

FREEDOM FROM RELIGION *foundation*

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March 23, 2017

SENT VIA U.S. MAIL & EMAIL
Comments.Mailbox@njcourts.gov

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Rules Comments
Hughes Justice Complex
P.O. Box 037
Trenton, NJ 08625-0037

Re: Comment on Proposed Changes to the Rules of Evidence

Dear Mr. Grant:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to express our support for the proposed change to N.J.R.E. 603 replacing religious oaths for witnesses with a standard secular affirmation.

FFRF is a national nonprofit organization promoting the separation of church and state and educating the public on nonbelief. We have more than 27,000 members, including nearly 550 in New Jersey, some of whom are attorneys. FFRF is currently involved in a lawsuit in New Jersey state court, *FFRF v. Morris County Bd. of Chosen Freeholders*, No. SOM-C-12089-15 (N.J. Super. Ct. Ch. Div. 2017). We have taken complaints from New Jersey attorneys with concerns about Bibles on display in courtrooms to facilitate swearing religious oaths.

FFRF strongly supports making secular affirmations the default, rather than requiring the nonreligious and others who do not wish to swear a religious oath to essentially make a declaration of their nonbelief in court.

A rapidly increasing segment of America is nonreligious. Repeated surveys of the religious views of Americans have made this clear. Overall, 23% of adult Americans are religiously unaffiliated – a group commonly referred to as the “nones.”¹ This represents an 8-point increase in the unaffiliated since 2007 and a 15-point jump since 1990, making the “nones” the fastest growing identification in America.² Seven percent of Americans, more than 20 million people, are avowed atheists or agnostics. Among Millennials, those born between 1981-1996, the youngest group surveyed in the 2015 Pew survey, this pattern is even more pronounced.

¹ *America's Changing Religious Landscape*, Pew Research Center (May 12, 2015), <http://pewrsr.ch/2czcSe6>.

² *Nones on the Rise: One-in-Five Adults Have No Religious Affiliation*, The Pew Forum on Religion and Public Life (October 9, 2012), <http://pewrsr.ch/2cT94SH>; Barry Kosmin, *National Religious Identification Survey* (1989-1990), <http://bit.ly/2dhF8PI>.

Approximately 35% of Millennials are not religiously affiliated, and 12% are atheistic or agnostic.

However, despite nonbelievers' increasing visibility, many religious people still have intense animus towards nonbelievers. As an article by two of the leading researchers on the rise of secularism noted, atheists "are one of the most despised people in the US today."³ Forty-two percent of Americans state that they would not vote for an atheist for president, making atheists the least-accepted religion-based group politically.⁴ According to a 2003 study, the American Mosaic Project Survey, 47.6% of Americans would disapprove if their child wanted to marry an atheist, again the highest percentage of disapproving responses of all religious groups asked about in this survey question.⁵

Atheists also drew the highest disapproval level by far of all groups listed when survey respondents were asked whether they agreed with the statement, "This group does not at all agree with my vision of American society," with 39.6% of respondents agreeing with this statement with respect to atheists.⁶ Thus, very large segments of the population do not view atheists or other nonbelievers as worthy of holding political leadership positions, joining their families, or even of sharing in their concept of America.

The 2008 American Religious Identification Survey reported that 42.9% of atheists and agnostics had experienced discrimination because of their lack of religious identification or affiliation in the five preceding years.⁷ The discrimination that nontheists suffer has included loss of jobs, abusive family situations, organized shunning campaigns in their communities, harassing telephonic and written communications, death threats, physical violence against property, and physical assault.⁸

It is therefore not difficult to understand why many nonbelievers are reluctant to make a public showing of their nonbelief by refusing to swear on a Bible in court: it is very likely that at least some of the jurors will perceive them as a nonbeliever and immediately view them negatively as a result.

It is intimidating for a nonbeliever to be asked to make their nonbelief known in court, and people have reported to FFRF feeling coerced into taking a religious oath instead. As long as religion remains the default, this choice is inevitable with every oath administered to a nonbeliever. They must necessarily either be coerced into making a religious oath or risk biasing

³ Ryan T. Cragun, Barry Kosmin, et al., *On the Receiving End: Discrimination toward the Nonreligious in the United States*, 27 J. Contemp. Religion 105, 105 (2012), <http://bit.ly/2czdyQv>.

⁴ *Support for Nontraditional Candidates Varies by Religion*, Gallup (June 24, 2015), <http://bit.ly/2d46Z5V>.

⁵ Penny Edgell, Joseph Gerteis, and Douglas Hartmann, *Atheists as "Other": Moral Boundaries and Cultural Membership in American Society*, 71 Am. Soc. Rev. 211, 218 (2006), <http://bit.ly/2daChwS>.

⁶ *Id.*

⁷ Cragun, *supra*, at 111, 114.

⁸ See, e.g., Abby Goodnough, *Student Faces Town's Wrath in Protest Against a Prayer* (Jan. 26, 2012), <http://nyti.ms/1Ff3c0o>; John Stossel, Sylvia Johnson, and Lynn Redmond, *The Black Sheep of Handesty* (May 11, 2007), <http://abcn.ws/2dDWvhg>; Margaret Downey, *Discrimination Against Atheists: The Facts*, 24 Free Inquiry No. 4 (2004), <http://bit.ly/2cXO1jc>; Rachel Bauchman, *Rachel Bauchman Versus Utah*, *Freethought Today* (Oct. 1996), <http://bit.ly/1Edko5F>.

jurors who may be hostile to anyone unwilling to swear an oath on a Bible, “so help me God.” Both of these options are undesirable for nonreligious people, and neither belongs in a government institution that is obligated to keep state and church separate.

As the law gives oaths and affirmations equal weight, there is no reason to continue using oaths when they are inevitably accompanied by these pitfalls. Using a secular affirmation as the default disposes of the oath’s assumption that all are Christians unless they declare otherwise, an assumption that is increasingly inaccurate and offensive in our progressively more pluralistic society.

Providing affirmations for all witnesses is a simple solution that avoids all the problems that arise from unnecessarily bringing matters of personal religious belief into the courtroom. The Freedom From Religion Foundation therefore urges the adoption of this sensible change to the Rules of Evidence.

Sincerely,

A handwritten signature in cursive script that reads "Madeline Ziegler".

Madeline Ziegler, Esq.
Patrick O'Reiley Legal Fellow
Freedom From Religion Foundation