# Brennan: Concurrence

I would hold that § 4 of the legislative call to the Tennessee constitutional convention,[[1]](#footnote-1) to the extent that it incorporates **[p. 630]** Art. 9, § 1, of the Tennessee Constitution, *see ante* at 435 U. S. 621 n. 1, violates both the Free Exercise and Establishment Clauses of the First Amendment as applied to the States through the Fourteenth Amendment. I therefore concur in the reversal of the judgment of the Tennessee Supreme Court.

## I

The Tennessee Supreme Court sustained Tennessee's exclusion on the ground that it

"does not infringe upon religious belief or religious action within the protection of the free exercise clause[, and] that such indirect burden as may be imposed upon ministers and priests by excluding them from the lawmaking process of government is justified by the compelling state interest in maintaining the wall of separation between church and state."

547 S.W.2d 897, 907 (1977). In reaching this conclusion, the state court relied on two interrelated propositions which are inconsistent with decisions of this Court. The first is that a distinction may be made between "religious belief or religious action," on the one hand, and the "career or calling" of the ministry, on the other. The court stated that

"[i]t is not religious belief, but the career or calling, by which one is identified as dedicated to the full time promotion of the religious objectives of a particular religious sect, that disqualifies."

*Id.* at 903. The second is that the disqualification provision does not interfere with the free exercise of religion, because the practice of the ministry is left unimpaired; only candidacy for legislative office is proscribed. **[p. 631]** The characterization of the exclusion as one burdening appellant's "career or calling" and not religious belief cannot withstand analysis. Clearly, freedom of belief protected by the Free Exercise Clause embraces freedom to profess or practice that belief,[[2]](#footnote-2) even including doing so to earn a livelihood. One's religious belief surely does not cease to enjoy the protection of the First Amendment when held with such depth of sincerity as to impel one to join the ministry.[[3]](#footnote-3)

Whether or not the provision discriminates among religions (and I accept, for purposes of discussion, the State Supreme **[p. 632]** Court's construction that it does not[[4]](#footnote-4)  *id.* at 908), it establishes a religious classification -- involvement in protected religious activity -- governing the eligibility for office, which I believe is absolutely prohibited. The provision imposes a unique disability upon those who exhibit a defined level of intensity of involvement in protected religious activity. Such a classification as much imposes a test for office based on religious conviction as one based on denominational preference. A law which limits political participation to those who eschew prayer, public worship, or the ministry as much establishes a religious test as one which disqualifies Catholics, or Jews, or Protestants. *Wieman v. Updegraff,* 344 U. S. 183, 344 U. S. 191-192 (1952).[[5]](#footnote-5) Because the challenged provision establishes as a condition of office the willingness to eschew certain protected religious practices, *Torcaso v. Watkins,*367 U. S. 488 (1961), compels the conclusion hat it violates the Free Exercise Clause.*Torcaso* struck down Maryland's requirement that an appointee to the office of notary public declare his belief in the existence of God, expressly disavowing

"the historically and constitutionally discredited policy of probing religious beliefs by test oaths or limiting public offices to persons who have, or perhaps more properly profess to have, a belief in some particular kind **[p. 633]** of religious concept."

*Id.* at 367 U. S. 494 (footnote omitted). That principle equally condemns the religious qualification for elective office imposed by Tennessee.

The second proposition -- that the law does not interfere with free exercise because it does not directly prohibit religious activity, but merely conditions eligibility for office on its abandonment -- is also squarely rejected by precedent. In *Sherbert v. Verner,* 374 U. S. 398 (1963), a state statute disqualifying from unemployment compensation benefits persons unwilling to work on Saturdays was held to violate the Free Exercise Clause as applied to a Sabbatarian whose religious faith forbade Saturday work. That decision turned upon the fact that

"[t]he ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship"

*Id.* at 374 U. S. 404.[[6]](#footnote-6) Similarly, in "prohibiting legislative service because of a person's leadership role in a religious faith," 547 S.W.2d at 903, Tennessee's disqualification provision imposed an unconstitutional penalty upon appellant's exercise of his religious faith.[[7]](#footnote-7) **[p. 634]** Nor can Tennessee's political exclusion be distinguished from *Sherbert's* welfare disqualification, as the Tennessee court thought, by suggesting that the unemployment compensation involved in *Sherbert* was necessary to sustain life, while participation in the constitutional convention is a voluntary activity not itself compelled by religious belief. *Torcaso* answers that contention. There we held that

"[t]he fact . . . that a person is not compelled to hold public office cannot possibly be an excuse for barring him from office by state-imposed criteria forbidden by the Constitution."

367 U.S. at 367 U. S. 495-496.

The opinion of the Tennessee Supreme Court makes clear that the statute requires appellant's disqualification solely because he is a minister of a religious faith. If appellant were to renounce his ministry, presumably he could regain eligibility for elective office, but if he does not, he must forgo an opportunity for political participation he otherwise would enjoy. *Sherbert* and *Torcaso* compel the conclusion that, because the challenged provision requires appellant to purchase his right to engage in the ministry by sacrificing his candidacy, it impairs the free exercise of his religion.

The plurality recognizes that *Torcaso* held "categorically prohibit[ed]," a provision disqualifying from political office on the basis of religious belief, but draws what I respectfully suggest is a sophistic distinction between that holding and Tennessee's disqualification provision. The purpose of the Tennessee provision is not to regulate activities associated with a ministry, such as dangerous snake handling or human sacrifice, which the State validly could prohibit, but to bar from political office persons regarded as deeply committed to religious participation because of that participation -- participation itself not regarded as harmful by the State, and which therefore must be conceded to be protected. As the plurality recognizes, appellant was disqualified because he

"fill[ed] a 'leadership role in religion,' and . . . 'dedicated **[p. 635]** [himself] to the full-time *promotion* of the religious objectives of a particular religious sect.' 547 S.W.2d at 903 (emphasis added),"

*ante* at 435 U. S. 627 n. 6. According to the plurality, McDaniel could not be, and was not, in fact, barred for his belief in religion, but was barred because of his commitment to persuade or lead others to accept that belief. I simply cannot fathom why the Free Exercise Clause "categorically prohibits" hinging qualification for office on the at of declaring a belief in religion, but not on the *act* of discussing that belief with others[[8]](#footnote-8)  *Ante* at 435 U. S. 626. **[p. 636]**

## II

The State Supreme Court's justification of the prohibition, echoed here by the State, as intended to prevent those most intensely involved in religion from injecting sectarian goals and policies into the lawmaking process, and thus to avoid fomenting religious strife or the fusing of church with state affairs, itself raises the question whether the exclusion violates the Establishment Clause.[[9]](#footnote-9) As construed, the exclusion manifests patent hostility toward, not neutrality respecting, religion; forces or influences a minister or priest to abandon his ministry as the price of public office; and, in sum, has a primary effect which inhibits religion.*See Everson v. Board of Education,* 330 U. S. 1, 330 U. S. 15-16 (1947); *Illinois ex rel. McCollum v. Board of Education,* 333 U. S. 203, 333 U. S. 210 (1948); *Torcaso v. Watkins,*367 U.S. at 367 U. S. 492-494; *Lemon v. Kurtzman,* 403 U. S. 602 (1971); *Meek v. Pittenger,* 421 U. S. 349, 421 U. S. 358 (1975). **[p. 637]** The fact that responsible statesmen of the day, including some of the United States Constitution's Framers, were attracted by the concept of clergy disqualification, *see ante* at 435 U. S. 622-625, does not provide historical support for concluding that those provisions are harmonious with the Establishment Clause. Notwithstanding the presence of such provisions in seven state constitutions when the Constitution was being written,[[10]](#footnote-10) the Framers refused to follow suit. That the disqualification provisions contained in state constitutions contemporaneous with the United States Constitution and the Bill of Rights cannot furnish a guide concerning the understanding of the harmony of such provisions with the Establishment Clause is evident from the presence in state constitutions, side by side with disqualification clauses, of provisions which would have clearly contravened the First Amendment had it applied to the States, such as those creating an official church,[[11]](#footnote-11) and limiting political office to Protestants[[12]](#footnote-12) or theistic believers generally.[[13]](#footnote-13) In short, the regime of religious liberty embodied in state constitutions was very different from that established by the Constitution of the United States. When, with the adoption of the Fourteenth Amendment, the strictures of the First Amendment became wholly applicable to the States, *see Cantwell v. Connecticut,* 310 U. S. 296, 310 U. S. 303(1940); *Everson v. Board of Education, supra* at 330 U. S. 8, earlier conceptions of permissible state action with respect to religion -- including those regarding clergy disqualification -- were superseded.

Our decisions interpreting the Establishment Clause have aimed at maintaining erect the wall between church and state. **[p. 638]** State governments, like the Federal Government, have been required to refrain from favoring the tenets or adherents of any religion or of religion over nonreligion,[[14]](#footnote-14) from insinuating themselves in ecclesiastical affairs or disputes,[[15]](#footnote-15) and from establishing programs which unnecessarily or excessively entangle government with religion.[[16]](#footnote-16) On the other hand, the Court's decisions have indicated that the limits of permissible governmental action with respect to religion under the Establishment Clause must reflect an appropriate accommodation of our heritage as a religious people whose freedom to develop and preach religious ideas and practices is protected by the Free Exercise Clause.[[17]](#footnote-17) Thus, we have rejected as unfaithful to our constitutionally protected tradition of religious liberty any conception of the Religion Clauses as stating a "strict no-aid" theory[[18]](#footnote-18) or as stating a unitary principle that

"religion may not be used as a basis for classification for purposes of governmental action, whether that action be the conferring of rights or privileges or the imposition of duties or obligations. " **[p. 639]** P. Kurland, Religion and the Law 18 (1962); *accord, id.* at 112. Such rigid conceptions of neutrality have been tempered by constructions upholding religious classifications where necessary to avoid

"[a] manifestation of . . . hostility [toward religion] at war with our national tradition as embodied in the First Amendment's guaranty of the free exercise of religion."

*Illinois ex rel. McCollum v. Board of Education, supra* at 333 U. S. 211-212. This understanding of the interrelationship of the Religion Clauses has permitted government to take religion into account when necessary to further secular purposes unrelated to the advancement of religion,[[19]](#footnote-19) and to exempt, when possible, from generally applicable governmental regulation individuals whose religious beliefs and practices would otherwise thereby be infringed,[[20]](#footnote-20) or to create without state involvement an atmosphere in which voluntary religious exercise may flourish.[[21]](#footnote-21)

Beyond these limited situations in which government may take cognizance of religion for purposes of accommodating our traditions of religious liberty, government may not use religion as a basis of classification for the imposition of duties, penalties, privileges or benefits.[[22]](#footnote-22) "State power is no more to be used so as to handicap religions than it is to favor them." *Everson v. Board of Education,* 330 U.S. at 330 U. S. 18.

Tennessee nevertheless invokes the Establishment Clause to excuse the imposition of a civil disability upon those deemed **[p. 640]** to be deeply involved in religion. In my view, that Clause will not permit, much less excuse or condone, the deprivation of religious liberty here involved.

Fundamental to the conception of religious liberty protected by the Religion Clauses is the idea that religious beliefs are a matter of voluntary choice by individuals and their associations,[[23]](#footnote-23) and that each sect is entitled to "flourish according to the zeal of its adherents and the appeal of its dogma." *Zorach v. Clauson,* 343 U. S. 306, 343 U. S. 313 (1952). Accordingly, religious ideas, no less than any other, may be the subject of debate which is "uninhibited, robust, and wide-open. . . ." *New York Times Co. v. Sullivan,* 376 U. S. 254, 376 U. S. 270 (1964). Government may not interfere with efforts to proselyte or worship in public places.*Kunz v. New York,* 340 U. S. 290 (1951). It may not tax the dissemination of religious ideas. *Murdock v. Pennsylvania,* 319 U. S. 105 (1943). It may not seek to shield its citizens from those who would solicit them with their religious beliefs. *Martin v. City of Struthers,* 319 U. S. 141 (1943).

That public debate of religious ideas, like any other, may arouse emotion, may incite, may foment religious divisiveness and strife, does not rob it of constitutional protection[[24]](#footnote-24)  *Cantwell v. Connecticut,* 310 U.S. at 310 U. S. 309-310; *cf. Terminiello v. Chicago,* 337 U. S. 1, 337 U. S. 4-5 (1949). The mere fact that a purpose of the Establishment Clause is to reduce or eliminate religious divisiveness or strife does not place religious discussion, association, or political participation in a status less preferred than rights of discussion, association, and political participation generally.

"Adherents of particular faiths and individual churches frequently take strong positions on public **[p. 641]** issues including . . . vigorous advocacy of legal or constitutional positions. Of course, churches, as much as secular bodies and private citizens, have that right."

*Walz v. Tax Comm'n,* 397 U. S. 664, 397 U. S. 670 (1970).

The State's goal of preventing sectarian bickering and strife may not be accomplished by regulating religious speech and political association. The Establishment Clause does not license government to treat religion and those who teach or practice it, simply by virtue of their status as such, as subversive of American ideals, and therefore subject to unique disabilities. *Cf. Wieman v. Updegraff,* 344 U. S. 183 (1952). Government may not inquire into the religious beliefs and motivations of officeholders -- it may not remove them from office merely for making public statements regarding religion, or question whether their legislative actions stem from religious conviction. *Cf. Bond v. Floyd,* 385 U. S. 116(1966).

In short, government may not, as a goal, promote "safe thinking" with respect to religion, and fence out from political participation those, such as ministers, whom it regards as overinvolved in religion. Religionists, no less than members of any other group, enjoy the full measure of protection afforded speech, association, and political activity generally. The Establishment Clause, properly understood, is a shield against any attempt by government to inhibit religion as it has done here; *Abington School Dist, v. Schempp,* 374 U. S. 203, 374 U. S. 222 (1963). It may not be used as a sword to justify repression of religion or its adherents from any aspect of public life.[[25]](#footnote-25) **[p. 642]** Our decisions under the Establishment Clause prevent government from supporting or involving itself in religion, or from becoming drawn into ecclesiastical disputes.[[26]](#footnote-26) These prohibitions naturally tend, as they were designed to, to avoid channeling political activity along religious lines, and to reduce any tendency toward religious divisiveness in society. Beyond enforcing these prohibitions, however, government may not go. The antidote which the Constitution provides against zealots who would inject sectarianism into the political process is to subject their ideas to refutation in the marketplace of ideas, and their platforms to rejection at the polls. With these safeguards, it is unlikely that they will succeed in inducing government to act along religiously divisive lines, and, with judicial enforcement of the Establishment Clause, any measure of success they achieve must be short-lived, at best.

1. Section 4, ch. 848, 1976 Tenn. Pub. Acts, provides, inter alia:

"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 upon filing with the County Election Commission of his county a nominating petition containing not less than twenty-five (25) names of legally qualified voters of, his or her representative district. Each district must be represented by a qualified voter of that district. In the case of a candidate from a representative district comprising more than one county, only one qualifying petition need be filed by the candidate, and that in his home county, with a certified copy thereof filed with the Election Commission of the other counties of his representative district." [↑](#footnote-ref-1)
2. That, for purposes of defining the protection afforded by the Free Exercise Clause, a sharp distinction cannot be made between religious belief and religiously motivated action is demonstrated by Oliver Cromwell's directive regarding religious liberty to the Catholics in Ireland:

"'As to freedom of conscience, I meddle with no man's conscience; but if you mean by that, liberty to celebrate the Mass, I would have you understand that in no place where the power of the Parliament of England prevails shall that be permitted.'"

Quoted in S. Hook, Paradoxes of Freedom 23 (1962). See P. Kurland, Religion and the Law 22 (1962).

This does not mean that the right to participate in religious exercises is absolute, or that the State may never prohibit or regulate religious practices. We have recognized that,

"'even when the action is in accord with one's religious convictions, [it] is not totally free from legislative restrictions.' . . . The conduct or actions so regulated[, however,] have invariably posed some substantial threat to public safety, peace or order."

Sherbert v. Verner, 374 U. S. 398, 374 U. S. 403 (1963) (citations omitted), in part quoting Braunfeld v. Brown, 366 U. S. 599, 366 U. S. 603 (1961). But the State does not suggest that the "career or calling" of minister or priest itself poses "some substantial threat to public safety, peace or order"; it is the political participation of those impelled by religious belief to engage in the ministry which the State wishes to proscribe. [↑](#footnote-ref-2)
3. The preaching and proselyting activities in which appellant is engaged as a minister, of course, constitute religious activity protected by the Free Exercise Clause. Kunz v. New York, 340 U. S. 290 (1951) (public worship); Murdock v. Pennsylvania, 319 U. S. 105 (1943) (distribution of religious literature). [↑](#footnote-ref-3)
4. It is arguable that the provision not only discriminates between religion and nonreligion, but may, as well, discriminate among religions by depriving ministers of faiths with established, clearly recognizable ministries from holding elective office, while permitting the members of nonorthodox humanistic faiths having no "counterpart" to ministers, 547 S.W.2d 897, 908 (1977), similarly engaged to do so. Madison warned that disqualification provisions would have precisely such an effect:

"[D]oes 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). [↑](#footnote-ref-4)
5. ". . . Congress could not 'enact a regulation providing that no Republican, Jew or Negro shall be appointed to federal office, or that no federal employee shall attend Mass or take any active part in missionary work.'"

344 U.S. at 344 U. S. 191-192, quoting United Public Workers v. Mitchell, 330 U. S. 75,330 U. S. 100 (1947). [↑](#footnote-ref-5)
6. Sherbert did not state a new principle in this regard. See 374 U.S. at 374 U. S. 404-405, n. 6 (collecting authorities); Van Alstyne, The Demise of the Right-Privilege Distinction in Constitutional Law, 81 Harv.L.Rev. 1439 (1968).

The Tennessee Supreme Court relied on Braunfeld v. Brown, supra at 366 U. S. 603-606. Candor compels the acknowledgment that, to the extent that Braunfeldconflicts with Sherbert in this regard, it was overruled. [↑](#footnote-ref-6)
7. The

"language of the [first] amendment commands that New Jersey cannot hamper its citizens in the free exercise of their own religion. Consequently, it cannot exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Non-believers, Presbyterians, or the members of any other faith, because of their faith, or lack of it, from receiving the benefits of public welfare legislation."

Everson v. Board of Education, 330 U. S. 1, 330 U. S. 16 (1947) (emphasis in original). [↑](#footnote-ref-7)
8. The plurality's reliance on Wisconsin v. Yoder, 406 U. S. 205 (1972), is misplaced. The governmental action interfering with the free exercise of religion here differs significantly from that in Yoder. There Amish parents challenged a state statute requiring all children within the State to attend school until the age of 16. The parents' claim was that this compulsion interfered with Amish religious teachings requiring the deemphasis of intellectual training and avoidance of materialistic goals. In sustaining the parents' claim under the Free Exercise Clause, the Court found it necessary to balance the importance of the secular values advanced by the statute, the closeness of the fit between those ends and the means chosen, and the impact an exemption on religious grounds would have on the State's goals, on the one hand, against the sincerity and centrality of the objection to the State's goals to the sect's religious practice, and the extent to which the governmental regulation interfered with that practice, on the other hand. In Yoder, the statute implemented by religiously neutral means an avowedly secular purpose which nevertheless burdened respondent's religious exercise. Cases of that nature require a sensitive and difficult accommodation of the competing interests involved.

By contrast, the determination of the validity of the statute involved here requires no balancing of interests. Since, "[b]y its terms, the Tennessee disqualification operates against McDaniel because of his status as a minister' or 'priest,'" ante at 435 U. S. 626-627 (emphasis in original), it runs afoul of the Free Exercise Clause simply as establishing a religious classification as a basis for qualification for a political office. Nevertheless, although my view -- that, because the prohibition establishes a religious qualification for political office it is void without more does not require consideration of any compelling state interest, I agree with the plurality that the State did not establish a compelling interest. [↑](#footnote-ref-8)
9. Appellant has raised doubt that the purpose ascribed to the provision by the State is, in fact, its actual purpose. He argues that the actual purpose was to enact as law the religious belief of the dominant Presbyterian sect that it is sinful for a minister to become involved in worldly affairs such as politics, Brief for Appellant 58-59, and that the statute therefore violates the Establishment Clause. Although the State's ascribed purpose is conceivable, especially in light of the reasons for disqualification advanced by statesmen at the time the provision was adopted, see ante at 435 U. S. 622-625, if it were necessary to address appellant's contention, we would determine whether that purpose was, in fact, what the provision's framers sought to achieve. In contrast to the general rule that legislative motive or purpose is not a relevant inquiry in determining the constitutionality of a statute, see Arizona v. California, 283 U. S. 423, 283 U. S. 455 (1931) (collecting cases), our cases under the Religion Clauses have uniformly held such an inquiry necessary because, under the Religion Clauses, government is generally prohibited from seeking to advance or inhibit religion. Epperson v. Arkansas, 393 U. S. 97, 393 U. S. 109 (1968); McGowan v. Maryland, 366 U. S. 420, 366 U. S. 431-445, 453 (1961); cf. Grosjean v. American Press Co., 297 U. S. 233, 297 U. S. 250-251 (1936). In view of the disposition of this case, it is unnecessary to explore the validity of appellant's contention, however. [↑](#footnote-ref-9)
10. See L. Pfeffer, Church, State and Freedom 118 (Rev. ed.1967); 1 A. Stokes, Church and State in the United States 622 (1950). [↑](#footnote-ref-10)
11. S.C.Const., Art. XXXVIII (1778); see generally Md. Declaration of Rights, Art. XXXIII (1776) (authorizing taxation for support of Christian religion). [↑](#footnote-ref-11)
12. N.C.Const. § XXXII (1776). [↑](#footnote-ref-12)
13. Tenn.Const., Art. VIII, § 2 (1796). The current Tennessee Constitution continues this disqualification. Tenn.Const., Art. 9, § 2 (1870). [↑](#footnote-ref-13)
14. Epperson v. Arkansas, supra; Abington School Dist. v. Schempp, 374 U. S. 203 (1963); Engel v. Vitale, 370 U. S. 421 (1962); Illinois ex rel. McCollum v. Board of Education, 333 U. S. 203 (1948). [↑](#footnote-ref-14)
15. Serbian Orthodox Diocese v. Milivojevich, 426 U. S. 696 (1976); Presbyterian Church v. Hull Presbyterian Church, 393 U. S. 440 (1969); Kedroff v. Saint Nicholas Cathedral, 344 U. S. 94 (1952); United States v. Ballard, 322 U. S. 78, 322 U. S. 86 (1944); See Watson v. Jones, 13 Wall. 679, 80 U. S. 727 (1872). [↑](#footnote-ref-15)
16. New York v. Cathedral Academy, 434 U. S. 125 (1977); Meek v. Pittenger, 421 U. S. 349(1975); Levitt v. Committee for Public Education, 413 U. S. 472 (1973); Committee for Public Education v. Nyquist, 413 U. S. 756 (1973); Lemon v. Kurtzman, 411 U. S. 192(1973) (Lemon II); Lemon v. Kurtzman, 403 U. S. 602 (1971) (Lemon I). [↑](#footnote-ref-16)
17. E.g., Abington School Dist. v. Schempp, 374 U.S. at 374 U. S. 212-214; id. at 374 U. S. 295 (BRENNAN, J., concurring); id. at 374 U. S. 306 (Goldberg, J., concurring); id. at374 U. S. 311-318 (STEWART, J., dissenting); Everson v. Board of Education, 330 U.S. at330 U. S. 8. [↑](#footnote-ref-17)
18. Giannella, Religious Liberty, Nonestablishment, and Doctrinal Development, Part II, 81 Harv.L.Rev. 513, 514 (1968). [↑](#footnote-ref-18)
19. See, e.g., Everson v. Board of Education, supra; McGowan v. Maryland, supra; Giannella, supra, n. 18, at 527-528, 532, 538-560 (discussion of "secularly relevant religious factor"). [↑](#footnote-ref-19)
20. Wisconsin v. Yoder, 406 U. S. 205 (1972); Sherbert v. Verner, 374 U.S. at 374 U. S. 409; id. at 374 U. S. 414-417 (STEWART, J., concurring in result); L. Tribe, American Constitutional Law § 14-4 (1978); Katz, Freedom of Religion and State Neutrality, 20 U.Chi.L.Rev. 426 (1953). [↑](#footnote-ref-20)
21. Zorach v. Clauson, 343 U. S. 306, 343 U. S. 313 (1952); Quick Bear v. Leupp, 210 U. S. 50 (1908). See generally Walz v. Tax Comm'n, 397 U. S. 664 (1970). [↑](#footnote-ref-21)
22. Accord, Giannella, supra, n. 18, at 527. [↑](#footnote-ref-22)
23. Id. at 516-522. [↑](#footnote-ref-23)
24. "Every idea is an incitement. It offers itself for belief, and, if believed, it is acted on unless some other belief outweighs it or some failure of energy stifles the movement at its birth."

Gitlow v. New York, 268 U. S. 652, 268 U. S. 673 (1925) (Holmes, J., dissenting). [↑](#footnote-ref-24)
25. "In much the same spirit, American courts have not thought the separation of church and state to require that religion be totally oblivious to government or politics; church and religious groups in the United States have long exerted powerful political pressures on state and national legislatures, on subjects as diverse as slavery, war, gambling, drinking, prostitution, marriage, and education. To view such religious activity as suspect, or to regard its political results as automatically tainted, might be inconsistent with first amendment freedoms of religious and political expression -- and might not even succeed in keeping religious controversy out of public life, given the 'political ruptures caused by the alienation of segments of the religious community.'"

L. Tribe, supra, n. 20, § 112, pp. 866-867 (footnotes omitted). [↑](#footnote-ref-25)
26. See authorities cited nn. 14-16, supra. [↑](#footnote-ref-26)