

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff,	§	
v.	§	
	§	CIVIL NO. 9:14-cv-138
JOHN PARKS TROWBRIDGE, JR.,	§	
BRIGHT FUTURE INVESTMENTS, INC,	§	
IDEAL ABILITIES and	§	
TYLER COUNTY TAX OFFICE,	§	
	§	
Defendants.	§	

**UNITED STATES' OPPOSITION TO DEFENDANT'S
SUPPLEMENTAL MOTION TO VACATE THE FINAL JUDGMENT (DKT. #81)**

Background

The United States filed a complaint seeking foreclosure of nominee liens filed against property in Tyler County, Texas. (Dkt. #1.) On November 26, 2014, the United States' requested the clerk enter default against Bright Future Investments and Ideal Abilities (Dkt. #30), and the clerk entered default against both defendants on December 5, 2014. (Dkt. #34.) The United States also filed its Motion for Summary Judgment against the remaining Defendant, John Parks Trowbridge, Jr., on April 24, 2015 (Dkt. #42.) Despite numerous objections and filings, the Court adopted the report and recommendations of the magistrate judge and entered final judgment on March 3, 2016. (Dkt. #66-67.) The United States and the Internal Revenue Service are currently in the process of selling the property, as ordered in the Final Judgment (Dkt. #67, 76.)

On January 13, 2017, Trowbridge filed another memorandum, asserting frivolous arguments and citing irrelevant law, claiming Judge Schneider lacked authority to issue

the judgments at issue because of perceived deficiencies in the oath of office, in his quest to avoid paying any of the millions of dollars in overdue taxes.¹ Trowbridge withdrew the motion shortly after the United States filed its opposition. (*See* Dkts. #78, #80 and #82.)

Unfortunately, Trowbridge filed another frivolous motion claiming that Judge Schneider lacks authority to exercise judicial power for a different, but still frivolous, reason. (*See* Dkt. #81.) The new perceived deficiency is that the oath of office given to every federal district court judge “requires a religious test” because of its language. (*See* Dkt. #81 at 2.) Trowbridge’s attack turns on the phrase “So help me God” in the oath taken by federal judges pursuant to 28 U.S.C. Section 453. According to Trowbridge, this phrase violates the prohibition in Article VI, Clause 3 of the Constitution, against requiring a religious test as a condition to becoming a federal district judge. As demonstrated below, Trowbridge’s challenge is meritless and should be summarily rejected. *Compare O’Hair v. Paine*, 432 F.2d 66, 67 (5th Cir. 1970) (A “contention concerning the judicial oath—i.e., ‘So help me God’ systematically excludes agnostics and atheists from the judiciary--approaches absurdity”).

Argument

As stated in the United States’ Complaint (Dkt. #1), this Court has jurisdiction pursuant to 28 U.S.C. § 1340, which gives district courts “original jurisdiction of any

¹ Trowbridge has attempted multiple times to assert frivolous arguments regarding jurisdiction and authority of this Court, none of which have been upheld. (*See* Dkts. #7, #10, #18, #19, #21, #42, #46.)

civil action arising under any Act of Congress providing for internal revenue...”.²

Further, this Court has jurisdiction under 28 U.S.C. § 1345, which gives district courts “original jurisdiction of all civil actions, suits or proceedings commenced by the United States...”³ Finally, the relief sought by the United States (i.e. entry of judgment and enforcement of liens) is also authorized by statute.⁴ Pursuant to explicit Constitutional authority, Congress created the federal court system, including the various federal district courts. *See* 28 U.S.C. § 124(c)(6)(Defining the Eastern District of Texas, Lufkin Division.) To preside over these district courts, Congress explicitly provided for the appointment of federal district court judges. 28 U.S.C. §§ 133, 134.

Trowbridge’s Motion presents three interrelated questions, each of which will be separately addressed below:

1. Does Trowbridge have standing to challenge the inclusion of the phrase “So help me God” in Judge’s Schneider’s oath of office?
2. Does including the phrase “So help me God” as part of a federal judge’s oath of office violate the Constitution’s “religious test” prohibition?
3. Does a federal judge’s recitation of, or refusal to recite, the phrase “So help me God” invalidate the judge’s oath and disqualify the judge from serving?

As discussed below, even if Trowbridge has standing to raise a “religious test” challenge, that challenge must be rejected because including “So help me God” in the

² 28 U.S.C. §1340.

³ 28 U.S.C. §1345.

⁴ 26 U.S.C. §7401, 7402(a), (f), 7403.

judicial oath of office is neither prohibited nor does it divest a judge of his judicial authority.

A. Does Trowbridge have standing to challenge the inclusion of the phrase “So help me God” in the judicial oath of office taken by Judge Schneider?

Typically, a “religious test” challenge involves a First Amendment “Establishment Clause” or “Free Exercise Clause” issue.⁵ Here, Plaintiff’s contention does not fit squarely into either type of challenge and, therefore, both will be addressed below.

Generally, standing turns on “whether the plaintiff has ‘alleged such a personal stake in the outcome of the controversy’ as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf.” *Warth v. Seldin*, 422 U.S. 490, 498–99, (1975). Accordingly, one may not claim standing to vindicate the constitutional rights of a third party. *Singleton v. Wulff*, 428 U.S. 106, 114 (1976); *see also O'Hair v. Paine*, 432 F.2d 66, 67 (5th Cir. 1970)(non-astronauts had no ascertainable legal interest with respect to whether orders by/authorization from NASA for certain astronauts to participate in religious activities during space flights amounted to an unconstitutional abuse of legislative power). However, even if Trowbridge asserts a meritless claim in federal court, the court does not lose jurisdiction

⁵ The First Amendment provides, in part, that: “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.” These two clauses are referred to as the “Establishment Clause” and the “Free Exercise Clause.” The Establishment Clause “command[s] that there should be ‘no law respecting an establishment of religion.’” *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971). An Establishment Clause analysis looks to whether the statute: (1) has a secular legislative purpose; (2) is its principal or primary effect one that neither advances nor inhibits religion; and (3) does it foster ‘an excessive government entanglement with religion.’ *Id.* at 612-13. In turn, the Free Exercise Clause “categorically prohibits government from regulating, prohibiting, or rewarding religious beliefs as such.” *McDaniel v. Paty*, 435 U.S. 618, 626 (1978). As discussed above, a Free Exercise Clause analysis turns on the religious beliefs of the party seeking its application.

over the claim because of a lack of standing. Rather, it should dismiss the claim under Federal Rule of Civil Procedure 12(b)(6). *Shaw Alumni & Friends, Inc. v. Bell*, 2016 WL 3080792, at p. 1 (E.D.N.C. May 31, 2016). Thus, a litigant, with a direct interest in a final judgment, may attack that judgment as void due to lack of subject matter jurisdiction. *Wages v. I.R.S.*, 915 F.2d 1230, 1234 (9th Cir. 1990).

With respect to a Free Exercise query, the question is whether a particular plaintiff holds a sincere belief that the affirmation at issue is religious. The Free Exercise Clause protects even an unreasonable belief that an affirmation is religious, so long as the belief is not “so bizarre, so clearly nonreligious in motivation.”⁶ *Soc’y of Separationists, Inc. v. Herman*, 939 F.2d 1207, 1212–13 (5th Cir. 1991), *on reh’g*, 959 F.2d 1283 (5th Cir. 1992). Thus, the Plaintiff clearly lacks standing to object to the oath using the judge’s religious beliefs rather than his own. Moreover, even if Trowbridge’s Motion had alleged⁷ his own personal religious beliefs as the basis for a Free Exercise challenge, any such challenge would be moot because the judicial oath he challenges was administered over 12 years ago.⁸ *See Doe v. Louisiana Supreme Court*, 1992 WL 373566, p. 2 (E.D. La. Dec. 8, 1992) (A party lacks standing to assert a constitutional Free Exercise challenge to “so help me God” being included in any oath already taken.); *Newdow v. Roberts*, 603 F.3d 1002, 1008 (D.C. Cir. 2010) (The constitutionality over the

⁶ An alleged Establishment Clause injury is sufficiently concrete and particularized when the plaintiff sees or hears a government-sponsored religious display or speech that offends his or her beliefs. *Newdow v. Roberts*, 603 F.3d 1002, 1014 (D.C. Cir. 2010).

⁷ In fact, Trowbridge has not asserted any personal religious beliefs, sincere or otherwise, which he maintains the judicial oath of office violated.

⁸ Trowbridge asserts that the judicial oath was taken by Judge Schneider on September 10, 2004. (See Dkt. #81 at 2.)
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incorporation of a religious oath and prayer in the 2009 presidential inaugural ceremony's may be an important question to plaintiffs, but it is not a live controversy that can avail itself of the judicial powers of the federal courts in 2010, and it is therefore moot.).

However, Trowbridge's challenge today differs from the typical Free Exercise controversy. Here, Trowbridge maintains that the Court lacked any authority to act because Judge Schneider was administered a constitutionally defective oath which, according to Trowbridge, prevented him from becoming a federal district court judge. For this reason, Trowbridge's challenge is more closely aligned with an Establishment Clause challenge.

As previously noted, because Trowbridge has standing to assert even a patently frivolous jurisdictional challenge to a judgment to which he was a party, it follows that he has standing today to litigate this constitutional question in order to ascertain the Court's jurisdiction to enter the December 5, 2016 Final Judgment. *See Shaw Alumni*, 2016 WL 3080792, at p. 1.

B. Is the phrase "So help me God" in a judge's oath a prohibited religious test?

Although the "religious test" prohibition is found in Article VI of the Constitution, and the Establishment Clause is found in the First Amendment to the Constitution, *Newdow v. Roberts*, 603 F.3d 1002, 1013 (D.C. Cir. 2010) is perhaps the closest parallel to the challenge Trowbridge raises today. In *Newdow*, a group of individuals, seeking to bar President Obama from stating the phrase "So help me God"

at the conclusion of his oath in office were denied declaratory and injunctive relief for an alleged First Amendment Establishment Clause violation. *Id.*, at 603 F.3d 1006-07. As addressed in Judge Kavanaugh's concurring opinion, "[u]nder *Marsh* and other Supreme Court precedents, the Establishment Clause permits 'so help me God' in the official Presidential oath." *Id.* at 1018-19. (The "use of 'so help me God' in oaths for government officials is deeply rooted in the Nation's history and tradition." Moreover, "the Supreme Court several times has suggested, at least in dicta, that the Constitution permits 'so help me God' in officially prescribed oaths of office.") *See also Marsh v. Chambers*, 463 U.S. 783, 792 (1983) ("To invoke Divine guidance on a public body entrusted with making the laws is not, ... an 'establishment' of religion or a step toward establishment; it is simply a tolerable acknowledgment of beliefs widely held among the people of this country.")

It is well settled that the State has a legitimate interest in extracting a solemn oath that in performing professional duties a candidate will apply his/her knowledge skillfully and ethically. *Nicholson v. Bd. of Comm'rs of Alabama State Bar Ass'n*, 338 F. Supp. 48, 58 (M.D. Ala. 1972) (inclusion of the words "so help me God" in an oath of office does not render the enabling statute unconstitutional, nor does it require that the potentially offending phrase be stricken from the statute). While that interest will not extend to mandating that a candidate invoke God's help in the face of a "sincere religious objection to such an act," [Free Exercise objection] this conflict can be resolved through alternative forms of oath which can embrace the required solemnity. *Id.*

C. Including “So help me God” as part of a judge’s oath does not invalidate the oath and disqualify the judge from serving.

Even if Trowbridge has standing to raise a challenge to Judge Schneider’s judicial oath at this late date, such challenge is meritless because including the phrase “So help me God” in the judicial oath does not invalidate a judge’s authority to perform his judicial functions.

“An oath need not parrot the exact language of the constitutional oaths to be constitutionally proper.” *Cole v. Richardson*, 405 U.S. 676, 682 (1972); *see also United States v. Medenbach*, 1997 WL 306437 (9th Cir. 1997) (The Constitution does not dictate express verbiage to be included verbatim in the oath of office administered to federal judges). Instead, [“t]he oath of constitutional support requires an individual assuming public responsibilities to affirm . . . that he will endeavor to perform his public duties lawfully.” *Cole*, 405 U.S. at 682. Specifically, Article VI, Clause 3 of the United States Constitution provides, in part, that “all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution.” “That provision does not prescribe the manner for taking the oath ... It simply requires that an oath be taken.” *See Sibley v. Florida Bar*, 2008 WL 3471781(N.D. Fla. Aug. 11, 2008).

As Trowbridge acknowledges, the judicial oath of office (as set out in 28 U.S.C. § 453) provides in part: “that I will faithfully and impartially discharge and perform all the duties incumbent upon me ... under the Constitution and laws of the United States.”(See Dkt. #81 at 3.) In so doing, it meets Article VI’s mandate.

Conclusion

Judge Schneider had the authority to enter judgment in this case and Trowbridge's arguments over the language of his oath of office do not change that authority. Adding to the absurdity of Trowbridge's argument is that he is requesting relief that would require a federal judge to use the very authority he disputes exists because of the perceived deficiencies in the oath taken by all Judges.

WHEREFORE, Plaintiff, the United States of America, requests that the Court deny Trowbridge's supplemental motion to vacate (Dkt. #81.) The United States also requests such further and other relief to which it may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed with the Court's ECF filing system that will send notification to all counsel of record. A copy was also served via United States Mail, postage pre-paid, as follows:

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