

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MICHAEL NEWDOW, et al.,
Plaintiffs,

v.

HON. JOHN ROBERTS, JR., et al.,
Defendants.

Civil No. 1:08-cv-02248-RBW

BRIEF OF

Peter R. Henriques, Professor of History, Emeritus, George Mason University
Fred Anderson, Professor of History, University of Colorado
John E. Ferling, Professor of History, West Georgia College
Martha Saxton, Professor of History, Amherst College
AS AMICI CURIAE

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STATEMENT OF SUBJECT MATTER

In just ten days, President-elect Barak Obama will stand up before the American people and the Chief Justice of the Supreme Court to be sworn in to the Office of President. Chief Justice, the Honorable John Roberts, Jr., will administer the oath. The language of the Presidential Oath is established in the United States Constitution. Justice Roberts, in agreement with the President-elect, intends to modify that oath.

The legality of such a modification is beyond the scope of this brief. This brief addresses the historical question of whether or not President Washington modified the oath when he was inaugurated. This brief is necessary because Defendants have alleged that the intended modification was made by our first President and used by subsequent presidents. This allegation is utterly false. There is absolutely no contemporary evidence that President Washington did any such thing. The Defendants cite no historical documents and no source that was even alive at the time of Washington's administration. Contemporary records indicate he stated the oath as written in the Constitution. A modification would have been contrary to the way in which President Washington conducted himself and would have been contrary to the actions taken by Congress in the days immediately surrounding the inauguration. In deciding the legality of the proposed change, this Court should have all of the facts and not just the myths at its fingertips.

INTEREST OF AMICI CURIAE

The Amici have no personal interest in the outcome of this case. The Amici are a collection of historians and scholars who have studied the early history of the United

States and who stand up for historical accuracy. The Amici give no opinion to how the Court should decide this case but merely request that the Court use the real history of the United States and not perpetuate falsehoods.

ARGUMENT

One of the most widely held myths about George Washington is that immediately after he took the prescribed oath to become the nation's first President, he solemnly added the words, "So help me God" and thus began a tradition that has been followed ever since. Unfortunately, this myth, accepted by such fine historians as David McCullough¹ and Kenneth C. Davis², is given further credence in a video released by The Joint Congressional Committee on Inaugural Ceremonies maintained by the Senate Rules Committee. Entitled 'So Help Me God,' it shows president after president uttering the words and authoritatively declares that George Washington first used the phrase. In fact, an examination of the historical evidence demonstrates that such a claim is almost certainly false.

There is absolutely no extant contemporary evidence that President Washington altered the language of the oath as laid down in Article 2, Section 1 of the Constitution: "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." A long letter by the French foreign minister Comte de

¹ McCullough, David, *John Adams*, Simon & Schuster Paperbacks, New York, 2001, paperback edition January 2008, page 387.

² Davis, Kenneth C., *Don't Know Much About History: Everything You Need to Know About American History but Never Learned*, Harper Collins, New York, 2003

Moustier, who attended the ceremony, repeated the oath verbatim and did not include the additional words.³

Apparently, it was not until 65 years after the event that the story that Washington added this phrase first appeared in a published volume. In his book, *The Republican Court*, Rufus Griswold referenced a childhood memory of Washington Irving as his source.⁴ It took another 27 years before the first clearly documented case of a President adding the words, "So help me God," was recorded — when Chester A. Arthur took the oath in 1881.⁵

³ Website: **Inaugural History - Facts and Firsts** - Watch the Video ""[So Help Me God](#)", a historical look at the Inaugural Ceremonies 1789-2005" - spokesperson Beth Hahn, Historical Editor, Senate Historical Office - (<http://inaugural.senate.gov/history/factsandfirsts/index.cfm> - last accessed January 10, 2009)

⁴ **Documentary History First Federal Congress**, Vol. 15, pages 404-405
Excerpt from French consul letter - retranslated from the French
"After every one had taken his seat, the Vice-President rose to announce to the President that the members of both Houses were ready to escort him to witness the oath he was going to take in conformity with the Constitution. A balcony adjoined the Senate-chamber, permitting all classes of people to witness the ceremony in greater number. Three doors communicating with this balcony were opened. The President passed by the middle one, followed by the Vice-President and the Chancellor of the State of New York, who was to administer the oath. The Senators went out by the right, and the Representatives by the left." "On an embroidered cushion a Bible was brought, upon which the President placed his hand and repeated the following words after the Chancellor: 'I solemnly swear to discharge with fidelity the functions of President of the United States, and to do all in my power to preserve, protect, and defend the Constitution of the United States of America.' Thereupon the Chancellor, making a sign with his hat to the people, exclaimed, 'Long live George Washington, President of the United States!' Three hurrahs, the customary acclamation of the people, followed; the President saluted the public profoundly, and re-entered with the Senators and the Representatives."

⁵ *New York Times* (1857-Current file); Sep 23, 1881 Proquest Historical Newspapers *The New York Times* (1851 - 2005)pg 5; **The New Administration President Arthur Formally Inaugurated.**

Moreover, it would have been completely out of character for George Washington to have tampered with the constitutional text in this way. He presided over the Constitutional Convention held in Philadelphia in the summer of 1787, and he took the Constitution produced there very seriously.⁶ He was, in many ways, a Constitutional literalist. Would such a man, during the very act of becoming the nation's first President, alter an oath that had been decided upon and written into the nation's fundamental charter? It is far more likely that his political philosophy, and not his religious beliefs, shaped his actions in this incident.

Proponents of the myth contend that Washington had expressed no personal objection to saying "So help me God" and had routinely taken such oaths during the colonial era. Perhaps, they contend, he simply added it as an afterthought or because he was caught up in the solemnity and reverence of the moment. While at first glance this is plausible, it seems certain that any such modification of the oath would have created comment at the time that would have survived in the historical record.

The reason for this assertion is at exactly the same time as these inaugural events were unfolding, the first Congress was debating what oath the new members of the new federal government should take so as to comply with the Constitution. Article Six called for an oath but specifically added, "No religious test shall ever be required as a qualification to any office or public trust under the United States." Early arrivals to the House of Representatives had taken an oath that included the words, "So help me

⁶ Griswold, Rufus Wilmot, **The Republican Court, or American Society in the Days of Washington**, First published in 1854 as a subscriber edition in 25 sections, Republished 1856, New York: D. Appleton and Company, page 141.

God."⁷ But, following the lead of a committee led by James Madison, legislators passed a new oath act on April 27, 1789 — just three days before Washington's inauguration — that excluded the words "So help me God."⁸ The Senate, after adding unrelated amendments, passed the bill on May 5, 1789.⁹ Would the Senate have passed an oath bill without the words, "So help me God," only five days after the great hero of the American people "solemnly" and "with fervor" added them to his own oath? And do so without any contemporary comment surviving?

CONCLUSION

Taken together, the complete lack of contemporary evidence, George Washington's political philosophy of strictly following the Constitution and the concurrent debate over the proper wording of oaths under the new Constitution make it virtually certain that George Washington did not add the words "So help me God" to his inaugural oath.

⁷ April 6, 1789 the House appointed a committee to prepare a bill "to regulate the taking the oath or affirmation prescribed by the sixth Article of the Constitution." The House then voted for the following wording for their own oath: "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." *Annals of Congress, House of Representatives, 1st Congress, 1st Session, page 101.*

⁸ April 27 the House reads and approves the bill, which specifies "I do solemnly swear that I will support the Constitution of the United States.", and forwards it to the Senate for its consideration. *Annals of Congress, House of Representatives, 1st Congress, 1st Session, page 215.*

⁹ May 7, the Senate agreed to bill as amended by the House. *Journal of the House Representatives: 1st-13th Congress, page 31.*

Respectfully submitted by,

A handwritten signature in cursive script, appearing to read "Vincent T. Lyon". The signature is written in black ink and is positioned above a horizontal line.

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