

Testimony Against HB0356

Honorable Delegates

Please enter an unfavorable decision about HB0356.

According to the Fiscal and Policy note for HB0356, this bill generally prohibits a governmental authority from substantially burdening a person's exercise of religion even if the burden results from a rule of general applicability. A person's exercise of religion may be substantially burdened only if the governmental authority demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest and the least restrictive means of furthering that compelling governmental interest. The bill authorizes a person aggrieved by a governmental authority to seek specified relief. The bill applies to a governmental action taken by a governmental authority on or after July 1, 2026, including a governmental action taken pursuant to a law, regulation, policy, guideline, or other authority that was in effect prior to July 1, 2026, unless State law expressly excludes that governmental action from coverage under the bill. The bill takes effect July 1, 2026

I oppose HB0356 because in my opinion Section 20-1303, subparts (B)(1) and (B)(2) conflict with Article 44 of the Maryland Declaration of Rights.

Section 20–1303.

(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A GOVERNMENTAL AUTHORITY MAY NOT SUBSTANTIALLY BURDEN A PERSON'S EXERCISE OF RELIGION EVEN IF THE BURDEN RESULTS FROM A RULE OF GENERAL APPLICABILITY.

(B) A GOVERNMENTAL AUTHORITY MAY SUBSTANTIALLY BURDEN A PERSON'S EXERCISE OF RELIGION ONLY IF THE GOVERNMENTAL AUTHORITY DEMONSTRATES THAT APPLICATION OF THE BURDEN TO THE PERSON IS:

- (1) IN FURTHERANCE OF A COMPELLING GOVERNMENTAL INTEREST;
- (2) THE LEAST RESTRICTIVE MEANS OF FURTHERING THAT COMPELLING GOVERNMENTAL INTEREST.

Article 44 states that our constitutional rights" ... apply, as well in time of war, as in time of peace; and any departure therefrom, or violation thereof, under the plea of necessity, or any other plea, is subversive of good Government, and tends to anarchy and despotism."

In other words, per Article 44 **there can never be a compelling reason for the Government to substantially burden a person's exercise of religion** such as locking down our places of worship for the necessity of preventing the spread of COVID. Governor Hogan already used the emergency powers law to burden our exercise of religion. We do not need an additional law that could do the same thing.

While I believe what I just stated is reason enough to enter an unfavorable report, please consider the following additional concerns on the next page.

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- **Unnecessary and risky:** Maryland courts already apply strict scrutiny; the bill risks replacing strong constitutional doctrine with a weaker statutory standard.
- **Conflicts with existing rights:** Maryland's Declaration of Rights already protects religious freedom; HB356's new framework may dilute rather than reinforce these constitutional protections.
- **Narrows scope through definitions:** The bill's specific definitions (e.g., "substantial burden") may exclude burdens currently recognized under broader constitutional standards.
- **Increases government power:** Codifying the "compelling interest" test may lead courts to defer to legislative definitions that restrict religious exercise.
- **Weakens protections by enabling mandates:** Defining "substantial threat to public health" as a compelling interest could justify vaccination requirements and other mandates against religious-freedom challenges.

Finally, I do not see any emergency need for this bill to become law by July 1, 2026.

Please enter an unfavorable decision about this unconstitutional bill, HB0356.

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