No. _____

In The
Supreme Court of the United States

OLGA PAULE PERRIER-BILBO;

*Petitioner*,

v.

UNITED STATES, L. FRANCIS CISSNA, DIRECTOR, U.S. CITIZENSHIP AND IMMIGRATION SERVICES;

*Respondents*.

**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT**

# PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED

May the federal government continue to degrade Atheists from the equal rank of citizens by repeatedly, flagrantly, and facially lending its power to Monotheistic belief?

## PARTIES TO THE PROCEEDING

Petitioner Olga Paul Perrier-Bilbo was the plaintiff in the district court proceedings and appellant in the court of appeals proceedings.

Respondents United States and L. Francis Cissna, Director, U.S. Citizenship and Immigration Services, were the defendants in the district court proceedings and appellees in the court of appeals proceedings.

## RELATED CASES

There are no related cases.

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The First Circuit's opinion is reported at *Perrier-Bilbo v. United States*, 954 F.3d 413 (1st Cir. 2020) and reproduced at App. 001-55. The opinion of the District Court for the District of Massachusetts is reported at *Perrier-Bilbo v. United States*, 346 F. Supp. 3d 211 (D. Mass. 2018) and reproduced at App. 056-78.

## JURISDICTION

The Court of Appeals entered judgment on April 3, 2020. Pursuant to this Court's Order dated March 19, 2020, the deadline to file this Petition is August 31, 2020. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL PROVISIONS, STATUTE, AND REGULATION INVOLVED

The issues in this case are based primarily on the First Amendment's Religion Clauses, the equal protection component of the Fifth Amendment's Due Process Clause, the Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb-2000bb-4 ("RFRA"), and 8 CFR 337.1. These laws are all provided at App. 079-85.

## CONCISE STATEMENT OF THE CASE

Plaintiff Olga Paule Perrier-Bilbo is a French citizen who, in 2008, decided to obtain American citizenship. Within months she had completed the necessary preliminary requirements and was ready for the final step in the naturalization process: joining with her fellow immigrants to take the oath as set forth at 8 CFR 337.1. In early 2009, Ms. Perrier-Bilbo received notice that she was scheduled to participate in an oath ceremony on March 4, 2009.

The oath includes a declaration that the individual "will support and defend the Constitution and laws of the United States of America." The oath also ends with the words "so help me God." Because she is an Atheist (and because she believes that the governmental infusion of a religious component in the naturalization ceremony is a violation of "the Constitution and laws of the United States of America"), Plaintiff refused to participate in the oath ceremony as scheduled. Rather, she requested that the oath be administered without the "so help me God" verbiage.

The U.S. Citizenship and Immigration Services ("USCIS") personnel informed Ms. Perrier-Bilbo that she was permitted to take the oath without including the challenged phrase. Plaintiff did not feel that was an adequate remedy, since she believes it violates her religious code to be an unwilling participant in a ceremony that includes what she considers a religious falsehood.[1] Additionally, she refuses to be

[1] *Cf.* Rev. Francis J. Connell, *Baltimore Catechism No. 3* (Benziger Brothers, Inc., 1949) No. 206 at p. 124. ("A Catholic sins against faith by taking part in non-Catholic worship

degraded from the equal rank of citizens on the basis of religion, especially as a part of the very act by which she becomes a citizen.[2]

USCIS presented another option: They offered her a separate ceremony where "so help me God" was not utilized at all. This, too, was unacceptable to Plaintiff. The idea that she was to forgo the joy of celebration with her fellow newly-naturalized citizens and instead be shipped off like a pariah to spend what should be one of the most exultant days feeling instead like an outsider was, to her, absolutely egregious. Why should she be punished because the Monotheistic majority in this nation decided to interlard the citizenship oath with their religious ideology? Isn't that precisely the type of behavior the Establishment Clause exists to preclude? Moreover, hasn't this Court already determined that *Plessy v. Ferguson*, 163 U.S. 537 (1896), was wrong the day it was decided?

With the government refusing to remove the "so help me God" verbiage from any general naturalization oath ceremony, Plaintiff sought relief by filing a lawsuit in the U.S. District Court for the District of Massachusetts on November 2, 2017. On February 22, 2018, Defendants filed a Fed. R. Civ. P. 12(b)(6) motion to dismiss. The District Court treated

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because he thus professes belief in a religion he knows is false.").

[2] Spatchcocking religious ideologies into governmental activities "degrades from the equal rank of citizens all those whose opinions in religion do not bend to those of the legislative authority." James Madison, *A Memorial and Remonstrance, Presented to the General Assembly of the State of Virginia, at Their Session in 1785, in Consequence of a Bill Brought into That Assembly for the Establishment of Religion by Law* 9. (1786).

the motion as cross-motions for summary judgment, and, on September 28, 2018, filed a Memorandum and Order in favor of Defendants.

Plaintiff filed a timely appeal of the District Court's Order in the United States Court of Appeals for the First Circuit on November 8, 2018. After briefing, oral argument was held on July 23, 2019. On April 3, 2020, the panel issued its decision, affirming the District Court's Order. This Petition seeks a writ of certiorari to review the decision of the Court of Appeals.

## REASON FOR GRANTING THE PETITION

### THE FIRST CIRCUIT HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT APPEARS TO CONFLICT WITH RELEVANT DECISIONS OF THIS COURT

Perhaps no question of federal law is more important than the question of equal justice, especially as it relates to protected characteristics. Thus, cases such as *Brown v. Board of Education*, 347 U.S. 483 (1954), serve as monuments to this nation's devotion to the great and noble principles enshrined in the Constitution. *Brown*, of course, involved a matter of race, with a unanimous Court recognizing the basic evil of racial discrimination that had become institutionalized throughout our society. When the Court, again in a unanimous decision, struck down anti-miscegenation statutes in *Loving v. Virginia*, 388 U.S. 1 (1967), it reinforced

that White Supremacy which had, for centuries, marginalized and denigrated the Black race on this continent would no longer be permitted under our legal system.

In 2007, seeking to commemorate the decision in *Loving*, the House of Representatives passed H. Res. 431. App. 091-94. That resolution began by noting the long history of North American anti-miscegenation laws. "Whereas the first anti-miscegenation law in the United States was enacted in Maryland in 1661" was how the Resolution began. App. 091. Other "Whereas" clauses included that "the Supreme Court held in Pace v. Alabama that anti-miscegenation laws were consistent with the equal protection clause of the 14th Amendment as long as the punishments given to both white and black violators are the same," *id.*, and that "by 1948, 38 States still forbade interracial marriage, and 6 did so by State constitutional provision." App. 091. Yet, despite the historical practices and understandings that clearly suggested that anti-miscegenation laws were constitutionally permissible, this Court recognized those laws as "directly subversive of the principle of equality," *Loving*, 388 at 12, and that they "surely … deprive all the State's citizens of liberty without due process of law," *id.* *Loving* involved a right that "resides with the individual and cannot be infringed by the State." *Id.* H. Res. 431 took pride in this Court's characterizations of the anti-miscegenation laws. App. 093.

This admiration for the Court's recognition that the long history of anti-miscegenation statutes means little (if anything) when measured against the evil of White Supremacy can be contrasted with the effects that resulted from another congressional

resolution passed by the Senate just a year earlier. Commemorating the 50th anniversary of "In God We Trust" becoming the national motto, S. Con. Res. 96 (2006), App. 086-90, also began with a "Whereas" historical review. This time, the clauses referred to espousals of Monotheism. For instance, the concurrent resolution informed us that in 1694, coins were minted with "God Preserve Our Carolina" and "God Preserve Our New England." App 086. Other historical facts included quotations indicating God-belief by some of our most renowned foundational statesmen. App. 087-88. (Not noted was that all those statesmen were White males, that many of them owned, bought, and sold Black human beings, or that they supported anti-miscegenation statutes.) The Senate also highlighted that in 1861 (i.e., after sixty-eight years of never mentioning a deity on any of our monetary instruments) "the Secretary of the Treasury … stated … 'The trust of our people in God should be declared on our national coins.'" App 088.

It can be assumed that the senators were fully aware that the Bill of Rights begins with "Congress shall make no law respecting an establishment of religion," and that they were also cognizant of the fact that there exist Americans who deny the existence of any god. Thus, at this stage, one might wonder if the Senate resolution would proceed as the House did with H. Res 431 – i.e., focus on eliminating a legal framework that is directly subversive of the principle of equality. Of course, that was not the case. Apparently, as politically unwise as it is to support White Supremacy, it is politically advantageous to support Monotheistic Supremacy. Accordingly, the last "Whereas" clause in S. Con. Res. 96 was:

> Whereas the occasion of the 50th anniversary of the formal adoption of the national motto of the United States, "In God We Trust", presents an opportunity for the citizens of the United States to reaffirm the concept embodied in that motto that—
>
> (1) the proper role of civil government is derived from the consent of the governed, who are endowed by their Creator with certain unalienable Rights; and
>
> (2) the success of civil government relies firmly on the protection of divine Providence.

App. 089. This was followed by a resolution that, among other things, Congress "celebrates the national motto as … a fundamental aspect of the national life of the citizens of the United States." App. 090.

The juxtaposition of H. Res. 431 and S. Con. Res. 96 raises a very interesting question that this Court has never addressed: Why, when evaluating a law that reflects White Supremacy, is the history leading to the law deemed to be "directly subversive of the principle of equality," while when evaluating a law that reflects Monotheistic Supremacy, the history is deemed to not only justify, but to celebrate the law? This query is especially puzzling when it is recognized that the anti-miscegenation law struck down in *Loving* was **not** directly subversive of the principle of equality. On the contrary, it was **indirectly** subversive of the equality principle since Blacks and Whites were treated identically under the

law. What is "directly subversive of the principle of equality" is having "so help me God" conclude the official naturalization oath,[3] as well as having "In God We Trust" as the national motto,[4] having a Pledge of Allegiance that claims we are "one Nation under God,"[5] having a Supreme Court that starts each of its sessions with "God save the United States and this honorable Court,"[6] having "In God We Trust" inscribed on every one of the billions of coins[7] and currency bills[8] produced each year by the Treasury Department, and having a military code of conduct that requires every serviceman to "trust in my God and in the United States of America."[9] These acts are all "directly subversive of the principle of equality" because each commemorates, celebrates, reaffirms, and/or encourages Monotheism, while they do nothing but directly contradict and deny Atheistic belief.

Thus it can be seen that although this Court has written, "Just as we subject to the most exacting scrutiny laws that make classifications based on race, ... so too we strictly scrutinize governmental classifications based on religion," *Employment Div. v. Smith*, 494 U.S. 872, 886 n.3 (1990) (citations omitted), the fact is that governmental favoritism for Monotheists is not "scrutinized" at all by this Court. Rather it is excused, justified, and amplified. Not one

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[3] 8 CFR 337.1.
[4] 36 U.S.C. § 302.
[5] 4 U.S.C. § 4.
[6] *The Court and Its Procedures*, https://www.supremecourt.gov/about/procedures.aspx (last visited Aug. 31, 2020).
[7] 31 U.S.C. § 5112(d)(1).
[8] 31 U.S.C. § 5114(b).
[9] 10 U.S.C. § 802, Art. VI.

of the members of this Court would ever uphold a naturalization oath that ended with "so help me the White race" or stand for "In Caucasians We Trust" as the national motto. Not one of the members of this Court would condone having that motto inscribed on every coin and currency bill, or having public school leading their students in a Pledge of Allegiance that claims we are "one Nation under White people." Not one justice would stand silent if our military code of conduct required every serviceman to "trust in the White race and in the United States of America." And most assuredly, not one justice would allow a court cry of "May the White Race save the United States and this honorable court."

Plaintiff contends, therefore, that "the relevant decisions of this Court" are not the ones where it has been "stated that 'the Establishment Clause must be interpreted "by reference to historical practices and understandings."'" *Perrier-Bilbo v. United States*, 954 F.3d 413, 423 (2020) (citations omitted). On the contrary, to use "historical practices and understandings" as the touchstone in Establishment Clause jurisprudence is to ignore the very essence of the Clause. "It is an unfortunate fact of history that when some of the very groups which had most strenuously opposed the established Church of England found themselves sufficiently in control of colonial governments in this country to write their own prayers into law, they passed laws making their own religion the official religion of their respective colonies." *Engel v. Vitale*, 370 U.S. 421, 427 (1962). That is the reason why we have a Bill of Rights, because the Framers recognized that those in power often (if not always) tend to favor their own race, their own gender, their own sexual orientation and,

above all, their own religion. As James Madison pointed out, "[t]he great danger lies … in the body of the people, operating by the majority against the minority,"[10] since the majority in a democracy has its representatives in power. In other words, to announce that "historical practices and understandings" form the basis of a judicial decision is to send a message that principles (such as equality and liberty) have lost their utility, and that the courts will not protect minorities.

In *Walz v. Tax Commission*, 397 U.S. 664, 678 (1970), this Court stated appropriately that "no one acquires a vested or protected right in violation of the Constitution by long use, even when that span of time covers our entire national existence and indeed predates it." Thus, especially if there are objective criteria for assessing a constitutional right, it does not matter that there is a history of that right having been violated. In other words, if Monotheists have their religious view (i.e., that there is a God) incorporated into the naturalization oath, and Atheists don't have their religious view (i.e., that God is a fiction and "the expression and product of human weakness"[11]) incorporated into the naturalization oath, then Monotheists and Atheists are not being treated equally, and there is an unequivocal constitutional violation.

To be sure, *Walz* was correct when it stated (in the next sentence), "Yet an unbroken practice … is not something to be lightly cast aside." *Walz*, 397

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[10] 1 Annals of Cong., 454 (Joseph Gales, ed. 1790), at 454-55 (June 8, 1789).

[11] Letter of Albert Einstein to Erik Gutkind (Jan. 3, 1954), https://lettersofnote.com/2009/10/07/the-word-god-is-the-product-of-human-weakness/.

U.S. at 678. But because something should not be "lightly" cast aside does not mean it should not be cast aside. Yet that is how this Court interpreted the second *Walz* statement when it decided *Marsh v. Chambers*, 463 U.S. 783, 790 (1983). Evidencing a complete and utter disregard for the religious views of Atheists, *Marsh* made what can only be described as the most ludicrous claim imaginable (at least from the point of view of an Atheist): "[T]here is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief." 463 U.S., at 794-95. Every single prayer given in the Nebraska legislature was a prayer to "God." Were Atheists simply invisible to the nine highest jurists in the land? Can anyone really be blind to the fact that every prayer was exploited to proselytize the one belief that there is a God? Was the Monotheistic Supremacy of the members of this Court so blinding that they saw no disparagement in the complete disregard for Atheistic religious opinions in the "light of the unambiguous and unbroken history of more than 200 years?" *Marsh*, 463 U.S., at 792.

With the *Marsh* opinion in place, the initial *Walz* quotation has been altered. It is now read as "no one acquires a vested or protected right in violation of the Constitution by long use, even when that span of time covers our entire national existence and indeed predates it, unless the protected right is Monotheism." Whites cannot acquire a vested or protected right in violation of the Constitution. Protestants cannot acquire a vested or protected right in violation of the Constitution. Males cannot acquire a vested or protected right in violation of the Constitution. But Monotheists? They have it made.

Just step into the Supreme Court building anytime the Court is in session and listen to the opening cry seeking the assistance of God. Just step into either chamber in Congress and gaze at the nation's sole official motto, "In God We Trust" on the walls as a tax-supported chaplain leads the room in a prayer to God, followed by the congress reciting the Pledge of Allegiance to "one Nation under God." Every four years, at the grandest ceremony we have (i.e., the inauguration of the President of the United States) just listen as the Chief Justice – who has written that "[i]f no enumerated power authorizes Congress to pass a certain law, that law may not be enacted," *National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 535 (2012) – alters (with no authorization whatsoever) the Constitutional text he swore to protect and defend, adding the exclusionary religious words, "so help me God." Then listen as the President – seeking to bolster his political support – peppers his speech with references to God and concludes with the apparently now-mandatory, "May God bless you and may God bless the United States of America."

The most outlandish aspect of the "historical practices and understandings" to which the judiciary refers is the fact that it is devoid of the most momentous historical facts. For instance, the Constitution itself was constructed with no Monotheistic bent. Unlike every colonial preamble, the preamble of the federal constitution has no reference to a Supreme Being. The only oath specified in the document is the Article II oath for the President, which – unlike the oath used for naturalization ceremonies – has no "so help me God" verbiage. Article VI, which requires the taking of an

oath in order to serve in a governmental capacity, specifically mandates that "no religious test shall ever be required as a qualification for any office or public trust." U.S. Const. Art. VI, § 3. Possibly more probative than any other fact is the history behind the very first act – Statute 1 – of the American government.

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."[12] 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."[13]

Consequentially, on April 8, 1789, this oath was subscribed to by thirty-four of the thirty-six House

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[12] 1 Annals of Cong. 101 (1789) (J. Gales ed. 1789), memory.loc.gov/cgi-bin/ ampage?collId=llac&fileName =001/llac001.db&recNum=51 (enter p. 101).

[13] *Id*. (emphases added).

members who attended the Congress after arriving in New York.[14]

Despite this precedent, Congress subsequently reconsidered the oath. In fact, the oath was addressed in some manner sixteen times during that April and May.[15] 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.[16] This revised oath was identical to the oath that had been taken, except that three phrases were deleted. 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"[17] as well. The second deleted phrase was "in the presence of Almighty GOD." The third deleted phrase was the "[s]o help me God" phrase upon which this case is based.

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

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[14] *Id*. at 106.

[15] 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).

[16] 1 Stat. 23 (1789), *available at* memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName =001/llsl001.db&recNum=2 (enter p. 23).

[17] *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*.

swear or affirm (as the case may be) that I will support the Constitution of the United States.'"[18] 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** that had already been used by Congress itself.[19]

Finally, there is one other fact that is relevant to the USCIS inclusion of "so help me God" in the naturalization oath. This Court has an official oath for those who wish to become members of the Supreme Court Bar. Like the Presidential oath in Article II and the oath the First Congress chose pursuant to Article VI, that oath also has no "so help me God" language.

In any event, this case presents the Court with an opportunity to explain why it views White Supremacy as an evil that needs to be extinguished, while it views Monotheistic Supremacy as something worthy and deserving of the Court's protection. The Court can elucidate why, when it interpreted the Equal Protection Clause in *Brown v. Board of Education*, 347 U.S. 483 (1954), it placed no weight on the fact that Congress passed "An Act relating to Public Schools in the District of Columbia"[20] (which funded "colored-only" schools) just forty days after it approved of the Fourteenth Amendment, or the fact that racial segregation had been in place in the public schools (and elsewhere) for nearly a century. Why were the "historical practices and understandings" insufficient to maintain the

[18] 1 Stat. 23 (1789).

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

[20] Cong. Globe, 39th Cong., 1st Sess. (Appendix) 380-81 (1866).

segregated public schools desired by the nation's White Supremacists? After all, in *Marsh v. Chambers*, 463 U.S. 783, 790 (1983), the Court wrote:

> It can hardly be thought that in the same week Members of the First Congress voted to appoint and to pay a chaplain for each House and also voted to approve the draft of the First Amendment for submission to the states, they intended the Establishment Clause of the Amendment to forbid what they had just declared acceptable.

Why was that same argument not used in *Brown v. Board of Education*?

This Court has never divulged why Monotheistic Supremacists are permitted to subjugate Atheists in ways that White Supremacists are prohibited from subjugating Blacks. If there is a reason for these divergent approaches to the ideal of equal protection, the Court should make it known. If there is not a reason, then the Court should announce that fact. Either way, this is an issue that the Court should consider so that Olga Perrier-Bilbo – and the millions of Atheists who are similarly turned into second-class citizens by the laws passed by the nation's Monotheistic Supremacists – can enjoy full and equal constitutional and statutory liberties on a par with those who are followers of every other religion.

## CONCLUSION

The reader (who is likely to be a Monotheist) undoubtedly takes offense at being compared to a White Supremacist. After all, White Supremacists enslaved other human beings, bought and sold them like cattle, and believe Blacks are inferior.

Yet a White Supremacist might reasonably be reciprocally insulted. After all, Monotheistic Supremacists have fought numerous wars, killing hundreds of thousands of other human beings to prove their God is the God who is to be obeyed, and they think that people with other religious ideologies (especially Atheistic ideologies) are inferior.

People will always believe their views are best. That is why those are the views they hold. Our Framers had the genius to recognize that allowing those views to be aired in the marketplace of ideas, without influence by the power, prestige, and financial support of government, is what allows a society to thrive. Since that recognition, numerous groups have nonetheless tried to garner that power, prestige, and financial support for their ends. No group has been as successful as the Monotheist Supremacists.

Plaintiff Olga Paule Perrier-Bilbo respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

Respectfully submitted,

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