Secular Maryland secularmaryland@tutanota.com

March 04, 2025

HB 822 - FAV

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

Dear Chair Joseline A. Pena-Melnyk, Vice-Chair Bonnie Cullison, and Members of the Health and Government Operations Committee,

We thank Delegate Hill and the eight cosponsors of this bill that we have been waiting decades for. 1961 was the year that the U.S. Supreme Court ruled unanimously in Torcaso v. Watkins that The Declaration of Rights, Article 37 of the Maryland Constitution violated the First and Fourteenth Amendments by requiring a citizen to state a belief in God as a qualification for public office in Maryland. There are similar provisions in Articles 36 and 39. Ira C. Lupu, an emeritus professor specializing in church-state issues at George Washington University Law School, said that court cases have been crystal clear that making belief in God a litmus test for public office is patently illegal: “Of course [the religious-test requirements] shouldn’t be in there. They’re all unconstitutional. They can’t be enforced.” Yet today, more than half a century later, provisions against non-theists (deists, agnostics, atheists) holding office remain in the state constitutions of Maryland, South Carolina, Pennsylvania, Texas, North Carolina, Tennessee, Mississippi and Arkansas.

These state constitutional provisions have sometimes been cited to threaten atheist candidates and elected officials. People who read their state constitutions are not always aware that the Supreme Court has struck down these discriminatory provisions. They were used against Herb Silverman who needed years in court and a South Carolina Supreme Court victory to win the right to be a notary public while self-identifying as an atheist. In 2014, a candidate for a runoff race for the Austin City Council invoked Texas’s Constitutional prohibition on non-believers holding office to argue her opponent was disqualified from serving.

Amending these state constitutions to treat everyone equally and comply with the U.S. Constitution and Supreme Court is a positive action that all Americans should be able to

agree on. If there were still similar provisions against Jews, Catholics, or Non-Christians then our lawmakers would be acting to get them removed. For example, provisions in the North Carolina Constitution barring Jews, Catholics and non-Christians from holding office have all been removed. Why are non-theists different? The provisions against non-theists remain a stain on the books and a mockery to non-theist citizens in Maryland and six other states. This ongoing state of affairs exhibits antipathy against the federal constitution's famous no religious test and establishment clauses.

Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, in a December 2016 news release from the Office of the UN High Commissioner for Human Rights (OHCHR) said the following: "People often do not fully understand the scope of the international human right to religious freedom. It is not just about religions or beliefs, but it also covers the right to freedom of thought and conscience as provided by the Universal Declaration for Human Right." The expert said the terms "religion" and "belief" should be understood in a broad sense to include theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. "All of them have important roles to play in building pluralistic and inclusive societies for the 21st century that are peaceful and prosperous," Mr. Shaheed stressed. "In the face of increasing diversity, the freedom of religion or belief can be upheld only with the acceptance and full inclusion of atheists and non-believers," he concluded.

Unfortunately, it is risky to rely primarily on the current Supreme Court to defend non-establishment of religion. Justice Clarence Thomas in particular has let it be publicly known that he believes federal law should permit state government establishment of religion. In his concurring opinion in a school voucher decision, Zelman v. Simmons-Harris (2002), Justice Clarence Thomas questioned whether the establishment clause applies to the states via the Fourteenth Amendment. Thomas went further in his concurring opinion in a Pledge of Allegiance decision, Elk Grove Unified School District v. Newdow (2004). In that opinion Thomas said "I would acknowledge that the Establishment Clause is a federalism provision, which, for this reason, resists incorporation." According to Thomas, the purpose of the Establishment Clause is to protect state establishments of religion from federal government interference (that was arguably true for *every clause* of the *entire* Bill of Rights prior to the 14th amendment). Thomas' reactionary, post 14th amendment, states rights applicability restriction that arbitrarily singles out only the Establishment Clause does not protect individual freedom of conscience given that there are thousands of competing religious beliefs but only 50 states and some people need to live where they are employed.

Respectfully,
Mathew Goldstein
3838 Early Glow Ln
Bowie, MD 20716