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"Church and State: The Court Prohibits Religious Tests
for Office"

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Delegates to the Constitutional Convention, as part of their commitment to separating church from state, unanimously adopted a clause in Article VI, declaring that "no religious Test shall ever be required as a qualification to any Office or public Trust under the United States."

In their adoption of the Oath Clause, the Framers demonstrated a liberality of spirit because all of delegates except those from New York and Virginia came from states that discriminated against some religious denominations by imposing some religious test as a requirement for holding public office. By prohibiting religious tests, the Convention showed a greater respect for religious liberty than most of the states.

The constitutional prohibition on religious tests was a reaction to the odious English practice, inherited by American colonies, of imposing a religious test or oath of those holding office. In the early 18th century, for example, Rhode Island enacted a law that limited citizenship and eligibility for public office to Protestants. A Pennsylvania law required a belief that God was "the rewarder of the good and punisher of the wicked." North Carolina disqualified from office anyone who denied the existence of God, the truth of the Protestant religion or the divine authority of either the Old or New Testament.

These laws—establishments of religion—became the objects of attack after the Revolutionary War by those seeking “disestablishment,” including the elimination of religious tests. In 1786, the Virginia Statute of Religious Freedom, authored by Thomas Jefferson, declared that “our civil rights have no dependence on our religious opinions,” and proscribed religious tests as violating the natural rights of citizens. James Madison made this statute the centerpiece of the First Amendment when he introduced the Bill of rights three years later.

In the view of the Framers of the Constitution, the Oath Clause was critical to the protection of religious liberty. A law characterizing citizens as unworthy of holding office unless they professed or renounced state approved religions was a recipe for theocracy and tyranny, not republicanism.

The constitutional prohibition, however, only applied to federal offices, and some states had religious tests in their laws or constitutions and did not repeal them. Some, such as Maryland, prohibited citizens from holding office unless they swore a belief in the existence of God. Article 37 of the Maryland Declaration of Rights was invoked to deny an otherwise fully qualified citizen from holding office—appointment as a Notary public—for refusing to sign the state’s oath.

In 1961, in the landmark case of *Torcaso v. Watkins*, the Supreme Court held the denial unconstitutional. The Court, in a unanimous opinion written by Justice Hugo Black, ruled that the oath violated both the First Amendment’s Establishment Clause and Free Exercise Clause, as well as the liberty guarantee of the Due Process Clause of the 14th Amendment.

The Court pointed out that the Establishment Clause prohibits not merely preferential treatment of one religion over another but also preferential treatment of religion against nonreligion. The oath requirement constituted a law representing an establishment of religion. Invoking the Free Exercise Clause, the Court said that the oath also invades "freedom of religion and belief."

Justice Black invoked the history of the practice of imposing religious oaths. He wrote, "It was largely to escape religious test oaths and declarations that a great many of the early colonists left Europe and came here to worship in their own way." Ironically, once they were in America, many "turned out to be perfectly willing, when they had power to do so, to force dissenters from their faith to take test oaths in conformity with that faith." Religious persecution, although denounced in principle, seemed to turn on who was holding the big stick.

Justice Black stated that neither a state nor the federal government could constitutionally force individuals to profess a belief or a disbelief in any religion, impose requirements that aid religions as against nonbelievers, or aid religions based on a belief in the existence of God as against religions based on different beliefs. Black pointed to Buddhism and Taoism as religions that do not teach "what would generally be considered belief in the existence of God." Maryland's religious test for public office unconstitutionally invaded Torcaso's "freedom of belief and religion and therefore cannot be enforced against him."

Justice Black, who had written several other opinions for the Court on issues that raised separation of church and state concerns, drew upon an earlier opinion and stated that "the test oath is abhorrent to our tradition."

Black dismissed Maryland's argument that Torcaso is "not compelled to hold office." Black wrote that the "fact that a person is not compelled to hold public office cannot possibly be excuse for barring him by state-imposed criteria forbidden by the Constitution." A constitutional right to hold office cannot be reduced to a mere "abstract right," which would make folly of the Bill of Rights.

As in so many landmark cases involving civil rights and civil liberties, it is the character of the state that is under scrutiny. States, like individuals, are better guided by the liberality of spirit displayed by the Framers when they sought protection for religious liberty by curbing the instincts of lawmakers to require adherence to religion in the public square.