
Is it lawful for our government to impose a religious test on public officials?

Article Six, Section 3 of the U.S. Constitution specifically states: "No religious Test shall ever be required as a Qualification for any Office or public Trust under the United States."[1]

No religious test for public office. Period.

At the time of America's Founding, this ban only applied to federal officeholders. States imposed religious tests and oaths as they saw fit and most of these tests were "to limit the ability of individuals of certain denominations to hold public office."[2] In addition, these tests often protected established churches, thus politicizing preferred religions.

The Constitutional Convention of 1787 adopted the "no religious test" provision with little fanfare. A few even thought it wholly unnecessary like Connecticut's Roger Sherman who had faith "that the prevailing liberality [was] a sufficient security [against] such tests."[3] In other words, Sherman believed the rule was unnecessary because surely no one in the national government would ever seek to impose such a test.

The "no religious test" provision, however, became very controversial when it came time to ratify the Constitution. Many Antifederalists – whose apprehension of not implementing religious tests was largely based in the absence of religious language in the Constitution and in the fear of religious minority rule – opposed the provision, while many Federalists supported it.

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[1] U.S. CONST. art. vi, cl. 3.

[2] AMENDMENT I (RELIGION): DEBATE IN NORTH CAROLINA RATIFYING CONVENTION, http://press-pubs.uchicago.edu/founders/documents/amendI_religions52.html (last visited Sep 14, 2017).

[3] RECORDS OF THE FEDERAL CONVENTION OF 1787, at 468 (Max Farrand ed., 1911).

One delegate, James Iredell, who became an original member of the Supreme Court of the United States, felt it would discriminate against a man of integrity because he would not affirm a religious oath if he believed differently, while an unprincipled individual would consent whether or not he really he believed what he was attesting to.[4] Another delegate, Oliver Ellsworth – who would serve as a Senator from Connecticut and the third Chief Justice of the Supreme Court of the United States – further argued in *Landholder*, No. 7:

> A religious test is an act to be done, or profession to be made, relating to religion (such as partaking of the sacrament according to certain rites and forms, or declaring one's belief of certain doctrines,) for the purpose of determining whether his religious opinions are such, that he is admissable to a publick office. A test in favour of any one denomination of Christians would be to the last degree absurd in the United States. If it were in favour of either congregationalists, presbyterians, episcopalions, baptists, or quakers, it would incapacitate more than three-fourths of the American citizens for any publick office; and thus degrade them from the rank of freemen. There need no argument to prove that the majority of our citizens would never submit to this indignity.[5]

Constitutional Convention delegates like Iredell and Ellsworth "saw religious tests as useless and counterproductive" because they would end up excluding from office the honorable person who may have sincerely held religious beliefs.[6] Unfortunately, and in spite of this "no religious test" rule, some of our best and most honorable have had to undergo a religious litmus test in their confirmation hearings before the Senate.

In his recent press release entitled "Religious Liberty is the Cornerstone of All Other Human Freedoms," U.S. Rep. Trent Franks (R-AZ) laments that when leftist U.S. Senators badger, harass, and effectively lead a religious inquisition on presidential nominees to federal office, they are "arrogantly abrogating *their* oath of office to the United States Constitution."[7]

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[4]Oliver Ellsworth, Landholder, No. 7 (Dec. 17, 1787), *reprinted in* THE FOUNDERS CONSTITUTION, *supra* n. 21, at 640.

[5] ARTICLE 6, CLAUSE 3: OLIVER ELLSWORTH, LANDHOLDER, NO. 7, http://press-pubs.uchicago.edu/founders/documents/a6_3s14.html (last visited Sep 14, 2017).

[6] AN ORIGINALIST ANALYSIS OF THE NO RELIGIOUS TEST CLAUSE, http://www.bing.com/cr?IG=28B848859C3046E5B6F3514CF67B4F2D&CID=096E63590A94610012AB69A40B926021&rd=1&h=2JHlaaKvazrk1SVFebkz5_OAgPqpUbd1x448N7wNZ3s&v=1&r=http%3a%2f%2fharvardlawreview.org%2fwp-content%2fuploads%2fpdfs%2fno_religious_test_clause.pdf&p=DevEx,5062.1 (last visited Sep 14, 2017).

[7] Press Release, Congressman Trent Franks, Religious Liberty is the Cornerstone of All Other Human Freedoms (Sept. 8, 2017),*available at* https://franks.house.gov/media-center/press-releases/religious-liberty-cornerstone-all-other-human-freedoms.

Rep. Franks is pointing out that by implementing a political litmus test or oath that coerces one to vacate their faith in order to qualify for a government office, these Senators are ironically violating their own oath of office listed in the same clause of the Constitution – Article VI, Clause 3: "The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution."[8]

Clearly, this religious litmus test was unacceptable to the Framers when the U.S. Constitution was written in 1787, and just as clearly, it remains unconstitutional today.

Although the ban on religious tests originally applied only to national federal office holders, the Supreme Court of the United States reaffirmed the broadening of its application in the case of *Torcaso v. Watkins* (1961), which settled that, NO religious test could be administered to qualify one for office. However, this case was decided on First Amendment Establishment Clause grounds, and not on an Article VI basis. Thus, the breadth of the Supreme Court's reaffirmation in *Torcaso* covered not only the federal government, but also prohibited the states from requiring ANY type of religious test for ANY public office since the First Amendment was applied to the states under the "doctrine of incorporation."

[8] U.S. CONST. art. vi, cl. 3.