

**Unfavorable**

Honorable Chairmen and Delegates, I am Pastor David Whitney Senior Instructor at Institute on the Constitution where I teach the only course offered anywhere on the Maryland State Constitution. I had the privilege of developing this course with the help of scholars and attorneys and I am in the midst of teaching Maryland citizens our Maryland Constitution course this winter / spring semester.

This bill demonstrates a fundamental misunderstanding of the Federal Constitution in relationship with our Maryland State Constitution.

The clause in the Federal Constitution, *"no religious test shall ever be required as a qualification to any office or public trust under the United States"*

is parallel to the U.S. First Amendment restriction that states, "Congress shall make no law..." The 1st Amendment is restricting Congress alone, just as the no religious test was restricting the Federal government alone. The proof that this no religious test clause applies only to the Federal Government is in the history of the relationship between Federal Government and the State Governments.

Consider the example of Delaware's first constitution of 1776. By the way it was still in use even after the ratification of the U.S. Constitution. Delaware was the first State to ratify the U.S. Constitution and it did so with this provision in its State Constitution. The ratification of the U.S. Constitution did nothing to change this provision in the Delaware State Constitution. (Note AB indicate first and last name)

**ART. 22.** Every person who shall be chosen a member of either house, or appointed to any office or place of trust, before taking his seat, or entering upon the execution of his office, shall take the following oath, or affirmation, if conscientiously scrupulous of taking an oath, to wit:

" I, A. B. will bear true allegiance to the Delaware State, submit to its constitution and laws, and do no act wittingly whereby the freedom thereof may be prejudiced."

And also make and subscribe the following declaration, to wit:

" I, A. B. do profess faith in God the Father, and in Jesus Christ His only Son, and in the Holy Ghost, one God, blessed for evermore; and I do acknowledge the holy scriptures of the Old and New Testament to be given by divine inspiration."

And all officers shall also take an oath of office."

Clearly this is a religious test and it was absolutely required to hold any office in Delaware, even after the Federal Constitution was ratified. The Federal Constitution did not change or forbid the State of Delaware from using this oath of office.

The State of Maryland also had a similar requirement to hold office in our first Constitution ratified in 1776.

"Dec. of Rights XXXV. That no other test or qualification ought to be required, on admission to any office of trust or profit, than such oath of support and fidelity to this State, and such oath of office, as shall be directed by this Convention or the Legislature of this State, and a declaration of a belief in the Christian religion.

Dec. of Rights XXXVI. That the manner of administering an oath to any person, ought to be such, as those of the religious persuasion, profession, or denomination, of which such person is one, generally esteem the most effectual confirmation, by the attestation of the Divine Being."

We see that the very nature of an oath is a solemn vow made before Almighty God. You can't swear an oath to a God you don't believe exists. Then we find in the body of the 1776 Constitution,

ART. LV. That every person, appointed to any office of profit or trust, shall, before he enters on the execution thereof, take the following oath; to wit: -" I, A. B., do swear, that I do not hold myself bound in allegiance to the King of Great Britain, and that I will be faithful, and bear true allegiance to the State of Maryland; " and shall also subscribe a declaration of his belief in the Christian religion."

This is the history. It is clear that only the Federal Government could not require a religious test. That restriction was not placed upon the State Governments nor upon their respective State Constitutions. This bill seems to claim in its second Whereas that this historic standard was changed by the Supreme Court case *Torcaso v. Watkins*. But the Supreme Court has no power or authority to alter the Contract We the People of the State of Maryland made in establishing our State Government. SCOTUS overstepped their powers in *Torcaso v. Watkins* and this bill actually admits as much. How? Because this bill attempts to amend the Maryland State Constitution, in other words to give legal authority to the opinion of SCOTUS in *Torcaso v. Watkins*.

When the Supreme Court has issued a wrong opinion what is the appropriate response? What was the response to *Dred Scott*? Consider that it was never overturned by any subsequent opinion SCOTUS issued. The appropriate response is to simply ignore the wrong opinion. Historically *Torcaso v. Watkins* was wrong. SCOTUS had no power to alter or amend any State Constitution. The U.S. Constitution did not and today does not require any State in the Union to avoid a religious test for those taking an oath of office. We should not add to the errors of SCOTUS by passing this bill to Amend the Maryland Constitution.

I urge an unfavorable report on HB0871