# McDANIEL v. PATY

**SUPREME COURT OF THE UNITED STATES**
**435 U.S. 618**
**April 19, 1978**
**[8 - 0]***

Can a state prohibit a minister from holding public office because he is a minister?
*Justice Blackmun took no part in the consideration of this case.

**OPINION:** Chief Justice Burger/Powell/Rehnquist/Stevens...The question presented by this appeal is whether a **Tennessee statute barring "Ministers of the Gospel, or priests of any denomination whatever" from serving as delegates to the State's limited constitutional convention** deprived...McDaniel, an ordained minister, of the right to the free exercise of religion...The 1st Amendment forbids all laws "prohibiting the free exercise" of religion.

In its first Constitution, in 1796, Tennessee disqualified ministers from serving as legislators. That disqualifying provision has continued unchanged since its adoption...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...for a declaratory judgment that McDaniel was disqualified from serving as a delegate and for a judgment striking his name from the ballot. [The Trial Judge]...held that [these laws] violated the 1st and 14th 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..." 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.**

**The disqualification of ministers from legislative office was a practice carried from England by seven of the original States; later six new States similarly excluded clergymen from some political offices...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. Prior to 1776, most of the 13 Colonies had some form of an established, or government-sponsored, church. Even after ratification of the 1st Amendment, which prohibited the Federal Government from following such a course, some States continued pro-establishment provisions. Massachusetts, the last State to accept disestablishment, did so in 1833.**

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...Thomas Jefferson initially advocated such a position in his 1783 draft of a constitution for Virginia. James Madison, however,...[opposed] 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 uncleanness, he shall then be fully restored to all the privileges of a free 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**."

**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." 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 1st and 14th Amendments' guarantees of the free exercise of religion. 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...

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. Tennessee also acknowledges the right of its adult citizens generally to seek and hold office as legislators or delegates to the state constitutional convention. 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...In so doing, Tennessee has encroached upon McDaniel's right to the free exercise of religion. "To 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."

...In our view, however, *Torcaso* [Case 1A-R-032 on this website] does not govern. By its 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. 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. 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.

**This does not mean, of course, that the disqualification escapes judicial scrutiny or that McDaniel's activity does not enjoy significant 1st Amendment protection. The Court recently declared in *Wisconsin v. Yoder* [Case 1A-R-045 on this website]:**

> **"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."**

**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 essence of the rationale underlying the Tennessee restriction on ministers is that if elected to public office they will necessarily exercise 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. 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.**

**We hold that §4 of ch. 848 violates McDaniel's 1st Amendment right to the free exercise of his religion**...[Judgment reversed]...

**CONCURRENCE:** Justice Brennan/Marshall...[Tennessee's justification for this] prohibition ...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. 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...**

Fundamental to the conception of religious liberty protected by the Religion Clause is the idea that religious beliefs are a matter of voluntary choice by individuals and their associations, and that each sect is entitled to "flourish according to the zeal of its adherents and the appeal of its dogma." *Zorach v. Clauson* [Case 1A-R-025 on this website]. 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* (1964) [Case 1A-S-12 on this website]. Government may not interfere with efforts to proselyte or worship in public places. *Kunz v. New York* (1951). It may not tax the dissemination of religious ideas. *Murdock v. Pennsylvania* (1943) [Case 1A-R-017 on this website]. It may not seek to shield its citizens from those who would solicit them with their religious beliefs. *Martin v. City of Struthers* (1943) [Case 1A-R-018 on this website].

**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.** *Cantwell v. Connecticut* [Case 1A-R-011 on this website]. **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 issues including...vigorous advocacy of legal or constitutional positions. Of course, churches as much as secular bodies and private citizens have that right."

**The State's goal of preventing sectarian bickering and strife may not be accomplished by regulating religious speech and political association...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.** 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 over involved 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. It may not be used as a sword to justify repression of religion or its adherents from any aspect of public

life...**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...