# White: Concurrence

While I share the view of my Brothers that Tennessee's disqualification of ministers from serving as delegates to the State's constitutional convention is constitutionally impermissible, I disagree as to the basis for this invalidity. Rather than relying on the Free Exercise Clause, as do the other Members of the Court, I would hold ch. 848, § 4, of 1976 Tenn.Pub.Acts unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.

The plurality states that § 4 "has encroached upon McDaniel's right to the free exercise of religion," *ante* at 435 U. S. 626, but fails to explain in what way McDaniel has been deterred in the observance of his religious beliefs. Certainly he has not felt compelled to abandon the ministry as a result of the challenged statute, nor has he been required to disavow any of his **[p. 644]** religious beliefs. Because I am not persuaded that the Tennessee statute in any way interferes with McDaniel's ability to exercise his religion as he desires, I would not rest the decision on the Free Exercise Clause, but instead would turn to McDaniel's argument that the statute denies him equal protection of the laws.

Our cases have recognized the importance of the right of an individual to seek elective office, and accordingly have afforded careful scrutiny to state regulations burdening that right. In *Lubin v. Panish,* 415 U. S. 709, 415 U. S. 716 (1974), for example, we noted:

"This legitimate state interest, however, must be achieved by a means that does not unfairly or unnecessarily burden either a minority party's or an individual candidate's equally important interest in the continued availability of political opportunity. The interests involved are not merely those of parties or individual candidates; the voters can assert their preferences only through candidates or parties, or both, and it is this broad interest that must be weighed in the balance. The right of a party or an individual to a place on a ballot is entitled to protection and is intertwined with the rights of voters."

Recognizing that "the rights of voters and the rights of candidates do not lend themselves to neat separation . . . ," *Bullock v. Carter,* 405 U. S. 134, 405 U. S. 143(1972), the Court has required States to provide substantial justification for any requirement that prevents a class of citizens from gaining ballot access, and has held unconstitutional state laws requiring the payment of prohibitively large filing fees,[[1]](#footnote-1) requiring the payment of even moderate fees by indigent candidates,[[2]](#footnote-2) and **[p. 645]** having the effect of excluding independent and minority party candidates from the ballot.[[3]](#footnote-3)

The restriction in this case, unlike the ones challenged in the previous cases, is absolute on its face: there is no way in which a Tennessee minister can qualify as a candidate for the State's constitutional convention. The State's asserted interest in this absolute disqualification is its desire to maintain the required separation between church and state. While the State recognizes that not all ministers would necessarily allow their religious commitments to interfere with their duties to the State and to their constituents, it asserts that the potential for such conflict is sufficiently great to justify § 4's candidacy disqualification.

Although the State's interest is a legitimate one, close scrutiny reveals that the challenged law is not "reasonably necessary to the accomplishment of . . ." that objective. *Bullock, supra* at 405 U. S. 144. All 50 States are required by the First and Fourteenth Amendments to maintain a separation between church and state, and yet all of the States other than Tennessee are able to achieve this objective without burdening ministers' rights to candidacy. This suggests that the underlying assumption on which the Tennessee statute is based -- that a minister's duty to the superiors of his church will interfere with his governmental service -- is unfounded. Moreover, the rationale of the Tennessee statute is undermined by the fact that it is both underinclusive and overinclusive. While the State asserts an interest in keeping religious and governmental interests separate, the disqualification of ministers applies only to legislative positions, and not to executive and judicial offices. On the other hand, the statute's sweep is also overly broad, for it applies with equal force to those ministers whose religious beliefs would not prevent them from properly discharging their duties as constitutional convention delegates. **[p. 646]** The facts of this case show that the voters of McDaniel's district desired to have him represent them at the limited constitutional convention. Because I conclude that the State's Justification for frustrating the desires of these voters and for depriving McDaniel and all other ministers of the right to seek this position is insufficient, I would hold § 4 unconstitutional as a violation of the Equal Protection Clause.

1. Bullock v. Carter, 405 U. S. 134 (1972). [↑](#footnote-ref-1)
2. Lubin v Panish, 415 U. S. 709 (1974). [↑](#footnote-ref-2)
3. Williams v. Rhodes, 393 U. S. 23 (1968). [↑](#footnote-ref-3)