

# FREEDOM FROM RELIGION *foundation*

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February 1, 2022

## **SUBMITTED ONLINE**

The Hon. Shane E. Pendergrass, Chair  
The Hon. Joseline A. Pena-Melnyk, Vice-Chair  
Health and Government Operations Committee  
House Office Building, Room 241  
6 Bladen St., Annapolis, MD 21401

Re: Testimony in support of H.B. 181

Dear Rep. Pendergrass, Rep. Pena-Melnyk, and Committee Members:

The Freedom From Religion Foundation (FFRF) strongly supports H.B. 181 and urges the committee to approve it. FFRF is a national nonprofit organization with more than 35,000 members across the country, including more than 600 members in Maryland. FFRF protects the constitutional separation between state and church, and educates about nontheism.

H.B. 181 would begin the process of removing outdated, biased, and unconstitutional language from the Maryland Constitution. The change would finally remove the religious test for public office and profession of faith in a “Divine Being” from oaths of office. The continued presence of such language in the Maryland Constitution is not a harmless relic of the past. It undercuts our modern understanding of religious liberty and state/church separation, lends support to blasphemy laws around the world, and reinforces the widespread stigma against nonreligious Americans. This change is long overdue.

As it stands right now, the Maryland Constitution is contradictory and discriminatory. It bans religious tests for public office and imposes such a test in the same sentence: “That no religious test ought ever to be required as a qualification for any office of profit or trust in this State, other than a declaration of belief in the existence of God.”

The ban on religious tests in the United States Constitution is one of the truly great and original bulwarks for freedom of thought and expression. Our Constitution is godless, omitting any mention of god or Jesus—a unique contribution of our founders. The original, unamended document mentions religion exactly once, in Art. 6 Clause 3: “No

religious test Shall ever be required for any office or public trust...” As Justice Joseph Story explained, “This clause is not introduced merely for the purpose of satisfying the scruples of many persons, who feel an invincible repugnance to any religious test, or affirmation. It ***had a higher objective: to cut off for ever every pretence of any alliance between church and state in the national government.***”<sup>1</sup> This is the better path. There is no freedom of religion without a government that is free from religion.

### **Religious government oaths violate religious freedom.**

One of Maryland’s truly great legislators, now-U.S. Representative Jamie Raskin, highlighted the line between state and church in 2006 when he was a constitutional law professor testifying against a bill to impeach a judge who rightly struck down Maryland’s odious law banning marriage equality. State Senator Nancy Jacobs asked Raskin about the role of the bible in dictating public policy. Raskin responded: “Senator, when you took your oath of office, you placed your hand on the Bible and swore to uphold the Constitution. You did not place your hand on the Constitution and swear to uphold the Bible.” The United States has a long tradition of secular oaths and barring religious tests for public office—a tradition that has been deliberately trampled in recent decades.

The first law ever passed by the U.S. Congress went through precisely the same amendments that are now being suggested in H.B. 181 more than 222 years later. In 1789, Congress removed religious verbiage from early drafts of its oath of office. As originally proposed, *An Act to regulate the Time and Manner of administering certain Oaths* had two clauses mentioning a deity — “in the presence of Almighty GOD” and “So help me God” — both of which were removed in committee and sent to President George Washington as wholly secular oaths, which he signed into law on June 1, 1789. That final oath read, in its totality: “I, A. B. do solemnly swear or affirm (as the case may be) that I will support the Constitution of the United States.”<sup>2</sup>

The only oath prescribed in the Constitution, the presidential oath in Article II, does not include the words “so help me God” or mention a god, but instead allows for an 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.” Presidents did not begin adding “So help me God” to this constitutionally prescribed oath until 1881—certainly Washington did not add the words.<sup>3</sup> Edward Lengel is editor-in-chief of the George Washington papers and over 60 volumes of Washington’s documents. Nobody knows Washington’s words

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<sup>1</sup> Joseph Story, *Commentaries on the Constitution of the United States*. 3 vols. 3:§1841 (Boston, 1833) In *The Founders Constitution*, (The University of Chicago Press) Vol. IV, Article 6, Clause 3, Document 27, available at [http://press-pubs.uchicago.edu/founders/documents/a6\\_3s27.html](http://press-pubs.uchicago.edu/founders/documents/a6_3s27.html).

<sup>2</sup> For the final version of the oath see, [1 Stat. 23](#); for the original version see, *Annals of Congress, House of Representatives*, 1st Congress, 1st Session, page 101, entry for Monday, April 6, 1789.

<sup>3</sup> See Andrew L. Seidel, *The Founding Myth: Why Christian Nationalism is Un-American* (Sterling Publishing, 2019).

better. Lengel wrote, “any attempt to prove that Washington added the words ‘so help me God’ requires mental gymnastics of the sort that would do credit to the finest artist of the flying trapeze.”<sup>4</sup> The modern tradition of adding the words coincides with the broadcasting of the inaugurals and truly began with Wilson’s second oath in 1917.<sup>5</sup>

Even before our Constitution was drafted, those fighting for American independence adopted secular oaths. The very first oath for enlisted soldiers, those who fought under General Washington, was prescribed as part of the creation of the Continental Army on June 14, 1775 and did not mention any god. The first United States Army oath was approved under the new U.S. Constitution on Sept. 29, 1789, and it too was without the “so help me God” requirement.<sup>6</sup>

### **Anti-atheist language supports barbaric blasphemy laws around the world.**

In some countries, the non-violent and victimless crime of blasphemy is punishable by serious penalties, including death.<sup>7</sup> While most people think of this as a problem unique to the Middle East and Africa, such laws are still on the books all over the world.<sup>8</sup> When laws against blasphemy or apostasy are challenged, the laws’ defenders point to other countries that have similar laws on the books. This, in part, is why Ireland finally repealed its own blasphemy law in 2018.<sup>9</sup>

Outdated American prohibitions against atheism have the same problem. When the United States condemns Nigeria for arresting one of its citizens because of his lack of religious belief,<sup>10</sup> Nigerian officials should not be able to point to *Maryland* as supporting its cause through its state constitution.

### **Prejudice against atheists is unacceptable.**

If this provision were against virtually any other minority, there would be no question or debate as to what ought to be done. If the Maryland Constitution singled out Jews or Muslims or Buddhists (some of whom are atheists) or Hindus or Black or Brown Americans, the path forward would be blindingly obvious and the prejudice scrubbed from the founding document with fervor. We ask only for the same treatment.

Atheists and agnostics now make up 9 percent of the total U.S. population, which is more than Mormons, Jews, Hindus, Muslims, Jehovah’s Witnesses and Buddhists **combined**.<sup>11</sup>

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<sup>4</sup> Edward G. Lengel, *Inventing George Washington* page 105 Harper Collins Publishers (2011).

<sup>5</sup> Seidel, *The Founding Myth*. See also, Andrew Seidel, “Leave God Out of the Presidential Oath,” *The Progressive* (Jan. 21, 2021).

<sup>6</sup> It was not until 1962 that the Army and other branches of the military began changing their oaths to include SHMG. See, e.g., U.S. Army Center of Military History, “Oaths of Enlistment and Oaths of Office” at [history.army.mil/html/faq/oaths.html](http://history.army.mil/html/faq/oaths.html).

<sup>7</sup> See, e.g., *Four-in-ten countries and territories worldwide had blasphemy laws in 2019*, Pew Research Center (Jan. 25, 2022), [www.pewresearch.org/fact-tank/2022/01/25/four-in-ten-countries-and-territories-worldwide-had-blasphemy-laws-in-2019-2/](http://www.pewresearch.org/fact-tank/2022/01/25/four-in-ten-countries-and-territories-worldwide-had-blasphemy-laws-in-2019-2/).

<sup>8</sup> *Id.*

<sup>9</sup> Emma Graham-Harrison, *Ireland votes to oust ‘medieval’ blasphemy law*, *The Guardian* (Oct. 27, 2018).

<sup>10</sup> Emmanuel Akinwotu, *UN condemns one year detention of Nigerian humanist Mubarak Bala*, *The Guardian* (April 28, 2021).

<sup>11</sup> *Id.*

About 12 percent of millennials are atheist or agnostic and 29 percent of Americans identify as nonreligious.<sup>12</sup> Nationally, about 35% of millennials—born after 1981—are nonreligious.<sup>13</sup> These numbers continue to climb with every study. In Maryland, a survey conducted in 2014 revealed that 10 percent of Marylanders “do not believe in God.”<sup>14</sup>

Despite these rapidly growing numbers, prejudice against nonbelievers remains acceptable in many circles. For example, when it comes to voting for an otherwise qualified candidate, atheists rank below Jewish, Mormon, LGBT and Muslim candidates—falling 14 percentage points below a gay or lesbian candidate, simply for not believing.<sup>15</sup> The same holds for parents asked about their child’s potential spouse—atheists are viewed as the least desirable.<sup>16</sup>

As currently written, the Maryland Constitution reinforces the stigma. Now is the time to change that. Please support H.B. 181.

Sincerely,



Andrew L. Seidel  
Constitutional Attorney  
Director of Strategic Response



Ryan D. Jayne  
Strategic Response Attorney

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<sup>12</sup> *Id.*

<sup>13</sup> *America’s Changing Religious Landscape*, PEW RESEARCH CENTER (May 12, 2015), available at [www.pewforum.org/2015/05/12/americas-changing-religious-landscape/](http://www.pewforum.org/2015/05/12/americas-changing-religious-landscape/).

<sup>14</sup> *Id.* at <https://www.pewforum.org/religious-landscape-study/state/#belief-in-god>.

<sup>15</sup> A more recent study put the number who would vote for atheists even lower. See Daisy Grewal, *In Atheists we Distrust*, SCIENTIFIC AMERICAN (Jan 17, 2012) (noting that only 45% of Americans would vote for an otherwise qualified atheist presidential candidate; and that atheists are rated the least desirable groups as potential son/daughters-in-law) available at <http://www.scientificamerican.com/article/in-atheists-we-distrust/>.

<sup>16</sup> John Allen Paulos, *Who’s Counting: Distrusting Atheists*, ABC News, April 2, 2006, available at <http://abcnews.go.com/Technology/story?id=1786422>.