

## SUPPORT

### HB0822 - Declaration of Rights - Religious Freedom, Religious Tests, and Oaths and Affirmations

February 26, 2025

Chair Pena-Melnyk, Vice-Chair Cullison, and Members of the Committee.

My name is Daniel Meyer. I'm a lifelong Maryland resident, and I wanted to explain why HB0822, the Bill kindly submitted on my behalf by Delegate Hill, is not only necessary but long overdue. My points in support of this Bill are as follows:

#### The current language in our State constitution violates the US Constitution

Article VI of the US Constitution explicitly states, there may be *no* religious tests to hold any office of public trust under the United States. The reasoning for it was sound, deliberate, and as applicable to Maryland as the United States. The Founding Fathers included this short clause only after extensive debate. Oliver Ellsworth, our 3<sup>rd</sup> Chief Justice stated:

*"In short, test laws are utterly ineffectual; they are no security at all, because men of loose principles will, by an external compliance, evade them. If they exclude any persons, it will be honest men, men of principle, who will rather suffer an injury than act contrary to the dictates of their consciences...."*

Similarly, Article 39 requires everyone to swear an oath to God to tell the truth while testifying in court. However, if someone doesn't believe, they are literally being asked to lie in the very statement in which they are promising to tell the truth. What is the point of a test that encourages people to hide their true beliefs by lying while punishing those who are principled enough not to? Even some believers might object to such an oath. The 3<sup>rd</sup> Commandment tells followers not to take the Lord's name in vain, but the required attestation might be interpreted as doing exactly that, and is in fact viewed that way by some Jews who will affirm but not swear.

#### The "test" has teeth

Article 37 is not just ornamental but has actually been used to deny people public office. Most notably, in 1959, it was enforced against Roy Torcaso, a Unitarian. His application to be a notary public was denied on grounds that he refused to claim a belief in God. In 1961, the Supreme Court ruled 9-0, in *Torcaso v Watkins*, that Article 37, specifically, violated the 1<sup>st</sup> and 14<sup>th</sup> Amendments, by establishing a religion and failing to treat all citizens equally. Justice Hugo Black repeatedly cites numerous statements made at the founding of the country regarding religious tests, some of which are quoted in this testimony.

More recently, in 1997, in South Carolina, which has similar language in its Constitution, Herb Silverman was also rejected for a notary public commission after omitting "So help me God" from his oath, The South Carolina Supreme Court, in a 5-0 decision agreed that this violated his 1<sup>st</sup> Amendment rights as well as Article VI of the US Constitution. Two decades later, in 2009, Asheville North Carolina (another state with similar language) Councilman Cecil Bothwell, a Unitarian, had his eligibility challenged for refusing to state a belief in God.

#### The "test" is coercive and discriminatory

James Iredell, one of the original Supreme Court Justices had the foresight to observe:

*"... [i]t is objected that the people of America may, perhaps, choose representatives who have no religion at all, and that pagans and [Muslims] may be admitted into offices. But how is it possible to exclude any set of men without taking away that principle of religious freedom which we ourselves so warmly contend for?"*

In other words, the Founders of our country, anticipated that religious tests could be used against minority religions **as well as the non-religious**, and concluded that **any** kind of religious test could erode the very religious freedoms which lay at the heart of American society.

Religious tests don't serve to promote piety and virtue, as we can see from Mr. Ellsworth's statement they only serve to suppress and oppress minorities, and these tests in particular serve to denigrate the value of

citizenship. The founders of our country understood this all too well, both intellectually as demonstrated from the quotes above and from observation of history, seeing all the sectarian conflict in Europe where religion was often weaponized for political purposes. They understood religious tests were the first step to this intellectual tyranny and wisely chose to ban them.

It wasn't just Europe though, Maryland was originally founded as a haven for Catholics, but decades of conflict between Protestants and Catholics led to the "Glorious Revolution" in 1689 and resulted in a century of oppression against Catholics, including a prohibition on voting. After the US Constitution was ratified, the MD Constitution guaranteed religious liberty, but only to Christians. Over the next several decades, it was further liberalized to allow Jews to hold office. Article 37 is the direct descendant of over a century of laws that were deliberately designed, not to provide religious freedom, but to take power away from religious minorities. In other words, politically weaponized religion wasn't just a European problem, it was a hallmark of Maryland's history. We can, and should, end this sad chapter in history by finally repudiating it.

### **The proposed changes broaden the scope of religious freedom**

Article 36 starts with: "That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty;" This Bill reduces this sentence to simply: "All persons are equally entitled to protection in their religious liberty." Justice Black argues that the rights granted to you in the Bill of Rights, are often subject to restrictions. The 1st Amendment guarantees us the right to free speech, but it's not completely free -- you aren't allowed to incite a riot, or falsely yell fire in a crowded theater. The 2nd Amendment grants us the right to keep and bear arms, but we're limited to firearms, not nuclear weapons -- but the freedom of conscience is absolute, and the right to act on your beliefs ends only where your actions harm others. It is not the government's place to dictate a duty to worship, but rather to defend your right to do so and there is no reason to invent a duty to worship, in order to justify the right to believe. The new language is simpler, and makes this clear, restricting religious activities *only* at the point where they harm others.

### **In summary**

Many will accuse this bill of "taking God out of the Constitution," but it only removes references to religious tests and requirements. By contrast other references to God such as the Preamble: "We, the People of the State of Maryland, grateful to Almighty God for our civil and religious liberty..." are deliberately retained.

The proposed amendment is not anti-religious, it does not restrict individuals from exercising their freedom of belief or worshipping their deity of choice -- to the contrary, the guarantees of religious freedom are retained and strengthened; it merely extends that freedom by removing requirements to participate in religious activities that individuals may not agree with, and therefore aims to make the State Constitution fairer and more inclusive.

Some may argue that the bill is unnecessary because the Torcaso decision renders the offending language unenforceable. To that I'd like to make two points: First, in recent years, it would appear that the legal principle of stare decisis no longer seems to have the weight it used to, and it would take only one errant court decision to reverse the legal status of religious tests in Maryland. Second, this is a statement about our values as Marylanders. Do we believe that all citizens should be treated equally or do we believe that it is acceptable to denigrate the citizenship of minorities as a prelude to disenfranchisement? Numerous current elected officials at all levels would fail the religious tests proscribed, even some who are believers.

I believe this bill will enhance religious freedom and liberty for all Marylanders and bring our Constitution into alignment with the US Constitution as required by Article 2 of the Declaration of Rights. Bringing it back to where it began, Mr. Torcaso died at the age of 96 in 2007, vindicated by the Supreme Court, but not the State of Maryland. It's time to set right the injustice that was visited upon him 66 years ago.

Sincerely,



Daniel Meyer