# Burger: Opinion

The question presented by this appeal is whether a Tennessee statute barring "Minister[s] of the Gospel, or priest[s] of any denomination whatever" from serving as delegates to the State's limited constitutional convention deprived appellant McDaniel, an ordained minister, of the right to the free exercise of religion guaranteed by the First Amendment. and made applicable to the States by the Fourteenth Amendment. The First Amendment forbids all laws "prohibiting the free exercise" of religion. **[p. 621]**

## I

In its first Constitution, in 1796, Tennessee disqualified ministers from serving as legislators.[[1]](#footnote-1) That disqualifying provision has continued unchanged since its adoption; it is now Art. 9, § 1, of the State Constitution. The state legislature applied this provision to candidates for delegate to the State's 1977 limited constitutional convention when it enacted ch. 848, § 4, of 1976 Tenn.Pub.Acts:

"Any citizen of the state who can qualify for membership in the House of Representatives of the General Assembly may become a candidate for delegate to the convention. . . ."

McDaniel, an ordained minister of a Baptist Church in Chattanooga, Tenn., filed as a candidate for delegate to the constitutional convention. An opposing candidate, appellee Selma Cash Paty, sued in the Chancery Court for a declaratory judgment that McDaniel was disqualified from serving as a delegate and for a judgment striking his name from the ballot. Chancellor Franks of the Chancery Court held that § 4 of ch. 848 violated the First and Fourteenth Amendments to the Federal Constitution, and declared McDaniel eligible for the office of delegate. Accordingly, McDaniel's name remained on the ballot, and, in the ensuing election, he was elected by a vote almost equal to that of three opposing candidates.

After the election, the Tennessee Supreme Court reversed the Chancery Court, holding that the disqualification of clergy imposed no burden upon "religious belief" and restricted

"religious action . . . [only] in the lawmaking process of government -- where religious action is absolutely prohibited by the establishment clause. . . ."

547 S.W.2d 897, 903 (1977). **[p. 622]** The state interests in preventing the establishment of religion and in avoiding the divisiveness and tendency to channel political activity along religious lines, resulting from clergy participation in political affairs, were deemed by that court sufficiently weighty to justify the disqualification, notwithstanding the guarantee of the Free Exercise Clause.

We noted probable jurisdiction.[[2]](#footnote-2) 432 U.S. 905 (1977).

## II

### A

The disqualification of ministers from legislative office was a practice carried from England by seven of the original States;[[3]](#footnote-3) later, six new States similarly excluded clergymen from some political offices. 1 A. Stokes, Church and State in the United States 622 (1950) (hereafter Stokes). In England, the practice of excluding clergy from the House of Commons was justified on a variety of grounds: to prevent dual officeholding, that is, membership by a minister in both Parliament and Convocation; to insure that the priest or deacon devoted himself to his "sacred calling," rather than to "such mundane activities as were appropriate to a member of the House of Commons"; and to prevent ministers, who, after 1533, were subject to the Crown's powers over the benefices of the clergy, from using membership in Commons to diminish its independence by increasing the influence of the King and the nobility. *In re MacManaway,* [1951] A.C. 161, 164, 170-171.

The purpose of the several States in providing for disqualification was primarily to assure the success of a new political experiment, the separation of church and state. Stokes 622. **[p. 623]** Prior to 1776, most of the 13 Colonies had some form of an established, or government-sponsored, church. *Id.* at 364-446. Even after ratification of the First Amendment, which prohibited the Federal Government from following such a course, some States continued pro-establishment provisions. *See id.* at 408, 418-427, 444. Massachusetts, the last State to accept disestablishment, did so in 1833.*Id.* at 426-427.

In light of this history and a widespread awareness during that period of undue and often dominant clerical influence in public and political affairs here, in England, and on the Continent, it is not surprising that strong views were held by some that one way to assure disestablishment was to keep clergymen out of public office. Indeed, some of the foremost political philosophers and statesmen of that period held such views regarding the clergy. Earlier, John Locke argued for confining the authority of the English clergy

"within the bounds of the church, nor can it in any manner be extended to civil affairs, because the church itself is a thing absolutely separate and distinct from the commonwealth"

5 Works of John Locke 21 (C. Baldwin ed. 1824). Thomas Jefferson initially advocated such a position in his 1783 draft of a constitution for Virginia.[[4]](#footnote-4) James Madison, however, disagreed, and vigorously **[p. 624]** urged the position which, in our view, accurately reflects the spirit and purpose of the Religion Clauses of the First Amendment. Madison's response to Jefferson's position was:

"Does not The exclusion of Ministers of the Gospel, as such, violate a fundamental principle of liberty by punishing a religious profession with the privation of a civil right? Does it [not] violate another article of the plan itself which exempts religion from the cognizance of Civil power? Does it not violate justice by at once taking away a right and prohibiting a compensation for it? Does it not, in fine, violate impartiality by shutting the door [against] the Ministers of one Religion and leaving it open for those of every other."

5 Writings of James Madison 288 (G. Hunt ed.1904).

Madison was not the only articulate opponent of clergy disqualification. When proposals were made earlier to prevent clergymen from holding public office, John Witherspoon, a Presbyterian minister, president of Princeton University, and the only clergyman to sign the Declaration of Independence, made a cogent protest and, with tongue in cheek, offered an amendment to a provision much like that challenged here:

"'No clergyman, of any denomination, shall be capable of being elected a member of the Senate or House of Representatives, because (here insert the grounds of offensive disqualification, which I have not been able to discover) Provided always, and it is the true intent and meaning of this part of the constitution, that if at any time he shall be completely deprived of the clerical character by those by whom he was invested with it, as by deposition for cursing and swearing, drunkenness or uncleanliness, he shall then be fully restored to all the privileges of a free **[p. 625]** citizen; his offense [of being a clergyman] shall no more be remembered against him, but he may be chosen either to the Senate or House of Representatives, and shall be treated with all the respect due to his brethren, the other members of Assembly.'"

Stokes 624-625.

As the value of the disestablishment experiment was perceived, 11 of the 13 States disqualifying the clergy from some types of public office gradually abandoned that limitation. New York, for example, took that step in 1846, after delegates to the State's constitutional convention argued that the exclusion of clergymen from the legislature was an "odious distinction." 2 C. Lincoln, The Constitutional History of New York 111-112 (1906). Only Maryland and Tennessee continued their clergy disqualification provisions into this century, and, in 1974, a District Court held Maryland's provision violative of the First and Fourteenth Amendments' guarantees of the free exercise of religion. *Kirkley v. Maryland,* 381 F.Supp. 327. Today, Tennessee remains the only State excluding ministers from certain public offices.

The essence of this aspect of our national history is that, in all but a few States, the selection or rejection of clergymen for public office soon came to be viewed as something safely left to the good sense and desires of the people.

### B

This brief review of the history of clergy disqualification provisions also amply demonstrates, however, that, at least during the early segment of our national life, those provisions enjoyed the support of responsible American statesmen, and were accepted as having a rational basis. Against this background, we do not lightly invalidate a statute enacted pursuant to a provision of a state constitution which has been sustained by its highest court. The challenged provision came to the Tennessee Supreme Court clothed with the presumption of validity to which that court was bound to give deference. **[p. 626]** However, the right to the free exercise of religion unquestionably encompasses the right to preach, proselyte, and perform other similar religious functions, or, in other words, to be a minister of the type McDaniel was found to be. *Murdock v. Pennsylvania,* 319 U. S. 105 (1943); *Cantwell v. Connecticut,* 310 U. S. 296 (1940). Tennessee also acknowledges the right of its adult citizens generally to seek and hold office as legislators or delegates to the state constitutional convention. Tenn.Const., Art. 2, §§ 9, 25, 26; Tenn.Code Ann. §§ 8-1801, 8-1803 (Supp. 1977). Yet, under the clergy disqualification provision, McDaniel cannot exercise both rights simultaneously, because the State has conditioned the exercise of one on the surrender of the other. Or, in James Madison's words, the State is "punishing a religious profession with the privation of a civil right." 5 Writings of James Madison, *supra,* at 288. In so doing, Tennessee has encroached upon McDaniel's right to the free exercise of religion.

"[T]o condition the availability of benefits [including access to the ballot] upon this appellant's willingness to violate a cardinal principle of [his] religious faith [by surrendering his religiously impelled ministry] effectively penalizes the free exercise of [his] constitutional liberties."

*Sherbert v. Verner,* 374 U. S. 398, 374 U. S. 406 (1963).

If the Tennessee disqualification provision were viewed as depriving the clergy of a civil right solely because of their religious beliefs, our inquiry would be at an end. The Free Exercise Clause categorically prohibits government from regulating, prohibiting, or rewarding religious beliefs as such. *Id.* at 374 U. S. 402; *Cantwell v. Connecticut, supra* at 310 U. S. 304. In *Torcaso v. Watkins,* 367 U. S. 488 (1961), the Court reviewed the Maryland constitutional requirement that all holders of "any office of profit or trust in this State" declare their belief in the existence of God. In striking down the Maryland requirement, the Court did not evaluate the interests assertedly justifying it, but rather held that it violated freedom of religious belief.

In our view, however, *Torcaso* does not govern. By its **[p. 627]** terms, the Tennessee disqualification operates against McDaniel because of his *status* as a "minister" or "priest." The meaning of those words is, of course, a question of state law.[[5]](#footnote-5) And although the question has not been examined extensively in state law sources, such authority as is available indicates that ministerial status is defined in terms of conduct and activity, rather than in terms of belief.[[6]](#footnote-6) Because the Tennessee disqualification is directed primarily at status, acts, and conduct, it is unlike the requirement in *Torcaso,* which focused on *belief.* Hence, the Free Exercise Clause's absolute prohibition of infringements on the "freedom to believe" is inapposite here.[[7]](#footnote-7)

This does not mean, of course, that the disqualification escapes judicial scrutiny, or that McDaniel's activity does not enjoy significant First Amendment protection. The Court **[p. 628]** recently declared, in *Wisconsin v. Yoder,* 406 U. S. 205, 406 U. S. 215 (1972):

"The essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion.[[8]](#footnote-8) "

Tennessee asserts that its interest in preventing the establishment of a state religion is consistent with the Establishment Clause, and thus of the highest order. The constitutional history of the several States reveals that, generally, the interest in preventing establishment prompted the adoption of clergy disqualification provisions, *see* Stokes 622; Tennessee does not appear to be an exception to this pattern. *Cf. post* at 435 U. S. 636 n. 9 (BRENNAN, J., concurring in judgment). There is no occasion to inquire whether promoting such an interest is a permissible legislative goal, however, *see post* at 435 U. S. 636-642, for Tennessee has failed to demonstrate that its views of the dangers of clergy participation in the political process have not lost whatever validity they may once have enjoyed. The essence of the rationale underlying the Tennessee restriction on ministers is that, if elected to public office, they will necessarily exercise **[p. 629]** their powers and influence to promote the interests of one sect or thwart the interests of another, thus pitting one against the others, contrary to the anti-establishment principle with its command of neutrality. *See Walz v. Tax Comm'n,* 397 U. S. 664 (1970). However widely that view may have been held in the 18th century by many, including enlightened statesmen of that day, the American experience provides no persuasive support for the fear that clergymen in public office will be less careful of anti-establishment interests or less faithful to their oaths of civil office than their unordained counterparts.[[9]](#footnote-9)

We hold that § 4 of ch. 848 violates McDaniel's First Amendment right to the free exercise of his religion made applicable to the States by the Fourteenth Amendment. Accordingly, the judgment of the Tennessee Supreme Court is reversed, and the case is remanded to that court for further proceedings not inconsistent with this opinion.

*Reversed and remanded.*

MR JUSTICE BLACKMUN took no part in the consideration or decision of this case.

1. "Whereas Ministers of the Gospel 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; therefore, no Minister of the Gospel, or priest of any denomination whatever, shall be eligible to a seat in either House of the Legislature."

Tenn.Const., Art. VIII, § 1 (1796). [↑](#footnote-ref-1)
2. The judgment of the Tennessee Supreme Court was stayed until final disposition of this appeal. McDaniel is currently serving as a delegate. [↑](#footnote-ref-2)
3. Maryland, Virginia, North Carolina, South Carolina, Georgia, New York, and Delaware. L. Pfeffer, Church, State, and Freedom 118 (Rev. ed.1967). Three of these -- New York, Delaware, and South Carolina -- barred clergymen from holding any political office. Ibid. [↑](#footnote-ref-3)
4. 6 Papers of Thomas Jefferson 297 (J. Boyd ed.1952). Jefferson later concluded that experience demonstrated there was no need to exclude clergy from elected office. In a letter to Jeremiah Moor in 1800, he stated:

"[I]n the same scheme of a constitution [for Virginia which I prepared in 1783, I observe] an abridgment of the right of being elected, which after 17 years more of experience & reflection, I do not approve. It is the incapacitation of a clergyman from being elected. The clergy, by getting themselves established by law, & ingrafted into the machine of government, have been a very formidable engine against the civil and religious rights of man. They are still so in many countries & even in some of these United States. Even in 1783, we doubted the stability of our recent measures for reducing them to the footing of other useful callings. It now appears that our means were effectual. The clergy here seem to have relinquished all pretensions to privilege, and to stand on a footing with lawyers, physicians, &c. They ought therefore to possess the same rights."

9 Works of Jefferson 143 (P. Ford ed. 1905). [↑](#footnote-ref-4)
5. In this case, the Tennessee Supreme Court concluded that the disqualification of McDaniel did not interfere with his religious belief. 547 S.W.2d 897, 903, 904, 907 (1977). But whether the ministerial status, as defined by state law, implicates the "freedom to act" or the absolute "freedom to believe," Cantwell v. Connecticut, 310 U. S. 296, 310 U. S. 304 (1940), must be resolved under the Free Exercise Clause. Thus, although we consider the Tennessee court's resolution of that issue, we are not bound by it. [↑](#footnote-ref-5)
6. The Tennessee constitutional provision embodying the disqualification inferentially defines the ministerial profession in terms of its "duties," which include the "care of souls." Tenn.Const., Art. 9, § 1. In this case, the Tennessee Supreme Court stated that the disqualification reaches those filling a "leadership role in religion," and those "dedicated to the full time promotion of the religious objectives of a particular religious sect." 547 S.W.2d at 903 (emphasis added). The Tennessee court, in defining "priest," also referred to the dictionary definition as "one who performssacrificial, ritualistic, mediatorial, interpretative, or ministerial functions. . . ." Id. at 908 (quoting Webster's Third New International Dictionary 1799-1800 (1971)) (emphasis added). [↑](#footnote-ref-6)
7. The absolute protection afforded belief by the First Amendment suggests that a court should be cautious in expanding the scope of that protection, since to do so might leave government powerless to vindicate compelling state interests. [↑](#footnote-ref-7)
8. Thus, the courts have sustained government prohibitions on handling venomous snakes or drinking poison, even as part of a religious ceremony, State ex rel. Swann v. Pack, 527 S.W.2d 99 (Tenn.1975), cert. denied, 424 U.S. 954 (1976); State v. Massey, 229 N.C. 734, 51 S.E.2d 179, appeal dismissed for want of substantial federal question sub nom. Bunn v. North Carolina, 336 U.S. 942 (1949), but have precluded the application of criminal sanctions to the religious use of peyote, People v. Woody, 61 Cal.2d 716, 394 P.2d 813 (1964); cf. Oliver v. Udall, 113 U.S.App.D.C. 212, 306 F.2d 819 (1962) (not reaching constitutional issue), or the religiously impelled refusal to comply with mandatory education laws past the eighth grade, Wisconsin v. Yoder. We need not pass on the conclusions reached in Pack and Woody, which were not reviewed by this Court. Those cases are illustrative of the general nature of free exercise protections and the delicate balancing required by our decisions in Sherbert v. Verner, 374 U. S. 398 (1963), and Wisconsin v. Yoder, when an important state interest is shown. [↑](#footnote-ref-8)
9. The struggle for separation of church and state in Virginia, which influenced developments in other States -- and in the Federal Government -- was waged by others in addition to such secular leaders as Jefferson, Madison, and George Mason; many clergymen vigorously opposed any established church. See Stokes 366-379. This suggests the imprecision of any assumption that, even in the early days of the Republic, most ministers, as legislators, would support measures antithetical to the separation of church and state. [↑](#footnote-ref-9)