

Religion and Senate Confirmation

An open letter to U.S. Senators from The Becket Fund for Religious Liberty



September 6, 2005

Dear Senator:

There is more than one way to violate the Constitution. And there is more than one way to redress such violations.

Article VI of the United States Constitution prohibits religious tests for public office. It does so with good reason. Religious tests for public office have a long and unsavory history in America. In the nineteenth century, it was common for states to impose such tests. Vermont, for example, required office holders to “own and profess the protestant religion.” This served to exclude primarily Jews, Catholics, and non-believers. The rationale was that non-believers were unrestrained by the prospect of eternal damnation and so could not be trusted. Catholics were thought to be loyal to the pope, a “foreign prince,” and were therefore unreliable. And Jews were simply presumed to be untrustworthy as a matter of sheer anti-Semitism. Vermont's religious test, and those of the various other states, were thus not so much qualifications for public office as they were a standard for disqualification. You could be any kind of protestant you wanted. You just couldn't be a Jew, Catholic, non-believer or other sort of infidel.

The days of such explicit religious tests are, happily, behind us. Nevertheless many are urging the United States Senate to apply a subtler form of religious test in the confirmation process, one that would serve to disqualify fervent believers. Now it is probably true that a Senator's decision to vote for or against a given nominee cannot be the subject of a federal lawsuit. However, a decision to disqualify a nominee based on his or her religion still violates Article VI, and thus the Senator's oath of office. And violations of a Senator's oath of office are actionable in the Senate Select Committee on Ethics.

The Becket Fund is a non-partisan, public-interest law firm that protects the free expression of all religious traditions. We hold no brief for any particular nominee to any particular office. We are, however, appalled by the misuse of religion some are urging on the United States' Senate. Consequently, we will carefully monitor all confirmation proceedings, of any administration, for all federal offices, beginning today. We will file an ethics complaint against any Senator who uses religion as a disqualification for federal office.

To be sure, not every mention of religion is improper. Religion, like ethnicity or race, is a natural part of one's background and may be referred to as naturally--and as respectfully--as those other things are. Then too, the rare nominee whose record provides specific factual evidence of past religious discrimination may be questioned about that evidence. But using fervent religious faith, of any tradition, as itself a disqualification for public office is unconstitutional. To repeat, any Senator of either party who resorts to such tactics will be the subject of a prompt ethics complaint.

Very truly yours,

Kevin J. “Seamus” Hasson
Chairman
The Becket Fund for Religious Liberty

1350 Connecticut Avenue, NW
Suite 605
Washington, D.C. 20036-1735
202-955-0095 Fax: 202-955-0090
www.becketfund.org

The Becket Fund for Religious Liberty is 501(c)(3) public-interest law firm that protects the free expression of all religious traditions. Mr. Hasson is its founder and chairman, as well as the author of the upcoming book *The Right to be Wrong: Ending the Culture War Over Religion in America*. To learn more about the Becket Fund, or the book, please visit www.becketfund.org.