

ANTHONY G. BROWN  
Attorney General



CANDACE MCLAREN LANHAM  
Chief of Staff

CAROLYN A. QUATTROCKI  
Deputy Attorney General

STATE OF MARYLAND  
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.  
(410) 576-7036

WRITER'S DIRECT DIAL NO.  
(410) 576-6584

March 8, 2023

TO: The Honorable Joseline Peña-Melnyk  
Chair, Health & Government Operations Committee

FROM: Hannibal G. Williams II Kemerer  
Chief Counsel, Legislative Affairs, Office of the Attorney General

RE: HB 0871 – Declaration of Rights – Religious Freedom, Religious Tests, and  
Oaths and Affirmations (**SUPPORT**)

---

The Office of the Attorney General urges a favorable report on House Bill 871. This bill, sponsored by Del. Hill, seeks to amend various articles of the Maryland Bill of Rights to remove references to God or a Supreme or Divine Being, and to further protect religious freedom within the state. More particularly, this bill seeks to bring the Maryland Declaration of Rights into conformance with previous binding court decisions and current practices.

Article VI of the United States Constitution expressly states that “no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.”<sup>1</sup> In *Torcaso v. Watkins*, the United States Supreme Court held that the imposition of a religious test to hold public office, requiring a “declaration of belief in the existence of God” under Article 37 of the Maryland Declaration of Rights, violates the federal Constitution.<sup>2</sup> Following the U.S. Supreme Court’s holding in *Torcaso*, the then Court of Appeals of Maryland held in *Schowgurow v. State* that Article 36’s requirement of a demonstration in the belief in God as a qualification to jury service infringes upon the federally protected freedom of religion.<sup>3</sup> It follows that Article 39’s

---

<sup>1</sup> U.S. Const., art. VI.

<sup>2</sup> *Torcaso v. Watkins*, 367 U.S. 488, 495–96 (U.S. 1961) (“We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person ‘to profess a belief or disbelief in any religion.’ Neither can [a state or the federal government] constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.”).

<sup>3</sup> *Schowgurow v. State*, 240 Md. 121, 131 (MD. 1965).

This bill letter is a statement of the Office of Attorney General’s policy position on the referenced pending legislation. For a legal or constitutional analysis of the bill, Members of the House and Senate should consult with the Counsel to the General Assembly, Sandy Brantley. She can be reached at 410-946-5600 or sbrantley@oag.state.md.us

requirement that all oaths and affirmations attest to “the Divine Being” is similarly unconstitutional and should be removed from our Declaration of Rights.<sup>4</sup>

As one of the most diverse states in the country, it is imperative that the Maryland Bill of Rights reflect our state’s commitment to ensuring equal opportunity and rights for all people, regardless of one’s belief system. For the foregoing reasons, the Office of the Attorney General recommends a favorable report on House Bill 871.

cc: Members of the Health & Government Operations Committee

---

<sup>4</sup> MD Constitution, Declaration of Rights, Art. 39 states: “That the manner of administering an oath or affirmation to any person, ought to be such as those of the religious persuasion, profession, or denomination, of which he is a member, generally esteem the most effectual confirmation by the attestation of the Divine Being.”