

# FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 › MADISON, WI 53701 › (608) 256-8900 › WWW.FFRF.ORG

March 6, 2023

The Hon. Joseline A. Pena-Melnyk  
Chair  
Health and Government Operations Committee  
House Office Building, Rm. 241  
Annapolis, Maryland 21401

**Re: Testimony in strong support of H.B. 0871**

Dear Delegate Pena-Melnyk and Committee Members:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to provide testimony in support of H.B. 0871, which would alter and remove references requiring a belief in God from certain provisions relating to religious freedom, religious tests, and oaths and affirmations. FFRF is a national nonprofit organization with more than 40,000 members across the country, including more than 700 members in Maryland. FFRF works to protect the constitutional separation between state and church, and educates about nontheism. The majority of our membership, 75 percent, identify as atheists; the rest are mainly agnostics.

H.B. 0871 would propose the removal of outdated, gendered and obviously unconstitutional language from the Maryland Constitution. The existing language is discriminatory and un-American, in addition to being inoperative because of its constitutional infirmity. There is no legitimate reason to oppose this change, and every reason for the legislature to approve the bill.

Just after the Maryland Constitution prohibits religious tests for public office (mirroring Article VI of the U.S. Constitution), it shockingly clarifies that discriminating against atheists is acceptable. The U.S. Supreme Court unanimously rejected this discriminatory provision in *Torcaso v. Watkins*, 367 U.S. 488 (1961), explaining the obvious discrimination in its historical context:

The power and authority of the State of Maryland thus is put on the side of one particular sort of believers — those who are willing to say they believe in ‘the existence of God.’ It is true that there is much historical precedent for such laws. Indeed, it was largely to escape religious test oaths and declarations that a great many of the early colonists left Europe and came here hoping to worship in their own way. It soon developed, however, that **many of those who had fled to escape religious test oaths turned out to be perfectly willing, when they had the power to do so, to force dissenters from their faith to take test oaths in conformity with that faith.**

*Id.* at 490. (emphasis added). The Court concluded, “This Maryland religious test for public office unconstitutionally invades [Torcaso]’s freedom of belief and religion and therefore

cannot be enforced against him.” *Id.* at 496. That ruling was more than 60 years ago, and yet the disgraceful and unconstitutional language disenfranchising many citizens remains on the books. It is long past time for it to be removed. Incidentally, FFRF is proud that Roy Torcaso was an honorary director, and is featured in our film, “A Second Look at Religion.”<sup>1</sup>

There is little doubt that the majority of Marylanders will support this change. In fact, non-religious Americans are the fastest growing segment of the U.S. population by religious identification — 29 percent of American adults now identify as religiously unaffiliated,<sup>2</sup> described by Pew Research and individuals who are “atheist, agnostic or nothing in particular.” Among Americans born after 1999 who are not religiously affiliated, as many as 21 percent are explicitly atheist or agnostic.<sup>3</sup>

The repeal of this provision in H.B. 0871 is long overdue. The only question to ponder is why this correction was not made decades or *centuries* ago. Please support this bill so that Marylanders have an opportunity to remove from their state constitution this law creating invidious discrimination, in violation of the Constitution, Supreme Court precedent and basic democratic principles.

Sincerely,



Ryan D. Jayne  
Senior Policy Counsel

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<sup>1</sup> “A Second Look at Religion,” available at [www.youtube.com/watch?v=NbqEGKidyL4](http://www.youtube.com/watch?v=NbqEGKidyL4).

<sup>2</sup> About Three-in-Ten U.S. Adults are Now Religiously Unaffiliated Pew Research Center (Dec. 14, 2021), [www.pewresearch.org/religion/2021/12/14/about-three-in-ten-u-s-adults-are-now-religiously-unaffiliated/](http://www.pewresearch.org/religion/2021/12/14/about-three-in-ten-u-s-adults-are-now-religiously-unaffiliated/).

<sup>3</sup> *Atheism Doubles Among Generation Z*, The Barna Group (Jan. 24, 2018), [www.barna.com/research/atheism-doubles-among-generation-z/](http://www.barna.com/research/atheism-doubles-among-generation-z/).