

Freedom Not to Believe

Torcaso v. Watkins, 367 U.S. 488 (1961)

The state of Maryland had a law saying that everyone who wanted a job in the state government had to swear that he or she believed in God. A man named Torcaso applied for a job as a government official. He was denied the job because he would not say that he believed in God.

Mr. Torcaso said that the Maryland law was unconstitutional because it limited his freedom of religion. He said that freedom of religion meant the freedom to believe in God or not to believe in God, as a person wishes.

The Supreme Court agreed with Mr. Torcaso. The Court said the Maryland law was unconstitutional and could not be enforced. The Court ruled that people cannot be enforced. The Court ruled that people cannot be required to say that they believe in God or do not believe in God. The Supreme Court was using its power of judicial review over the action of a state government.

What Does the Judicial Branch Do?

The framers created the judicial branch to handle disagreements over the law. Article III of our Constitution describes the responsibilities and powers of this branch. In this lesson, you will learn how the judicial branch works. Suppose you thought the government had taken away one of your rights guaranteed by the Constitution. What could you do? You could ask a court to listen to your case. If the court agreed with you, it would order the government to stop what it was doing and protect your rights. The courts interpret the law. They also settle disagreements between individuals and the government. Different levels of court handle different kinds of cases. Federal courts handle cases about the Constitution and the laws made by Congress. They also deal with problems between one or more states.

How Is It Organized?

The Supreme Court is the highest court in the judicial branch. The judicial branch also includes lower courts. The judges on the Supreme Court are called justices. The head of the Supreme Court is the chief justice.

The framers believed that if judges were elected by the people, they might favor some people over others. For this reason, judges are not elected. They are appointed to office. Judges on all federal courts are appointed by the president. However, the Senate must approve all the president's appointments. Judges serve in the judicial branch until they retire or die. They can also be impeached, tried, and removed from their positions, just like the president.

Do you agree that judges should be appointed rather than elected? Should judges, who are appointed, should have the power to overrule the will of the majority as expressed by elected representatives?

Understanding Judicial Review

Judicial review is one of the most important powers of the judicial branch. Judicial review is the power of the courts to say that the Constitution does not allow the government to do something. For example, the Supreme Court can say that a law passed by Congress is not constitutional. The Supreme Court can also say that the president is not allowed to do certain things.

Suppose Congress passed a law that said you must belong to a certain religion. The Constitution says Congress cannot do this. You can go to court and say that Congress has no right to tell you to belong to a certain religion. The court will review your case. The court has the power to say that the law made by Congress is unconstitutional. If the court does this, the law cannot be enforced.

When you read the story of the *Torcaso* case, you will see how the Supreme Court used its power of judicial review. In this case, the Court decided a state law was unconstitutional.