Oaths and Religious Disqualifications.—In early cases the Court sustained the power of a state to exclude from its schools children who would not participate in the salute to the flag because of their religious beliefs,[296] only to, within a short time, reverse itself and condemn such exclusions on speech grounds, rather than religious.[297] Also, the Court seemed to be clearly of the view that the government could compel those persons religiously opposed to bearing arms to take an oath to do so or to receive training to do so,[298] only in later cases to cast doubt on this resolution by statutory interpretation,[299] and still more recently to leave the whole matter in some doubt.[300]

Although the Court has been divided in dealing with religiously based conduct and governmental compulsion of action or nonaction, it was unanimous in voiding a state constitutional provision which required a notary public, as a condition of perfecting his appointment, to declare his belief in the existence of God. The First Amendment, considered with the religious oath prohibition for federal officers in Article VI,[301] makes it impossible "for government, state or federal, to restore the historically and constitutionally discredited policy of probing religious beliefs by test oaths or limiting public offices to persons who have, or perhaps more properly, profess to have, a belief in some particular kind of religious concept."[302]

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[296] Minersville School Dist. v. Gobitis, 310 U.S. 586 (1940).

[297] West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943). On the same day, the Court held that a state may not forbid the distribution of literature urging and advising on religious grounds that citizens refrain from saluting the flag. Taylor v. Mississippi, 319 U.S. 583 (1943). In 2004, the Court rejected for lack of standing an Establishment Clause challenge to recitation of the Pledge of Allegiance in public schools. Elk Grove Unified School District v. Newdow, 542 U.S. 1 (2004).

[298] *See* United States v. Schwimmer, 279 U.S. 644 (1929); United States v. Macintosh, 283 U.S. 605 (1931); and United States v. Bland, 283 U.S. 636 (1931) (all interpreting the naturalization law as denying citizenship to a conscientious objector who would not swear to bear arms in defense of the country), all three of which were overruled by Girouard v. United States, 328 U.S. 61 (1946), on strictly statutory grounds. *See also* Hamilton v. Board of Regents, 293 U.S. 245 (1934) (upholding expulsion from state university for a religiously based refusal to take a required course in military training); *In re* Summers, 325 U.S. 561 (1945) (upholding refusal to admit applicant to bar because as conscientious objector he could not take required oath).

[299] United States v. Seeger, 380 U.S. 163 (1965); *see* id. at 188 (Justice Douglas concurring); Welsh v. United States, 398 U.S. 333 (1970); *see also* id. at 344 (Justice Harlan concurring).

[300] Gillette v. United States, 401 U.S. 437 (1971) (holding that secular considerations overbalanced free exercise infringement of religious beliefs of objectors to particular wars).

[301] U.S. Const. Art. VI, cl. 3 provides that "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States."

[302] Torcaso v. Watkins, 367 U.S. 488, 494 (1961).