



February 17, 2009

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Via U.S. Mail and Electronic Mail

Senator Bob Johnson
President Pro Tempore
Arkansas Senate
State Capitol
Room 320
Little Rock, AR 72201
johnsonb@arkleg.state.ar.us

Dear Senator Johnson:

We are writing to express our support for HJR 1009 and urge you to vote in favor of that proposed constitutional amendment. The Becket Fund for Religious Liberty is a nonprofit, nonpartisan, public interest law firm devoted to protecting the free expression of all religious traditions. We have represented individuals and groups from a wide variety of religious traditions, including Buddhists, Christians, Hindus, Jews, Muslims, Native Americans, Sikhs, and Zoroastrians.

HJR 1009 would remove Art. 19 § 1 from the Arkansas Constitution. That provision denies atheists the right to hold public office or testify in court:

“No person who denies the being of a God shall hold any office in the civil departments of this State, nor be competent to testify as a witness in any Court.”

In 1961, the U.S. Supreme Court invalidated a similar Maryland law in *Torcaso v. Watkins*.¹ Both the Eighth Circuit Court of Appeals² and the Arkansas Attorney General³ have said that the provision is likely unconstitutional. And courts would quickly strike down this provision if Arkansas ever tried to enforce it.

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1 364 U.S. 488.

2 *See Flora v. White*, 692 F.2d 53, 54 n.2 (8th Cir. 1982).

3 *See Attorney General Opinion 92-164* (1992).



Although this provision is not likely to be enforced, removing it from the Arkansas Constitution serves an important symbolic purpose. Specifically, as we at the Becket Fund have consistently maintained, the free expression of religious belief, together with what James Madison called the “the full and equal rights of conscience,” should apply to people of *all* religious traditions—including atheists. Government should no more penalize a person for professing atheism than for professing a belief in Christianity, Buddhism, or Islam.

Laws like Art. 19 § 1 have a long history, none of it good. In 17th-century Europe, such laws were the favored tool for excluding people of the “wrong” faith. Protestants in England devised “test oaths”—mandatory oaths denying certain Catholic beliefs—as a way to keep Catholics from holding legislative offices, voting, or otherwise gaining political power.⁴ In the United States, oaths and laws were used to ensure that Catholics could not vote, polytheists could not testify, and Jews could not hold public office.⁵ Today, nations like Saudi Arabia and Iran use similar laws to discount the court testimony of non-Muslims and prevent them from gaining full civil and political rights.⁶

We at the Becket Fund believe in the robust protection of religious freedom. We oppose attempts to exclude all mention of God or religious expression from the public square, including, for example, the attempt to strike the words “under God” from our nation’s Pledge of Allegiance. But we also believe that expressions of faith must be *voluntary*. The refusal to acknowledge the same God as many Arkansans, or to acknowledge any deity at all, may not and should not be penalized.

By amending its constitution to protect freedom of belief, Arkansas can set an example for the rest of the nation and, indeed, the rest of the world

Sincerely,

Eric C. Rassbach
National Director of Litigation

⁴ See CATHARINE COOKSON, *ENCYCLOPEDIA OF RELIGIOUS FREEDOM* 116-17 (Taylor & Francis 2003).

⁵ KEVIN J. HASSON, *THE RIGHT TO BE WRONG* 46-48, 108-11 (Encounter 2005).

⁶ See U.S. State Department, *Iran: International Religious Freedom Report 2007*, available at <http://www.state.gov/g/drl/rls/irf/2007/90210.htm> (detailing restrictions on officeholding by non-Shia Muslims and uneven access to legal system); U.S. State Department, *Saudi Arabia: International Religious Freedom Report 2007*, available at <http://www.state.gov/g/drl/rls/irf/2007/90220.htm> (detailing legal status of non-Muslims and discounting of legal testimony by non-Muslims).