

SUPPORT

HB181 - Declaration of Rights - Religious Freedom, Religious Tests, and Oaths and Affirmations

February 1, 2022

Chair Pendergrass, Vice-Chair Pena-Melnyk, and Members of the Committee.

My name is Daniel Meyer. I'm a lifelong Maryland resident, and I wanted to address HB181 as the bill was submitted on my behalf by Delegate Hill

I would like to start with outlining what this Bill does not do. Contrary to what the synopsis implies, it's purpose is not to simply excise "references to God" or negate the importance of religion. On the contrary, the purpose of this bill is to remove an unconstitutional mandatory requirement for residents to believe in, worship, and proclaim a belief in God in order to participate in public and civic life -- and in the process expand freedoms for everyone regardless of their belief systems. In fact, the preamble to the Maryland Declaration of Rights starts with: "We, the People of the State of Maryland, grateful to Almighty God for our civil and religious liberty..." That remains unchanged. Not only is that a reference to God, but according to Merriam-Webster, "Almighty God" is a specific God, it's the God of the Bible.

Instead of arbitrarily removing God from the Declaration of Rights, this bill removes a Constitutional mandated duty for residents to worship God, and to proclaim a belief in God. This is not just a cosmetic change. I think it is important to discuss how insidious the intent of this language is, not just now, but at the time it was written. These provisions have teeth. In 1961, Article 37 resulted in Roy Torcaso being refused a notary public commission and subsequently bringing his case before the US Supreme Court. The court ruled 9-0 that Article 37 violated the 1st and 14th Amendments, establishing a religion and failing to treat all citizens equally. In 1997, in South Carolina which has similar language in its Constitution, Herb Silverman was rejected for a notary public commission after omitting "So help me God" from his oath, The South Carolina Supreme Court, in a 5-0 decision agreed that this violated his 1st Amendment rights as well as Article VI.

When the US Constitution was written, Article VI was included which explicitly states that there may be **no** religious tests to hold any office of public trust under the United States. This was intentionally included after much deliberation and debate. Writing for a unanimous majority, Justice Hugo Black, in the 1961 Torcaso V Watkins decision cited multiple people debating the ratification of the US Constitution. In 1787, Oliver Ellsworth stated:

"In short, test laws are utterly ineffectual; they are no security at all, because men of loose principles will, by an external compliance, evade them. If they exclude any persons, it will be honest men, men of principle, who will rather suffer an injury than act contrary to the dictates of their consciences. . . ."

Article 39 requires everyone to swear an oath to God that they will tell the truth. But if someone doesn't believe, they are literally being asked to lie in the very statement in which they are promising to tell the truth. Justice Black also cites James Iredell, who wrote:

". . . [i]t is objected that the people of America may, perhaps, choose representatives who have no religion at all, and that pagans and [Muslims] may be admitted into offices. But how is it possible to exclude any set of men without taking away that principle of religious freedom which we ourselves so warmly contend for?"

In other words, the Founders of our country, had the foresight to anticipate that religious tests could be used against minority religions (at the time, there were likely very few, if any, Muslims in the country) *and* the non-religious, and he still concluded that there should be no religious tests, acknowledging that this could erode the very religious freedoms which lay at the heart of American society.

Samuel Spencer of North Carolina expounded on this, writing that religious tests were the foundation for persecution in all countries, and the "no religious tests" clause "leaves religion on the solid foundation of its own inherent validity, without any connection with temporal authority, and no kind of oppression can take place."

The required attestation of Article 39 actually brings up another relevant issue. There are believers in the Abrahamic God who might object to being required to "generally esteem the most effectual confirmation by the attestation of the Divine Being." Presumably, this is exhorting people to swear to God. The 3rd

Commandment tells followers not to take the Lord's name in vain, but the required attestation might be interpreted as doing exactly that.

Therefore, these tests serve no useful purpose except to persecute minorities, denigrate the value of citizenship based on religious belief, and clearly violate the plain text as well as all known interpretations of the US Constitution. I believe this thoroughly addresses the changes in Article 37 and 39.

Article 36 includes several changes. The first is to remove the use of religious tests from witnesses and jurors in court for reasons already stated. However there are also several additional changes:

1) The words: "infringes on the laws of morality" were removed. This text is disturbing as it has the potential to restrict someone's religious freedom, given the subjective and potentially arbitrary way in which "morality" might be interpreted. While most people would agree being immoral is a bad thing, the consensus on what is immoral is probably harder to come by. If it is necessary to restrict the free exercise of religion, I'd hope that a legislative body could specify and debate the specific restrictions before allowing a zealous prosecutor to restrict someone's free exercise of religion based on their personal moral code.

2) Article 36 starts with: "That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty;" Justice Black argues that the rights granted to you in the Bill of Rights, are often subject to restrictions. The 1st Amendment guarantees us the right to free speech, but it's not completely free -- you aren't allowed to incite a riot, or falsely yell fire in a crowded theater. The 2nd Amendment grants us the right to keep and bear arms, but we're limited to firearms, not nuclear weapons -- but the freedom of conscience is absolute, and the right to act on your beliefs ends only where your actions harm others. Therefore, it is unnecessary and unhelpful to justify the right to religious liberty, it is self-evident.

3) The 2nd paragraph states: " Nothing shall prohibit or require the making reference to belief in, reliance upon, or invoking the aid of God or a Supreme Being in any governmental or public document, proceeding, activity, ceremony, school, institution, or place"

The Supreme Court has repeatedly stated that staff and faculty members in public schools are prohibited from leading prayers. It should be noted that this **only** applies to staff or faculty led prayers. Students are free to pray. This was initially established in the 1962 6-1 SCOTUS case, Engel v Vitale which was brought by a Jewish man who objected not to prayer in general, but to the specific prayer not being consistent with his (or his son's) religious beliefs. This precedent was further upheld and strengthened in 1963 by the 8-1 decision, Abington School District vs Schempp, and then again in 1971 with the 8-1 decision, Lemon v Kurtzman.

It is fairer for everyone involved, religious and irreligious alike, for staff and faculty members of public schools not to push prayers onto students who may have limited opportunities not to participate or face ostracism for failure to participate.

In summary, I believe this bill will enhance religious freedom and liberty for all Marylanders and bring our Constitution into alignment with the US Constitution as required by Article 2 of the Declaration of Rights.

Sincerely,

A handwritten signature in black ink, appearing to read "David M.", with a stylized flourish at the end.