

March 6, 2023

The Honorable Joseline Pena-Melnyk
Chair
Health and Government Operations
Committee
Maryland House of Delegates
Room 241, House Office Building
Annapolis, Maryland 21401

The Honorable Bonnie Cullison
Vice Chair
Health and Government Operations
Committee
Maryland House of Delegates
Room 241, House Office Building
Annapolis, Maryland 21401

Re: Support HB 871 – Maryland’s Constitution Should Not Require a Belief in God

Dear Chair Pena-Melnyk and Vice Chair Cullison:

On behalf of the Maryland members and supporters of Americans United for Separation of Church and State, I write to express our support for HB 871, which proposes a constitutional amendment to remove language that requires unconstitutional religious tests from the Maryland Constitution. Maryland is a religiously diverse state that is home to people of all religions and none. It is long past the time for Maryland to amend its Constitution to ensure that everyone feels welcome and included, regardless of their religious beliefs. We urge you to support HB 871.

It is a fundamental principle of religious freedom that the government cannot require individuals to express a belief in God. As the Supreme Court has explained: “[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”¹ Indeed, requiring a religious test “is abhorrent to our tradition” of freedom of religion.²

Article VI of the United States Constitution states that “no religious test shall ever be required as a qualification to any office or public trust under the United States.”³ Yet,

¹ *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642, (1943).

² *Girouard v. United States*, 328 U.S. 61, 69 (1946).

³ U.S. Const. art. VI, cl. 3. The Religion Clauses of the First Amendment also protect this ideal. The Supreme Court has long held that the Establishment Clause prohibits the government from preferring religion over non-religion. See *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968) (the “touchstone” of the First Amendment is the principle that “mandates governmental neutrality between religion and religion,

three of Maryland's Articles of the Declaration of Rights retain language that requires declarations of a belief in God—even after courts have explicitly struck some of these provisions down as unconstitutional.

The U.S. Supreme Court struck down Article 37's requirement that no religious test can be required for a candidate for office "other than a declaration of belief in the existence of God" in 1961. The Supreme Court explained that the Establishment Clause prohibited Maryland from requiring people seeking commissions as notaries to declare a belief in God: "Maryland[']s religious test for public office unconstitutionally invades . . . freedom of belief and religion and therefore cannot be enforced."⁴

Just four years later, the Maryland Court of Appeals struck down Article 36's provision that requires witnesses and jurors to believe "in the existence of God." The court explained that its decision was "the inevitable result of the Supreme Court's decision in *Torcaso*." The law is clear that "the exclusion of persons from jury service because of their lack of belief in a Supreme Being is in violation of the Federal Constitution."⁵

Finally, Article 39, requires that all oaths and affirmations must confirm "the attestation of the Divine Being." It is similarly unconstitutional.

Maryland's residents practice a variety of religions and faiths, and many are nonreligious. Freedom of religion gives us all the right to believe or not as we see fit, and no one should have to profess a belief in God in order to become a juror, serve in public office, or swear an oath. Passing this bill would demonstrate that Maryland respects and welcomes all people, whether they believe in God or not. Accordingly, I urge you to support HB 871. Thank you for your consideration on this important matter.

Sincerely,



Nikolas Nartowicz
State Policy Counsel

cc: Members of the Health and Government Operations Committee

and between religion and nonreligion."). And the Free Exercise Clause bars the government from "compel[ling] affirmation of religious belief." *Employment Division v. Smith*, 494 U.S. 872, 877 (1990).

⁴ *Torcaso v. Watkins*, 367 U.S. 488, 492–96 (1961).

⁵ *Schowgurow v. State*, 240 Md. 121, 128, (1965).