Naturalization Oath in a ceremony that abides by the First Amendment.
117. Apparently following the path blazed by prior Director Haydon, Director Sherman provided no response to Newdow's April 11, 2016 letter.
118. On or about April 22, 2016, Plaintiff sent another letter to INS, asking for an update on her application. There was no response.
119. On or about May 2, 2016, Plaintiff sent yet another letter to INS, asking for an update on her application. This letter was sent by certified mail. There was no response.
120. On or about September 6, 2016, Newdow sent Director Sherman another letter, explaining that Plaintiff was still awaiting a response. Again, no response ensued.
121. On November 1, 2016, another letter was sent to the Boston Field Office of USCIS. This letter again explained Plaintiff's situation, and warned that a lawsuit was being contemplated to resolve this matter.
122. On March 11, 2017, USCIS sent another Form N-445. This one informed Plaintiff that USCIS had scheduled her for a Naturalization Oath Ceremony on April 6, 2017.
123. On April 6, 2017, Plaintiff arrived at 11:45 am at the U.S. District Court in Boston (where the ceremony was to take place). She tried to explain her situation to the woman who was seating the new citizens to be.
124. That woman had another individual ("Sean") speak with Plaintiff.
125. Plaintiff again explained her situation (to Sean), who told Plaintiff, "You don't have to say anything." Plaintiff replied, "If I participate, I feel I am violating the Constitution I am supposed to support and defend."

126. Sean left to speak with some other individual and then returned, stating, “You cannot be sworn today. You have to go back to the JFK Building and talk to them” (i.e., USCIS).
127. Plaintiff immediately walked the ten minutes or so to the JFK Building, arriving there at approximately 12:20 pm. She explained her situation to the receptionist, who asked Plaintiff to wait. Still waiting at 1:35 pm, Plaintiff heard the receptionist call for someone to help Plaintiff.
128. Still waiting at 2:46 pm, Plaintiff heard the receptionist speak with a Ms. Roman, providing Ms. Roman with Plaintiff’s “A number.”
129. Finally, at 3:30 pm, Plaintiff was met by an individual with a Polish-sounding last name, and a first name sounding something like “Marek.”
130. “Marek” had Plaintiff’s file and, presumably, familiarized himself with it. After Plaintiff spoke with “Marek,” Newdow was called and he, too, spoke with “Marek.”
131. “Marek” indicated that he understood the situation, and that Plaintiff and/or Newdow should expect to hear further from USCIS.
132. No further correspondence was apparently sent by USCIS until August 9, 2017, when a letter signed by Michael J. McCleary, Field Office Director was sent. In the letter, Director McCleary noted that Plaintiff was scheduled to participate in a naturalization oath ceremony occurring on September 14, 2017.
133. Director McCleary wrote further:

As part of these proceedings, you have requested to take an oath of allegiance modified for religious or conscientious objections. You may take the modified oath by not reciting the portion of the oath that you have requested be omitted (see 8 C.F.R. Section 337.1(b); however, please note that the full oath of allegiance will be administered on this day to the rest of the naturalization applicants present and the U.S. District Court will not modify the oath of allegiance for the applicants who have not requested such a modification.

134. Director McCleary continued:

If you do not wish to attend the above noted public naturalization ceremony that will have the full oath of allegiance administered on the day, the U.S. District Court of MA has offered to schedule you for a private naturalization ceremony to take the modified oath of allegiance as you have requested. A date and time will be determined if you choose this option.

135. On Thursday, September 7, 2017, Plaintiff went to the USCIS office with a letter written by attorney Newdow. *See* Addendum. She gave that letter to Patrick Ddiba, who stated the letter would be entered “into the system,” and indicated (in response to Plaintiff’s question) that it would be seen by Director McCleary. Plaintiff also went to the District Court, but there was no office open that dealt with immigration matters.

136. On September 18, 2017, USCIS sent Plaintiff a Form I-797C (“Notice of Action”) stating that “Our records indicate that failed to appear” for the September 14, 2017 ceremony. The notice concluded, “You will be notified by USCIS of the date, place and time of your rescheduled Oath Ceremony.”

PLAINTIFF'S ISSUES

137. Plaintiff Perrier-Bilbo takes the Naturalization Oath very seriously. Of particular concern to her is that she is swearing to “support and defend the Constitution and laws of the United States of America,” and that the oath ends with the words “so help me God.”
138. When the government of the United States ends its official oath with the words “so help me God,” it is violating the first ten words of the Bill of Rights (“Congress shall make no law respecting an establishment of religion“). After all, “The government may not ... lend its power to one or the other side in controversies over religious ... dogma,” *Employment Div. v. Smith*, 494 U.S. 872, 877 (1990), and there is, perhaps, no greater controversy over religious dogma than whether or not there exists any “God.”
139. By adding “so help me God” to the oath, the United States is asserting that God exists. *Cf. Van Orden v. Perry*, 545 U.S. 677, 695-96 (2005) (Thomas, J., concurring) (“[W]ords such as ‘God’ have religious significance. ... The declaration that our country is ‘one Nation under God’ necessarily entails an affirmation that God exists.”(Citation and internal quotations omitted.)).
140. Plaintiff is an Atheist who specifically denies the existence of any “God.”
141. Accordingly, her rights under the First Amendment’s Free Exercise Clause are being violated by this oath.
142. So, too, are her rights under 42 U.S.C. § 2000bb through § 2000bb-4 (Religious Freedom Restoration Act (RFRA)) being violated by the “so help me God” verbiage that the federal government has gratuitously spatchcocked into the naturalization oath.

143. To be sure, 8 CFR 337.1(b) allows for an alteration of the oath:

When a petitioner or applicant for naturalization, by reason of religious training and belief (or individual interpretation thereof), or for other reasons of good conscience, cannot take the oath prescribed in paragraph (a) of this section with the words “on oath” and “so help me God” included, the words “and solemnly affirm” shall be substituted for the words “on oath,” the words “so help me God” shall be deleted, and the oath shall be taken in such modified form. Any reference to “oath of allegiance” in this chapter is understood to mean equally “affirmation of allegiance” as described in this paragraph.

144. As an initial matter, Plaintiff has no objection to the words “on oath.” Accordingly (since § 337.1(b) specifically references those who “cannot take the oath prescribed in paragraph (a) of this section with the words “on oath” **and** “so help me God”), the allowance for the deletion of “so help me God” does not appear to apply to her situation.

145. More importantly, even if the law allowed for the deletion of the “so help me God” phrase for individuals who do not object to the words “on oath,” Plaintiff would be violating her oath to “support and defend the Constitution and laws of the United States of America,” since that Constitution and those laws do not permit the government to turn people – especially as they enthusiastically begin their new lives as citizens of the United States of America – into “outsiders” “by reason of [their] religious training and belief.” *See, e.g., Allegheny County v. Greater Pittsburgh ACLU*, 492 U.S. 573 (1989).

146. It is acknowledged that Plaintiff does not have standing to bring that claim on behalf of others. But she certainly can bring that claim on behalf of herself, both because (i) pursuant to her oath, she is swearing to “support and defend the Constitution and laws of the United States of America,” and (ii) she, herself, is being turned into an “outsider” purely “by reason of [her] religious training and belief.”

147. Moreover, Plaintiff's RFRA rights are being abridged, as can be appreciated by first considering the words written by León Rodríguez (one of Defendant Cissna's predecessors) on July 25, 2014, three days after he participated in his first naturalization ceremony as USCIS Director:⁴⁵

On July 22, I had the honor of swearing in new Americans at a naturalization ceremony hosted at the Department of Justice by U.S. Attorney General Eric Holder. This was my very first naturalization ceremony as USCIS director – and I can't imagine a more meaningful and moving experience as the son and grandson of immigrants who became American citizens. In fact, 50 years ago, I stood next to my parents as they took the Oath of Allegiance.⁴⁶

148. That experience is surely at least as "meaningful and moving" for each individual, such as Plaintiff, being sworn in among those "new Americans."

149. To be able to join with one's fellow new United States citizens in taking the oath of naturalization, without being made to feel like an outsider due to one's religious beliefs, is unquestionably an important benefit for those being naturalized. Yet, as stated in *Thomas v. Review. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 717-18 (1981):

Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists. While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial.

150. By placing a religious statement (to which Plaintiff does not adhere) into the Oath of Naturalization, and then forcing Plaintiff to use an alternative oath (so that she must feel less than a full new citizen), Defendants substantially burden Plaintiff in her exercise of religion.

⁴⁵ Statement of USCIS Director León Rodríguez, available at https://www.uscis.gov/archive/blog/2014/07/an-introduction-by-new-director-of?topic_id=0&page=4.

⁴⁶ *Id.*

151. Under RFRA, pursuant to 42 U.S.C. §§ 2000bb-1(b)(1) and (b)(2):

Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person ... is in furtherance of a compelling governmental interest; and ... is the least restrictive means of furthering that compelling governmental interest.

152. As evidenced by the Article II presidential oath of office and the oath act that comprised the nation's very first statute, *see supra*, ¶¶ 22-32), government has no compelling interest in having "so help me God" in its oaths.

CLAIMS FOR RELIEF

COUNT I: DEFENDANTS' INCLUSION OF THE WORDS "SO HELP ME GOD" IN THE OFFICIAL NATURALIZATION OATH VIOLATES THE ESTABLISHMENT CLAUSE AND PLAINTIFF'S RIGHTS UNDER THAT CLAUSE

153. The allegations set forth in the preceding paragraphs are realleged herein.
154. This cause of action is pled against each and all Defendants.
155. The first ten words of the Bill of Rights are "Congress shall make no law respecting an establishment of religion."
156. In directing the lower courts how to rule in regard to those ten words, the Supreme Court has stated that "[t]he touchstone for our analysis is the principle that the 'First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.'" *McCreary County v. ACLU*, 545 U.S. 844, 860 (2005) (citation omitted).
157. As between the religious idea that there exists a God and the religious idea that God is a myth created by man, government is not neutral when it adds "so help me God" to any oath.
158. The high court has also stated that "[governmental] sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are nonadherents 'that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.'" *Santa Fe Independent School District v. Doe*, 530 U.S. 290, 309-310 (2000) (citation omitted).

159. The phrase “so help me God,” added to the nation’s official Naturalization Oath, sends the ancillary message to members of the audience that disbelieve in God that they are outsiders, not full members of the political community, and an accompanying message to those that believe in God that they are insiders, favored members of the political community.
160. Additionally, “this Court has come to understand the Establishment Clause to mean that government may not promote or affiliate itself with any religious doctrine.” *Allegheny County v. Greater Pittsburgh ACLU*, 492 U.S. 573, 590 (1989).
161. Government promotes and affiliates itself with the religious doctrine that there exists a God when it adds “so help me God” to the sole official Naturalization Oath.
162. Thus, by including “so help me God” in the Oath of Naturalization, Defendants have violated the Establishment Clause and Plaintiff’s rights under that clause.

COUNT II: DEFENDANTS' INCLUSION OF THE WORDS "SO HELP ME GOD" IN THE OFFICIAL NATURALIZATION OATH VIOLATES THE FREE EXERCISE CLAUSE AND PLAINTIFF'S RIGHTS UNDER THAT CLAUSE

163. The allegations set forth in the preceding paragraphs are realleged herein.
164. This cause of action is pled against each and all Defendants.
165. The Free Exercise Clause of the First Amendment states, "Congress shall make no law ... prohibiting the free exercise [of religion]."
166. In determining the reach of the Free Exercise Clause, the Supreme Court provided guidance in *Sherbert v. Verner*, 374 U.S. 398 (1963).
167. In that case, the Court indicated that government may not place an individual in a situation that "forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to [obtain those benefits], on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her [religious beliefs]." *Id.*, at 404.
168. Of course it is true that in *Employment Div. v. Smith*, 494 U.S. 872, 886 n.3 (1990), the Court determined "that generally applicable, religion-neutral laws that have the effect of burdening a particular religious practice need not be justified by a compelling governmental interest." The addition of "so help me God" to an oath, however, is clearly not "religion-neutral." On the contrary, as between the religious idea that there exists a God and the religious idea that God is a man-made fiction, it unquestionably favors the former.

169. Accordingly, since “A law failing to satisfy th[e neutrality] requiremen[t] must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest,” *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 531 (1993), government must meet those requirements in order to have “so help me God” in any of its official oaths.
170. As noted, *supra* p. 30 (¶¶ 151-152), there is no compelling interest in placing “so help me God” in the Naturalization Oath. Thus, by including “so help me God” in the Oath of Naturalization, Defendants have violated the Free Exercise Clause and Plaintiff’s rights under that clause.

COUNT III: DEFENDANTS' INCLUSION OF THE WORDS "SO HELP ME GOD" IN THE OFFICIAL NATURALIZATION OATH VIOLATES RFRA AND PLAINTIFF'S RIGHTS UNDER RFRA

171. The allegations set forth in the preceding paragraphs are realleged herein.
172. This cause of action is pled against each and all Defendants.
173. Pursuant to 42 U.S.C. § 2000bb through § 2000bb-4, the Religious Freedom Restoration Act of 1993 (RFRA), government may not substantially burden any individuals in the exercise of their religious beliefs absent a compelling interest.
174. A substantial burden exists “where [the state] denies [an important] benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs.” *Thomas v. Review. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 717-18 (1981).
175. Being able to join with one’s fellow immigrants in becoming new citizens of the United States by reciting a Naturalization Oath that does not exclude the given oath-taker on the basis of her religious beliefs is an important benefit.
176. It is noteworthy that the Supreme Court has emphasized that “Congress enacted RFRA in 1993 in order to provide very broad protection for religious liberty,” *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2760 (2014); that “RFRA did more than merely restore the balancing test used in the *Sherbert* line of cases: it provided even broader protection for religious liberty than was available under those decisions,” *id.*, at 2761 n.3; and that the protection was to be ““to the maximum extent permitted by the terms of this chapter and the Constitution,”” *id.*, at 2762.

177. Moreover, RFRA was intended to address government actions that were religiously neutral. In this case, Defendants have gone far beyond that expected reach of RFRA. They have acted in a religiously non-neutral manner. Specifically, Defendants have introduced a Monotheistic bias into the Oath of Naturalization. “So help me God” is no more “neutral” than “so help me Jesus,” “so help me Mohammed,” or any other phrase that excludes individuals on the basis of their religious beliefs.
178. On October 6, 2017, the Attorney General of the United States, Jeff Sessions, issued a Memorandum providing “guidance interpreting religious liberty protections in federal law, as appropriate.” In that Memorandum, he wrote, “A governmental action substantially burdens an exercise of religion under RFRA if it ... pressures the adherent to modify [that adherent’s religious] observance or practice.
179. Plaintiff has every right to take her naturalization oath in the company of her fellow new citizens and she seeks to exercise that right. Yet the only way she can do this is to participate in a ceremony where the United States government affirms the existence of God. Plaintiff’s religious tenets prohibit her from participating in ceremonies that include such an affirmation. Thus, in order to participate in one of the most meaningful and significant events in her entire life, Plaintiff is being pressured to modify her religious observance and practice.
180. According to Attorney General Sessions, this is a substantial burden on Plaintiff’s religious exercise that mandates the government to show a compelling interest. Government cannot make that showing for having “so help me God” in its naturalization oath, and – even if some interest that is “compelling” could be conjured up – placing “so help me God” would not be the least restrictive means of serving that interest.

181. The Supreme Court, in *Trinity Lutheran Church of Columbia, Inc., v. Comer*, No. 15-577, 582 U.S. ____ (2017), essentially made the same point, writing that “this Court has repeatedly confirmed that denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion that can be justified only by a state interest ‘of the highest order.’” *Id.*, slip op. at 6 (citations omitted).
182. Defendants have no interest “‘of the highest order’” to justify the burden placed on Plaintiff in this matter. *See supra* p. 30 (¶¶ 151-152). Thus, by including “so help me God” in the Oath of Naturalization, Defendants have violated RFRA and Plaintiff’s rights under RFRA.

COUNT IV: DEFENDANTS' INCLUSION OF THE WORDS "SO HELP ME GOD" IN THE OFFICIAL NATURALIZATION OATH VIOLATES THE EQUAL PROTECTION COMPONENT OF THE FIFTH AMENDMENT'S DUE PROCESS CLAUSE AND PLAINTIFF'S RIGHTS UNDER THAT EQUAL PROTECTION COMPONENT

183. The allegations set forth in the preceding paragraphs are realleged herein.
184. This cause of action is pled against each and all Defendants.
185. In determining equal protection matters, the Supreme Court has recently relied on the concept of "individual dignity." *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). Thus, decided the Court, homosexuals who wish to marry should have the right to do so, lest their "individual dignity" be disparaged.
186. Yet, "freedom to exercise religion is – unlike the right imagined by the majority – actually spelled out in the Constitution." *Id.*, at 2625 (Roberts, C.J., dissenting).
187. Accordingly, whatever constitutional command there is for equal protection in the sexual preference realm, it surely must be at least as great in the realm of religion.
188. "[P]ersonal choices central to individual dignity and autonom[y] include[e] intimate choices that define personal identity and beliefs." *Id.*, at 2597 (majority opinion). Plaintiff here has made an intimate choice in regard to religion, which is explicitly protected by the First Amendment.
189. Plaintiff's religious choice is to maintain that there is no God, and the government's disregard of that choice (and endorsement of its opposite) – during the citizenship ceremony in which Plaintiff has earned the right to participate – is surely not "equal dignity in the eyes of the law." *Id.*, at 2608.

190. Under *Obergefell*, equal protection principles protect the right of same sex couples to have government show respect for their sexual orientation as that pertains to marriage ceremonies.
191. Surely, then, those same principles protect the right of Atheists to have government show respect for their religious orientation as that pertains to naturalization ceremonies.
192. Accordingly, Defendants have violated the Equal Protection component of the Due Process Clause of the Fifth Amendment and Plaintiffs' rights under that clause.

COUNT V: DEFENDANTS' INCLUSION OF THE WORDS "SO HELP ME GOD" IN THE OFFICIAL NATURALIZATION OATH VIOLATES THE FIFTH AMENDMENT'S DUE PROCESS CLAUSE AND PLAINTIFF'S PROCEDURAL DUE PROCESS RIGHTS

193. The allegations set forth in the preceding paragraphs are realleged herein.

194. This cause of action is pled against each and all Defendants.

195. In order for Plaintiff to become a naturalized citizen of the United States, she must take an oath swearing "to support and defend the Constitution and the laws of the United States." 8 U.S.C. § 1448(a)(3).

196. Because the ceremony that Defendants have created itself violates multiple provisions in the Bill of Rights, Plaintiff will be violating her oath to provide such Constitutional support and defense simply by participating in the oath ceremony.

197. Under Due Process precepts, government may not require an individual to take an oath to support and defend the Constitution while participating in an oath ceremony that, itself, violates the Constitution. Accordingly, Defendants have violated the Due Process Clause of the Fifth Amendment and Plaintiffs' procedural due process rights under that clause.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests relief and judgment as follows:

- I. Declaring that the inclusion of “so help me God” within the official naturalization oath violates the Establishment Clause (and/or Plaintiff’s rights under that clause);
- II. Declaring that the inclusion of “so help me God” within the official naturalization oath violates the Free Exercise Clause (and/or Plaintiff’s rights under that clause);
- III. Declaring that the inclusion of “so help me God” within the official naturalization oath violates 42 U.S.C. § 2000bb through § 2000bb-4, the Religious Freedom Restoration Act (RFRA) (and/or Plaintiff’s rights under that Act);
- IV. Declaring that the inclusion of “so help me God” within the official naturalization oath violates the Equal Protection and Procedural Due Process components of the Fifth Amendment’s Due Process Clause (and/or Plaintiff’s rights under that clause);
- V. Permanently enjoining Defendants from placing “so help me God” in future naturalization oath ceremonies;
- VI. Ordering Defendant to reimburse Plaintiff’s second Form N-400 \$680.00 application fee.
- VII. Allowing Plaintiff – pursuant to 42 U.S.C. § 1988, 28 U.S.C. § 2412 (the Equal Access to Justice Act), and as may otherwise be allowed by law – to recover all reasonable costs, expert witness fees, attorney fees, and other expenses; and
- VIII. Providing such other and further relief as the Court may deem proper.

Respectfully submitted,

/s/ - Michael Newdow

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