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"In Defense of Clergy, the Court Strikes Blow for
Religious Liberty"

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In 1977, in *McDaniel v. Paty*, the U.S. Supreme Court delivered a landmark ruling that held unconstitutional one of the last anticlerical remnants of the founding era, a 1796 Tennessee law that prohibited ministers and priests from holding public office.

The statute, drafted at the dawn of the republic in the name of separation of church and state, reflected a widespread legal policy among the early states that sought to curb the outsized role that clergy played in English public affairs and the colonies, in which laws respecting establishments of religion were a commonplace. The principle of banning religious officials from holding public office had enjoyed the support of the influential English philosopher, John Locke, as well as Thomas Jefferson. James Madison and John Witherspoon, the only minister who signed the Declaration of Independence, opposed such restrictions.

By 1796, several of the state laws banning religious leaders from holding office had been repealed. Eleven of the original 13 states contained such provisions. The Bill of Rights had been ratified in 1791, and although it would not be held applicable

to the states until the 1920s, state leaders became increasingly drawn to Madison's objection that citizens should not be required to choose between civil rights and religious rights. Prohibiting clergy from holding public office ran afoul of the values embodied in the First Amendment.

In 1977, Paul A. McDaniel, a Baptist minister, filed as a candidate to serve in Tennessee's constitutional convention. Another candidate, Selma Cash Paty, brought a lawsuit seeking a declaratory judgment that McDaniel was barred by the anticlerical statute and should be disqualified. A lower court held the state law violated the First and 14th Amendments' guarantees of religious freedom. McDaniel was elected with more votes than the combined total of his three opponents. After the election, the Tennessee Supreme Court reversed the lower court, ruling that the statute did not restrict McDaniel's freedom of religion. The court held that the state's interest in maintaining separation of church and state justified restrictions imposed by the statute. The court said that the state constitution had prohibited clergy from serving in the legislature because they "are by their profession dedicated to God and the care of souls and ought not to be diverted from the great duties of their functions."

But the U.S. Supreme Court, in a unanimous opinion authored by Chief Justice Warren Burger, struck a blow for religious liberty and declared that the statute violated McDaniel's First Amendment right to freedom of religion. Burger, nominated to the Court by President Richard Nixon, was unpersuaded by the rationale invoked by Tennessee to deny religious liberty to members of the clergy. Burger concluded, "the American experience provides no persuasive support for the fear that clergymen" will promote religious interests and values.

The principal vice of the statute, Burger wrote, was that it made the ability to exercise civil rights—holding public office—conditional on the surrender of religious rights, in violation of McDaniel's free exercise of religion. McDaniel should not be forced to choose between civil rights and religious rights.

The decision was unanimous, but Justices weighed in with different rationales for striking down the law. Justice William Brennan, named to the Court by Dwight Eisenhower, held that the Tennessee statute essentially constituted a test of religious belief, in violation of the Oath Clause of Article VI of the Constitution, which forbids, as we discussed last week in the column on *Torcaso v. Watkins*, the requirement of a religious test or oath.

Brennan agreed with Burger that governmental imposition of the burden to choose between one's religious beliefs and the wish to hold office is an unconstitutional restriction on the free exercise of religion. And the Establishment Clause, he said, denies to government the authority to discriminate against religious persons seeking public office. The state, he wrote, may not "fence out" those whom it believes to be "overinvolved in religion," for "religionists," like all other members of society, are entitled to the "full measure of protection" when it comes to freedom of speech and association and political activity in general.

Justice Byron White, nominated to the Court by President John F. Kennedy, identified yet another flaw in the statute. He believed that the law violated the Equal Protection Clause of the 14th Amendment. The mischief, White wrote, lay in the fact that the statute, which was specific to clergy, implies that ministers are less capable of preventing outside interests from interfering with their governmental service than anyone else.

The Tennessee statute targeted clergy based on rationales once well-grounded as a response to the great power that the Anglican Church wielded in England. But the Bill of Rights and evolving notions of civil rights and liberties in the early years of the American republic indicated that the hurly-burly of American politics could embrace the voices of ministers in discussions and debates about the future of the country without fear that they would eclipse those of non-religionists.