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AMENDMENT TO OATH OF ENLISTMENT

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HEARING BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES UNITED STATES SENATE

EIGHTY-SEVENTH CONGRESS

SECOND SESSION

ON

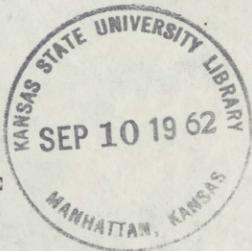
H.R. 218

AN ACT REQUIRING INDIVIDUALS ENLISTED INTO THE
ARMED FORCES TO TAKE AN OATH TO DEFEND
THE CONSTITUTION

AUGUST 8, 1962

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AMENDMENT TO OATH OF ENLISTMENT

HEARING

SUBCOMMITTEE OF THE

COMMITTEE ON ARMED SERVICES

COMMITTEE ON ARMED SERVICES

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H.R. 218—REQUIRING ENLISTEES INTO THE ARMED FORCES TO TAKE AN OATH TO DEFEND THE CONSTITUTION

WEDNESDAY, AUGUST 8, 1962

U.S. SENATE,
SUBCOMMITTEE OF THE
COMMITTEE ON ARMED SERVICES,
Washington, D.C.

The subcommittee composed of Senators Thurmond (chairman), Bartlett, Byrd of West Virginia, Smith of Maine, and Beall met, pursuant to notice, at 2:05 p.m., in room 212, Old Senate Office Building.

Present: Senators Thurmond, Bartlett, Byrd of West Virginia, and Smith of Maine.

Also present: William H. Darden, professional staff member; Harry L. Wingate, Jr., chief clerk; and Herbert S. Atkinson, assistant chief clerk.

Senator THURMOND. The subcommittee will come to order.

This hearing has been called to consider H.R. 218. This bill proposes to amend section 501 of title 10, and section 304 of title 32 of the United States Code. These are the sections of the code which set out the oath which is taken by enlisted personnel in the Armed Forces, including the National Guard. In essence, the purpose of H.R. 218 is to change the substance of the oath currently being administered to persons enlisted into the Armed Forces by including an oath to support and defend the Constitution of the United States, and by adding the phrase, "So help me God," at the conclusion of the oath. The oath prescribed by H.R. 218 is patterned after the oath of office required to be taken by any person who is elected or appointed to an office of honor or profit, either in the civil, military, or naval service.

If there is no objection, a copy of the bill will be included in the record at this point.

[H.R. 218, 87th Cong., 1st sess.]

AN ACT To provide that individuals enlisted into the Armed Forces of the United States shall take an oath to support and defend the Constitution of the United States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 501 of title 10, United States Code, is amended as follows:

"§ 501. Enlistment oath: who may administer

"Each person enlisting in an armed force shall take the following oath:

"I,-----, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders

of the officers appointed over me, according to regulations and the Uniform Code of Military Justice. So help me God.' This oath or affirmation may be taken before any commissioned officer of any armed force."

SEC. 2. Section 304 of title 32, United States Code, is amended to read as follows:

"§ 304. Enlistment oath

"Each person enlisting in the National Guard shall sign an enlistment contract and subscribe to the following oath:

"I do hereby acknowledge to have voluntarily enlisted this ----- day of -----, 19---, in the ----- National Guard of the State of ----- for a period of ----- year(s) under the conditions prescribed by law, unless sooner discharged by proper authority.

"I, -----, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and of the State of ----- against all enemies, foreign and domestic; that I will bear true faith and allegiance to them; and that I will obey the orders of the President of the United States and the Governor of ----- and the orders of the officers appointed over me, according to law and regulations. So help me God.'

This oath may be taken before any officer of the National Guard of the State or territory, or of Puerto Rico, the Canal Zone, or the District of Columbia, as the case may be, or before any other person authorized by the law of the jurisdiction concerned to administer oaths of enlistment in the National Guard."

SEC. 3. This Act does not affect any oath taken before one year after its enactment.

Passed the House of Representatives August 7, 1961.

Attest:

RALPH R. ROBERTS, *Clerk.*

Senator THURMOND. This bill was passed in its present form by the House of Representatives on August 7, 1961. The constitutional question of adding the words "So help me God" to the required oath was considered and their inclusion in the oath was approved by the other body. Since that time, however, the Supreme Court of the United States has handed down its decision in the case of *Engel v. Vitale* in which the daily recitation of a particular prayer, as composed by the New York State Board of Regents, by children in the Union Free School District No. 9 of that State was held unconstitutional. We must now consider the impact of that decision upon the wording of this proposal.

To the best of my knowledge, this is the first occasion on which this language, or language of similar import, has been considered by a congressional committee since that Supreme Court decision was handed down.

The practice of ending oaths by saying "So help me God" is of ancient vintage and was carried over to the colonies from Great Britain. There is evidence that it was common practice in Great Britain to use this phrase as early as the 16th or 17th century. The oath required to be taken by the Governor and Council of Plymouth Colony, in this country, as early as 1624 ended "So help me God." The oath required of every freshman in Massachusetts Colony in 1631 and that required of residents in 1634 ended "So help me God."

In New Haven Colony, the Governor was required to take an oath which ended "So help me God in our Lord Jesus Christ." The elders or rulers oath in New Hampshire concluded with the phrase "So God be helpful and gracious to you and yours in Christ Jesus."

The first settlers of our country, who fled England to escape religious persecution, obviously did not consider this practice as an infringement of their religious liberty. Throughout the history of our

country there are many instances in which the Deity has been called upon to insure the sanctity of an oath.

Many States have included the phrase "So help me God" in oaths prescribed for elected or appointed officials. My own State of South Carolina in article 3, section 26 of the State constitution, which contains the oath of office for members of the State legislature and members of the bar, has ended the oath with "So help me God."

It is within this historical framework that we are considering the present proposal.

We have a number of witnesses here today to testify.

I believe our first witness is from the Bureau of Naval Personnel, Capt. K. J. Sanger, Recruiting Division.

Captain Sanger, won't you come around. We are glad to have you with us. Will you raise your hand and be sworn. Do you swear the evidence you give at this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Captain SANGER. I do.

Senator THURMOND. You may proceed, Captain Sanger.

STATEMENT OF CAPT. K. J. SANGER, DIRECTOR, RECRUITING DIVISION, DEPARTMENT OF THE NAVY

Captain SANGER. Mr. Chairman, I have a prepared statement here. My name is Capt. K. J. Sanger, U.S. Navy, and I am appearing for the Department of Defense on H.R. 218.

This bill would change the substance of the oath currently being administered to persons enlisting in the Armed Forces (10 U.S.C. 501) by deleting the following language "bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever;" by substituting the following language "support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same;" and also by adding the words "So help me God" at the conclusion of the oath.

The Department of Defense interposes no objection to the enactment of H.R. 218 now before you.

If enacted, it would be appreciated if the effective date could be delayed 1 year in order that the Armed Forces would have time to effect the change. That concludes my statement.

Senator THURMOND. I would like to ask you this: Speaking about delaying the effect of it 1 year, is that to prepare forms?

Captain SANGER. Yes, sir; that is correct. We could also use the current forms, and it would reduce the expenditures, the needless expenditures, if we could have approximately 1 year of grace to put the form into effect.

Senator THURMOND. Do you have forms now to last, say, 6 months?

Captain SANGER. Yes, sir. The feeling now is that we have forms that would run out within a year and we could have the new forms printed and just substitute them in the future as opposed to negating all the forms we have currently on hand in all services.

Senator THURMOND. Is that the only reason you ask for it to be delayed a year because of the printing of the forms?

Captain SANGER. That is the only reason, sir.

Senator THURMOND. Senator Bartlett.

Senator BARTLETT. Captain Sanger, was this proposed legislation initiated by the Department of Defense?

Captain SANGER. No, sir. As I understand it, it was introduced into the House by Mr. Gross.

Senator THURMOND. Leaving aside the phrase "So help me God," do you feel the substituted language appearing in H.R. 218 for the language now used when a member of the armed services is sworn, is necessary or helpful in any way?

Captain SANGER. The position of the Department of Defense, Senator Bartlett, is that we can administer this bill any the Congress decides.

We do not, the Department of Defense does not, consider it essential to change the current oath nor does it have any objection to the substitute proposal.

I was not directly responsive to your question, however, do we feel it would be helpful.

The Department of Defense has no feeling in this matter whether it would be helpful or not. It certainly considers it not to be detrimental.

Senator BARTLETT. In the language now used, the taker of the oath is to bear true faith and allegiance to the United States of America, "that I will serve them honestly and faithfully against all their enemies whomsoever."

Were you present at the testimony before the House committee?

Captain SANGER. No, sir; I was not. I read that testimony, however.

Senator BARTLETT. Do you know what the philosophy was in the introduction of this bill which adds the words "support and defend the Constitution of the United States against all enemies," et cetera?

Captain SANGER. Yes, sir. I believe the philosophy at the particular time it was brought up in the House was that we ought to be reminded a little bit more about our Constitution, and what we are really defending or, rather, when we are obeying the orders of the President and the officers appointed over us that we are, in fact, carrying out the provisions of the United States. I believe that is the philosophy.

Senator BARTLETT. Even if that were implicit in the oath now being used, this might be better designed to attract that fact to the attention of those taking the oath?

Captain SANGER. Yes, sir.

Senator BARTLETT. Thank you. That is all.

Senator THURMOND. Mrs. Smith?

Senator SMITH. Thank you, Mr. Chairman.

Captain, do I understand correctly that if this bill is enacted into law, the same requirement as to the oath would be made of the enlisted man as now made of the officers?

Captain SANGER. That is correct, Senator Smith.

Senator SMITH. Thank you very much. That is all.

Senator THURMOND. Senator Byrd.

Senator BYRD of West Virginia. Do you think it would be possible for an individual to so interpret the Constitution of the United States that he could take this oath and swear that he would support and defend the Constitution of the United States and, at the same time,

participate in activities undermining the Government of the United States?

Captain SANGER. Most assuredly he could.

Senator BYRD of West Virginia. So that one's interpretation of the Constitution of the United States might not in itself preclude him from engaging in subversive activities?

Captain SANGER. Absolutely correct, sir.

Senator BYRD of West Virginia. Is it not a well-recognized fact that there is a great divergency of opinion in almost any group of individuals where two or more persons are gathered together, as to just what this Constitution of the United States means and as to what it actually says, unless one has it before him at the time, with regard to the various questions and issues which are important and vital, as are some of the great issues of the day?

You and I would probably disagree without the Constitution in front of us, and if it were in front of us, we would disagree as to its meaning in many respects.

I think it would be interesting to see, to know, just how many U.S. Senators and how many Members of the House of Representatives have never read the Constitution of the United States. Perhaps they have all read it. It would be, at least, interesting to know how recently they have read it, to know the most recent date.

Senator BARTLETT. Will the Senator yield?

Senator BYRD of West Virginia. Yes.

Senator BARTLETT. I would say if they took a poll, they would all say they read it in its entirety yesterday.

Senator BYRD of West Virginia. I would not, and you would not either, Senator Bartlett.

But the point I am trying to make is if we eliminate, as I understand the suggestion here, "bear true faith and allegiance to the United States of America," and substitute the words "support and defend the Constitution of the United States against all enemies, foreign and domestic," while the import of the new oath would, we hope, adequately treat the problem we are trying to meet, it would seem to me that one could very easily sincerely and conscientiously swear that he would support and defend the Constitution of the United States against all enemies, foreign and domestic, but his view of what the Constitution says on question A or on issue B might be quite radical a view, and he might feel that he would be upholding the Constitution of the United States if he were to engage in an activity which would displace this Government and put in a government more to his own liking.

So why would it not be better to leave the words "bear true faith and allegiance to the United States of America," and "that I will support and defend the Constitution of the United States against all enemies, foreign and domestic"? This, at least, cuts down the area, it seems to me, even though you would still be injecting a sentence here which we have been discussing, but it seems to me you would cut down this area—he would be swearing that he would bear true faith and allegiance to the United States of America, and that he would support and defend the Constitution of the United States against all enemies, foreign and domestic; and that he will bear true faith and allegiance to the same, "so help me God."

What is your reaction to this suggestion, that we incorporate the two?

Captain SANGER. I can only give you my personal reaction to that, Senator. I do not know how the Department of Defense would feel about that.

My personal reaction is that I feel you could change this thing a thousand different ways and it probably would be just as good as it is in its present form, or better maybe, I do not know.

But I think this is a ceremonial oath, to a large extent.

It reminds a person that we do have a Constitution in this country, that this Constitution is the real institution that has guaranteed our freedoms, our rights.

He knows this is the Constitution of the United States, and this is the real thing, this is our Government, the very instrument of our Government, as I see it, personally, and the United States of America could be interpreted as a land area. But what really gives this land area flesh and blood is the Constitution of the United States and the heritage that went on before this Constitution was adopted, building toward it, implementing it.

So I think personally again, in my opinion, this is fine the way it is written, although if you changed it, it would probably be just as good.

Senator BYRD of West Virginia. Well, I would only change it to include that which you have said is good, and that which I think might be necessary.

I do not quite agree that the Constitution itself has insured all of these things, the liberties and freedoms that we hold dear.

I think we have to add to this Constitution: This is the Bible.

Captain SANGER. I agree.

Senator BYRD of West Virginia. But to it we have had to add the courts.

Captain SANGER. But the Constitution provided for it.

Senator BYRD of West Virginia. I realize that, but it is a piece of paper.

Captain SANGER. True.

Senator BYRD of West Virginia. It is a piece of paper, and that is our basic compass and our map. But over and above that you have got to have this form of government of ours, the blueprint of which it lays down. We have got to have a form of government and the people, institutions here, governed by individuals who believe in this Constitution and who are trying to uphold it and who make it a living thing rather than just a piece of paper.

It would be interesting to know just how many, what percentage, of the men and women who went to the Armed Forces of the United States have ever read this Constitution.

They have some vague idea as to what it comprehends and as to what it involves, but they certainly know what this country is to them, and they hold dear the right to worship in any church or not worship in any church.

Some of them may be ignorant of the fact that these rights are embedded in this Constitution, but they have an idea born of their own experience as to what they are swearing to uphold when they bear true faith and allegiance to the United States of America.

So I am only hoping that we can combine the two and possibly come out with something that is a little better.

Of course, they can still swear to what I have suggested and you have suggested, and everything else, and not live according to their oath.

But I just feel, Mr. Chairman, that the words "bear true faith and allegiance to the United States of America," are good. I cannot see the necessity for dropping them. It would seem to me we should add these words concerning the Constitution because, as has been said, it should be impressed more and more upon every individual's mind and heart that we do have a Constitution of the United States and it was written by illustrious forebears who were great men and who were God-fearing and God-loving men and that, perhaps, this Constitution was divinely insured.

Franklin, when he stood on his feet that day in 1787 at the Constitutional Convention, said to the Chairman, George Washington:

Sir, I have lived a long time, and the longer I live the more convincing proofs I see that God still governs in the affairs of men. And if a sparrow cannot fall to the ground without His notice, we cannot build an empire without His aid.

So these were men who believed zealously in a higher power, and I think this belief manifested itself in this document, which was the greatest document, we think, that the world has ever seen of its kind.

So while we do want to impress upon these men and women a greater attachment for and a stronger faith in and a more abiding love and respect for this Constitution, at the same time I can see it would do no harm, and it might lend something else if we kept the words "bear true faith and allegiance to the United States of America," while we add the other.

Thank you, Mr. Chairman.

Senator THURMOND. I might say, Senator, the proposed oath does that, if you look at the report on the bill or the bill—

Senator BYRD of West Virginia. I have not looked at that.

Senator THURMOND. Compare the old with the new one—

Senator BYRD of West Virginia. I just read these words. Don't these words make reference to deleting the following language, "bear true faith and allegiance to the United States of America"?

Senator THURMOND. The proposed oath retains the words "to bear true faith and allegiance." I believe those are the words you have referred to.

Senator BYRD of West Virginia. I merely read the statement by Capt. K. J. Sanger.

Senator THURMOND. Are there any more questions of the witness?

Captain Sanger, that will be all. You may be excused.

Captain SANGER. Thank you.

Senator THURMOND. Our next witness is Mr. Homer Brett, Jr., fourth vice president of the American Coalition of Patriotic Societies.

Is Mr. Brett here?

Mr. BRETT. Yes.

Senator THURMOND. Come around, Mr. Brett. Will you raise your hand to be sworn. Do you swear the evidence you give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BRETT. I do, sir.

Senator THURMOND. Proceed.

Do you have a prepared statement?

Mr. BRETT. Yes, sir.

Senator THURMOND. You may proceed.

**STATEMENT OF HOMER BRETT, JR., FOURTH VICE PRESIDENT,
AMERICAN COALITION OF PATRIOTIC SOCIETIES, INC.**

Mr. BRETT. The American Coalition of Patriotic Societies, Inc., of about 100 patriotic, civic and fraternal organizations, at its 33d Annual Convention meeting at the Mayflower Hotel, Washington, D.C., February 1, 1962, unanimously adopted the following resolution in support of H.R. 218:

RESOLUTION 23—ARMED FORCES OATH

Whereas the current oath being administered to persons enlisting in the Armed Forces includes no obligation to support and defend the Constitution of the United States of America, and no opportunity to invoke the help of the Almighty in rendering faithful service in defense of the United States; and

Whereas the words "So help me God" are not a part of the obligation assumed upon taking the oath;

Resolved, That the American Coalition of Patriotic Societies endorses H.R. 218, 87th Congress, as passed by the House on August 7, 1961, which amends the existing law to include these important additions: "to support and defend the Constitution of the United States of America" and a closing phrase "So help me God";

Resolved, That H.R. 218, now in the Senate Armed Services Committee, be reported favorably out of committee at the earliest possible date.

The American Coalition of Patriotic Societies supports H.R. 218 on the following grounds:

1. Under systems of government antedating the American Republic, enlisted men were customarily treated as inferior members of the political, economic, and social community. They were, therefore, not required to take any oath as complex as that which a free and highly educated citizen now takes to preserve a constitutional republic of limited and balanced powers.

2. Today the American enlisted man is generally a high school graduate, and often an accomplished college graduate, receiving high pay for skilled technical services. He is not an ignorant peasant responsible only to the orders of his immediate military superior.

3. The American Coalition of Patriotic Societies is dedicated to the task of improving citizen understanding of the American constitutional system of government. In view of this dedication, the American Coalition urges the adoption of an oath of loyalty by enlisted men of the Armed Forces, as required of responsible citizens and officers of any other walk of life, which will constantly remind them that they are citizens of a republic and that they are bound in duty to defend the American Republic, its Constitution; and the concept of popular local self-government, against any attempt to usurp the powers the citizenry have placed in the hands of their representatives in the Congress of the United States of America.

We add to that at the present time there are strong forces inside the United States which are working against patriotism, the support of the Constitution and the national sovereignty of the United States.

There is more than one international conspiracy working on this. In addition to the Communist conspiracy we also have international Socialists and Social Democrats in the United States who advocate and have consistently advocated for 162 years the abolition of the Armed Forces of their respective countries in whatever country they live.

They have also advocated for the destruction of the national sovereignty of their respective countries.

These people today form an international and cohesive force in at least 15 major nations of the Western Hemisphere.

These people are working inside the United States and are organized, they are working in Sweden, they are working in Germany, they are even working in the State of Israel against those people who are known as patriotic—I beg your pardon, as nationalistic bourgeoisie in Israel, which is one of the favorite terms of reproach used by the Social Democrats against any man who would loyally defend and support his nation and its institutions.

I thank you, sir.

Senator THURMOND. Senator Bartlett.

Senator BARTLETT. No questions.

Senator THURMOND. Senator Smith.

Senator SMITH. I have no questions.

Senator THURMOND. Senator Byrd.

Senator BYRD of West Virginia. I have no questions.

Senator THURMOND. Thank you for appearing, Mr. Brett.

The next witness is Mr. Laurence Cohen, attorney, a member of the District of Columbia bar, of the American Civil Liberties Union.

Is Mr. Cohen here?

Mr. COHEN. Yes, sir.

Senator THURMOND. Come around, Mr. Cohen. Raise your hand to be sworn. Do you swear the evidence you will give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. COHEN. I do.

Senator THURMOND. You may proceed.

STATEMENT OF LAURENCE COHEN, AMERICAN CIVIL LIBERTIES UNION

Mr. COHEN. Mr. Chairman, I would like to say at the outset that I am appearing on behalf of Lawrence Speiser, director of the Washington Office of the American Civil Liberties Union who, at the moment, is on a well-deserved vacation in Senator Smith's home State.

STATEMENT BY LAURENCE COHEN, AMERICAN CIVIL LIBERTIES UNION

The American Civil Liberties Union throughout its 42-year history has maintained a continuous and vigilant concern that the rights protected by the first amendment, including freedom of conscience, as well as the prohibition against establishment of religion, be kept inviolate. This stems not from any antagonism toward religion, but, on the contrary, is based on the deeply felt conviction of the ACLU, which includes many religious leaders among its members, that religion is best protected in the United States by maintaining complete separation of church and state. It is for this reason that we appear here today.

The basic purpose of H.R. 218, as stated in the House committee reports (H. Rept. 782, pts. I and II) is to expand the oath of allegiance for enlistment in the Armed Forces of the United States and the National Guard to include, in addition to the oath presently taken, a specific promise to support and defend the Constitution of the United States. With that purpose, the American Civil Liberties Union has no quarrel. However, some confusion has arisen as to what is the legislative intent of including the words "So help me God" at the end of the oath so that it would read as follows:

"I, -----, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice. So help me God."

The addition of these words "So help me God" was not considered controversial at the hearing of the House committee held on July 12, 1961. However, two newspaper stories have raised serious questions as to whether the addition of these words was intended to exclude enlistees from the Armed Forces, who either do not believe in the existence of God, or who prefer to enlist by affirming their allegiance (rather than swearing to it) by deleting the words "So help me God." On July 9, 1961, the Washington Post carried a UPI story which stated:

"The bill's sponsor, Representative H. R. Gross, Republican, of Iowa, said anyone who refused to take the oath because he did not believe in God did not belong in the Armed Forces."

A later UPI story in the New York Times, July 13, 1961, stated:

"A House Armed Services Subcommittee voted today to require enlisted men to swear before God allegiance to the Constitution. They would be barred from service if they refused."

The committee report (H. Rept. 782) discusses this issue, but fails to clear up the confusion. In fact, it compounds it. We still do not know after reading the report (1) whether the committee intends that only believers in the existence of God may enlist in the Armed Forces or the National Guard, and (2) whether individuals who desire to affirm their allegiance (for any reason) rather than swear may delete the words "So help me God" in making their affirmation. It is because of this confusion as to the legislative intent behind this proposed change that we are appearing before this committee on this matter which involves a serious question of separation of church and state.

If H.R. 218 is intended to bar enlistees from the Armed Forces of the United States unless they believe in the existence of God, then the bill is clearly unconstitutional. In the case of *Torcaso v. Watkins* (367 U.S. 488), decided June 19, 1961, the U.S. Supreme Court unanimously held unconstitutional a provision of the Maryland constitution requiring a declaration of the belief in the existence of God as a condition for holding any office of profit or trust. The Court stated:

"Nothing decided or written in *Zorach* lends support to the idea that the Court there intended to open up the way for Government, State, or Federal, to restore the historically unconstitutionally discredited policy of probing religious beliefs by test oaths or limiting public offices to persons who have, or perhaps more properly, profess to have a belief in some particular kind of religious concept. * * *

Similarly here, if H.R. 218 is written with the purpose of excluding either those who don't believe in God, or who refuse to say whether they believe in God, then it violates the freedom-of-religion guarantees of the first amendment.

However, that is only one of the two questions involved here. The second problem raised concerns the proper method of making an affirmation in lieu of taking an oath. In 1, U.S.C. 1 the following rule of construction appears:

"In determining the meaning of any act of Congress unless the context indicates otherwise * * * oath includes affirmation, and sworn includes affirmed;" (61 Stat. 633 (1947), amended 62 Stat. 859 (1948); 65 Stat. 710 (1951); 1 U.S.C.A. 1).

This policy that a "requirement of an oath shall be deemed complied with by making affirmation in judicial form" has been part of our law since 1871. (Rev. Stat. sec. 1 (1873), based on act of Feb. 25, 1871, c. 71, 16 Stat. 431; *Bram v. United States*, 168 U.S. 532, 566, 18 S. Ct. 183.)

There is nothing in the context of the oath of allegiance in this case which would warrant the assumption that this particular oath does not include the right

of affirmation. As a matter of fact, the bill itself includes the alternative "(or affirm)" in its language and, in addition, the following appears:

"This oath or affirmation may be taken before any commissioned officer of any armed force."

Therefore, the right to affirm appears to be clearly indicated. But how does a person affirm instead of taking an oath?

The crux of the matter is whether the words "So help me God" in the oath of allegiance are a substantive part of the oath itself or merely part of the ceremony of administering the oath. If they are merely a procedural device, then they may be dropped when a person affirms. This matter has been before the courts in a few cases.

In the case of *Petition of Plywacki*, 107 Fed. Supp. 595 (District of Hawaii 1952), the Federal district court in Hawaii denied naturalization to an alien who was in the U.S. Army and who sought to become a citizen by affirming the oath of allegiance prescribed by the Immigration and Nationality Act then in force. Plywacki wanted to do this by substituting the words "I hereby declare * * * in honor and sincerity" for "I hereby declare on oath" and, in addition, omitting the closing phrase "So help me God." After the denial of naturalization by the district court, there was an appeal to the Ninth Circuit Court of Appeals in which a number of religious-liberty arguments were raised as well as the comparatively simple argument that the rule of construction set forth in 1 U.S.C. 1 applied.

On appeal, the U.S. Department of Justice confessed error (admitting the Federal district court judge was wrong) citing this particular section of the U.S. Code. On this confession of error, the court of appeals reversed (205 F. 2d 423 (C.A. 9 1953)). Plywacki later was naturalized in Oregon by affirming the oath of allegiance without saying "So help me God." Quakers also regularly become citizens by affirmation without saying "So help me God."

An early California decision explains the logic of the answer to this problem: "The words 'So help me God' are no part of the oath or thing sworn to—that the witness will tell the truth—for they do not extend the operation of the oath. They are part of the form and manner and pertain to the mode of administering it, and like kissing the Bible or raising the hand, are merely the sanction or pledge that the substance of the oath—the declaration to tell the truth—will be kept." *People v. Parent* (139 Cal. 600, 601; 73 Pac. 423).

Further proof that "So help me God" is not a substantive part of an oath may be seen from the taking of the oath of office by President John F. Kennedy on January 20, 1961. The U.S. Constitution, article II, section 1(8) states the President before entering office 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."

In spite of the fact that the words "So help me God" do not appear in this oath, President Kennedy added them at the end as have probably all other Presidents. It could not seriously be contended that President Kennedy and all previous Presidents were not validly sworn into office because they took an oath of office other than the one set forth in the Constitution; that is, by adding words not contained in the constitutional oath. The only possible logical conclusion is that the words "So help me God" are not a substantive part of an oath.

The whole concept of affirmation as it was developed by the Quakers and other religious groups opposed to oaths was that they should not be forced to swear nor to take the Lord's name in vain. Their whole struggle for religious liberty was, in part, based on their right to leave out the words "So help me God," since they felt this violated their religious tenets.

We are not suggesting that the words "So help me God" need be eliminated from all of the various oaths which are required under Federal law for those who are willing to take an oath when required as a condition for public office or trust. All we are suggesting is that when someone wants to affirm he be permitted to affirm by leaving off the words "So help me God."



Many of the Federal oaths of office are set out in the United States Code and do not include the words "So help me God" at the end.¹ Others do.² There seems to be no pattern or reason why "So help me God" is set out for some but not others. Those who take oaths universally add the words "So help me God" whether it is included in the oath set out in the code or not.

The confusion in this area which can be caused by this ambiguity is well illustrated by an incident which occurred at the University of Maryland last year in which a sophomore sought to enroll in the Air Force ROTC. He indicated his desire to make an affirmation of allegiance required for enlistment in the Air Force ROTC rather than swearing allegiance and signing the oath. He indicated that he wished to do this by striking out the word "swear" where it states, "I swear (or affirm)" and by striking out the words "So help me God" at the end of the allegiance declaration. However, the enlisting officer refused to permit him to enlist in this fashion on the grounds that there was no authority to change the oath of allegiance required by Air Force ROTC regulations in any way. Subsequently, after some correspondence with the General Counsel of the Department of the Air Force, two regulations were issued covering this situation. On November 3, 1961, the following change was made:

After the loyalty oath add: "Any applicant who objects to the phrase 'So help me God' may affirm that I will support and defend the Constitution, etc.' In such an affirmation the phrase 'So help me God' and the word 'swear' may be deleted." AFROTCM 45-1B November 3, 1961.

I would like to suggest that similar language be included in H.R. 218 to eliminate any confusion. From the earliest days of our Nation, we have made allowances in our law and in our Constitution for those individuals who desire to affirm rather than swear to their allegiance. Certainly nothing should be done at this time to derogate from that right.

Senator THURMOND. Now, as I understand it, your organization does not object to the addition of the words "support and defend the Constitution of the United States against all enemies, foreign and domestic," but that you do object to the addition of the words "so help me God."

Mr. COHEN. That is not quite correct, Senator. We do not object to either of these additional phrases. We would like it made clear that a person who affirms rather than swears, as he is allowed to do by this bill, be permitted, if he wishes, to delete the phrase in taking the oath.

¹ Members of State legislatures and State officers: Every member of a State legislature, and every executive and judicial officer of a State, shall, before he proceeds to execute the duties of his office, take an oath in the following form, to wit: "I, A. B., do solemnly swear that I will support the Constitution of the United States." Act of July 30, 1947 (61 Stat. 643, ch. 389); 4 U.S.C. 101.

Attorney upon admission to the Supreme Court practice: "I, _____, do solemnly swear (or affirm) that I will demean myself, as an attorney and counselor of this Court, uprightly, and according to law; and that I will support the Constitution of the United States." Rules of the Supreme Court of the United States, rule 5 (4); 28 U.S.C. appendix.

National Science Foundation scholarship or fellowship: "I do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America and will support and defend the Constitution and laws of the United States against all its enemies, foreign and domestic." Act of May 10, 1950 (64 Stat. 156, sec. 16(d)), as amended by act of Apr. 5, 1952 (66 Stat. 43, ch. 159), and as renumbered by act of July 11, 1958 (72 Stat. 353, sec. 2, Public Law 85-510); 42 U.S.C. 1874(d).

Similarly: Armed Forces enlistment oath, act of Aug. 10, 1956 (70A Stat., ch. 1041); 10 U.S.C. 501.

Cadets on admission to the Academy, act of Aug. 10, 1956 (70A Stat. 242); 10 U.S.C. 4346(d).

National Guard enlistment oath, act of Aug. 10, 1956 (70A Stat. 602, ch. 1041); 32 U.S.C. 304.

National Defense Education Act of 1958, act of Sept. 2, 1958 (72 Stat. 1602, sec. 1001(f); Public Law 85-864); 20 U.S.C. 1958 edition, sec. 581(f).

Officials of Puerto Rican courts, act of Mar. 2, 1917 (39 Stat. 954, ch. 145, sec. 10), as amended by act of May 17, 1932 (47 Stat. 153, ch. 190); 48 U.S.C. 873.

Government officials of the Virgin Islands, act of July 22, 1954 (68 Stat. 509, ch. 558, sec. 29); 48 U.S.C., 1958 edition, sec. 1543.

Civil defense officers and employees, act of Jan. 12, 1951 (64 Stat. 1255, ch. 1228, sec. 403(b), as amended by act of Mar. 5, 1952 (66 Stat. 13, ch. 78, sec. 1(b)); 50 app., U.S.C., 1958 edition, sec. 2255(b).

² Senators, Representatives, members of State legislatures, and others, act of July 11, 1868, 15 Stat. 85. Executive departments and all Federal officers, Rev. Stat. 1757, as amended by act of May 13, 1884 (23 Stat. 22, ch. 46, secs. 2, 3); 5 U.S.C. 16.

Postal service, Rev. Stat., secs. 391, 392, as amended by act of Mar. 5, 1874 (18 Stat. 19, ch. 46); 5 U.S.C. 365. Justices and judges, act of June 25, 1948 (62 Stat. 907, ch. 646); 28 U.S.C. 453.

Reserve Officers Training Corps (ROTC) loyalty oath, act of July 7, 1960 (74 Stat. 353; Public Law 86-601).

Alien physicians, dentists, and allied specialists inducted and appointed as commissioned officers, act of June 29, 1953 (67 Stat. 86, sec. 1); 50 app. U.S.C., 1958 edition, sec. 457(i)(7). Universal Military Training and Service Act.

But as the House committee report says, for those who wish the opportunity of calling on the Deity in making the oath, we certainly believe they should have the right to do so, and we merely raise the question of whether a person objecting to this has the right to delete the phrase "so help me God," as we believe he should.

Senator THURMOND. But, as I understand it, you are objecting to amending the bill to make it mandatory.

Mr. COHEN. Exactly.

Senator THURMOND. To take the words, "so help me God," unless the person wishes to do that.

Mr. COHEN. Yes, sir. We would object if it makes it mandatory for all taking the oath. We would object to it. I would point out that there is some confusion, as I have stated, in the House report.

At page 3 of the report it speaks of men taking the oath being given the opportunity to invoke the help of the Almighty.

But then on page 4 it refers to such a reference as "required by the enlisted man's oath," and this is exactly the confusion which we would like to see cleared up.

Senator THURMOND. So what you are asking the committee to do then is not to make it mandatory to add the words "so help me God," in the oath; is that your point?

Mr. COHEN. Exactly. We would suggest that this language from the regulations of the Air Force, set forth on page 6 of the statement, might be incorporated in the bill or, perhaps, simply by legislative history it could be made clear that a person objecting could delete the words.

Senator THURMOND. You do not object to the addition of the words "support and defend the Constitution?"

Mr. COHEN. No.

Senator THURMOND. Senator Bartlett?

Senator BARTLETT. No questions.

Senator THURMOND. Senator Smith.

Senator SMITH. I have no questions.

Senator THURMOND. Senator Byrd.

Senator BYRD of West Virginia. Do you interpret the words "that I will bear true faith and allegiance to the same," as being addressed to the antecedent word "Constitution" or to the words "United States"? Or does it relate to both?

Mr. COHEN. I think there may be some confusion about the words. My own personal reaction is I believe I would read them as applying to both.

Senator BYRD of West Virginia. Would you see any objection to using the words of the existing law, "do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America" and then insert the verbiage, "I will support and defend the Constitution of the United States against all enemies, foreign and domestic, and that I will obey the orders of the President of the United States"?

Mr. COHEN. I think we would have no objection, Senator.

Senator BYRD of West Virginia. Do you think that might help to clarify this a bit?

Mr. COHEN. Assuming there is some confusion, as I say there is in my reading of it, I think it might be helpful to clarify it.

Senator BYRD of West Virginia. I have no further questions.

Senator THURMOND. I wish to thank you, Mr. Cohen, for appearing. You are now excused.

Mr. COHEN. May I make one further comment which is responsive to a statement made at the beginning of the session, Senator, and that is that I believe the American Civil Liberties Union does not view the case of *Engel v. Vitale*, the school prayer decision, as prohibiting the use of the words "so help me God," on the oath so long as a person objecting may, as we suggest, delete them.

Senator BARTLETT. Are you a lawyer, Mr. Cohen?

Mr. COHEN. Yes, sir.

Senator BARTLETT. I thought so.

Mr. COHEN. We would like to thank the committee for the opportunity of presenting our views here.

Senator THURMOND. Our next witness is Mr. John S. Mears, legislative representative of the American Legion.

Come around, Mr. Mears.

Mr. MEARS. I believe you have our statement.

Senator THURMOND. Will you raise your hand? Do you swear the evidence you give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MEARS. I do.

Senator THURMOND. You may proceed with your statement.

**STATEMENT OF JOHN S. MEARS, LEGISLATIVE REPRESENTATIVE,
NATIONAL LEGISLATIVE COMMISSION, THE AMERICAN LEGION**

Mr. MEARS. Thank you, Mr. Chairman and members of the subcommittee.

The American Legion supports H.R. 218. This position was established in Resolution No. 30, adopted by the National Executive Committee of the American Legion at its meeting in Indianapolis, Ind., May 2-3, 1962.

As passed by the House, H.R. 218 would amend the language of the present oath of enlistment to provide that individuals enlisted into the Armed Forces of the United States shall take an oath to "support and defend the Constitution of the United States against all enemies, foreign and domestic." The bill also provides for the oath to end with the phrase "So help me God."

Section 16 of title 5, United States Code, requires any person elected or appointed to any office of honor or profit, either in the civil, military, or naval service (except the President), to take an oath to support and defend the Constitution of the United States against all enemies, foreign and domestic. This oath also ends with the phrase "So help me God." (Art. II, sec. 1, of the Constitution requires the President to take an oath to defend the Constitution.)

While I have no specific information as to why the phrase to support and defend the Constitution was omitted from the enlistment oath, the reason may have been that a person enlisting in the military service was not considered to be entering upon the duties of an "office" as that word is legally defined. In any event, whatever the reason may have been, it was not because of any specific prohibition.

In earlier times it may not have been considered necessary or important for enlisted men to take an oath to support and defend the

Constitution of the United States. However, present circumstances amply justify the addition of this language to the enlistment oath. The duties and obligations imposed upon the enlisted men of the Armed Forces, in all ranks, stationed throughout the world, constitute no less an "office of honor or profit" than some of those coming within the requirements of section 16, title 5, of the United States Code.

The Constitution of the United States is the paramount authority of our Government. The Constitution molded the form and structure of our Government. And the Constitution is the cohesive element which holds our Government together in the same basic form and structure in which it was created. To require an enlisted man in the armed services to take an oath to bear true faith and allegiance to the United States of America, to serve them honestly and faithfully against all their enemies whomsoever, but not require him to support and defend the Constitution seems illogical. It may be thought by some that this is unnecessary since the latter requirement is implicit in the former. The American Legion does not agree. A specific oath to support and defend the Constitution is the preferable course of action. The American Legion agrees with the statement of Hon. H. R. Gross, author of this bill, in which he advised the House Committee on Armed Services:

* * * I can conceive of no logical reason why persons enlisting in the Armed Forces of the United States should not take an oath to support and defend the Constitution, just as is presently the case with persons elected or appointed to offices of honor or profit in the civil, military, and naval services.

In conclusion, Mr. Chairman, the American Legion urges this subcommittee to report favorably H.R. 218 in the same form it passed the House.

I thank you, Mr. Chairman, and all the members of the subcommittee for the privilege and honor of appearing before you to present the views of the American Legion.

If you have any questions I will be glad to try to answer them.

Senator THURMOND. Senator Bartlett?

Senator BARTLETT. Mr. Mears, Mr. Cohen informed the committee that the Quakers, as one group, do not take oaths.

Would you see any objection to amending the language of the bill before us or making it clear in the report on the bill that an affirmation might be substituted for an oath?

Mr. MEARS. Well, of course, the position of the American Legion is that they have no objection to including the phrase, and I am sure that if there is any constitutional question, if it appears to be a mandatory requirement, I am sure there would be no objection to making it elective.

Senator BARTLETT. Your answer pleases me very much because I think we have a duty to protect minority groups such as Mr. Cohen represented the Quakers to be.

Mr. MEARS. I believe so, sir. I would have to agree.

Senator BARTLETT. Thank you.

Senator THURMOND. Senator Smith?

Senator SMITH. I have no questions.

Senator THURMOND. Senator Byrd?

Senator BYRD of West Virginia. I do not believe the previous witness indicated that the Quakers are opposed to oaths so much as they are opposed to being forced to swear or to take the Lord's name in vain.

Senator BARTLETT. I stand corrected on that.

Senator BYRD of West Virginia. Is that correct? I am just wondering if I interpret that correctly.

Senator BARTLETT. I think your interpretation is correct, and mine is in error.

Senator BYRD of West Virginia. I would like to ask the witness whether or not the words that "I will bear true faith and allegiance to the same" are clear beyond doubt as to the portent of their meaning.

Mr. MEARS. Well, I think I would agree with the previous witness that I do not believe I could say that they are clear without doubt. I think that certainly a reasonable construction would be, in my opinion, that they refer back to both the Constitution and the United States. However, as we said, there may be some question in people's minds.

Senator BYRD of West Virginia. Would you have any objection to the use of the words in the present oath "to bear true faith and allegiance to the United States of America," and then proceed to add the words which call attention to the Constitution of the United States?

Mr. MEARS. I really see no real objection to that. I believe if it is felt by the subcommittee that this would clarify some of the confusion, it would certainly make no real difference.

Senator BYRD of West Virginia. You would have no objection to an individual's accepting this responsibility by affirmation rather than by oath? You would have no objection?

Mr. MEARS. I would have no objection to that. I believe that undoubtedly there may be a constitutional question raised if a choice is not granted.

Senator BYRD West Virginia. Inasmuch as a witness or a party in a court trial is accorded this same privilege, you would see no reason why the person entering the armed services should not be accorded such a privilege likewise?

Mr. MEARS. No, I see no objection.

I would also like to, if I may, state that, in my opinion also, as the previous witness testified, the recent Supreme Court decision concerning the New York State regents' prayer would not prohibit the inclusion of these words on a voluntary basis.

Senator BYRD of West Virginia. I have no further questions, Mr. Chairman.

Senator THURMOND. I wish to thank you, Mr. Mears, and if there are no other questions, you may be excused.

Senator THURMOND. Our next witness is Rear Adm. W. R. Furlong, Sons of the American Revolution.

Come around, Admiral, and have a seat.

Admiral FURLONG. Thank you.

Senator THURMOND. The evidence you give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God.

Admiral FURLONG. Yes, I do.

Senator THURMOND. Have a seat. You may proceed with your statement, Admiral.

**TESTIMONY OF REAR ADM. W. R. FURLONG, U.S. NAVY, RETIRED,
SONS OF THE AMERICAN REVOLUTION**

Admiral FURLONG. I am William Rea Furlong, rear admiral, U.S. Navy, retired. I appear at the request and direction of Dr. Charles A. Anderson, president general of the National Society of the Sons of the American Revolution. The national society is composed of 19,000 members divided among 300 chapters in the 50 States, with 1 chapter in France.

The Sons of the American Revolution urge the adoption of the legislation proposed in this bill, H.R. 218, for the reason that it will give the enlisted personnel the same full sense of responsibility to their country for the defense of the Constitution as is given by the oath required of officers.

The oath now taken by officers (5 U.S.C. 16) includes a statement to "support and defend the Constitution of the United States against all enemies, foreign and domestic," and the officers' oath ends with the words "So help me God."

Now, as I noticed, some questions were asked about that of former witnesses. I would like to read the oath of office from 5 U.S.C. 16 which includes not only the military and naval service but also civilians who are appointed to office, statutory offices.

The oath to be taken by any person elected or appointed to any office of honor or profit in the civil, military, or naval services, except the President of the United States, shall be as follows:

I, A. B., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same.

In other words, to the Constitution this oath is generally taken.

Senator BYRD of West Virginia. You interpret this as having reference to the Constitution.

Admiral FURLONG. That is right. It says that.

Senator BYRD of West Virginia. That they will bear true faith and allegiance to the same, to the Constitution of the United States?

Admiral FURLONG. That is what preceded it in that oath, and that is the one taken by officers.

Then, "I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office upon which I am about to enter, so help me God."

Now, that is the officer's oath.

The present oath of enlisted personnel does not contain these statements. Both of these statements should be in the oath of the enlisted personnel. The Sons of the American Revolution heartily endorse the wording of H.R. 218 which provides for the inclusion of these phases.

This endorsement conforms with a resolution adopted at the most recent meeting of the National Society of the Sons of the American Revolution held on May 30 of this year "For a strong military preparedness program under complete control of the Government of the United States in order to preserve and defend constitutional government."

This bill in providing for enlisted personnel to take the oath to defend the Constitution means that the Constitution will be preserved, asking enlisted personnel to do this now, which they didn't do before.

When the great numbers of enlisted personnel really know and appreciate the rights granted by the Constitution, they will never allow those rights to be surrendered to any foreign-dominated group with powers to supersede the Constitution of the United States.

That is all I have to say, sir.

Senator THURMOND. Senator Bartlett?

Senator BARTLETT. No questions, Admiral.

Senator THURMOND. Senator Smith?

Senator SMITH. Mr. Chairman, I have no questions but I am glad to welcome Admiral Furlong who was very pleasant when he was the commander out in the Pacific during World War II and was so helpful to us.

Admiral FURLONG. Thank you.

Senator THURMOND. Senator Byrd?

Senator BYRD of West Virginia. Under existing law the enlisted man does not in his taking of the oath say "So help me God."

Admiral FURLONG. That is right, sir.

Senator BYRD of West Virginia. Now, would you object to the use of—to the inclusion of these words, but at the same time—you support the inclusion of these words but would you object to an individual who for reasons which to me are not very sound but to him may be perfectly sound, who would prefer to affirm his allegiance rather than to swear to it?

Admiral FURLONG. Yes. I would be agreeable to that.

Senator BYRD of West Virginia. You would be agreeable. And would you also think—

Admiral FURLONG. But I wouldn't remove "So help me God" for the great body of the people of the United States who believe in God.

Senator BYRD of West Virginia. You couldn't remove them because they are not there now to remove.

Admiral FURLONG. In the present one, no. But I am talking about this one that we are talking about being proposed.

Senator BYRD of West Virginia. Yes. So I think we are both in agreement that they should be included, and as far as you and I are concerned, there shouldn't be anyone who would disagree with us that there is a Deity and that we ought to be willing to say, "So help me God," but there are individuals who are just as sincere as we are, perhaps, in doubting it, but would we not both agree that these individuals who want to give their service to their country and who are willing to die for it should be permitted to affirm their allegiance—

Admiral FURLONG. That is right.

Senator BYRD of West Virginia. Rather than swear to it?

Admiral FURLONG. I agree.

Senator BYRD of West Virginia. Now, one further question. Do you believe, Admiral, that it might clarify the meaning of this oath if you kept the present phraseology "I will bear true faith and allegiance to the United States of America," and proceed then to add the additional words "I will support and defend the Constitution of the United States against all enemies, foreign and domestic," and then proceed—

Admiral FURLONG. Then what after that?

Senator BYRD of West Virginia. Have the remainder of the verbiage that is included in the new bill, that I will obey the orders

of the President of the United States and the orders of the officers appointed over me, and so on, so help me God.

Admiral FURLONG. That is all right.

Senator BYRD of West Virginia. Thank you.

Admiral FURLONG. Of course—you are looking out for the Quakers. Some of them were my ancestors. But we don't want to get away from taking too much of God away from our doings because we fall then right into the hands of the atheists, to whom an oath means nothing, because they don't have the Deity to back it.

Senator BYRD of West Virginia. That is true. So we are taking away nothing here because the words are not there to start with. We are adding the words, but there will be an agnostic or an atheist who might be just as patriotic as any of the rest of who would be willing to lay down his life. I know, I feel as you do. I feel strongly that this is not my view of things, but still there are people who are agnostics, who are atheists, and yet who would die for Old Glory, and we should not deny them the privilege of affirming their allegiance. Do you agree?

Admiral FURLONG. I agree. But after you get them in the service, then comes a question of whether you can trust them in anything that is secret because they haven't any background that would lead me to believe that they would do what they say.

Mr. BYRD of West Virginia. Well, I have some feeling in this direction but I don't think either of us could say that simply because a man does not know whether there is a God; he may not be an athiest, he may be an agnostic. He may say I don't know whether there is or isn't. I am not willing to say "so help me God." And yet this man may hold just as dear as I do the cherished traditions of this country based as they are, as you and I would say, on principles which we may think come from the Bible. But yet he may hold just as dear these institutions and freedoms, and so on. So we would agree, I believe, that he should have the right of affirming.

Admiral FURLONG. I think so, yes.

Senator SMITH. Mr. Chairman—

Senator THURMOND. Senator Smith.

Senator SMITH. Admiral, it would seem to me that what we have before us is a need to change the law as to the oath, either change the oath for the officers or for the enlisted personnel, and at least have them all on the same basis as far as the oath is concerned, is that correct?

Admiral FURLONG. Well, that was in my statement, that I felt that the enlisted men should be required to take the same oath that the officers take to support their country and support the Constitution.

Senator THURMOND. Are there any more questions?

Senator BARTLETT. Yes, one more. The officer may affirm instead of swear according to what you read, I believe.

Admiral FURLONG. I am not so sure. But I am pretty sure that in the times I have taken oaths, I would have been able to affirm—yes. Yes. I copied this from the code.

Senator BARTLETT. We find it here.

Admiral FURLONG. I copied it right from the code, "or affirm".

Senator BARTLETT. And the same language is in the report of the House committee. Thank you, Admiral.

Senator THURMOND. Thank you, Admiral, for appearing here as a witness, and you are excused.

Admiral FURLONG. Thank you.

Senator THURMOND. Our next witness is Roy R. Torcaso. Has he arrived?

Mr. DARDEN. Mr. Chairman, he hasn't arrived and he said if he hadn't by the time he was called, he will just ask the privilege of inserting his statement in the record.

Senator THURMOND. His statement will be inserted in the record.

Senator THURMOND. Are there any other witnesses here now except Mr. Long? I believe Mr. Long is the last witness unless there are others. I am just trying to ascertain.

Now, if there are others, raise your hands back there.

There appear to be no other witnesses here now except Mr. Long.

Mr. Long, if you will come around, I believe you are the last witness.

The evidence you give us in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God.

Mr. LONG. Yes.

Senator THURMOND. Have a seat.

STATEMENT OF HAMILTON A. LONG

Mr. LONG. I want to apologize to the committee. I mailed each of the committee a clean copy of this statement and on my typewritten copy that you have, which I brought just as a supplement, there are some changes, so I will have to apologize.

Senator THURMOND. That is all right. You may proceed with your statement.

Mr. LONG. Thank you. I will read the typewritten statement first, if I may, which was attached to the back.

1. This statement in support of H.R. 218 is made by me as an individual; as a member of the New York bar since 1925 (now retired); as a long-time and close student and writer regarding constitutional history and law—for example, author of the 1957 published study "Usurpers—Foes of Free Men," and of various articles in the American Bar Association Journal (one scheduled to be published in its September issue concerning the oath of office required by article VI of the Constitution, in relation to this article's prohibition of a religious test for office under the United States); and as a major, AUS, retired.

2. The accompanying press release, issued by me today concerning H.R. 218, is made a part hereof—to be printed in the record as such; supplemented by the following points.

3. The definition of an oath, as understood by the framers and adopters of the Constitution and of the first 10 amendments, makes it clear that the words "so help me God" are impliedly part of the oath—of its very essence—even when not made express. For example, in the 1788 North Carolina Convention which considered ratification of the Constitution, James Iredell (later a member of the U.S. Supreme Court) defined an oath as follows—as being:

a solemn appeal to the Supreme Being, for the truth of what is said, by a person who believes in the existence of a Supreme Being and in a future state of rewards and punishments, according to that form which will bind his conscience most.

These elements of belief in, and an appeal to, a Supreme Being—as conceived by the oath taker, without any degree of religious conformity—are the essentials of any and every oath, such as the promissory oath of any official required by article VI and the oath prescribed by H.R. 218. In the period of the founding of the Republic, the words “so help me God,” were often made express in oaths prescribed for officeholders, as in the constitutions of Massachusetts (1780) and New Hampshire (1784). President Washington concluded his oath-taking ceremony in 1789, it seems, by stating: “I swear—so help me God,” followed by his kissing the Bible.

Now, Mr. Chairman, I want to interpolate something if the reporter will take this. It will be of interest to note that the Judiciary Act of the United States, statute 1, chapter 20, adopted September 24, 1789, provided for the “clerk’s oath ending ‘so help me God’ and for the judge’s oath ending ‘so help me God.’”

The modern definition of an oath contains those two essential elements, for instance as defined in the standard work *Corpus Juris Secundum*, volume 67, section 2, as follows:

An oath is an appeal by a person to God to witness the truth of what he declares, and an imprecation of divine punishment or vengeance if what he says is false. * * *

Here the requisite belief is implicit. The continuance of the custom of including “so help me God” in prescribed forms of oath is exemplified by those specified in the United States Code, title 5, section 16, and title 28, section 453, as well as in the form used invariably in courts in swearing witnesses.

No competent student of the history of the Constitution who is intellectually honest, with no ax to grind, would pretend—and no one could successfully prove—that the Founders, including for example the signers of the Declaration of Independence and the framers and adopters of the Constitution and the first 10 amendments, had any conception of an oath in conflict with that indicated above—especially the two essential elements noted.

4. Any contention of violation of religious freedom by H.R. 218 is unsound. Any claim that the oath prescribed by H.R. 218, including its closing words “so help me God,” violates the right to religious freedom under the first amendment deals at best in nonsense, and at worst, in fraud on historical truth and on the Constitution. Any such claim is attributable to either incompetence or intellectual dishonesty. So to claim is to contend in effect that the Constitution itself is self-contradictory and makes nonsense because the oath prescribed by H.R. 218 is comparable to that required by article VI, which such a claim falsely pretends, in effect, is violative of the first amendment. Nothing could be more ridiculous, indeed preposterous—judged by the controlling intent of the framers and adopters thereof. Merely to state the proposition thus clearly is to expose its absurdity. It should be emphasized that in both cases—officials taking the article VI oath, and those “enlisting” taking the H.R. 218 oath—the oath taking is voluntary, in connection with the privilege of serving the United States in the respective capacities involved, there being no right involved.

5. It is recommended that the report to be made to the Senate concerning H.R. 218 by the Armed Services Committee stress expressly

and emphatically two points: (a) that the word "enlisting" as used in H.R. 218 connotes voluntary enlistment; and (b) that any oath taking must always be bona fide—based on belief in a supreme being, as conceived by the oath taker as noted above—because otherwise it would constitute a false oath and a rank fraud in law and in morals. This is why an atheist, a nonbeliever, is incapable of oath taking.

6. Oaths such as those prescribed by article VI and H.R. 218 are proper qualifications. Such promissory oaths, including a pledge to support the Constitution, constitute proper qualifications designed to help insure faithful fulfillment by the oath takers of the responsibilities involved in the roles to be assumed by them. As Madison stated regarding article VI, in a letter to Edmund Randolph of April 10, 1788, Congress is empowered to prescribe "the proper qualifications." In his famed "Commentaries on the Constitution of the United States," published in 1833, a longtime member of the Supreme Court (1811-45), Justice Joseph Story, stated with regard to article VI's requirement of an oath of office to support the Constitution (his sec. 1844):

That all those who are entrusted with the execution of the powers of the National Government should be bound by some solemn obligation to the due execution of the trusts reposed in them and to support the Constitution, would seem to be a proposition too clear to render any reasoning necessary in support of it. It results from the plain right of society to require some guarantee from every officer that he will be conscientious in the discharge of his duty. Oaths have a solemn obligation upon the minds of reflecting men, and especially upon those who feel a deep sense of accountability to a supreme being.

Article VI requires such an oath of all officials, civil and military; while all persons "enlisting" in the Armed Forces have traditionally been required to take an oath of allegiance to the U.S. Government but not to support the Constitution—an omission which is as grave as it is inexplicable. H.R. 218 merely fills this need, remedies this omission, by adding to the present oath for enlistees the requirement of a pledge to support the Constitution, making the oath comparable to that taken by military officers and other officials. In prescribing that the oath end with "so help me God," H.R. 218 introduces nothing new but merely continues present practice which is in keeping with American tradition.

In commenting on the requirement of article VI of an oath, followed in the same sentence by the prohibition of a religious test for office under the United States, the then former President John Quincy Adams made a striking statement in his "Jubilee" address on April 30, 1839—the 50th anniversary of President Washington's first inauguration—as follows:

The Constitution had provided that all the public functionaries of the Union, not only of the general but of all the State governments, should be under oath or affirmation of its support. The homage of religious faith was thus superadded to all the obligations of temporal law, to give it strength; and this confirmation of an appeal to the responsibilities of a future omnipotent judge, was in exact conformity with the whole tenor of the Declaration of Independence—guarded against an abusive extension by a further provision—

and then my explanatory words of what he said was prohibited—

prohibiting a religious test for office—

which is from article VI of the Constitution.

The importance of this oath requirement, from the standpoint of the American people, is apparent when one considers that the oaths

to support the Constitution are to be taken by those entrusted by the people with preserving, in all its integrity as originally intended by those who framed and adopted the initial instrument and later each amendment, this "supreme law of the land" as the only dependable bulwark of what they are convinced constitutes their God-given, unalienable rights—unalienable because they come from God. This great importance is indicated by the primacy given the "oath" law by the First Congress: Statute 1, chapter 1, Section 1, June 1, 1789.

This is why atheists cannot ask for the privilege (there is no right)—cannot be given the privilege—of holding public office requiring the taking of an oath; they cannot take a bona fide oath; nor act as witnesses in courts, but they can testify without oath because this affects not their competence as witnesses but only their credibility. Judge and jury will weigh the testimony accordingly, in evaluating its truth.

7. The clause: "So help me God" cannot be attacked soundly. There is no basis whatever in American history—including that of the Constitution, as amended—for any question as to the religious foundation and significance of any and every oath, including that clause impliedly when not made express. To challenge this clause in the form prescribed by H.R. 218, on the basis of the false claim that it violates the right to religious freedom, is in effect to challenge the constitutionality of every required oath itself. Any such specious challenge can succeed only in revealing the challenger's incompetence or intellectual dishonesty; and the challenge merits today the contemptuous dismissal with which the Founders would have scorned it.

8. Two recent Supreme Court decisions merit mention here, as being irrelevant: in *Torcaso v. Watkins* (1961) 367 U.S. 488, and in *Engle v. Vitale* (June 1962). They are mentioned merely to forestall any false pretense that they have some bearing upon the subject hereof.

The *Torcaso* decision was that the provision of the Maryland constitution expressly prohibiting any religious test for office "other than a declaration of belief in the existence of God" did in fact prescribe a religious test (obviously true on the face of the provision) and that this violates the 1st amendment of the U.S. Constitution as supplemented by the 14th. This is all the decision stands for; the Court stated that article VI was not considered in deciding the case. (The article, as to religious test, expressly pertains only to Federal office.)

The *Engle* decision was that the school prayer prescribed by the government of New York State, for use in public schools of the State, violates the 1st and 14th amendments. The decision pertains to nothing else, even in New York; and it has no effect whatever upon anything or anybody outside of New York State.

To repeat, both cases are irrelevant here; they have no bearing whatever upon the oath provision of H.R. 218: "So help me God." The excess language in the opinions in these cases, not necessary to the precise decision in each instance, is mere obiter dicta and of no judicial force or effect whatever—just as if never uttered.

The question of the soundness of these two decisions—judged by the controlling intent with which the Constitution and each of its amendments was framed and adopted—cannot be discussed here, but their soundness is not conceded.

9. Conclusion: H.R. 218 should be approved and made law promptly.

Now I will read the points in my press release because they are a summary as an addition to my statement.

1. The new pledge for those "enlisting"—to support and defend the Constitution—is essential as a part of the sound education and orientation of young enlistees taken into the Armed Forces so that they may realize—be seriously impressed with the fact—that they are dedicating themselves to support and defend "the supreme law of the land" (not persons as officers) on a basis comparable to their officers and all Federal and State officials as required by article VI of the Constitution [word used in H.R. 218].

2. Those "enlisting" are volunteers; to enlist is to take a voluntary step or action, per military usage and regulations. The oath requirement, H.R. 218, involves no compulsory oath against a person's will—each enlistee voluntarily submitting to the requirement by seeking the privilege of serving in the U.S. Armed Forces. There is no right of any person so to serve; so no right is involved.

3. From the standpoint of the Constitution, as well as American law in general and custom, every oath is an invocation addressed to a Supreme Being—as conceived by the oath taker without any degree of religious conformity—so that the traditional closing words: "So help me God" are always implied even when not made express. To attack this clause: "So help me God" is, therefore, inescapably an attack on the oath itself—all oaths required by any law—as being unconstitutional.

4. It is unsound to claim that a requirement for an oath—with or without the words: "So help me God"—by those "enlisting" violates the constitutional right to freedom of religion (under the first amendment or otherwise) because every enlistment is voluntary and by permission to enjoy a privilege granted upon request (per 2 above) and further because the first amendment's guarantee, that Congress may not adopt any law abridging freedom of exercise of religion (which merely confirmed expressly what the original Constitution forbade by not granting any such power to Congress) was not intended by its framers and adopters to prevent any such oath comparable to the oath of office prescribed by article VI. This intent of the framers and adopters controls the meaning, which the courts may only ascertain from historical records and apply.

Enlistees contrasted to inductees:

5. The compulsory act of submitting to induction into the Armed Forces, required of those who do not enlist but are subject to military service per pertinent law and regulations—namely, required of inductees, does not involve any oathtaking. The oath of allegiance (here under discussion), administered to inductees after induction, does not constitute any part of induction, as provided by AR 601-270, paragraph 37. The Armed Forces never force any person who is compelled to be inducted and render military service to take any oath.

Now, the postscript I will read.

Since an atheist—not believing in a Supreme Being—is barred thereby from taking a bona fide oath, he is also barred thereby from being given the privilege of enlisting in the Armed Forces, not involving any right.

Now I would like to make a couple of supplementary remarks if I may. This is a Government of laws and not of men and the basic fundamental law is the Constitution of the United States. And the oath for the enlisted man, like the oath of every officer in the Army and every Government official, should be to the fundamental law under a government of laws and not of men.

To change the oath required by this statute as proposed by the House and as should be adopted by the Senate can be done with regard, for example, to omitting the words "So help me God" only by changing every law which provides every oath including the oath which Senators take, and every other oath prescribing "So help me God" starting back, as I said, in 1789.

It is impossible with any intellectual honesty and integrity to omit the words "So help me God" here in a law which is for enlistees, volunteers only, without changing all laws which prescribe "So help me God" at the end of every oath. This has nothing to do with forcing anybody to take an oath. It has nothing to do with inductees. It has only to do with volunteers who are just as much volunteers as the gentlemen and Mrs. Smith of this committee. You are nothing but volunteers.

Nobody forces you to take the office and you have no right to object to the oath of office including "So help me God." If you don't like it, resign or never take it, and that goes for every enlistee.

Now, it may interest you to know, and it took some doing to find this out—I had to telephone, as usual, the lieutenant who does the work. I talked to the Pentagon 20 times. I talked to all kinds of people 20 times, and I finally had to call the lieutenant who administers the oath at the induction center.

This is where you get "the McCoy" as everybody knows who knows anything about the military.

It might interest you to know that this is the procedure. All enlistees are volunteers and go through the procedure of signing an oath privately. It has nothing to do with lining them up.

All of the others, the inductees, are lined up and then they are told that when they take one step forward, they are thereby giving physical evidence of their acceptance of induction and its obligations under law. So they then take one step forward if they wish to.

Everyone who doesn't, I will take up later. Then they are read the oath and they raise their right hands, those who have taken the step forward only. They raise their right hands and take the oath. And they are not obligated to take the oath. If they still refuse to take the oath, they would be kept in the service because they are subject—they have consented to military service by induction. But they would not be forced to take the oath even then, I am informed.

Now, as to the man who doesn't step forward and refuses to submit to the laws requiring induction, he is then taken aside and told if he doesn't submit to induction—this has nothing to do with the oath—he will be sent home and the matter will be referred to the Federal district attorney to consider prosecution for refusing to obey the laws as to rendering military service to the United States.

It has nothing to do with the oath. And they are prosecuted.

There is a special volume—the first volume of the "Records of Debates of the Congress of the United States." It contains the

debates about the States proposals of amendments. When they were talking about the first amendment, they discussed the conscientious objectors and about letting them out, making a specific provision in the so-called Bill of Rights. It is not a "bill of rights" at all: it is a "bill of prohibitions" against the Federal Government.

But that was left out because it was considered unnecessary. Now, as we know, we have a perfectly well regulated system which is very fairly administered under the court supervision for all conscientious objectors, so this has nothing to do with them and no conscientious objector is going to volunteer to enlist anyway. So that is out.

So everything that has been talked about here, every point that has been raised, has no bearing on this bill. None. None at all. This is merely a voluntary act and is no different from a man becoming a judge or becoming a Senator and subscribing to the oath prescribed, and, as all the historical evidence proves, this is as contemplated by those who wrote the Constitution, signed the Declaration of Independence. It is a perfectly legitimate thing to request a pledge of faithful performance to the American people.

And as Justice Story said, it is a perfectly legitimate right of the American people to require such an oath of those who offer themselves voluntarily to serve the American people.

Now, with regard to Senator Byrd's point about the language of this oath, I think it would be a great mistake to shift those words around in the way you have been suggesting because then it would look as if they are not bearing allegiance to the Constitution.

If you are going to make any change, put in the word "both." Leave it where it is and put in the word "both." We certainly want allegiance to the country and we certainly want allegiance to the Constitution.

But this is the point of this hearing. This is a government of laws and not men, and we don't want our soldiers required to bear allegiance to something different from the officers.

The soldiers in this country are just as good as the officers, and I have been an officer in both World Wars and in between, and also an enlisted man. And this oath merely puts them in a position of comparable dignity and comparable trust and comparable obligations.

And of all the fantastic things, to challenge the H.R. 218 form of oath. The idea of depriving the enlisted men of this means of being impressed with the obligation of swearing allegiance to the Constitution under this bearing the oath of office when we know what happened to so many men in Korea, is to me just beyond belief.

Now, I apologize for having talked so long, and I will be delighted to answer any questions if there are any.

Senator THURMOND. Senator Bartlett?

Senator BARTLETT. No questions, thank you, Mr. Chairman.

Senator THURMOND. Senator Smith?

Senator SMITH. I haven't any questions.

Senator THURMOND. Senator Byrd?

Senator BYRD of West Virginia. Mr. Long, do you feel that under the bill as it is presently written that there might be some misunderstanding as to what is meant by the second clause, "I will bear true faith and allegiance to the same"? Do you think this is ambiguous and that it ought to be made clear?

Mr. LONG. I don't think it could possibly be made clearer, and I think it should stay right where it is because if there is any possibility of its being given a double meaning in the sense of bearing upon both the Constitution and the Government, the United States, then I think that it would be fine.

In fact, if I were going to make any change, I would merely make that express, but it is obviously not important to make that express, I mean the point I have just made.

Senator BYRD of West Virginia. Do you think that it might improve the language if you were to retain that portion of the present oath which says "bear true faith and allegiance to the United States of America," and then add the part of the language which is being added by this bill, "and that I will support and defend the Constitution of the United States against all enemies, foreign and domestic"?

Mr. LONG. Doesn't the present bill include the words "bear allegiance"?

Senator BYRD of West Virginia. Yes.

Mr. LONG. Well, then, as I say, what you are in effect asking is should we shift those words before the words about the Constitution.

Senator BYRD of West Virginia. Not necessarily.

Mr. LONG. I beg your pardon, then. I don't get you.

Senator BYRD of West Virginia. Not necessarily. To me this isn't emphatically clear as to what they are saying, that we will bear true faith and allegiance to—

Mr. LONG. Oh, that is my point and I have made it twice and I will make it again. We ought to leave it where it is so if there is any possibility of its applying to something other than the United States and applying to the Constitution, then for heaven's sake leave it there.

Senator BYRD of West Virginia. I don't care where you leave it. Leave it there or put it up ahead. The thing I want to make sure is that we clarify it so we know what we are bearing true faith and allegiance to, and you can repeat the words if you wish, say "bear true faith and allegiance to the United States." I think that ought to be in there and if you want to say "bear true faith and allegiance to the Constitution of the United States," put that in there, too.

Let us make it clear as to what we are bearing true faith and allegiance to.

Mr. LONG. Personally, I think it is already clear.

Senator BYRD of West Virginia. Well, you think it is, but I don't.

Mr. LONG. Well, you asked me and I am saying that I—

Senator BYRD of West Virginia. I know. But the previous witnesses indicated that it wasn't emphatically clear to them.

Mr. LONG. Well, I couldn't disagree with them more completely.

Senator BYRD of West Virginia. Well, at least we have to accord to them the honesty of stating what they feel.

Mr. LONG. I don't say anything about that. I am just saying what I feel, what I think, not feel.

Senator BYRD of West Virginia. Certainly, but I don't think that there is any justification for not making this perfectly clear, not only to you but to me and to them.

Mr. LONG. Well, if the—to make it clear—what I am trying to find out is what you mean? What is it you want to make clear? How

would you clarify it? I mean, what would it make clear, that it bears allegiance to both, the United States and the Constitution?

Senator BYRD of West Virginia. Yes. That is right.

Mr. LONG. Well, if there is any doubt on that, and if there is any change to the bill, which I do not agree is necessary, then I would say including both would be the only change to make. But I don't think that is necessary, myself.

Senator BYRD of West Virginia. Well, you may not think it necessary. Do you see any reason why it shouldn't be done?

Mr. LONG. Yes; for this reason.

Senator BYRD of West Virginia. It won't make it further ambiguous; will it?

Mr. LONG. I don't think it is either. This is a very late time in the session of this Congress, and if there is any change going to be made, I don't think it would be made law and it ought to be made law right now. This has been held in the Senate since August 1961, 12 months. I think it ought to be enacted. In other words, I think it ought to become law and I don't think the point you are raising affects the material sense of the clause. That is all. That is my opinion.

Senator BYRD of West Virginia. Well, let me say to you that you don't have any monopoly on thinking that it ought to become law and become law immediately. I share that thought. But I am interested in making this perfectly clear.

Mr. LONG. Yes. Well, I would just say that I am not unclear. Of course, if the Senate feels that, and this committee feels that it is unclear, then I would only recommend, since you are asking my opinion, that it be made very definitely clear that it was swearing allegiance to both the Constitution and the United States.

Senator BYRD of West Virginia. I don't know that it makes a great deal of difference, but I asked the same questions of those two who preceded you.

Mr. LONG. Yes.

Senator BYRD of West Virginia. And I thought perhaps you could shed some light on this, too. That is our purpose here.

Mr. LONG. Surely. I appreciate your asking me.

Senator BYRD of West Virginia. Now, I have one further question. Do you have any objection to permitting those enlistees who wish to affirm their allegiance rather than swear to it? Do you have any objection to permitting them to do that?

Mr. LONG. That is automatically already permitted. That is already in all forms, if I am not mistaken. The captain can tell us. Whether they swear or affirm is optional in every oath. I am satisfied you will find that is true both as a matter of law and as a matter of practice. So that is already covered.

May I just look at my notes to see if there is any additional point I think I ought to mention?

The point was raised that the oath does not preclude subversion. Of course it doesn't. The oath of a Senator doesn't preclude his betraying the U.S. Government and the Constitution, but that is no reason for not having the oath, and the same applies in this case.

With regard to the Air Force regulation of November 3, 1961, I would need to find out what that is, but I think that my statement with regard to the constitutional matters and to the military practice

disposes of it. If the Air Force has made any regulation contrary to the principles, and so forth, that I have discussed, then I would say they are in error. I won't try to pass judgment on it now. But the main point to keep in mind here is that this is strictly for volunteers, enlistees, and has nothing to do with compelling anybody to do anything.

And one other thing. The words "so help me God" are implied in every oath anyway and you can't take them out. By dropping them expressly, you can't take them out, so it doesn't accomplish any purpose. All it does is it looks as if you think you are, while it would merely be evidencing ignorance on the part of the U.S. Government, the Senate, which would be impossible to concede. The words "so help me God" are essentially a part of the oath.

Well, I think that that is all that I have. I appreciate very much this opportunity.

Senator THURMOND. Senator Byrd, do you have any other questions?

Senator BYRD of West Virginia. No.

Senator THURMOND. Mr. Long, with further regard to the questions that Senator Byrd asked you, the proposed oath now would read this way:

"I, John Doe, do solemnly swear or affirm that I will defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same."

Now, what was your interpretation of that sentence, that "I will bear true faith and allegiance to the same?" Does that mean to the Constitution of the United States?

Mr. LONG. Let me look at those words again. It refers to the Constitution of the United States. It is not referring to the United States of America as a government or something else. So it is referring specifically and I think by all the laws of interpretations I know anything about as an old lawyer, it refers strictly and pointedly to the Constitution.

Senator BYRD of West Virginia. Yes. I thought that, too, and I wondered why we shouldn't retain at least that phraseology of the old oath which continues to bring upon the individual the importance and the requirement of bearing faith and allegiance to his country.

Mr. LONG. Only because it would then be putting the enlisted man in a special category different from his officers, and the point you have just raised is automatically included in swearing allegiance to the Constitution because the Government is the creation of the Constitution. So, what you are doing is going back to fundamentals here. You are going back to the primary thing.

Now, if you are going to go on and say the Government of the United States, you might list all the Presidents, all the officers, Members of Congress, and everything else as forming the Government. In other words, you are gilding the lily, to use a term that sometimes is used. In other words, whenever you have included the all-inclusive word, the Constitution, the basic thing on which everything else is erected and rests, then you have included everything.

Senator BYRD of West Virginia. Of course, we have gone round the mulberry bush before, the other gentlemen and I. I don't agree to that. I think if we really want to make it all inclusive, put them both in.

Mr. LONG. Let me use an apt illustration here with regard to the Bill of Rights. The reason they didn't put a Bill of Rights in the original Constitution, as Hamilton explained in the "Federalist" No. 84, if my recollection is correct it is 84, was: Why specify certain things that the Federal Government is prohibited from doing and not all the others? And you couldn't possibly list all the others the Government is prohibited from doing because it would be an endless list. So to add any particular on top of the word "Constitution," you could go on endlessly. Now, actually what you suggested would do no harm obviously, but as I say, in terms of its being included, it is already there. Put it that way.

Senator BYRD of West Virginia. Well, I think you are right but if it can do no harm, it might do a little good.

Mr. LONG. I would say no only for the reason I have already mentioned and that is, if you make any change, you probably wouldn't get it through this session.

Senator THURMOND. Senator Byrd, they are having a rollcall now. We are going to have to recess and come back unless we are through. Now, do you have some other questions?

Senator BYRD of West Virginia. No, except I think he made a very fine statement.

Senator THURMOND. Mr. Long, I know of your reputation as a constitutional lawyer. We are honored to have you before us. I am familiar with your writings in the American Bar Association Journal and we feel you made a very fine contribution here today.

Mr. LONG. Thank you very much.

(The following statement was subsequently received and is included in the record at this point.)

AUGUST 8, 1962.

Senator STROM THURMOND,
Chairman, Senate Armed Services Committee,
Subcommittee re H. R. 218,
Senate Office Building, Washington, D. C.

DEAR SENATOR THURMOND: I request and hope that you and your fellow members of the subcommittee will permit me to supplement my testimony today—by including in the record of this statement at the end of my testimony—not to bring up any new point but to elaborate somewhat upon my statement during the hearing with regard to America's being blessed with a philosophy and system of "government of laws, and not of men, founded upon the Constitution as the people's fundamental law" to which those enlisting in the Armed Forces should be permitted, and required, to pledge allegiance on a basis similar to that provided in the oath which officers and public officials take.

The supplementary point which I wish to make here pertains to the Constitution and specifically to the fact that it is—in its essentials and fundamentals—perfectly understandable by even children of high school age, with respect especially to its main purpose, when framed and adopted, and as amended, of serving as a charter of government and as the definition of the limits imposed by the sovereign people upon the power of the Federal Government. There is nothing confusing, or beyond understanding, with regard to this fundamental law of the people—the "supreme law of the land"—so that every person who takes the oath of allegiance, including those enlisting (if H. R. 218 is made law, as I believe should be done), can and should become soundly informed concerning it in its essentials and fundamentals.

No earlier generation of Americans had any doubt about these essentials and fundamentals of the Constitution—as to its meaning, or their obligation and determination to support it faithfully, with or without oath to do so. As late as 1930, for instance, Gov. Franklin D. Roosevelt of New York restated (in his State's rights speech of March 2d) some of these fundamental characteristics of the Constitution's philosophy and system and he admitted that he was merely

rephrasing what had been well understood by all previous generations in America by the people in general. Every American leader from George Washington's day to 1930—using the same date for present purposes—knew and proclaimed this to be true; and it was a cause of comment by various distinguished foreigners from time to time that the American people were remarkably well informed about the principles of government, about the significance and nature and essentials of the Constitution, as the bulwark of their liberties—for example, Lord Bryce in his "The American Commonwealth" and de Toqueville in his "Democracy in America." True of frontiersmen and city folk, young and old, they said.

The most notable work, in a single volume, which makes all of the essentials and fundamentals of the Constitution—of its philosophy and system—perfectly clear so that even children of high school age can understand it perfectly in the main, is the volume I referred to in my testimony: *The Federalist* written by Hamilton, Madison, and Jay as 85 newspaper essays in 1787–88 to explain the Constitution and to help the people to understand it and support its ratification. To repeat, these were newspaper essays and they were widely read throughout the 13 States, from coast to frontier. This is widely acknowledged and praised as being the greatest book ever written about government; and any American—young or old, official or private citizen—can find within its covers all that is needed to gain an adequate understanding of the Constitution's essentials and fundamentals. There are, of course, various other writings which are most useful and helpful to this end, all capable of being understood by the young too—down at least to high-school age; but *The Federalist* is the prime source because contemporary and so authoritative that all competent authorities, including the courts, have always considered it most persuasive in defining the meaning of the Constitution.

It is entirely the fault of our own generation in this country that the now widespread confusion, with regard to this subject of the Constitution's meaning, has come to be both widely recognized and commented on—by public officials and leaders in private life. The source of the confusion, in the main, is not a topic which can be discussed here, for lack of space; but it is widely and well known, as discussed in many utterances and writings in recent years—for instance in my 1957 published study: "Usurpers—Foes of Free Man" (mentioned in my testimony and in your remarks concluding the hearing).

Any ignorance, or confusion, about the Constitution's meaning—in its essentials and fundamentals—is as inexcusable as it is tragic, for the young today and posterity in America, unless soon remedied by adequate action looking toward every citizen's once again, as in former generations, becoming soundly informed as to these basic elements of the foundation of constitutionally limited government and therefore of the philosophy underlying our God-given, unalienable rights as proclaimed in the Declaration of Independence.

Those enlisting and taking the oath prescribed by H.R. 218 (if made law), like all others who have taken the oath of allegiance and all who do so in the future, are of course obligated morally by this oath to make every reasonable effort to become adequately informed in this regard; and one purpose and function of the oath is to impress upon every one who takes it this duty as a citizen and as an American—determined to be one of the sound and dependable supporters of the traditional, American philosophy and system to the end, in part, of helping this generation to live up to its responsibility as the temporary trustee of the just heritage of young America today and of posterity. This heritage includes a soundly understood and functioning constitutional system; and no American today—as in every generation—can justly shirk this responsibility.

The Constitution—in its original, true and only meaning, which controls its proper interpretation on the basis of all pertinent historical records—not only can readily be understood but should be, by adults as well as the young down to high school age; and must be if traditional America is to endure.

HAMILTON A. LONG.

Senator THURMOND. You are excused.

Senator BARTLETT. Mr. Chairman, I do have a couple of questions I would like to ask Captain Sanger. Actually it wouldn't take more than 2 minutes at the most.

Senator THURMOND. All right. If Captain Sanger will come up around here.

Senator BARTLETT. I will ask you while you are approaching. Captain, is an inductee required to take an oath or make an affirmation?

Captain SANGER. He is not required to take an oath, Senator, no, sir. He may take the oath as a ceremonial oath but it is not part of the induction process.

Senator BARTLETT. As you construe the language in H.R. 218, as it passed the House and is before the Senate, could the Department of Defense by regulation or otherwise provide for affirmation instead of oath or would that necessitate a change in language in the act?

Captain SANGER. It is my understanding of it that the affirmation is in the act. I think what you probably may mean is the "so help me God" part of it.

Senator BARTLETT. That is what I do, of course.

Captain SANGER. No, sir. I feel that if the bill is enacted as currently written, as passed by the House, it is law and the Department of Defense can take no administrative action to change the law.

Senator BARTLETT. Thank you.

Senator THURMOND. Thank you very much, Captain.

Now, without objection there are certain letters here that we are going to put in the record, and I will give those to the clerk.

(The documents referred to are as follows:)

STATEMENT OF REPRESENTATIVE H. R. GROSS

Mr. Chairman, members of the committee, I am grateful for the consideration you are giving to my bill, H.R. 218, and for this opportunity to submit a brief statement in support of the measure.

I can conceive of no valid reason why individuals enlisting in the Armed Forces should not take an oath to support and defend the Constitution of the United States. As you well know, such an oath is required of any person elected or appointed to an office of honor or profit, either in the civil, military, or naval service.

So why not have an oath of enlistment patterned after that taken by military and naval officers? Why should there be any difference in the enlistment oath and the oath for officers?

Besides, it seems to me that in these troubled times we would do well to refer more often to our Constitution; to impress upon the citizens of this Republic the precious freedoms they enjoy under it and the responsibilities they have to preserve it.

Some criticism has been expressed to the provision in H.R. 218 which would add the phrase, "so help me God," at the conclusion of the oath.

I insist that such criticism is unwarranted.

The argument of a very few individuals that addition of the phrase is contrary to the provisions of the first amendment to the Constitution is refuted quite adequately, I believe, in the report of the House Committee on Armed Services accompanying H.R. 218. I will not take the space to quote that portion of the report dealing with this constitutional question, but I commend it to your attention. Let me only say this:

If addition of the phrase, "so help me God," to the oath of enlistment is a violation of the Constitution—and I am firmly convinced that it is not—then the same can be said of the many references to the Almighty which run through our laws, our public rituals, and our ceremonies.

Are those who now oppose the phrase, "so help me God," equally determined to strike from our laws and customs these references to the Almighty?

Would they also remove from our coins and paper money the phrase, "In God We Trust"?

Perhaps these are appropriate questions to be asked those who might testify in opposition to H.R. 218 on constitutional grounds.

Let these critics state for the record, for all to see, what their real motive is.

WHEATON, MD., August 8, 1962.

To the Senate Armed Services Committee:

This statement is presented to protest the enactment of H.R. 218, a bill to change the oath or affirmation administered to personnel enlisting in the military forces of the United States.

Having served 7 years in active duty in the Armed Forces, as well as 3 additional years in the National Guard, I have taken the present oath numerous times. As the Department of Defense has so well stated, there exists no necessity for the change proposed. The present language is clear and unmistakable and obtains the objective sought, that is, an unequivocal pledge from the individual to protect the United States. The wording is different, but the meaning and intent are perfectly clear. It thus appears that nothing is to be gained by change.

While I suggest no change is necessary, my greatest objection is to the inclusion of the religious expression "So help me God" at the end of the oath.

Is the use of this expression to be voluntary? Will the enlistee be asked beforehand if he wishes to use it? and will he be permitted to decline?

If the answer is "No," then the practice invades the individual's right of privacy in his religious philosophy in a manner that is not harmonious to our Constitution. There are patriotic young men and women in this Nation who would be glad to serve their country, but whose religious beliefs would prevent them from accepting this closing phrase. This may seem strange, even unbelievable, to those whose upbringing has been in a conventional, orthodox religious tradition. But there are many agnostics and other unbelievers whose spiritual philosophy does not embrace the concept of a Supreme Being and who could not, honestly in good conscience, accept these words. They would be totally without meaning and, therefore, would detract from the dignity of the ceremony. While the number of such persons would not run into the millions, nor perhaps even into the thousands, I have no doubt it would be noticeably substantial. Certainly we do not want to deprive the United States of the faithful service of such a group of dedicated individuals.

A further question arises with respect to individuals who are drafted into the military service as distinguished from those who enlist. The term "enlist" implies a voluntary action, while those who are drafted have a different motivation. I may misunderstand it, but as I read this proposed legislation, it appears that the new form of the oath would apply only to those individuals who enlist. For those who enter the military service through the means of the draft procedures, will the oath presently used be continued? If not, these draftees will be subjected to unlawful discrimination in that they will not have the same choice given to the enlistees. When the phrase "So help me God" is uttered, the enlistee can say, "I do not care to accept that expression," and he can decline the oath, pick up his suitcase, and return home. Not so the man who is drafted. He may be quite willing to serve his country; I believe most men are. But as is pointed out above, he may be wholly unwilling to accept this religious expression. What happens to him if he refuses? Will he be courtmartialled? There would be no basis for it because the expression is clearly one of a religious nature which cannot, constitutionally, be enforced upon anyone.

On analysis then, we have a rather comic picture, though tragic. On the one hand, we have the volunteer unbeliever who is denied the opportunity to serve his country because he cannot accept the words "So help me God." And on the other hand, we have the threat of punishment for the man who is drafted and, similarly, cannot accept these words.

And what about supply? If there are to be two forms of the oath, one for the enlistee and another for the draftee, there will inevitably be administrative problems in supply. A clerk may pick up the wrong form, inadvertently, or the correct form for a particular situation may not be available, and the prospective soldier objects to it. An officer with little understanding or patience, in a hurry "to get on with" the swearing-in ceremony can make things difficult. I was in service long enough to know that this sort of thing can happen time and time again. Some may argue that it cannot happen often enough to be a matter of importance. But where the civil rights of even a single person are concerned, it becomes a matter of the utmost importance. I know from personal experience.

What if a person specifically requests that an affirmation be administered? Will the words "So help me God" be tacked on at the close the same as if an oath is administered? A person requesting an affirmation normally does so on the basis of religious scruples, and he probably would not expect the phrase to be included. Yet I see nothing in wording of H.R. 218 to indicate that it would not also be a part of an affirmation.

In my considered view, the proposed change in the oath will serve no useful purpose. On the other hand, it will create problems where none previously existed. I urge most vigorously, therefore, that this committee kill this proposed legislation.

Respectfully submitted,

ROY R. TORCASO.

THE AMERICAN ETHICAL UNION,
New York, N.Y., September 22, 1961.

Senator RICHARD B. RUSSELL,
Chairman, Senate Committee on Armed Services,
Senate Office Building, Washington, D.C.

DEAR SENATOR RUSSELL: Mr. L. D. MacIntyre, Bethesda, Md., has shared with us his letter to you of August 14, 1961, which you have indicated will be inserted in the record at such time as hearings are held on H.R. 218, "Armed Forces Oath of Enlistment."

Although a past president of the American Ethical Union and a member of our national public affairs committee, he wrote as an individual because the subject had not been brought to our attention at the time.

We have now examined both H.R. 218 and the accompanying Report No. 728 of the House of Representatives, and unqualifiedly support his objections to the phrase "So help me God" as stated in this letter to you. We adopt the position as our own and ask that the advice of our action be inserted in the record at the appropriate time.

Sincerely yours,

RICHARD B. HERTZ,
Chairman, Public Affairs Committee.

BETHESDA, MD., August 14, 1961.

Hon. RICHARD B. RUSSELL,
Chairman, Senate Armed Services Committee,
Old Senate Office Building, Washington, D.C.

DEAR SENATOR RUSSELL: Before your committee for consideration is H.R. 218 "Armed Forces Oath of Enlistment" as amended by report No. 782 from the House Committee on Armed Services. If enacted into law in its present form it would require of enlistees an appeal to the Almighty for assistance in supporting and defending the Constitution of the United States—a requirement not stipulated for the President of this country in taking his oath of office for admittedly grave responsibilities. I find this effort to give custom a legal status objectionable for several reasons.

It is stated in report 782 that the purpose for adding the words "So help me God" is to give the opportunity to invoke the aid of the Almighty. To have an opportunity presupposes an option but since the additional words are mandatory there is no choice which runs counter to the later reference to the basic concepts of individual dignity.

I believe that regardless of stated disclaimers in the report No. 782, the effect of this revised oath is to force a profession of theism regardless of individual belief. To impose hypocrisy upon an individual enlistee is to weaken the significance of the oath taken. It implies a degree of cynicism upon the part of those requiring the words "So help me God" to be a part of the oath if they are held meaningless by the enlistee and add nothing to the solemnity of the affirmation. They certainly could not be held to constitute an assertion of sincerity as stated since no option is afforded. This is an attempt to impose by law what has been a matter of custom.

Without questioning the good faith of those who seem to doubt that patriotism is possible unsupported by theism, it is still permitted to question the wisdom of imposing their form of religiosity upon all enlistees. The statement that the imposed requirement is not unconstitutional is, if true, a negative endorsement—it does not make the added provision a wise one. Why go out of our way to provoke dissension when our unity is a pressing need? Finally, to require a profession not sincerely held is to degrade a truly religious expression into mumbo-jumbo.

The question I am raising may seem a small matter but this effort to legislate the appearance of devoutness is an encroachment upon individual beliefs which if not opposed will be used as a precedent for greater encroachments. If this

bill should become law in its present form, what are the penalties if an enlistee omits the words "So help me God"? Is he rejected for the armed services as has been suggested or is he given a punitive sentence under some obscure regulation? If either course is followed we weaken the Armed Forces we seek to strengthen and sabotage the individual freedom we are striving to defend. So believing, I respectfully request that the oath of enlistment proposed in H.R. 218 be amended to strike the words "So help me God" and that this communication be made a part of the hearing record.

Very truly yours,

L. D. MacINTYRE.

THE AMERICAN LEGION,
DEPARTMENT OF COLORADO,
July 20, 1962.

Hon. STROM THURMOND,
*Subcommittee Chairman, Senate Armed Services Committee,
Senate Office Building, Washington, D.C.*

DEAR SENATOR THURMOND: The thousands of members of The American Legion, department of Colorado, and we believe, all good Americans are very much concerned about wording of the oath of enlistment for those entering armed services of the United States.

We're all quite familiar with proposed wording, and in line with the action of our national executive committee at its May 1962, meeting, are all enthusiastically in support of H.R. 218, as passed by the House of Representatives, pertaining to this matter.

We're completely at a loss to understand the enlisted man's oath upon entering service should not include the oath "to support and defend the Constitution of The United States" and why it doesn't contain the phrase "So help me God." God has been, is, and we trust, always will be the cornerstone of our American civilization and we all certainly, especially those in service, should constantly affirm and swear to support and defend the Constitution of the United States against all enemies, and so forth.

Please mark down in your committee's consideration of H.R. 218, the complete and enthusiastic, as well as vigorous support of all honorably discharged veterans in Colorado in favor of H.R. 218.

Sincerely and gratefully,

M. L. LYCKHOLM, *Department Adjutant.*

THE AMERICAN LEGION,
DEPARTMENT OF INDIANA,
Indianapolis, Ind., July 20, 1962.

Re H.R. 218.

Hon. Senator STROM THURMOND,
*Chairman, Senate Armed Services Committee,
Senate Office Building,
Washington, D.C.*

DEAR SENATOR THURMOND: The National Executive Committee of The American Legion, at its meeting held in May 1962, approved Resolution No. 32 which places The American Legion in support of H.R. 218 and, consequently, the amended oath of enlistment. At our department convention held at South Bend, Ind., last week, the delegates reiterated their support of H.R. 218.

It is my understanding that this bill is in a subcommittee of the Senate Armed Services Committee, and we would appreciate you seeing that this letter gets into the proper hands of that subcommittee, showing that the 110,000 members of the Indiana Department of The American Legion endorse this bill.

Thanking you for your consideration in this matter, I am,

Sincerely yours,

FRANK J. MYERS, *Department Adjutant.*

DEFENDERS OF THE AMERICAN CONSTITUTION, INC.,
Annapolis, Md., July 18, 1962.

HON. STROM THURMOND,
*Senator from South Carolina,
Chairman, Subcommittee, Senate Armed Services Committee,
Senate Office Building, Washington, D.C.*

DEAR SENATOR: The most shocking innovation ever inflicted upon the Armed Forces of the United States was the deletion of the words "to support and defend the Constitution of the United States of America."

The Defenders of the American Constitution are united in their vigorous support of H.R. 218, which restores the oath to its original and meaningful form.

Only a subversive, working from a relatively high position, could have brought about this deletion of the most important words in the oath of office of any public servant of the Republic. It reflects a general attitude of contempt for the basic law of the Republic, if not a genuine effort to bring about its destruction. We have noticed with concern for many years the rapid erosion of the Constitution by usurpations, by failure to observe its terms, and by downright violations of the oath of office.

To this trend we may rightly ascribe the sorry situation the Republic now finds itself in, morally, financially, and in prestige at home and abroad. By the same token, every step in the restoration of the proper respect and attitude towards the Constitution is one good step in the direction of good government, and the restoration of this great country, which we once called God's Country, to that moral, ethical, and financial soundness which the Founding Fathers so carefully arranged for in the Constitution.

As I am unable to attend, I respectfully request the Senator read this letter in committee, and may the hand of Providence guide the hands of the men responsible to the end that the favorable action of the Senate will clinch the patriotic action of the House.

Respectfully,

P. A. DEL VALLE, *President.*

TRINITY EPISCOPAL CHURCH,
STATESVILLE, N. C., July 19, 1962.

HON. STROM THURMOND,
*Chairman, Subcommittee of the Senate Armed Services Committee,
Senate Office Building, Washington, D.C.*

DEAR SENATOR THURMOND: I am informed that hearings will be held before your subcommittee on the bill, H.R. 218, which was passed by the House of Representatives on August 7, 1961, which would amend the current oath being administered to persons enlisting in the Armed Forces so as to add the words "to support and defend the Constitution of the United States of America" and a closing phrase "So Help Me God".

I feel that every member of our Armed Forces should be bound by such an oath and I don't see how anyone could object to imploring Divine guidance.

Anybody objecting to such an oath has no place in our Armed Forces.

I would like to request that these observations be enclosed in the hearings' record.

Kindest regards and best wishes.

Yours very sincerely,

Rev. JAMES P. DEES, *Rector.*

VETERANS OF FOREIGN WARS
OF THE UNITED STATES,
Washington, D.C., August 22, 1962.

HON. STROM THURMOND,
*Committee on Armed Services,
U.S. Senate, Washington, D.C.*

DEAR SENATOR THURMOND: The purpose of this letter is to inform you officially that the Veterans of Foreign Wars of the United States unreservedly endorses and supports the provisions of H.R. 218 (armed services oath) currently pending before the subcommittee of which you are chairman.

This endorsement is based upon a longstanding and basic position of the Veterans of Foreign Wars and has been reiterated consistently in past resolutions of

our national conventions and in statements by VFW officials. Historically, the Veterans of Foreign Wars of the United States, whose membership comprises 1,300,000 oversea combat veterans, has long urged that the oath administered to all personnel in the Armed Forces should contain a positive statement that the individual concerned supports and defends the Constitution of the United States of America and that the closing phrase of such oath be "So help me God."

It is the view of the Veterans of Foreign Wars of the United States that such statement of loyalty to the Constitution, coupled with a reverent recognition of God, is especially appropriate for inclusion in an oath administered to members of the armed services, as the primary purpose of our military services is the defense of our Constitution and our beliefs.

The sincerity with which the VFW supports H.R. 218 is underlined by the fact that the oath administered to VFW officials contains the phrase "So help me God." Thus, in supporting the measure before your subcommittee, the VFW urges the use in the Armed Forces of precisely the same expression of belief in and devotion to God as is used as the closing phrase of the VFW oath.

Additionally, the VFW vigorously believes that the key provisions of H.R. 218—support of the Constitution and invoking the help of Almighty God in adhering to the obligations inherent in the oath—are fully consistent with the spirit of divine reverence and patriotic devotion that guided our Nation's Founding Fathers and which has subsequently been the unfailing inspiration for all those who have fought in the defense of our Nation and its ideals.

It is my privilege, Mr. Chairman, to submit this letter on behalf of the Veterans of Foreign Wars of the United States and with the full approval of Mr. Byron B. Gentry, national commander in chief of the Veterans of Foreign Wars of the United States.

The views expressed in this letter are based upon and stem directly from Resolution No. 113, "Support of H.R. 218—Armed Forces Oath," unanimously adopted by the delegates attending the 63d National Convention of the Veterans of Foreign Wars held in Minneapolis, Minn., August 12 to 17, 1962. The full text of Resolution No. 113 is enclosed herewith.

Sincerely,

J. D. HITTLE.

RESOLUTION No. 113

SUPPORT OF H.R. 218—ARMED FORCES OATH

Whereas the current oath being administered to persons enlisting in the Armed Forces includes no obligation to support and defend the Constitution of the United States of America, and no opportunity to invoke the help of Almighty God in rendering faithful service in defense of the United States; and

Whereas the words "So help me God" are not a part of the obligation assumed upon taking oath: Now, therefore, be it

Resolved by the 63d National Convention of the Veterans of Foreign Wars of the United States, That we endorse pending legislation (H.R. 218) which amends the existing law to include the important additions "to support and defend the Constitution of the United States of America" and the closing phrase "So help me God."

Senator THURMOND. The subcommittee is now adjourned and we will recess subject to the call of the Chair.

(Whereupon, at 3:50 p.m., a recess was taken subject to the call of the Chair.)



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