

**CL. 3—Oath of Office**

degree, a matter of statutory interpretation; a determination whether state regulations can be reconciled with the language and policy of federal enactments. In the field of taxation, the Court has all but wiped out the private immunities previously implied from the Constitution without explicit legislative command. Broadly speaking, the immunity which remains is limited to activities of the government itself, and to that which is explicitly created by statute, *e.g.*, that granted to federal securities and to fiscal institutions chartered by Congress. But the term “activities” will be broadly construed.

Clause 3. The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

**OATH OF OFFICE****Power of Congress in Respect to Oaths**

Congress may require no other oath of fidelity to the Constitution, but it may add to this oath such other oath of office as its wisdom may require.<sup>280</sup> It may not, however, prescribe a test oath as a qualification for holding office, such an act being in effect an *ex post facto* law,<sup>281</sup> and the same rule holds in the case of the states.<sup>282</sup>

**National Duties of State Officers**

Commenting in *The Federalist* on the requirement that state officers, as well as members of the state legislatures, shall be bound by oath or affirmation to support the Constitution, Hamilton wrote: “Thus the legislatures, courts, and magistrates, of the respective members, will be incorporated into the operations of the national government *as far as its just and constitutional authority extends*; and it

<sup>280</sup> *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 416 (1819).

<sup>281</sup> *Ex parte Garland*, 71 U.S. (4 Wall.) 333, 337 (1867).

<sup>282</sup> *Cummings v. Missouri*, 71 U.S. (4 Wall.) 277, 323 (1867). *See also* *Bond v. Floyd*, 385 U.S. 116 (1966), in which the Supreme Court held that antiwar statements made by a newly elected member of the Georgia House of Representatives were not inconsistent with the oath of office to support to the United States Constitution.