



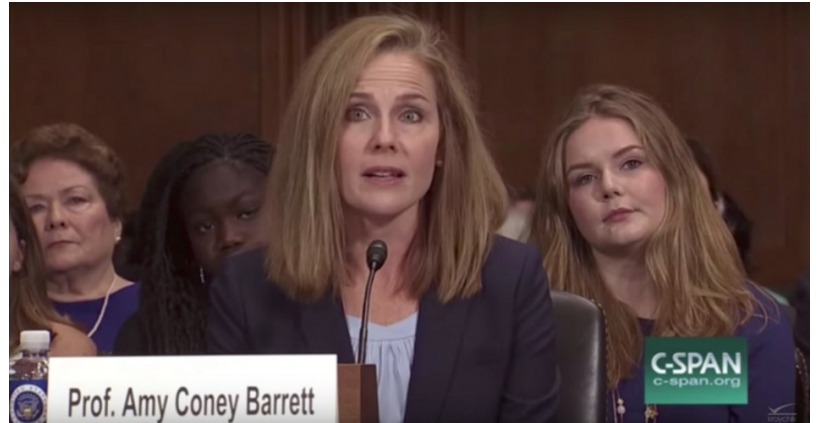
Written by [Joe Wolverton, II, J.D.](#) on September 10, 2017

## Senators Impose Religious Test on Catholic Judicial Nominee

Members of a Senate committee seem committed to applying a religious test to one of President Trump's nominees for federal judge, in direct violation of Article 6 of the U.S. Constitution.

Article VI reads in relevant part:

"No religious Test shall ever be required as a Qualification to any Office or public Trust under the United States."



On September 6, Notre Dame Law Professor Amy Coney Barrett faced the Senate Judiciary Committee as part of the nomination process to fill a position on the bench of the U.S. Court of Appeals for the Seventh Circuit. She was nominated last year by the president.

During the hearing, several Democratic members of the committee questioned whether Barrett's faith — she's a Roman Catholic — would keep her from following the law.

Referring to a paper published by Barrett regarding the obligations of Christian jurists, Senator Diane Feinstein (D-Calif.) revealed her prejudice against people of faith, or, in the words of the Constitution, she applied a "religious test" to someone seek "office or public trust under the United States."

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"When you read your speeches, the conclusion one draws is that the dogma lives loudly within you," Feinstein said. "And that's of concern when you come to big issues that large numbers of people have fought for for years in this country," she added.

After trying to reassure Feinstein and the other senators on the committee that she would, in fact, decide cases according to established law and not her own "personal convictions," Barrett was subjected to a second round of religious test, this time administered by Senator Mazie Hirono (D-Ha.).

"Ms. Barrett, I think your article is very plain in your perspective about the role of religion for judges, and particularly with regard to Catholic judges," Hirono said, parroting the persecution.

Considering the volume of the outrage, one would imagine that Barrett's article called for the restoration of the Spanish Inquisition.

The truth is so much tamer, however.

In 1998, Barrett co-authored an article published by the *Norte Dame Law Review* entitled "Catholic Judges in Capital Cases," in which she suggested that in death penalty cases Catholics judges should be allowed to seek recusal.

That's it. That's why Democratic senators are skewering an accomplished judge, attempting to force her to clear a hermeneutic hurdle specifically prohibited by the Constitution.

For those still not convinced that certain senators were targeting Barrett's faith and imposing a religious test, consider Senator Dick Durbin's comments and questions during the hearing.



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“What’s an ‘orthodox Catholic?’” Durbin asked, “Do you consider yourself an ‘orthodox Catholic?’” he continued.

“If you’re asking whether I’m a faithful Catholic, I am, although I would stress that my own personal church affiliation or my religious belief would not bear on the discharge of my duties as a judge,” Barrett replied, appearing stunned that a senator would require her to defend her religious beliefs.

Thankfully, there was at least one member of the Senate Judiciary Committee who refused to remain silent while his colleagues ignored their oaths of office and the explicit constitutional prohibition against their actions.

Senator Mike Lee (R-Utah) is a consistent friend to the Constitution and the day after the hearing he delivered a speech on the floor of the Senate that deserves to be read in its entirety. For the sake of space, here is an inspiring excerpt:

I’ve been doing a lot of thinking lately about the fascinating men and women of America’s Founding Generation. I want to share with you one of their stories.

Jonas Phillips was a penniless Jewish immigrant, an indentured servant, a hard-working businessman, and an American patriot who served in the Philadelphia Militia during the Revolutionary War. During the British occupation of New York, he snuck messages past the censors by writing in Yiddish.

Years later, Phillips addressed a letter to George Washington and the delegates at the Constitutional Convention.

He urged them not to include a religious test in the Constitution as a requirement for public service, because no man, he wrote, should be “deprived or abridged of any Civil Right as a Citizen on account of his Religious sentiments.”

Jonas Phillips wrote this letter because Pennsylvania, the state where he lived, required officials to swear that the New Testament was inspired by God. As a faithful Jew, Jonas Phillips could not do that.

“By the above law,” he wrote, “a Jew is deprived of holding any public office or place of government.”

Thankfully, Jonas Phillips’ letter ... his prayer ... was answered. Days earlier, the convention had voted unanimously to ban religious tests for federal office.

The language the Framers inserted into the Constitution was unequivocal: “No religious test shall ever be required as a qualification to any office or public trust under the United States.”

When the Founders wrote “ever,” they meant it.

As Senator Lee said in his speech, “These strange inquisitions have nothing to do with the nominees’ competency, patriotism, or ability to serve Americans of different faiths equally.”

I’ll give the final word to one of the Framers, Edmund Randolph, who, on June 10, 1788 at the Virginia Ratifying Convention, explained the restriction on religious tests with the unique insight of one who was there when it was included in the Constitution.

Read Randolph’s words closely. They are timely and timeless. Regarding this clause, Randolph said:

It puts all sects on the same footing. A man of abilities and character, of any sect whatever, may be



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admitted to any office or public trust under the United States. I am a friend to a variety of sects, because they keep one another in order. How many different sects are we composed of throughout the United States? How many different sects will be in congress? We cannot enumerate the sects that may be in congress. And there are so many now in the United States that they will prevent the establishment of any one sect in prejudice to the rest, and will forever oppose all attempts to infringe religious liberty. If such an attempt be made, will not the alarm be sounded throughout America? If congress be as wicked as we are foretold they will, they would not run the risk of exciting the resentment of all, or most of the religious sects in America.

*Screen-grab of Prof. Amy Coney Barrett: C-Span*



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