

Delegate Macdonald.

DELEGATE MACDONALD: Mr. Chairman and fellow Delegates:

I for one would hate to see us adopt a Constitution which shows promise of being one of the finest Constitutions in the United States, and yet have it contain an unconstitutional oath or one which may be shrouded in doubt as to its constitutionality.

Now, in the case of *Torcaso v. Watkins*, decided by the United States Supreme Court, the Supreme Court held that it was unconstitutional to require a reference to Almighty God in the taking of an oath, and that case originated here in Maryland. That oath was prescribed by the Constitution.

Now, the oath that we have in this Committee Recommendation is optional, so the question is, does the fact that it is optional save it? Would that make it constitutional?

In *Engle v. Vitale*, a case which was decided by the United States Supreme Court in June of 1962, the question of a prayer which had been prescribed by the New York Board of Regents was involved. The prayer read as follows:

"Almighty God, we acknowledge our dependence on Thee and we beg Thy blessings upon us, our parents, our teachers, and our country."

The decision, the facts in the case made it clear that this prayer was optional. It was not required. It was not compulsory.

As Justice Douglas stated — and I quote — "As I read this regulation, a child is free to stand or not stand, to recite or not recite, without fear of reprisal or even comment by his teacher or any other school official." The United States Supreme Court held that, nevertheless, it was unconstitutional to require, to establish the prayer.

Let me read a little bit from the court's decision. The court stated — and I quote — "Neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of the students is voluntary can serve to free it from the limitations of the establishment clause. The establishment clause" — and I am still quoting — "unlike the free exercise clause, does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion, whether those laws operate directly to coerce non-observer individuals or not."

In other words, the basis of the decision was not compulsion nor the lack of compulsion. The basis of the decision was that there was an official establishment of a prayer, and by that very fact the court struck it down.

In the *Torcaso* case by the United States Supreme Court the court stated that neither the state nor the Federal Government can require a person to profess a belief or disbelief in any religion. So the fact that the prayer is optional does not save it. I think it should be removed.

THE PRESIDENT: Does any other delegate desire to speak against the amendment?

Delegate Adkins.

DELEGATE ADKINS: Mr. Chairman, I think that this Convention is being swept off its feet. The proposal here is to eliminate the words which are completely optional with the person who is proposing to take them. I personally would be very happy to see the entire oath eliminated. The oath does nothing, in my judgment, to insure the proper performance of any duties of a public official.

If this Convention elects to require an oath, it seems to me the least it can do is to permit the person taking the oath to decide the terms in this context in which it would take that oath.

Let me preface it by saying I do not profess to be a constitutional lawyer. I do not even profess to be familiar with the cases which are related to this problem. I do suggest that the court cannot and will not say that a man giving the right to either affirm or state the words in the presence of Almighty God will decree that that is an unconstitutional exercise of an individual right.

There is no constitutional denial of a man's right to believe in God. There is a constitutional denial of a requirement that he shall believe in God; and I suggest that we are confusing the issues in this section.

I am not a religious man. Should I take the oath, I should probably prefer to say that I affirm, because that is all in due honesty I could say.

There are many people in this State who do not so feel. We are doing great violence to many deeply held beliefs of the people of Maryland in this constitution. I beg you not to offend their sensibilities beyond what you must do. I suggest to you that in this instance you are offending their