SOUTHERN JEWISH HISTORY

Journal of the Southern Jewish Historical Society

2021
Volume 24

Southern Jewish History

Southern Jewish History is a publication of the Southern Jewish Historical Society available by subscription and a benefit of membership in the society. The opinions and statements expressed by contributors are not necessarily those of the journal or of the Southern Jewish Historical Society.

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Articles appearing in *Southern Jewish History* are abstracted and/or indexed in *Historical Abstracts; America: History and Life; Index to Jewish Periodicals; Journal of American History; Journal of Southern History; RAMBI-National Library of Israel;* Immigration and Ethnic History Society *Newsletter;* and the *Berman Jewish Policy Archive* (www.bjpa.org).

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ISSN 1521-4206

PERMISSION STATEMENT

"Hebrews in Favor of the South": Jews, Race, and the North Carolina State Convention of 1861–1862

by

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On May 20, 1861, the state convention of North Carolina voted to secede from the United States.[1] On December 6, 1861, the convention amended the state constitution to alter the religious test.[2] Contemporary newspapers explained the change to the religious test as a long-overdue extension of the formal right to hold office to North Carolina's Jews.[3] A common thread connected the two votes. One of the primary arguments that supporters of Jewish rights in North Carolina used to justify expanding the religious test was Jewish support for the Confederacy. An October 1861 article published in a North Carolina newspaper crowed about "the unanimity for the Hebrews in favor of the South."[4] The southern newspaper exaggerated Jewish support for the Confederacy. Southern Jews demonstrated a range of reactions to the war, from enthusiastic support to ambivalence, and a variety of responses, including volunteering to join the Confederate army, moving north to avoid Confederate military service, and paying people to take their place in the Confederate army.[5] The White Christian perception of the loyal southern Jew, however, is essential for understanding how North Carolina Jews won the formal right to hold the public offices from which Article 32 of the state's original constitution had excluded them. The anti-Black racism present in the American South and southern Jewish acceptance of slavery and the Confederate cause enabled Jews to achieve political equality in North Carolina.

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The Wording, Meaning, and Implementation of the 1861 and 1868 Religious Tests

Contemporaries disagreed about the meaning of the change to the religious test, and historians continue to dispute its significance. Before the state convention met in 1861, the state constitution barred from holding office anyone "who shall deny the being of God, or the truth of the Christian Religion, or the divine authority of the Old or New Testament."[6] The 1861 convention dropped the reference to Christianity and changed a few crucial words. The 1861 version of the test barred from office anyone who denied "the divine authority of both the Old and New Testaments."[7] Had the test required acceptance of "the divine authority of both the Old and New Testaments," Jews would have remained constitutionally excluded because they accepted one and not the other. As Christian delegates to the convention and contemporary North Carolina newspapers understood it, Jews denied the New Testament but accepted the Old Testament; therefore, by virtue of not denying both, Jews could be eligible for office under the new wording, however strained the

North Carolina State Capitol in Raleigh, 1861. (Wikimedia Commons.)

writing style.[8] The wording has beguiled some—although not all—contemporary Jewish commentators and modern historians. While several historians have claimed that North Carolina's Jews only achieved the right to hold office in 1868 when the adoption of a new state constitution made their right unequivocal, the primary sources will show that the date Jews were constitutionally included in office holding has to be moved back from 1868 to 1861.[9] A distinction also has to be made between de jure and de facto qualifications. Although North Carolina's 1776 constitution seemingly barred Jews from holding office until its 1861 amendment, Jews still held positions in government, and the only attempt to enforce the religious test against a Jewish North Carolinian proved unsuccessful.

The delegates to the 1861 convention and North Carolina newspapers explained the change in wording as accomplishing nothing more or less than expanding those qualified to hold office to include Jews. According to the local newspapers and convention delegates, the amendment's only purpose was to allow Jews to hold office. During the debate, the proposal was described as an "ordinance for amending the Constitution, so as to remove Jewish disability to hold office." Proposals to completely abolish the test failed. Delegates objected to the possibility that Muslims, Pagans, or "China-men" could be allowed to serve in government.[10]

In 1861, Jewish newspapers reported that the new wording allowed Jews to hold office. The *Occident* (Philadelphia) and the *American Israelite* (Cincinnati) triumphantly announced the extension of formal equality to Jews. These newspapers, edited by Isaac Leeser and Isaac M. Wise, respectively, echoed the expressed intent and interpretations of the convention delegates and the North Carolina press. Leeser stood out as the key spokesperson for the traditionalists of the era, and Wise served in the same capacity for the moderate Reformers.

North Carolina historians, following the narrative provided by the delegates and the North Carolina papers, have generally understood the 1861 amendment as an expansion of those eligible to hold office to include Jews under the religious test. Their interpretations have explained the change in wording as accomplishing exactly what its authors claimed it had been written to achieve: the formal acceptance of Jewish office holders. In these works, however, which are not focused on Jewish history, the

1861 amendment receives only glancing mention, sometimes only half a sentence.[11]

In contrast, in 1866, the *Occident*, the *Jewish Messenger* (New York), and the *Israelite* all reported that the new wording had done nothing to alter Jewish disabilities.[12] This reversed the previous interpretations of the Philadelphia and Cincinnati publications. These out-of-state publications did not always possess accurate information about North Carolina politics. North Carolina, the *Israelite* acknowledged, "is the only State in the Union where we have no subscribers and no correspondent, hence we know nothing about it."[13] Historians writing about American Jews, including historians of North Carolina Jewry, have tended to accept the interpretation offered by Jewish papers in 1866 and have argued that the 1861 amendment did not end the formal exclusion of Jews from office. Some of these historians do not mention the 1861 change to the test.[14] Others, while correctly noting that the convention changed the language of the test, still argue that Jews remained formally barred until 1868.[15] Three quote the language of the revised 1861 test.[16] According to these historians, the change in language had no effect on the exclusion of Jews from office. They interpret the phrasing of the amendment to mean that a man was required to accept both scriptures to qualify for office. Neither North Carolina politicians nor the local press understood the test in this way.[17]

The date Jews gained formal equality matters. An 1868 extension of formal equality to Jews creates a narrative of simultaneous progress, in which Reconstruction brought emancipation to the enslaved and full political rights to Jews. "With Reconstruction," Anton Hieke writes, "Jews were finally granted the right to hold executive offices in North Carolina."[18] Samuel Rabinove adds that only the absence "of the old white leadership of the state" at the 1868 constitutional convention made the expansion of the religious test possible.[19] If Jews gained full rights in 1861, however, they achieved equality at the same moment the state plunged into a war to preserve chattel slavery. Jews gained formal equality not despite the old White leadership but through it.

This extension of rights was certainly the expressed goal of the 1861 delegates. North Carolina elites explained their solicitude towards Jews after the South had begun its descent into war as a desire to repay the

loyalty of Jews to slavery, the Confederacy, and white supremacy. This history is essential to understand the motivations of the 1861 delegates.

The History of Article 32 from Convention to Convention

The limits of the North Carolina religious test remained vague. It is not clear exactly what counted as an "office or place of trust or profit in the civil department within this State" as defined by the constitution.[20] North Carolinians disagreed about whether a seat in the legislature counted as an "office" during the controversy over Jacob Henry, a Jewish North Carolinian who won election to the House of Commons in 1808 and 1809.[21] In Maryland, where a Christian-only religious test covered "any office of profit or trust" until 1826, "office" had a capacious definition.[22] Maryland Jews complained not only of being unable to run for city council but also of being unable to serve as commissioned officers in the state militia or even to work as lawyers. Nonetheless, Jews did receive commissions in militia companies and served on juries. Unlike in North Carolina, Jews did not win elected office until after the amendment of the religious test.[23] As proved by the Jacob Henry incident, the only effort to enforce the test in North Carolina, it is difficult to determine whether "office" had a narrower construction for the purpose of the religious test in North Carolina than it did in Maryland.

Regardless of the wording of the 1861 text or the definition of "office," Jews did hold government jobs in North Carolina between 1861 and 1868, when the state adopted a new constitution. Abram Weill served as a Charlotte alderman in 1865, and Emil Rosenthal was appointed to the Wilson town council in 1867. A prominent member of his local Jewish community, Weill had served as a Confederate major and temporarily sheltered Jefferson Davis from federal arrest after the war. In 1866, a North Carolina paper claimed that, after the 1861 amendment, Jews served as justices of the peace. Even this evidence, however, does not settle the practical meaning of the 1861 amendment because Jews also held office before 1861. Jacob Henry served in the legislature in 1808 and 1809, when the constitution appeared to require all office holders to be Protestant, and Michael Grausman served as an official in the state treasury before the Civil War, when the constitutional wording required all office holders to be Christian.[24] An examination of Article 32 of the 1776 constitution, which

imposed the religious test, however, illuminates the contours of the debates.

Five months after the Declaration of Independence, North Carolina adopted a state constitution. Article 32 of the new constitution imposed a religious test:

> That no person, who shall deny the being of God or the truth of the Protestant religion, or the divine authority either of the Old or New Testaments, or who shall hold religious principles incompatible with the freedom and safety of the State, shall be capable of holding any office or place of trust or profit in the civil department within this State.[25]

The debate over the 1776 Constitution was not recorded, but evidence suggests the controversial nature of the inclusion of the religious test.[26] Samuel Johnston, who served as the sixth governor of North Carolina and opposed the religious test, complained in a 1776 letter that his return home had been delayed because "one of the members from the back country" had suggested a religious test. The test "was carried after a warm debate," Johnston wrote, "and has blown up such a flame, that everything is in danger of being thrown into confusion."[27]

There is no evidence that North Carolina ever enforced Article 32. Article 31, by contrast, which prohibited a "clergyman, or preacher of the gospels," from holding office "while he continues in the exercise of the pastoral function," resulted in three expulsions from the legislature, two in 1801 and one in 1820.[28] North Carolina, along with several other states, excluded practicing clergy from political office. Proponents of this restriction variously argued that it kept church and state separate, prevented clergy from using their religious authority to influence their colleagues in the legislature, and preserved religious freedom.[29]

The Case of Jacob Henry Revisited: Jews and Catholics

The unsuccessful attempt to enforce Article 32 against Jacob Henry, a Jewish member of the North Carolina House of Commons, produced significant publicity. Henry first won election to the House of Commons in 1808. In 1809, after his reelection, Hugh Mills challenged Henry's right to hold office, claiming "that a certain Jacob Henry, a member of this house, denies the divine authority of the New Testament" and that "it is contrary to the freedom and independence of our happy and beloved

government, that any person should be allowed to have a seat in this Assembly . . . who is not constitutionally qualified for that purpose."[30] The legislature held a short inquiry into Henry's beliefs, and Henry gave a speech in his defense. William Gaston, a Catholic member of the House of Commons, also argued against expelling Henry. On December 7, 1809, a North Carolina newspaper reported, "The allegations were disproved and the resolution [to expel Henry] unanimously rejected."[31]

Henry's speech found lasting acclaim. The second edition of *The American Speaker*, published in 1814 and advertising itself as a schoolbook with the dual goals of teaching oratory through example and furthering youths' patriotic love of country, included, alongside speeches by George Washington and three presidents' inaugural addresses, Henry's speech on the religious test.[32] In 1818, H. M. Brackenridge, arguing in the Maryland House of Delegates in favor of passing the "Jew Bill," which would allow Jews to hold office in Maryland, quoted from Henry's speech. "Mr. Henry" kept his seat, Brackenridge declared, "and it is part of our education, as Americans, to love and cherish the sentiments uttered by him on that occasion."[33]

Henry's speech is noteworthy for its circumspection about his beliefs. He defined the "religion I profess" as "inculcat[ing] every duty which man owes to his fellow men," "enjoin[ing] upon its votaries the practice of every virtue," and "teach[ing] them to hope for the favour of Heaven exactly in proportion as their lives are directed by just, honourable and beneficent maxims." Henry did not mention the Torah, the Talmud, or any belief or custom that differentiated Judaism from Christianity. Henry closed his speech with a quotation from the New Testament: "whatever ye would that men should do unto you, do ye so even unto them" (Matthew 7:12).[34]

In declining to enforce the religious test, legislators expressed a general opposition to it and personal respect for Henry. One of Henry's supporters in the legislature, denouncing the investigation into Henry's beliefs, declared that he would never "consent that this House shall become a Court of Inquisition." Henry's colleagues, it turned out, said little about his religion. One legislator claimed he had never seen Henry at a synagogue but had "seen him at meetings of Baptists and Methodists." The legislators did not know whether Henry ate pork. John Roberts, who

Last page of Jacob Henry's speech to the North Carolina House of Commons, 1809. General Assembly Session Records, November–December, 1809. (North Carolina Digital Collections, courtesy of the North Carolina Department of Natural and Cultural Resources.)

represented the same county as Henry, testified that he "knew nothing of [Henry's] religion," that Henry "was esteemed a good man and a moral citizen," and that while Henry's "step Father was a Jew, and he understood that Mr. H. was of that religion," he "did not recollect ever to have heard him say so."[35]

Henry was a wealthy landowner and an acculturated Jew. The 1810 census records him living in Beaufort, North Carolina, with twelve enslaved people. In 1812, he served as a captain in the North Carolina militia.[36] Henry built a stately Federal-style house soon after his arrival in North Carolina and sold it to his son in 1835.[37] During Henry's residence in North Carolina, no synagogue existed in the state, and there is no evidence of Henry's observance of Judaism. His 1847 funeral notice in a Charleston newspaper made no mention of Judaism but invited members of the Masonic fraternity to pay their respects. However, Jacob Henry's wife and mother were buried in the Charleston, South Carolina, Jewish cemetery, and Jacob was probably buried there as well.[38]

Gaston, befitting his training as a lawyer, gave an artful construction of Article 32 that would allow Henry to keep his seat. Gaston argued that Henry, as a legislator, was not an officer of the state, because a seat in

Jacob Henry House, Beaufort, NC, and historical marker. (Wikimedia Commons; North Carolina Department of Natural and Cultural Resources.)

the legislature was not an office but was rather above offices. Therefore, Article 32 did not apply. Historians have tended to dismiss this argument as "talmudic" and "far-fetched."[39] Seth Barrett Tillman, however, criticizes this characterization and defends the legal plausibility of Gaston's argument. As Tillman points out, Gaston's arguments may have convinced the legislators, but they also may have declined to expel Henry for other reasons, or they may have acted with a mix of motivations.[40]

Gaston achieved considerable political prominence in North Carolina, Article 32 notwithstanding. Throughout the early nineteenth century, Gaston served in the state senate, House of Commons, and U.S. House of Representatives. He served as an associate justice of North Carolina's supreme court from 1833 to 1844. Before 1835, Article 32 explicitly invoked Protestantism, and Gaston was an avowed Catholic. Before joining the state supreme court, Gaston asked Governor David Lowry Swain, state supreme court justice Thomas Ruffin, and U.S. Supreme Court chief justice John Marshall whether they thought Article 32 barred him from serving as a justice. All three encouraged Gaston to accept the job.[41]

Gaston argued that Article 32 did not prevent him from becoming a judge and questioned the definability of *Protestant*. "Who shall judicially say what is 'the Protestant Religion' or what is it 'to deny its truth?'" Gaston asked. "The clause disqualifying those who deny the truth of the Protestant religion may have been intended to embrace Roman Catholics," he wrote, but "the clause in question is part of the written, and fundamental law of the land, and is therefore to be expounded by the well established rules of legal interpretation." Although Gaston professed himself a Catholic, judicially, he averred, it was impossible to consider him non-Protestant. Even if Catholics could not be Protestants in the eyes of the state, Gaston continued, Catholics did not "deny the truth of the Protestant Religion." "Protestants have separated from Catholics because, as they alledge Catholics have added to the Christian Code doctrines not revealed," he wrote. "But I know of no affirmative doctrine embraced by Protestants generally which is not religiously professed also by Catholics."[42] Whether the legislature accepted Gaston's reasoning or not, it expressed its belief in his eligibility by electing him to the state supreme court.[43]

William Gaston, 1834.
Engraving by
Asher Brown Durand.
(Metropolitan Museum of Art,
via Wikimedia Commons.)

By 1835, when delegates to the North Carolina constitutional convention debated whether to amend or abolish the religious test, both defenders and detractors claimed that it was no longer enforced. Weldon Nathaniel Edwards (opposed to the Protestant test) and James Strudwick Smith (in favor of keeping the Protestant test) both called it a "dead letter." According to one delegate, however, "public opinion has never considered [the test] *to be a dead letter*." Another delegate worried that "if, after all the discussion upon this matter, it is still retained, it will be a dead letter no longer."[44] No delegate claimed that the test had ever been enforced, and there is no record of its enforcement either before or after 1835.

Gaston advocated a complete end to the religious test, but the majority of delegates valued the test as a symbolic affirmation of state support for Christianity. One delegate explained why he supported an unenforced religious test: "The 32d section merely impresses the truths of Christianity with the seal of the constitution." "Should so solemn an instrument," he asked, "not contain a recognition of the Christian religion?" The convention did, however, broaden Article 32, replacing "Protestant" with "Christian," thereby extending formal equality to Catholics and presumably (although not explicitly mentioned in the *Proceedings and Debates of the Convention*) other non-Protestant Christians who otherwise met the requirements.[45]

An examination of court records fails to clarify Article 32. In 1860, the North Carolina Supreme Court upheld the validity of a contract conducted on a Sunday. One of the justices, dissenting from the decision, quoted Article 32: "Our governors and magistrates," he wrote, "must be christians, and it seems to me to be a necessary consequence that our government is a christian government."[46] Article 32 had an important symbolic value, but it is less clear whether it ever exerted force. Gaston may have been right when he denounced the test for having "brought down upon the Constitution of North Carolina, the double reproach of manifesting at once the *will* to persecute, and the *inability* to execute, its purpose."[47]

The Decline of Religious Tests in the American States

In the early republic, North Carolina enjoyed plentiful company in imposing a religious test for public office. According to Gerard V. Bradley, when delegates met at the Constitutional Convention in Philadelphia in 1787, "every state (save perhaps Virginia) employed religious tests for office."[48] The exact accuracy of this assertion depends on how religious test is defined, although it remains true in broad strokes. Early constitutions in South Carolina, Georgia, Vermont, and New Hampshire explicitly limited office to Protestants.[49] New Jersey's constitution implicitly required office holders to be Protestant.[50] Maryland and Pennsylvania limited office to Christians.[51] Massachusetts explicitly limited eligibility to Christians and implicitly barred Catholics (and possibly members of the Church of England).[52] Delaware required office holders to be trinitarian Christians.[53] Connecticut did not have a religious test oath but provided disqualification for office as a punishment for blasphemy.[54] Rhode Island, like Connecticut, did not adopt a constitution after independence, but statutes limited office holding to Christians.[55]

In 1788, New York passed a law requiring all office holders to renounce foreign allegiance "in all matters ecclesiastical as well as civil," echoing the naturalization oath required by its 1777 constitution. The legislature reiterated the oath for office in 1801.[56] In 1805, Francis Cooper, a Catholic, won election to the New York legislature and refused to take the oath. New York Catholics presented a petition to the legislature objecting to the language in the 1777 constitution and the 1801 statute. In 1806, the state legislature passed the "Catholic Bill," removing the test, and Cooper

took his seat.[57] In Virginia, neither statute nor the state constitution limited office by religious faith, but Virginia criminalized blasphemy by statute and common law. In Bradley's words, "a professed [atheist], polytheist, or unorthodox Christian," elected to public office in Virginia, "would have had to serve from jail."[58]

Most religious tests withered quickly in the new republic. A spate of new state constitutions adopted after the federal constitution, including those of Georgia (1789), South Carolina (1790), Delaware (1792), Kentucky (1792), and Vermont (1793), had no religious tests. In 1790, Pennsylvania replaced its Christian-only test with a requirement to acknowledge "the being of a God and a future state of rewards and punishments."[59] By 1861, North Carolina and New Hampshire were the only states with religious tests that barred Jews from office. Religious tests requiring belief in God proved more durable. Eight state constitutions continue to bar atheists from office, but these tests have been rendered unenforceable since the Supreme Court declared them unconstitutional in 1961.[60]

The closest analogue to the 1861 debate in North Carolina about whether to allow Jews to hold office is the Maryland "Jew Bill." In 1826, after eight years of debate, the Maryland legislature changed the religious test, allowing Jews as well as Christians to hold office. This bill received extensive contemporaneous coverage in the press, and historians have given it significant attention. The Maryland Jew Bill and the 1861 amendment to the North Carolina constitution are unusual, however, since the debates over state religious tests did not usually focus specifically on the fitness of Jews for office.[61]

The only state to bar Jews from office longer than North Carolina was New Hampshire, but the rhetoric surrounding the New Hampshire test did not focus specifically on Jews. The New Hampshire religious test provided that only Protestants could serve in certain positions in state government. Like the North Carolina test, however, there is no evidence that New Hampshire enforced the restriction. Deists and Catholics openly served in positions the constitution appeared to disqualify them from occupying.[62] As in North Carolina, some questions arise about the legal meaning of *Protestant*. In one church property case, the majority of justices argued that Protestant meant non-Catholic Christian, and the dissenting justice argued that, legally, Protestant meant only non-Catholic, meaning that Jews, Deists, and atheists counted as

"Protestants."[63] Similarly, New Hampshirites contested the original motivation of the New Hampshire test. By one account, a combination of anti-Deism and anti-Catholicism motivated the creation of the test. Alternatively, anti-Catholicism may have been the test's sole cause and purpose.[64]

Table. When Jews Won the Formal Right to Office in the United States [65]

State	Year	Method of Change	Old religious qualification	New religious qualification
Ga.	1789	New Constitution	Protestant	None
S.C.	1790	New Constitution	Protestant	None
Penn.	1790	New Constitution	Christian	Theist (implied)
Del.	1792	New Constitution	Trinitarian Christian	None
Vt.	1793	New Constitution	Protestant	None
Mass.	1821	Constitutional Amendment	Christian (implicitly Protestant)	None
Md.	1826	Constitutional Amendment	Christian	Christian or Jew
R.I.	1798 or 1843 (disputed)	Statutory (1798); Constitution (1843)	Christian	None
N.J.	1844	New Constitution	Protestant (implied)	None
N.C.	1861	Constitutional Amendment	Christian	Christian or Jew
N.H.	1877	Constitutional Amendment	Protestant	None

The New Hampshire religious test controversy did not focus on Jews. The Jewish presence in New Hampshire was minimal.[66] Despite their small numbers, however, the *Jewish Messenger* reported that some Jews won elected office (although not to any of the statewide offices that were subject to the religious test). The *Occident* frequently complained

about the New Hampshire test, but New Hampshire newspapers that criticized the test often did not mention Jews at all.[67] The exclusion of Jews did not rise to a significant issue in New Hampshire as it had in Maryland and North Carolina.

The Passage of the 1861 Amendment and the Reasons for It: Race, Slavery, and Civil War

The religious test in North Carolina persisted as an object of controversy even after its 1835 wording included Catholics. Jewish aspirants to public office played an important role in contesting religious tests that excluded Jews. In 1858, Abram Weill presented a petition to the legislature "for the removal of the Jewish disability to hold office." Weill later served as a Charlotte alderman in 1865. Similarly, Solomon Etting and Jacob I. Cohen, Jr., who fought for the passage of the Jew Bill in Maryland, both won election to the Baltimore city council in 1826, the year of the law's passage.[68] Elite Jewish men stood to gain the most from amending religious tests to accommodate Jews, and they played important roles in the efforts to change the religious tests in Maryland and North Carolina.

Much had changed in North Carolina between 1809, when Jacob Henry kept his seat, and 1858, when Weill presented his petition. The 1835 constitutional convention not only expanded the definition of those who qualified to vote, it had also disenfranchised free Black male taxpayers who had previously possessed the right to vote. The property requirement to vote for state senators ended in 1857, although the property requirements to hold office lasted until 1868. By 1858, Black men had no political rights in North Carolina, whereas all White male taxpayers enjoyed the right to vote.[69] The possession of political rights had become deeply intertwined with racial politics, and the struggle to end the Jewish disability to hold office became enmeshed in the racial status of Jews in the South.

Before secession, efforts to amend North Carolina's religious test to include Jews met with failure. In 1858, John S. Dancy introduced a bill to "repeal such clauses of the Amended Constitution of North Carolina, as prohibits persons of the Jewish Israelitish faith from holding offices of profit or trust in the State." The chairman of the judiciary committee issued a report praising the bill that opened with the declaration: "The

Committee are of the opinion that the principle on which the bill is founded, is correct. No person should be proscribed or placed under any civil disabilities on account of religious faith." The religious test had been inserted into the constitution "when the principles of religious liberty were very imperfectly understood in North Carolina." The anti-Jewish clause, the chairman continued, is a relic of "an age of bigotry and intolerance" unfit to be associated with the high ideals of republican government and the Gospel.[70]

Despite its forceful rhetoric in favor of religious freedom, the committee recommended against the bill's passage. The committee report reasoned: "[I]t is highly inexpedient at this time to alter or amend the constitution by legislative enactment" and the "people of North Carolina seem to be satisfied with their government." Furthermore, the committee deemed it unwise "to produce discontent, when peace and happiness prevail."[71] A Baltimore paper praised the report's "sensible opinions" but condemned its opposition to the bill. The committee, the newspaper concluded, "must be composed of a set of decided 'old fogies.'" The *Jewish Messenger* published a premature celebration of the bill's passage but printed a correction when the text of the committee report came to the newspaper's attention and it learned of its error. The report, the newspaper noted, "is strangely inconsistent with itself."[72]

The failure of the 1858 bill did not deter supporters of Jewish rights. Over the summer of 1860, Jewish North Carolinians attempted to pressure legislative candidates to declare their support for Jewish political equality. North Carolina newspapers printed supportive declarations.[73] In February 1861, the *Israelite* declared success. Like the *Jewish Messenger* three years earlier, however, the celebration proved premature, and Isaac M. Wise's newspaper issued a retraction. Again, the bill never came to a direct vote.[74]

More pressing political concerns overtook the debate over Jewish political rights in North Carolina. The ad valorem tax provoked particular controversy. Changing the tax scheme for enslaved labor from the capitation tax (per head) to the ad valorem tax (according to property value) would raise taxes for slaveholders. Support for the proposed tax change came largely from small farmers in the western part of the state, less invested in slaveholding and more supportive of raising money to fund internal improvements. Eastern planters, more invested in slaveholding

and less supportive of government spending, strongly opposed the ad valorem tax, characterizing it as an attack on the institution of slavery.[75] According to the *Israelite*, the effort to end Jewish disabilities "was killed by its opponents putting amendments on it to alter the system of taxation in the state, and thereby defeated our bill." North Carolina papers shared the *Israelite*'s assessment, reporting that amendments in favor of the ad valorem tax had sunk the bill.[76]

Yet at least one opponent of the bill used anti-Jewish rhetoric to justify his support for the status quo. T. N. Crumpler, a western North Carolina legislator who supported the ad valorem tax, accused Jews of being consumers rather than producers. Both the Jewish and North Carolina press condemned the calumny. A Charlotte paper printed a response to Crumpler's remarks with the commendation that the writer, Samuel Cohen, was "a Jew, a gentleman and a good citizen." Cohen concluded his letter with a promise of Jewish loyalty to the South: "As law loving and abiding citizens of North Carolina," should the state "need the services of her sons in the present crisis, the Jews will not cry 'peace when there is no peace,' but will be found among those battling for her rights and institutions."[77]

Jews in and outside of North Carolina pressed for passage of the bill. Isaac Leeser, writing in the *Occident*, decried the failure of the 1858 bill: "[T]he people of North Carolina know that they have been unjust in their recent decision, and it is expected that they will seize the earliest opportunity to remedy the evil." "Mr. Samuel A. Cohen, of Charlotte," the *Jewish Messenger* reported, published an open letter to the candidates for the legislature, which he signed, "Several Israelites." In 1856, two years before the legislative efforts started, the *Israelite* had denounced the religious test in passionate and theological terms. "It is a holy duty, imposed upon all our brethren," Rabbi Max Lilienthal declared, "to efface on this soil of religious and civil liberty, the last stain of intolerance, imported in past times from illiberal Europe." The anti-Jewish clause in the North Carolina state constitution, he continued "is against the Constitution of the United States, and therefore illegal. We deem, that the attention of the legislature has but to be called to such an illegality, and that it will promptly be removed."[78] North Carolina did eventually change its religious test, but the effort took more time and effort than was predicted by Lilienthal's expectation of prompt removal.

The fight for Jewish rights received favorable coverage in North Carolina newspapers. "As Presbyterians and friends to civil and religious liberty," a group of North Carolinians wrote, "we regard the clause as odious and intolerant, and shall rejoice to see it expunged from our Constitution." In 1861, when the state amended the constitution, a Charlotte paper praised the development as "just and right." As was common for pro-Jewish newspaper sentiment in the Civil War–era South, the writer justified the support for Jewish rights by reminding the reader of "the spirit of patriotism and devotion exhibited throughout the South by the Hebrews."[79] Newspapers in North Carolina had long decried the disqualification of Jews as a bigoted violation of religious liberty, but by 1861 southern newspapers had another reason to favor Jewish rights: Jewish support for the Confederacy.

When the state convention met in 1861, it quickly made a series of momentous decisions. On May 20, the convention voted to secede from the United States. North Carolina was the next-to-last state to secede and did so only after the Fort Sumter bombardment and Lincoln's call for seventy-five thousand troops. Unionist sentiment in the state had

Journal of the Convention of the People of North Carolina, 1861. (Duke University Libraries, via Internet Archive.)

been strong; in February 1861, voters had initially rejected a secessionist convention in a public referendum. The contentious nature of the controversy over secession in North Carolina highlights the significance of Jewish support for the Confederate cause.

North Carolinians contested the limits of the state convention's power. In August 1861, the legislature attempted unsuccessfully to abolish the convention. The convention claimed the power to overrule the legislature and amend the constitution. Some in the legislature believed that the ordinances of the convention needed to be submitted to the people. The convention prevailed, however, meeting four times between May 20, 1861, and May 13, 1862.[80]

The state convention's amendment of the constitution without submitting any questions to public referendum generated allegations of illegitimacy, but these claims were not strong enough to prevent the convention's amendments from taking effect. The language and timing of the alteration is slightly confusing. Newspapers reported "passage" of the religious test ordinance on June 11 and "ratification" on December 6.[81] Likewise, the official *Journal of the Convention* shows that the amendment passed on June 11, and the official *Ordinances and Resolutions* records that the alteration to the religious test was "*Ratified the 6th day of December*, 1861." The text of the amendment was identical on both of these dates.[82] The convention ratified the ad valorem ordinance on June 25.[83]

On August 21, 1861, state senator Burgess Sidney Gaither argued that the ordinances of the convention were legitimate and binding, including both the ad valorem tax and the amendment to the religious test. Bedford Brown, however, contended that although the convention's passage of the ad valorem tax was legitimate, the adoption of the Confederate constitution was not. Referring "to the Jewish disability act," Gaither asked "if that was not in force?" Gaither apparently believed that the amendment had taken effect on June 11.[84] Gaither's view of the convention's powers prevailed over Brown's. The convention never submitted any questions to the people. Newspapers reported that the ordinance was "[r]ead three times and ratified in open Convention the sixth day of December, A.D., 1861," the same language used to report the ratification of other ordinances.[85] The state followed the convention's ordinances, and so the "Jewish disability act" had the same force as its other ordinances. Disagreement persisted, however, even among those in North

Carolina's government, as to the exact timing of the amendment to Article 32.

The delegates debated whether to amend the religious test to include Jews or whether to abolish the test completely. The former justice of the North Carolina supreme court, Thomas Ruffin, known for his uncompromising opinions in defense of slavery, championed Jewish rights in the 1861–62 convention. Ruffin introduced the amendment to change the religious test. On the motion of another delegate, the question was divided into two parts: first, to strike out the existing Christians-only religious test, and second, to replace it with a new religious test intended to include both Christians and Jews. The convention voted on the two elements separately. The vote to strike out the existing religious test passed 84 to 20. The vote to include a religious test that restricted office to those who did not reject the divinity of both the Old and New Testament passed 84 to 22. Another delegate proposed ending the religious test entirely. That motion failed 33 to 69. The convention then voted 96 to 9 to adopt Ruffin's proposal.[86]

The delegates argued that completely ending the religious test would harm the state. One delegate objected to the possibility of granting equality to "Mahomedans, Indians, China-men, Japanese and Hotentots."[87] Ruffin wanted Jews to be allowed to hold office, but he objected that the same right might apply also to "Turks, Pagans, [or] Coolies." A religious test must continue, Ruffin argued, because "all our laws are founded on the idea that we are a religious people," and the complete abrogation of the religious test "would have a tendency to weaken the sense of religious obligation among the people."[88]

For nineteenth-century Americans, religious and racial categories often blended together, as seen, for example, in the rhetoric around the physiognomic distinctiveness of the "Mormon race."[89] The 1861 delegates exhibited this tendency, mixing religious ("Mahomedans") and racial ("Hottentots") categories in their lists of hypothetical outrages that an end to the religious test might cause. The end of the religious test would not have changed the racial qualification. So nonwhite North Carolinian men could neither vote nor hold office, regardless of the fate of the religious test. The delegates' rhetoric, however, illustrates the interconnectedness of religion and race in the minds of nineteenth-century White North Carolinians. The proponents of eligibility for Jewish and Christian

Judge Thomas Ruffin in the 1860s. Photograph by Matthew Brady. (U.S. National Archives and Records Administration.)

men (but not men of other faiths) contrasted the racial and religious suitability of Jews with others whom they deemed religiously or racially unfit.

The text of Ruffin's amendment to the religious test did not mention Jews by name, but its avowed purpose was to allow Jews to hold office. Since 1835, the North Carolina Constitution had denied the right to hold office to any person who denied "the Christian religion" or "the divine authority either of the Old or New Testaments." In 1861, the state convention removed the reference to Christianity and reworded the reference to the Bible, so the test now barred any person who denied "the divine authority of both the Old and New Testaments." The "sole object of the amendment," a Greensboro newspaper explained, "was to remove the disqualification of Jews." Delegates objected to the total removal of "all religious tests as a qualification for office, so that" all men "would all be put on the same footing, and all equally entitled to hold civil office in this State." Responding to fears that the change in wording might allow men neither Jewish nor Christian to hold office, a delegate clarified that "the object of the proposed amendment is to apply only to the Jews."[90] A majority was willing to give Jews the same political rights as Christians, but no majority could be found to extend the same rights to other, less favored

religious groups. The proponents of the amended religious test made their intent unambiguous, the new test's stilted wording notwithstanding.

News of the convention's amendment to the religious test spread throughout the summer. On June 15, a member of the North Carolina government sent a letter to Mendes Cohen of Baltimore, the brother of Jacob I. Cohen, Jr., who had fought for the Maryland Jew Bill, informing him that Jewish disabilities in North Carolina had come to an end. Mendes Cohen wrote a letter relaying news of the state convention's ordinance amending the constitution on June 23. The *Occident* printed Cohen's letter on July 1, as did the *Israelite* on July 12.[91] The passage of the Maryland Jew Bill in 1826 had turned the attention of the North Carolina papers to their own state's religious test. "Since the passage of the Jew Bill in Maryland," the *Carolina Observer* reported, "it has been discovered that the Constitution of this State is more in want of amendment than that of Maryland, one of its provisions going so far as to exclude Atheists, Jews, and Catholics, from a participation in the common rights of citizens." The *Raleigh Register* regretted that North Carolina appeared "more intolerant even than" Maryland, but expressed optimism that the religious test "will no doubt be expunged whenever an opportunity occurs for so doing."[92] For thirty-five years, however, North Carolina had done nothing to remove Jewish disabilities.

What had changed between the *Israelite*'s premature declaration of Jewish political equality on February 1, 1861, and its reporting of constitutional change just five months later?[93] Christian support for Jewish rights was wider than it was deep. North Carolina newspapers expressed their support of Jewish equality, but not as their first priority. Jews lobbied for change, but the Jewish community in North Carolina was quite small. In 1860, there was no Jewish congregation, and, according to one historian, only 210 Jews resided in the state.[94] Political controversies like the fight over the ad valorem tax delayed action on the political rights of the state's few Jews.

The state's secession on May 20 acted as another important development. Before secession, proponents of Jewish rights appealed to the ideal of religious liberty. After secession, increasingly, southerners sympathetic to Jewish interests cited Jewish support for the Confederate cause as a reason for their political inclusion. Article 6, section 4 of the Constitution of the Confederate States of America copied the no religious test clause of

the U.S. Constitution verbatim (with the substitution of "Confederate" for "United"): "no religious test shall ever be required as a qualification to any office or public trust under the Confederate States." The Confederate States of America had adopted this constitution on March 11, 1861, and the North Carolina state convention voted to "adopt and ratify" the Confederate Constitution on June 19, 1861. Thus, the Confederate endorsement of the no religious test clause also may have influenced the state convention.[95]

North Carolina newspapers emphasized the fealty of southern Jews to the Confederacy. One North Carolina newspaper reprinted a "Religious Notice.—To the Soldiers of the Hebrew Faith of the Confederate States." "This is to remind you," the notice informed the paper's readers, "that the 5th and 6th of September will be the day of Memorial (Roshhashonoh, 5622 [1861],) and the 14th the day of Atonement (Yome Kepoor)." Praise of southern Jewish loyalty prefaced the notice: "No class of our citizens have responded more liberally to the treasury and army of the Confederacy than the Southern Jews."[96] The newspaper used the political loyalty of southern Jews to justify respect for Jewish religious traditions.

Wilmington Journal, *September 5, 1861.*
(Newspapers.com.)

In the state convention, delegates in favor of expanding the right to hold office to Jews cited Jewish support for the Confederacy and slavery. The Jews "ought to be let in," argued delegate W. F. Leak, because "they believe in the true God"; "they hold to future rewards and punishments"; and "their history proves that they have always been found fighting on the side of their adopted country." The delegate found the shared theological history of Judaism and Christianity important because he "never [could] consent that the God of the Bible shall be ignored." Concern long existed that without a belief in a future state of rewards and punishment officeholders could not be trusted to honor oaths, and the delegate worried, "[How] can you *bind* a man to the discharge of any obligation who feels none?" The delegate also attached great significance to the political leanings of Jews, praising their "commendable" support for the Confederacy.[97]

Supporters of amending the religious test defended Jews as economically productive and economically important to the Confederacy. In a North Carolina newspaper, Samuel Cohen responded to Crumpler's claim that Jews were consumers and not producers, that if Crumpler examined "the taxbooks in the counties where Jews reside" he would discover that they "produce their share of the State Revenue." In 1862, a Raleigh newspaper reported that the "Jewish citizens of Wilmington, now in Charlotte" raised "over eleven hundred dollars" for "the sick and suffering poor of Wilmington." The newspaper exclaimed, "Would to God that more of our men were Jews of that sort." In May 1861, a Wilmington paper similarly praised Jews for their political and financial support: "The jews in this State, have in this emergency shown themselves just as willing to contribute their services and their means as any other religionists." A delegate to the 1861 convention who supported amending the religious test pointed to Jewish financial support to the Confederacy "in this our country's greatest need." He cited "Mr. [Moses Cohen] Mordecai, of South Carolina, a Jew," who "has been the largest contributor to the Confederate Treasury of any private gentleman."[98]

By 1861, Whiteness was a prerequisite for political inclusion in the South, but the racial position of Jews in the antebellum South was complicated. On the one hand, Jews were considered racially distinct from the White Christian majority. On the other hand, White southerners did not treat Jews as Black either socially or legally before the Civil War.[99] Unlike

many Irish and Italians, southern Jews did not tend to engage in ditch digging, domestic service, or other occupations that White southerners associated with Blacks. According to Mark Greenberg, since southern Jews "clustered in commercial ventures and purchased blacks rather than toiling as manual laborers, their 'whiteness' was rarely questioned, and they faced relatively less social ostracism than other immigrant groups."[100] Some historians argue that southern antisemitism was more economic and religious than racial, and White southerners did not seriously question the Whiteness of Jews during the antebellum period.[101]

Jewish Americans have used a number of words to describe themselves, *race* among them. Jews often referred to themselves as members of the Jewish faith, emphasizing Judaism's religious element. Using the language of race ran the risk of undermining Jews' claim to Whiteness and their belonging in America. Some Reform rabbis explicitly disclaimed any racial element to Judaism. Other more traditionalist Jews explicitly affirmed racial pride in Jewishness. Many Jews in the North and South expressed unease with a universalistic Judaism that denied the importance of blood and welcomed intermarriage at a time between the early national period and Civil War during which intermarriage was widespread. Christians and Jews both defined Jews as a separate race with specific racial characteristics into the twentieth century. In the antebellum American South, Jews were perceived to constitute a distinct race, even as most non-Jewish southern Whites counted them among the White majority.[102]

North Carolina newspapers covered the debates among the prominent antebellum racial theorists.[103] Jews figured prominently in environmental and biblical theories of racial difference. According to a North Carolina writer committed to the environmental theory, "In the northern countries of Europe [Jews] are white; in Germany many of them have red beards; in Portugal they are tawny . . . but no change has occurred in their cast of feature, habits, or ideas." Another North Carolina newspaper article used the Bible to dispel the environmental and multiple genesis theories. Shem, who "must have been a red man," the article claimed, "was the father of the Jewish race, who are of the same hue, varying it is true, some being of a darker, and some of a lighter shade," a fact partly explained from Jews' "amalgamation by marriage with white, and with the darker nations, as the African." The author used this theory of racial

difference to justify American slavery: "Noah declared, Ham, with his posterity, should serve or become servants to both the posterity of Shem and Japheth," and "the African race" are "the descendants of Ham."[104] These authors defined Jews as racially distinct from the White majority, but also racially distinct from the Black minority. As slavery became an increasingly important national political controversy throughout the antebellum period and political rights became ever more closely tied to whiteness in North Carolina, the non-Blackness of Jews proved a vital prerequisite for their inclusion in state politics.

North-Carolinian,
August 21, 1841.
(Library of Congress.)

Jews did not receive rights and acceptance only in slave societies, but anti-Black racism often eased the acceptance of Jews into White society. In France, on the one hand, Jews gained equal rights as a result of the egalitarian spirit of the French Revolution.[105] In Jamaica, on the other hand, Jews gained equal rights in the context of slavery and anti-Black racism. The White Christian elite of Jamaica evinced hostility to both Jews and Blacks, but, in the early nineteenth century, Jamaica's government granted legal equality to Jews to forestall what it saw as the "greater danger": Black equality. The Jamaican Jews, as Samuel and Edith Hurwitz write, "shared

the values and prejudices of the dominant elements in Jamaican society. Thus, in an effort to present a 'united front,' the White Christians of Jamaica sought [after decades of resistance] to grant the Jews full rights." In 1833, two years after Jews gained full rights in Jamaica, Britain abolished slavery throughout its empire.[106] Both Jamaica and North Carolina sought to remove anti-Jewish political restrictions when race-based slavery was threatened, suggesting that the specter of Black freedom caused White Christians in both places to expand Jewish political rights in order to cement White solidarity.

North Carolina newspapers praised Jews for supporting slavery. "It is a singular fact," one North Carolina newspaper declared in 1861, "that the most masterly expositions which have lately been made of the constitutional and the religious argument for slavery are from gentlemen of the Hebrew faith," singling out Senator Judah Benjamin of Louisiana and Rabbi Jacob Morris Raphall of New York. Another North Carolina newspaper reprinted an article that not only claimed southern Jewish support for the Confederacy but also that Jews "residing without the Confederate States are with us to a man." Jewish support for the Confederacy, the article averred, had caused the "Jews of Chatham-street, New York, and of Harrison-street, Baltimore, [to be put] under the surveillance of the Federal detectives."[107]

Although few Jews participated in the abolition movement, Jewish support for slavery was far from universal. On the eve of the Civil War, Baltimore had three rabbis, an abolitionist, a moderate, and a defender of slavery.[108] A few rabbis, mostly Reform rabbis in the North including Liebman Adler (Detroit then Chicago), David Einhorn (Baltimore then Philadelphia), and Bernard Felsenthal (Chicago), spoke out against slavery. Most northern Jews, however, "maintained a discreet silence on the subject." In the South, Jews expressed support for slavery. Morris Raphall, a prominent Orthodox rabbi in New York, famously endorsed southern Christian arguments that the Hebrew Bible provided support for slavery.[109]

North Carolinians praised Raphall for his defense of slavery. An 1860 article in a Wilmington paper reported that Raphall was an "affable," "pleasant," and "learned" man who believed the only people who did not believe in the "lawfulness of slavery" were "persons who have not been religiously educated." According to a delegate to the 1861

Rabbi Morris J. Raphall, c. 1850.
Lithograph by Philip Haas.
(Library of Congress.)

convention who supported amending the religious test, Raphall wrote "the best defence of slavery on scriptural grounds that has come under my observation." Raphall fits less neatly as a Confederate sympathizer than these North Carolina newspapers suggested. Although Raphall offered a controversial biblical defense of slavery, he criticized American slavery for failing to live up to the biblical standard and remained a Unionist throughout the Civil War.[110]

Antisemitism and Philosemitism

Equivocal and hostile views of Jews sometimes found expression in the antebellum North Carolina press. An 1839 article in the *Newbern Spectator* expressed the belief that Jewish suffering was punishment from God: "That the Jews should be degraded and despised is part of their chastisement, and fulfillment of prophecy." The author expressed hope that "the dawn of a better day" would save the suffering Jews, "which raising them alike from neology and rabbinism, shall set them at large in the glorious liberty of the Gospel."[111] Antebellum southern anti-Jewish prejudice marked Jews as "other," but it neither prevented Jews from finding

success in southern society nor did it prevent them from enjoying the legal and economic benefits of whiteness.

The Civil War inflamed antisemitism throughout the country. The rhetoric towards Jews in the North Carolina press hardened. North Carolina newspapers accused Jews of being dishonest speculators. "The Jews," a Wadesboro paper pronounced in 1862, are "a speculating race, since their traffic in the blood of Christ." In 1863, a Raleigh paper differentiated between "respectable merchants, whether they be Jews or Gentiles" and "those swarms of Jewish traders, who employ under-ground railroads to carry on their work of extortion upon the people."[112] This anti-Jewish turn, however, largely postdates the change in the religious test.

The 1861 amendment to the constitution did not settle the racial status of Jews or their fitness for citizenship in North Carolina. Zebulon Vance, who served as governor of North Carolina during the Civil War, delivered a celebrated philosemitic speech, "The Scattered Nation," throughout the country after the Civil War. The exact date of authorship

Zebulon Baird Vance, c. 1870. Photograph by Matthew Brady. (Library of Congress.)

is not known, but Vance likely wrote the speech between 1868 and 1873. In 1874, North Carolina newspapers proudly reported that Vance, "that gifted son of our State," delivered his "beautiful lecture on the Jewish people" to an audience in Baltimore. Vance's motivation to defend the Jewish people, historian Leonard Dinnerstein argues, was "the hostility he observed toward Jews in North Carolina and elsewhere." In the speech, Vance noted, "There are objections to the Jew as a citizen; many objections; some true and some false, some serious and some trivial." Like the delegates to the 1861 convention, Vance partially justified his respect for Jews with anti-Black racism. "In the negro," Vance claimed, "the trunk constitutes 32 per cent. of the height of the whole body, in the European 34 per cent., in the Jew 36 per cent."[113] For Vance, as for other racial theorists, Jews were racially distinct from Europeans. In Vance's philosemitic speech, however, Jews were further removed from Blacks than they were from other Europeans. By the time Vance gave his speech, the North Carolina constitution granted full political rights to all men who believed in God, Black and White, Jewish and Christian. Reconstruction constitutions, however, as the long history of Jim Crow amply demonstrates, did not provide lasting solutions to the problems of prejudice and inequality in the South.

Postwar Constitutional Change and the Right to Hold Office during Reconstruction

The overwhelming concerns of the 1861 state convention had been connected to slavery, the ad valorem tax, secession, and the new Confederate state. These issues colored the debate over Jewish political rights. Southern politicians praised Jews for their financial contributions to the Confederacy, support for slavery, and willingness to take up arms for the southern cause. Antiblack racism, slavery, and Jewish acceptance of these facets of antebellum southern life allowed southern Jews to achieve a certain measure of cultural acceptance and inclusion.

The defeat of the Confederacy forced changes in North Carolina's government. President Andrew Johnson appointed a provisional governor for North Carolina on May 29, 1865. In October 1865 and May–June 1866, a constitutional convention met in North Carolina to draft a new constitution as a condition for the state to rejoin the Union. Voters for this

convention had to have been eligible to vote under state laws as they existed before May 20, 1861, thus preventing Black men from voting. In October 1865, the convention voted to nullify the ordinance of secession, abolish slavery, and repudiate Confederate debt. The proposed constitution carried over the wording of the religious test from 1861, excluding anyone who denied "the divine authority of both the Old and New Testaments."[114] This wording provoked the ire of the Jewish press.

Jewish newspapers vocally protested the perceived attempt to bar Jews from holding office. The Board of Delegates of American Israelites, the first attempt at a national Jewish organization, called into existence in 1859 in reaction to uncoordinated American Jewish responses to the Mortara case, published an appeal in the North Carolina papers to reject the proposed constitution because of its religious test.[115] The *Jewish Messenger*, the *Occident*, and the *Israelite* published articles critical of the proposed constitution. All three correctly quoted the language of the religious test, and all three interpreted it as excluding Jews. The reaction of the Jewish press to the proposed constitution is somewhat puzzling. In 1861, the *Israelite* and the *Occident* had celebrated the very same language that they decried in 1866. "When we heard," the *Occident* reported in 1866, that North Carolina planned to revise its constitution "to alter it in compliance with the views of the President of the United States, we at once dreaded that the concessions made to Israelites in the Convention which voted the State from the Union, would be stricken out from the new fundamental law."[116] These two periodicals apparently accepted the intent and interpretation of the 1861 convention delegates regardless of the wording the convention employed. As they hoped, the proposed constitution did not alter the "the concessions made to Israelites" in 1861 since the 1861 and 1866 terminology were entirely identical.

The North Carolina press tried to reassure concerned Jews that the 1866 religious test would do no harm. Replying to the board of delegates, a Raleigh paper assured its "Jewish friends" that the proposed constitution would have the exact same religious test as already existed. Other North Carolina papers printed similar articles, noting that the state had changed its religious test in 1861 to include Jews and the same wording was to be carried over into the 1866 constitution. One Wilmington paper expressed puzzlement at "how strangely" the board of delegates had "misapprehended the purpose and meaning" of

the 1861 amendment. The paper offered a grammatical explanation of how the word *both* operated in the test: "There must be a denial of the divine authority, not only of the *New*, but also of the *Old* Testament, not of *one*, but of *both*, to disenfranchise." A Raleigh newspaper, in a similar vein, wrote, "the Board of Delegates are laboring under a misapprehension." The object of the 1861 amendment "was clearly to remove the unjust proscription imposed upon Jews, while, at the same time, carefully guarding against allowing deists, atheists or infidels to hold office or places of trust and profit." The paper adduced further evidence of the 1861 test's meaning: "[S]ince 1861, we know of instances having occurred in which persons of Jewish persuasion have been appointed to, and have discharged duties of, the office of Justice of the Peace."[117]

Voters rejected the 1866 proposed constitution, although for reasons unrelated to the religious test. The proposal, while forbidding slavery, would have essentially preserved the antebellum political order, largely reproducing the 1776 Constitution as amended in 1835 (and retaining the 1861 amendment to the religious test). Black men would have regained the franchise, a right they had held before 1835, but political apportionment would be based on the White population. The proposed constitution also retained property qualifications for office holding. The Civil War had transformed political expectations in North Carolina, and the voters rejected the proposed constitution.[118]

The Jewish press celebrated the constitution's rejection. The *Israelite* expressed its satisfaction: "The State's honor is redeemed, and its fanatics and bigots are humbled and humiliated." The *Occident*, while noting that the result probably had very little to do with North Carolinians' feelings

American Israelite, *Sept 28, 1866. (Newspapers.com.)*

about religious freedom, took similar pleasure in the proposed constitution's failure.[119] The explanations in the North Carolina papers that the proposed 1866 constitution posed no threat to Jews either did not reach or did not convince the writers of the Jewish press.

After the defeat of the proposed constitution in 1866 and Congress's passage of the Reconstruction Acts in 1867 and 1868, delegates met at a new convention from January 14 to March 17, 1868. The Reconstruction Acts divided the former Confederate states (except Tennessee) into five military districts. The states could be readmitted to the Union and their representatives and senators seated in Congress only after the states ratified the Fourteenth Amendment and adopted new constitutions. Adult men, regardless of race, needed to qualify to vote for the delegates to the convention, and the resulting constitution had to provide universal adult male suffrage (except those disenfranchised for felony or rebellion). Men who could not take an oath of past and future loyalty to the Union (the "Ironclad Oath") also could not vote.[120] Of the 120 delegates at the 1868 North Carolina convention, 107 were Republicans, including 13 Black delegates.[121] North Carolina's new constitution marked a significant departure from the antebellum political order. Conservatives divided between those who advocated limiting the franchise to White men and those who were willing to accept some Black male voters, but only with a property requirement limiting the franchise. A coalition of Black and poor White men voted to ratify the new constitution, overcoming conservative opposition and enacting universal manhood suffrage.[122] In the 1868 constitution, neither race nor poverty restricted the franchise.

The 1868 constitution also changed the religious test. To hold public office in the state, a man now only needed to profess belief in "Almighty God." This religious test clearly allowed Jews to hold office. The 1861 amendment failed to help North Carolinians who accepted neither the Old nor New Testament, and the language of Article 32, forbidding those who "hold religious principles incompatible with the freedom and safety of the State" from holding office may have excluded Christian pacifists.[123] The 1868 constitution, therefore, may have extended the formal right to office to Quakers, Moravians, and Deists for the first time.[124] It remained possible that some of the people disparagingly referenced in the 1861 debate over the religious test, "China-men, Japanese," may have been excluded

as "godless" even after 1868. Regardless of these possibilities, the implications of the new wording received no discussion.[125]

Conclusion

During Congressional Reconstruction, the national government forced the former Confederate states to write new state constitutions. North Carolina's new constitution's inclusion of a religious test was unusual but not unique among these postwar state constitutions. Eight former Confederate states including North Carolina adopted new constitutions in 1868, Texas followed in 1869, and Tennessee and Virginia did so in 1870. Of these eleven constitutions, nine had no religious test, whereas North Carolina and Tennessee required a belief in God. No significant changes further eroded religious tests for office in the United States (except New Hampshire's abolition of its Protestant-only test in 1877) after the Civil War until 1961, when the U.S. Supreme Court ruled that states could not bar atheists from holding office.[126]

Although North Carolinians long considered the religious test a "dead letter," it proved a long-lasting source of controversy. The religious test provided a terrain for controversies over the bounds of citizenship, as only certain North Carolinians were guaranteed full participation in the state's political life. Between independence and secession, North Carolina expanded political equality for White Christian men, ending the formal exclusion of Catholics from office in 1835 and the property requirement to vote for the state senate in 1857. At the same time as the state loosened religious requirements, it hardened racial lines, disenfranchising free Black men in 1835.[127] In 1861, as the country descended into civil war, North Carolina contested whether Jews deserved the full measure of political inclusion. The fitness of Jews for citizenship did not receive a final answer in 1861, and it remained a live question even after the Civil War. During the Civil War and Reconstruction, the position of Black Americans dominated political debate. The controversy over Jewish office holding in North Carolina was coterminous and connected. In secession, war, and Reconstruction, Americans questioned and contested the fundamental structure of the nation. The story of Jewish political rights in North Carolina is inseparable from these struggles over the meanings of race, democracy, and citizenship in America.

NOTES

I would like to thank Mark Bauman, Leonard Rogoff, Sarah Pearsall, Seth Barrett Tillman, and an anonymous peer reviewer for their helpful comments and suggestions.

[1] *Ordinances and Resolutions Passed by the State Convention of North Carolina. First Session in May and June, 1861* (Raleigh, NC, 1862), 3.

[2] The convention's publications provide June 11, 1861, as the date of the "passage" of the amendment to the constitution and December 6, 1861, as the date when the amendment to the constitution was "ratified." The convention acted on its own authority and did not submit the amendment to the public. *Journal of the Convention of North Carolina Held on the 20th Day of May, A. D., 1861* (Raleigh, NC, 1862), 93; *Ordinances and Resolutions*, 56. Newspapers also reported that the amendment passed on June 11 and was ratified on December 6. "North Carolina State Convention," *Fayetteville (NC) Observer*, June 17, 1861; "Proceedings of the North Carolina State Convention," *Daily Journal* (Wilmington, NC), June 18, 1861; *Semi-Weekly Raleigh (NC) Register*, December 25, 1861; *Weekly Standard* (Raleigh, NC), December 25, 1861.

[3] See, for example, *Greensborough (NC) Patriot*, June 14, 1861.

[4] "Loyalty of the Jews," *Western Democrat* (Charlotte, NC), October 1, 1861.

[5] Anton Hieke, *Jewish Identity in the Reconstruction South: Ambivalence and Adaptation* (Berlin, Germany, 2013), 164–200.

[6] North Carolina Constitution of 1776, art. XXXII (amended 1835).

[7] *Ordinances and Resolutions*, 56.

[8] I use *Old Testament* here and elsewhere instead of *Jewish* or *Hebrew Bible* because that is how the Christian delegates and newspaper writers referred to it.

[9] See, for example, Morton Borden, *Jews, Turks, and Infidels* (Chapel Hill, 1984), 46; Leonard Rogoff, *Down Home: Jewish Life in North Carolina* (Chapel Hill, 2010), 71; Hieke, *Jewish Identity in the Reconstruction South*, 177–78.

[10] *Greensborough Patriot*, June 14, 1861; "North-Carolina State Convention," *Weekly Standard*, June 5, 1861; *Journal of the Convention … 1861*, 92; *Semi-Weekly Standard*, June 15, 1861; *Greensborough Patriot*, June 14, 1861; "North-Carolina State Convention," *Semi-Weekly Standard*, June 5, 1861.

[11] Samuel A'Court Ashe, *History of North Carolina* (Raleigh, NC, 1925), 2:625; Gary R. Govert, "Something There Is That Doesn't Love a Wall: Reflections on the History of North Carolina's Religious Test for Public Office," *North Carolina Law Review* 64 (1986): 1086; William S. Powell, *North Carolina Through Four Centuries* (Chapel Hill, 1989), 348; John V. Orth, "North Carolina Constitutional History," *North Carolina Law Review* 70 (1992): 1775. Paul E. Herron claims that the 1861 convention "eliminated the religious test for office." Paul E. Herron, *Framing the Solid South: The State Constitutional Conventions of Secession, Reconstruction, and Redemption, 1861–1902* (Lawrence, KS, 2017), 89.

[12] "North Carolina," *Occident and American Jewish Advocate* (Philadelphia) 24 (September 1866): 281–82; *American Israelite* (Cincinnati), July 20, 1866; *Jewish Messenger* (New York), July 27, 1866.

[13] *Israelite*, July 20, 1866.

[14] Stanley F. Chyet, "The Political Rights of the Jews in the United States: 1776–1840," *American Jewish Archives* 10 (1958): 49; Henry L. Feingold, *Zion in America: The Jewish Experience from Colonial Times to the Present* (New York, revised edition, 1981), 30; Samuel Rabinove, "How—and Why—American Jews Have Contended for Religious Freedom: The Requirements and Limits of Civility," *Journal of Law and Religion* 8 (1990): 137–38; Hieke, *Jewish Identity in the Reconstruction South*, 177–78; Seth Barrett Tillman, "A Religious Test in America?: The 1809 Motion to Vacate Jacob Henry's North Carolina State Legislative Seat—A Re-Evaluation of the Primary Sources," *North Carolina Historical Review* 98 (January 2021): 2n5.

[15] Borden, *Jews, Turks, and Infidels*, 46; Rogoff, *Down Home*, 71.

[16] Leon Hühner, "The Struggle for Religious Liberty in North Carolina, with Special Reference to the Jews," *Publications of the American Jewish Historical Society* 16 (1907): 65–66; Peter Wiernik, *History of the Jews in America: From the Period of the Discovery of the New World to the Present Time* (New York, 1912), 120–21; Borden, *Jews, Turks, and Infidels*.

[17] Leonard Rogoff has suggested that another possible explanation is that when the South lost the Civil War, the national government voided the Confederate state constitutions. Thus in 1866 the changes from 1861 were no longer in effect. Nonetheless, I have been unable to locate any evidence that the change to the religious test had been voided. The ordinance of secession was held null and void by the first ordinance of the Convention of 1865 (as confirmed by an 1867 case, *State v. Bell*), but a June 1866 case cites the pre–Civil War state constitution as governing authority (*Gardner v. Hall*). *State v. Bell*, 61 N.C. 76, 89 (1867) (per curiam); *Gardner v. Hall*, 61 N.C. 21, 22-24 (1866) (per curiam).

[18] Hieke, *Jewish Identity in the Reconstruction South*, 177.

[19] Rabinove, "How—and Why," 138. Rabinove dates 1868 as the end of the "Protestant oath," but the test had expanded to include Catholics in 1835.

[20] North Carolina Constitution of 1776, art. XXXII.

[21] Tillman, "A Religious Test in America?" 1–16.

[22] Maryland Constitution of 1776, art. XXXVII.

[23] According to Eric Goldstein and Deborah Weiner, the Maryland religious test had little practical effect except preventing "two wealthy, influential Jewish businessmen," Solomon Etting and Jacob I. Cohen, Jr., from serving on the Baltimore city council, but the supporters of the Jew Bill "found it expedient to downplay the de facto civic acceptance" of Maryland's Jews. According to Edward Eitches, however, the test "prevented Jews from becoming lawyers and commissioned officers in the state militia." Eric L. Goldstein and Deborah R. Weiner, *On Middle Ground: A History of the Jews of Baltimore* (Baltimore, 2018), 46–49; Edward Eitches, "Maryland's 'Jew Bill,'" *American Jewish Historical Quarterly* 60 (March 1971): 258.

[24] Leonard Rogoff, "A Tale of Two Cities: Race, Riots, and Religion in New Bern and Wilmington, North Carolina, 1898," *Southern Jewish History* 14 (2011): 41; "North Carolina

and the Jews," *Daily Sentinel* (Raleigh, NC), July 30, 1866. On Weill and Rosenthal before, during, and after the war see Rogoff, *Down Home*, 80, 82, 88, 89, 93, 94, 97, 130, 188. Grausman refused to own enslaved people and hired free Black employees. Rogoff, *Down Home*, 62.

[25] North Carolina Constitution of 1776, art. XXXII. According to William S. Powell, the purpose of the phrase "religious principles incompatible with the freedom and safety of the State," was to exclude "religious bodies as Quakers, Moravians, and others who refused to bear arms in times of war." Powell, *North Carolina Through Four Centuries*, 273. I thank Seth Barrett Tillman for this and another citation.

[26] Govert, "Something There Is That Doesn't Love a Wall," 1076–79. According to John V. Orth, Article 32, in its 1776 formulation, "was aimed at (respectively) atheists, Roman Catholics, Jews, and Christian pacifists like Quakers and Moravians." Orth, "North Carolina Constitutional History," 1764.

[27] Griffith J. McRee, *Life and Correspondence of James Iredell, One of the Associate Justices of the Supreme Court of the United States* (New York, 1857), 1:339. "Tradition" identifies the "back country" supporter of the religious test as David Caldwell, a Presbyterian minister. As Stephen Weeks notes, however, "this assertion has never been proven." Gary Freeze, "Like A House Built Upon Sand: The Anglican Church and Establishment in North Carolina, 1765–1776," *Historical Magazine of the Protestant Episcopal Church* 48 (December 1979): 429; Stephen B. Weeks, "David Caldwell," in Samuel A. Ashe, ed., *Biographical History of North Carolina from Colonial Times to the Present* (Greensboro, NC, 1905), 1:206, 209.

[28] North Carolina Constitution of 1776, art. XXXI; Powell, *North Carolina Through Four Centuries*, 273.

[29] John Witte, "Facts and Fictions about the History of Separation of Church and State," *Journal of Church and State* 48 (2006): 30–31; Govert, "Something There Is That Doesn't Love a Wall," 1079; Delaware Constitution of 1776, art. XXIX; Maryland Constitution of 1776, art. XXXVII; New York Constitution of 1777, arts. XXXVIII–XXXIX; South Carolina Constitution of 1778, art. XXI; Tennessee Constitution of 1796, art. VIII, sect. 1.

[30] "House Resolution to Vacate the Seat of Jacob Henry," General Assembly Session Records, box 2, folder 16, North Carolina Digital Collections, accessed January 25, 2021, https://digital.ncdcr.gov/digital/collection/p16062coll36/id/101617.

[31] *Star* (Raleigh, NC), December 7, 1809. According to Seth Barrett Tillman, the newspaper's conclusion that the vote was unanimous "is not entirely unreasonable, but it is certainly not sound." Tillman, "A Religious Test in America?" 30.

[32] *The American Speaker: A Selection of Popular, Parliamentary and Forensic Eloquence* (Philadelphia, 1814), iii–vii, 279–82.

[33] *Speeches on the Jew Bill in the House of Delegates of Maryland* (Philadelphia, 1829), 91.

[34] "State Legislature," *Star*, December 14, 1809. Henry's speech can be found in the General Assembly Session Records, box 2, folder 16, North Carolina Digital Collections, accessed January 25, 2021, https://digital.ncdcr.gov/digital/collection/p16062coll36/id/101619.

[35] Ibid.

[36] Rogoff, *Down Home*, 43; Third Census of the United States, 1850, Carteret County, North Carolina; "Pay Voucher: Jacob Henry," North Carolina Digital Collections, accessed January 25, 2021, https://digital.ncdcr.gov/digital/collection/p16062coll7/id/5607.

[37] The house still stands in Beaufort as a registered historic place. "Jacob Henry House," *National Register of Historic Places – Nomination and Inventory*, North Carolina State Historic Preservation Office, accessed January 25, 2021, https://files.nc.gov/ncdcr/nr/CR0005.pdf.

[38] Rogoff, *Down Home*, 43, 94; "State Legislature," *Star*, January 4, 1810; *Charleston (SC) Courier*, October 14, 1847; Alice R. Cotten, "Henry, Jacob," in *Dictionary of North Carolina Biography*, ed. William Stevens Powell (Chapel Hill, 1988), 3:114.

[39] "State Legislature," *Star*, December 28, 1809; Hühner, "The Struggle for Religious Liberty," 52; Govert, "Something There is That Doesn't Love a Wall," 1080; John V. Orth, "Fundamental Principles in North Carolina Constitutional History," *North Carolina Law Review* 69 (1991): 1360.

[40] Tillman, "Religious Test in America?," 12–26.

[41] Charles H. Bowman, Jr., "Gaston, William," in Powell, *Dictionary of North Carolina Biography,* 2:283–85; Joseph Herman Schauinger, "William Gaston: Southern Statesman," *North Carolina Historical Review* 18 (April 1941): 123–24; Govert, "Something There is That Doesn't Love a Wall," 181–82. For highly sympathetic accounts of Gaston's jurisprudence on the North Carolina Supreme Court, see Barbara A. Jackson, "Called to Duty: Justice William J. Gaston," *North Carolina Law Review* 94 (2016): 2066–96; Timothy C. Meyer, "Slavery Jurisprudence on the Supreme Court of North Carolina, 1828–1858: William Gaston and Thomas Ruffin," *Campbell Law Review* 33 (2010): 313–39; and Joseph Herman Schauinger, "William Gaston and the Supreme Court of North Carolina," *North Carolina Historical Review* 21 (April 1944): 97–117.

[42] William Gaston to William A. Graham, November 12, 1834, William Gaston Papers, #272, Southern Historical Collection, Wilson Library, University of North Carolina at Chapel Hill. Tillman suggests that "officer" could also mean positions subordinate to "apex authority." He writes: "[A]ll the positions Gaston held were (as far as I know) apex positions: elected federal or state positions, including his service as a Justice on the Supreme Court of North Carolina." In this interpretation, "apex positions" would not be subject to the Article 32, but subordinate government offices would. Tillman, "Religious Test in America?" 21–25.

[43] Gaston received 112 votes. Henry Seawell received 43 votes. "Scattering and blanks" accounted for the remaining 36 votes. "General Assembly," *Tarborough (NC) Free Press*, December 6, 1833; *Newbern (NC) Spectator, and Literary Journal*, December 6, 1833.

[44] *Proceedings and Debates of the Convention of North Carolina: Called to Amend the Constitution of the State, Which Assembled at Raleigh, June 4, 1835* (Raleigh, NC, 1836), 218, 244, 234 (emphasis in original), 262.

[45] Ibid., 280, 310, 320, 323–24, 331–32.

[46] *Melvin v. Easley*, 52 N.C. 356, 370 (1860) (Battle, J., dissenting). Capitalization as in original.

[47] *Proceedings and Debates of the*, 280 (emphasis in original).

[48] Gerard V. Bradley, "The No Religious Test Clause and the Constitution of Religious Liberty: A Machine That Has Gone of Itself," *Case Western Reserve Law Review* 37 (1987): 679.

[49] South Carolina Constitution of 1778, arts. III, XII, XIII; South Carolina Constitution of 1790. No religious test appeared in the South Carolina Constitution of 1776. Georgia Constitution of 1777, art. VI; Georgia Constitution of 1789; Vermont Constitution of 1777, ch. II (Plan or Frame of Government), sect. IX; Vermont Constitution of 1786, ch. II (Plan or Frame of Government), sect. XII (Vermont became a state in 1791); New Hampshire Constitution of 1784, part II, arts. XIV, XXIX, XLII, and LXI; *The Constitution of New Hampshire as Amended by the Constitutional Convention Held at Concord on the First Wednesday of December, A.D. 1876* (Concord, NH, 1877), 9, 11, 15. The constitutional amendment passed by referendum in 1877 and came into effect in 1879. Wilfrid H. Paradis, *Upon This Granite: Catholicism in New Hampshire, 1647–1997* (Portsmouth, NH, 1998), 30.

[50] New Jersey Constitution of 1776, art. XIX; New Jersey Constitution of 1844. Article XIX of the New Jersey Constitution of 1776 guarantees that "all persons, professing a belief in the faith of any Protestant sect . . . shall be capable of being elected into any office of profit or trust, or being a member of either branch of the Legislature." For sources that consider the 1776 Constitution to have barred non-Protestants from office, see Borden, *Jews, Turks, and Infidels*, 15; Bradley, "No Religious Test Clause," 682–83; John K. Wilson, "Religion Under the State Constitutions, 1776–1800," *Journal of Church and State* 32 (Autumn 1990): 764; Daniel L. Dreisbach, "The Constitution's Forgotten Religion Clause: Reflections on the Article VI Religious Test Ban," *Journal of Church and State* 38 (Spring 1996): 265; John Fea, "Disestablishment in New Jersey," in *Disestablishment and Religious Dissent: Church-State Relations in the New American States, 1776–1833*, ed. Carl H. Esbeck and Jonathan J. Den Hartog (Columbia, MO, 2019), 32–33. For contrary interpretations, see *Proceedings and Debates of the Convention*, 292; *Hale v. Everett*, 53 N.H. 9, 113 (1868); George Bancroft, *History of the United States, From the Discovery of the American Continent* (Boston, 1875), 9:279 n.1.

[51] Maryland Constitution of 1776, Declaration of Rights, art. XXXV, Frame of Government, art. LV; *Laws Made and Passed by the General Assembly of the State of Maryland at a Session Begun and Held at the City of Annapolis, on Monday the Sixth Day of December, Eighteen Hundred and Twenty-Four* (Annapolis, 1824), 154–55; *Laws Made and Passed by the General Assembly of the State of Maryland at a Session Begun and Held at the City of Annapolis, on Monday the Twenty-sixth Day of December, 1825* (Annapolis, 1825), 21. (Constitutional amendments had to pass two consecutive sessions of the Maryland legislature. The state's General Assembly passed the Jew Bill on February 26, 1825, and confirmed it on January 5, 1826.) Pennsylvania Constitution of 1776, ch. II (Frame of Government), sect. 10; Pennsylvania Constitution of 1790, art. IX, sect. 4. The 1790 constitution guaranteed that "no person, who acknowledges the being of a God and a future state of rewards and punishments, shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this

commonwealth." This phrasing implies that those who did not acknowledge these religious opinions might be barred from office. William Bentley Ball, "The Religion Clauses of the Pennsylvania Constitution," *Widener Journal of Public Law* 3 (1994): 716.

[52] Massachusetts Constitution of 1780, ch. VI, art. I; Massachusetts Constitution of 1780, Articles of Amendment, art. VI (1821). The 1780 constitution originally required officeholders to affirm their belief in "the Christian religion" and to "renounce and abjure all allegiance, subjection and obedience" to any "foreign power" in "any matter, civil, ecclesiastical or spiritual," a provision intended to exclude Catholics. According to Daniel L. Dreibach, the "oath was clearly directed at Roman Catholics, although arguably it also applied to members of the Church of England." Dreisbach, "The Constitution's Forgotten Religion Clause," 266–67. See also Bradley, "No Religious Test Clause," 681–82; Wilson, "Religion Under the State Constitutions," 764.

[53] Delaware Constitution of 1776, art. XXII; Delaware Constitution of 1792.

[54] Historians disagree as to the religious test in Connecticut. Chad D. Lower writes, "[T]here were no religious tests or oaths for public office" in Connecticut. "Considering the religious conservatism in Connecticut," John K. Wilson argues, "one would expect test oaths to exist, but there appears to be no evidence for or against this supposition." Gerard V. Bradley claims that Connecticut had a religious test that required belief in Trinitarian Christianity. Bradley's evidence is a Connecticut law that forbids anyone "convicted before any of the Superior Courts of this State" of blaspheming against the Holy Trinity from possessing any "Offices or Employments, ecclesiastical, civil or military." This statute does not constitute a religious test oath because aspirants for office were not required to affirmatively declare any religious beliefs. Chad D. Lower, "The Political Ideology of Connecticut's Standing Order" (Ph.D. dissertation, Kent State University, 2013): 74; Wilson, "Religion Under the State Constitutions," 764; Bradley, "No Religious Test Clause," 683. See also John D. Cushing, ed., *First Laws of the State of Connecticut* (Wilmington, DE, 1982), 67.

[55] Rhode Island repealed its anti-Catholic test in 1783, giving all Christians the right to hold office. In 1798, the legislature passed a law that expanded religious freedom but failed to explicitly mention Jews. In 1843, Rhode Island adopted a new constitution, and Jews gained the right to hold office at that point. According to James S. Kabala, "between 1798 and 1843 it was still somewhat ambiguous whether Jews had" the right to hold office. James S. Kabala, "Church and State in Rhode Island," in Esbeck and Den Hartog, *Disestablishment and Religious Dissent*, 56–57. See also Borden, *Jews, Turks, and Infidels*, 13; Wilson, "Religion Under the State Constitutions," 764; Scott D. Gerber, "Law and the Lively Experiment in Colonial Rhode Island," *British Journal of American Legal Studies* 2 (2013): 468–72.

[56] *Laws of the State of New York Passed at the Sessions of the Legislature Held in the Years 1785, 1786, 1787 and 1788, Inclusive, Being the Eighth, Ninth, Tenth, and Eleventh Sessions* (Albany, 1886), 2:637; New York Constitution of 1777, art. XLII; *Laws of the State of New York* (Albany, 1802), 1:401.

[57] *American Citizen* (New York), February 10, 1806; *Republican Watch-Tower* (New York), February 11, 1806; *American Citizen*, February 12, 1806; Jason K. Duncan, *Citizens or Papists?:*

The Politics of Anti-Catholicism in New York, 1685–1821 (New York, 2005), 71–78, 117–32; Leo Raymond Ryan, *Old St. Peter's, The Mother Church of Catholic New York* (New York, 1935), 83–86.

[58] Bradley, "No Religious Test Clause," 683.

[59] Georgia Constitution of 1789; South Carolina Constitution of 1790; Delaware Constitution of 1792; Kentucky Constitution of 1792; Vermont Constitution of 1793; Pennsylvania Constitution of 1790, art. IX, sect. 4.

[60] *Torcaso v. Watkins*, 367 U.S. 488 (1961). North Carolina Constitution, art. VI, sect. 8; Arkansas Constitution, art. XIX, sect. 1; Maryland Constitution, art. XXXVII; Mississippi Constitution, art. XIV, sect. 265; South Carolina Constitution, art. XVII, sect. 4; Tennessee Constitution, art. IX, sect. 2; Texas Constitution, art. I, sect. 4.

[61] On the Maryland Jew Bill, see E. Milton Altfeld, *The Jew's Struggle for Religious and Civil Liberty in Maryland* (Baltimore, 1924); Joseph L. Blau, "The Maryland Jew Bill: A Footnote to Thomas Jefferson's Work for Religious Freedom," *Review of Religion* 8 (1944): 227–39; Eitches, "Maryland's 'Jew Bill,'" 258–79; Borden, *Jews, Turks, and Infidels*, 35–40; James S. Kabala, *Church-State Relations in the Early American Republic, 1787–1846* (London, 2016), 95–105; Goldstein and Weiner, *On Middle Ground*, 34–49; Eric Eisner, "'Suffer Not the Evil One': Unitarianism and the 1826 Maryland Jew Bill," *Journal of Religious History* 44 (September 2020): 338–55. The geographic breadth of the contemporary newspaper coverage is illustrated by a few examples: *Hallowell (ME) Gazette*, October 22, 1823; "Political Sketch," *City Gazette* (Charleston, SC), October 9, 1823; *Westchester Herald* (Ossining, NY), February 9, 1819.

[62] New Hampshire Constitution of 1784, part II, arts. XIV, XXIX, XLII, and LXI; *Hale v. Everett*, 53 N.H. 9, 116 118, 130 (1868); *Hale v. Everett*, 53 N.H. 9, 172 (1868) (Doe, J., dissenting); William Plumer, Jr., *Life of William Plumer, By his Son, William Plumer Junior* (Boston, 1857), 51.

[63] *Hale v. Everett*, 53 N.H. 9, 92, 129 (1868); *Hale v. Everett*, 53 N.H. 9, 169 (1868) (Doe, J., dissenting). The contention that one needs to be Christian to be Protestant as defined by the New Hampshire constitution is also found in *Attorney Gen. ex rel. Abbot v. Dublin* 459, 573 (1859). For more on Charles Doe, see John Reid, "The Obscurity of Over-Elaboration: The Style and the Influence of Mr. Justice Doe," *University of Pittsburgh Law Review* 24 (October 1962): 59–72; John Reid, "The Last Lawmaker: Charles Doe and Judicial Power," *Wayne Law Review* 10 (1964): 553–79; Jay Surdukowski, "Not Your Average Doe: Notes on the Recently Discovered Library of Chief Justice Charles Doe," *New Hampshire Bar Journal* 48 (Winter 2008): 11–23.

[64] *Hale v. Everett*, 53 N.H. 9, 123-124 (1868); *Hale v. Everett*, 53 N.H. 9 172 (1868) (Doe, J., dissenting).

[65] Virginia, New York, and Connecticut never had religious tests for public office that formally barred Jews and so are not included in this table. Georgia Constitution of 1777, art. VI; Georgia Constitution of 1789; South Carolina Constitution of 1778, arts. III, XII, XIII; South

Carolina Constitution of 1790; Pennsylvania Constitution of 1776, ch. II (Frame of Government), sect. 10; Pennsylvania Constitution of 1790, art. IX, sect. 4; Ball, "Religion Clauses of the Pennsylvania Constitution," 716; Delaware Constitution of 1776, art. XXII; Delaware Constitution of 1792; Vermont Constitution of 1777, ch. II (Plan or Frame of Government), sect. IX; Vermont Constitution of 1786, ch. II (Plan or Frame of Government), sect. XII; Vermont Constitution of 1793; Massachusetts Constitution of 1780, ch. VI, art. I; Massachusetts Constitution of 1780, Articles of Amendment, art. VI (1821); Bradley, "No Religious Test Clause," 681–82; Dreisbach, "The Constitution's Forgotten Religion Clause," 266–67; Wilson, "Religion Under the State Constitutions," 764; Maryland Constitution of 1776, Declaration of Rights, art. XXXV, Frame of Government, art. LV; *Laws Made and Passed by the General Assembly of the State of Maryland, 1824*, 154–55; *Laws Made and Passed by the General Assembly of the State of Maryland, 1825*, 21; Kabala, "Church and State in Rhode Island," 56–57; Borden, *Jews, Turks, and Infidels*, 13; Gerber, "Law and the Lively Experiment in Colonial Rhode Island," 470–72; Wilson, "Religion Under the State Constitutions," 764; New Jersey Constitution of 1776, art. XIX; New Jersey Constitution of 1844; North Carolina Constitution of 1776, art. XXXI; *Ordinances and Resolutions*, 56; North Carolina Constitution of 1868, art. VI, sect. V; New Hampshire Constitution of 1784, part II, arts. XIV, XXIX, XLII, and LXI; *The Constitution of New Hampshire as Amended*, 9, 11, 15; Paradis, *Upon This Granite*, 30.

[66] Some Jews contributed to the salary of the freethinking religious leader at the center of the *Hale* case, Francis E. Abbot. *Hale v. Everett*, 53 N.H. 9, 99 (1868). A *bikur holim* society organized in New Hampshire in 1857, and an estimated 150 Jews resided in the state in 1878 according to William B. Hackenburg, *Statistics of the Jews of the United States* (Philadelphia, 1880), 6. See also "Progress of Judaism in New Hampshire," *Jewish Messenger*, November 20, 1857.

[67] "New Hampshire," *Jewish Messenger*, January 14, 1859; "Jewish Emancipation," *Occident* 3 (1845): 109; "Progressive Reforms," *Occident* 12 (1854): 384; "Massachusetts," *Occident* 14 (1856): 450; Isaac Leeser, "North Carolina and the Israelites," *Occident* 17 (1859): 533; "New Hampshire and North Carolina," *Occident* 17 (1860): 299; "Revision of the Constitution," *New Hampshire Patriot & State Gazette* (Concord, NH), August 30, 1849; "The Election of Delegates," *New Hampshire Patriot & State Gazette*, September 12, 1850; "The Convention," *Farmer's Cabinet* (Amherst, NH), October 31, 1850. There is a reference to the eligibility of all, "be he Jew, Mahomedon, or Catholic" in "The Constitutional Convention," *New Hampshire Patriot & State Gazette*, December 26, 1850.

[68] "House of Commons," *Weekly Standard*, December 8, 1858; Rogoff, *Down Home*, 82; Goldstein and Weiner, *On Middle Ground*, 35.

[69] *Proceedings and Debates of the Convention*, 80–81, 331–32; Orth, "North Carolina Constitutional History," 1773, 1792; Karin L. Zipf, "'The Whites Shall Rule the Land or Die': Gender, Race, and Class in North Carolina Reconstruction Politics," *Journal of Southern History* 65 (August 1999): 505–6.

[70] "Jewish Disabilities," *New Era* (New Bern, NC), December 21, 1858.

[71] Ibid.

[72] "Jews in North Carolina," *Sun* (Baltimore), December 13, 1858; "North Carolina," *Jewish Messenger*, December 31, 1858.

[73] Rogoff, *Down Home*, 71; "Jewish Disabilities of North Carolina," *Israelite*, August 31, 1860; "Jewish Disabilities," *Times* (Greensboro, NC), August 25, 1860; "Jewish Disabilities," *Iredell Express* (Statesville, NC), September 14, 1860.

[74] "Political Disabilities," *Western Democrat*, August 28, 1860; "Jewish Disabilities of North Carolina," *Israelite*, August 31, 1860; "Jewish Disabilities," *Iredell Express*, September 14, 1860; "North Carolina," *Israelite*, February 1, 1861; "The Disabilities of North Carolina," *Israelite*, March 22, 1861.

[75] See George Ruble Woolfolk, "Taxes and Slavery in the Ante Bellum South," *Journal of Southern History* 26 (May 1960), 198–99; Donald C. Butts, "The 'Irrepressible Conflict': Slave Taxation and North Carolina's Gubernatorial Election of 1860," *North Carolina Historical Review* 58 (January 1981): 44–66; Powell, *North Carolina through Four Centuries*, 339–48.

[76] "The Disabilities of North Carolina," *Israelite*, March 22, 1861; "Proceedings of the Legislature of North Carolina," *Semi-Weekly Raleigh Register*, February 27, 1861; "The Jewish Disability Bill," *Western Democrat*, March 5, 1861; "The Jewish Disability Bill," *Western Democrat*, March 12, 1861.

[77] *Western Democrat*, March 5, 1861; Thomas N. Crumpler, *Speech of T. N. Crumpler, of Ashe, on Federal Relations, Delivered in the House of Commons, Jan. 10, 1861* (Raleigh, NC, 1861); "The Jewish Disability Bill," *Western Democrat*, March 12, 1861; Rogoff, *Down Home*, 71; "Jewish Disabilities of North Carolina," *Israelite*, August 31, 1860. After the amendment's passage, the *Occident* reported that "great credit is due to Mr. [Samuel] Cohen of Charlotte, N.C., for the efforts he has made in this matter, and for the personal influence he successfully wielded with gentlemen of distinction in his State." "North Carolina," *Occident* 19 (1861): 191.

[78] Isaac Leeser, "North Carolina and the Israelites," *Occident* 16 (1859): 536; "North Carolina," *Jewish Messenger*, August 17, 1860; Max Lilienthal, "Laws regarding Jews in the United States," *Israelite*, June 20, 1856. The U.S. Supreme Court failed to adopt Lilienthal's view of the Constitution until *Torcaso v. Watkins*, 367 U.S. 488 in 1961.

[79] "Jewish Disabilities," *Greensborough Patriot*, August 25, 1860; "The Disability Removed," *Daily Bulletin* (Charlotte, NC), July 1, 1861.

[80] "Senate," *Weekly Standard*, August 28, 1861; Powell, *North Carolina Through Four Centuries*, 348.

[81] "North Carolina State Convention," *Fayetteville Observer*, June 17, 1861; "Proceedings of the North Carolina State Convention," *Daily Journal*, June 18, 1861. See also *Semi-Weekly Raleigh Register*, December 25, 1861; *Weekly Standard*, December 25, 1861.

[82] *Journal of the Convention*, 90–93; *Ordinances and Resolutions*, 56; "North Carolina State Convention," *Fayetteville Observer*, June 17, 1861; "Proceedings of the North Carolina State Convention," *Daily Journal*, June 18, 1861. See also *Semi-Weekly Raleigh Register*, December 25, 1861; *Weekly Standard*, December 25, 1861.

[83] *Ordinances and Resolutions*, 33. According to Donald C. Butts, the convention ratified the ad valorem tax in 1861 "to placate the nonslaveholders." Butts, "Irrepressible Conflict," 66.

[84] "Senate," *Weekly Standard*, August 28, 1861.

[85] *Semi-Weekly Raleigh Register*, December 25, 1861; *Weekly Standard*, December 25, 1861.

[86] *Journal of the Convention*, 90–93. The *State Journal* (Raeligh, NC) gave the same tallies as the official journal for the first two votes (the "reporter did not learn" the result of the third and fourth votes). "Proceedings of the Convention," *State Journal*, June 15, 1861. Other contemporary newspapers gave slightly divergent counts. The *Semi-Weekly Standard* reported that the first vote passed 85 to 19 (instead of 84 to 20), that the second vote passed 44 to 22 (instead of 84 to 22), that the third vote failed 33 to 69, and the fourth passed 95 to 10 (instead of 96 to 9). *Semi-Weekly Standard*, June 15, 1861. The *Semi-Weekly Raleigh Register* reported that the first voted passed 85 to 19 (instead of 84 to 20), the second vote passed 84 to 22, and the third vote failed 33 to 69 (the paper did not give a count for the fourth vote). *Semi-Weekly Raleigh Register*, June 15, 1861. Although the use of the term "ratified" seems odd, both the newspapers and the convention's publication use that term.

[87] *Greensborough Patriot*, June 14, 1861.

[88] "North-Carolina State Convention," *Semi-Weekly Standard*, June 5, 1861.

[89] See W. Paul Reeve, *Religion of a Different Color: Race and the Mormon Struggle for Whiteness* (Oxford, 2015).

[90] North Carolina Constitution of 1776, art. XXXII; *Ordinances and Resolutions Passed by the State Convention*, 56; *Greensborough Patriot*, June 14, 1861; "North-Carolina State Convention," *Weekly Standard*, June 5, 1861.

[91] "North Carolina," *Occident* 19 (1861): 191; *Israelite*, July 12, 1861. See also Isaac M. Fein, *The Making of an American Jewish Community: The History of Baltimore Jewry from 1773 to 1920* (Philadelphia, 1971), 22–25. The official publication of the convention refers to the alteration as an "ordinance" that "amended" the constitution. *Ordinances and Resolutions*, 56. However intriguing this reference to the Maryland Jew Bill, this remains the only place that I found it noted.

[92] "Intolerance," *Carolina Observer* (Fayetteville, NC), February 22, 1826; *Raleigh Register and North-Carolina Gazette*, March 3, 1826.

[93] "North Carolina," *Israelite*, February 1, 1861; Mendes I. Cohen, letter dated June 23, 1861, *Israelite*, July 12, 1861.

[94] Hieke, *Jewish Identity in the Antebellum South*, 33. See also Rogoff, *Down Home*, 94–97.

[95] Constitution of the Confederate States of America, art. VI, sect. 4; U.S. Constitution, art. VI, clause 3; *Ordinances and Resolutions*, 8–28.

[96] "Day of Memorial," *Wilmington (NC) Journal*, September 5, 1861.

[97] "Remarks of W. F. Leak," *Semi-Weekly Standard*, June 26, 1861 (emphasis in original).

[98] *Weekly State Journal*, March 20, 1861; "The Fever in Wilmington," *State Journal* (Raleigh, NC), October 11, 1862; "The Convention—Some Plain Suggestions," *Daily Journal*, May 18, 1861; "Remarks of W. F. Leak," *Semi-Weekly Standard*, June 26, 1861. On Mordecai and his

support for the Confederacy see Robert N. Rosen, *The Jewish Confederates* (Columbia, SC, 2000), 2, 34, 40, 47, 220. Capitalization as in original.

[99] For discussion of the racial position of southern Jews, see Leonard Rogoff, "Is the Jew White?: The Racial Place of the Southern Jew," *American Jewish History* 85 (September 1997): 195–230; Mark I. Greenberg, "Becoming Southern: The Jews of Savannah, Georgia, 1830–70," *American Jewish History* 86 (March 1998): 55–75; Hieke, *Jewish Identity in the Reconstruction South*.

[100] Greenberg, "Becoming Southern," 63.

[101] Eric L. Goldstein, *The Price of Whiteness: Jews, Race, and American Identity* (Princeton, 2006), 16–19; Rosen, *Jewish Confederates*, 9–34; Greenberg, "Becoming Southern," 62–63.

[102] Rogoff, "Is the Jew White?," 205. For more on Jews' racial self-perception, see Eric L. Goldstein, "'Different Blood Flows in Our Veins': Race and Jewish Self-Definition in Late Nineteenth Century America," *American Jewish History* 85 (March 1997): 29–55.

[103] For more on nineteenth-century racial thought, see William Stanton, *The Leopard's Spots: Scientific Attitudes Toward Race in America, 1815–59* (Chicago, 1960); Thomas F. Gossett, *Race: The History of an Idea in America*, rev. ed. (Oxford, 1997); Christopher A. Luse, "Slavery's Champions Stood at Odds: Polygenesis and the Defense of Slavery," *Civil War History* 53 (December 2007): 379–412.

[104] *North Carolina Argus* (Wadesborough, NC), March 21, 1861; "Supposed Origins of Human Complexions, with the Ancient Signification of the Names of the Three Sons of Noah, and Other Curious Matter," *North Carolinian* (Fayetteville, NC), August 21, 1841.

[105] An extensive literature exists on Jews and the French Revolution. See Jacques Godechot, "La Révolution française et les Juifs (1789–1799)," *Annales historiques de la Révolution française* 48 (1976): 47–70; Robert Badinter, *Libres et égaux: l'émancipation des Juifs, 1789–1791* (Paris, 1989); Jay R. Berkovitz, "The French Revolution and the Jews: Assessing the Cultural Impact," *AJS Review* 20 (1995): 25–86.

[106] Samuel J. Hurwitz and Edith Hurwitz, "The New World Sets an Example for the Old: The Jews of Jamaica and Political Rights 1661–1831," *American Jewish Historical Quarterly* 55 (September 1965): 55. For more on slavery in Jamaica, see Christer Petley, *Slaveholders in Jamaica: Colonial Society and Culture during the Era of Abolition* (London, 2016).

[107] "The Hebrews and Slavery," *Daily Bulletin*, January 19, 1861; "Loyalty of the Jews," *Western Democrat*, October 1, 1861.

[108] Isaac M. Fein, "Baltimore Rabbis during the Civil War," in *Jews and the Civil War: A Reader*, ed. Jonathan D. Sarna and Adam D. Mendelsohn (New York, 2010), 181–96; Goldstein and Weiner, *On Middle Ground*, 77–94.

[109] Jayme A. Sokolow, "Revolution and Reform: The Antebellum Jewish Abolitionists," in Sarna and Mendelsohn, *Jews and the Civil War*, 137, 126; Bertram W. Korn, "Jews and Negro Slavery in the Old South, 1789–1865," *Publications of the American Jewish Historical Society* 50 (March 1961): 191–98; Morris J. Raphall, *The Bible View of Slavery* (New York, 1861); Robert F. Southard, "The Debate on Slavery: David Einhorn and the Jewish Political Turn," *American Jewish Archives* 64 (2012): 137–43.

[110] "Not Religiously Educated," *Daily Journal*, April 5, 1860; "Remarks of W. F. Leak," *Semi-Weekly Standard*, June 26, 1861; Raphall, *Bible View of Slavery*; Leonard Rogoff, "Who is Israel? Yankees, Confederates, African Americans, and Jews," *American Jewish Archives Journal* 64 (2012): 27–52.

[111] *Newbern Spectator*, June 7, 1839.

[112] John Higham, *Send These to Me: Immigrants in Urban America* (Baltimore, 1984), 123; Mark I. Greenberg, "Ambivalent Relations: Acceptance and Anti-Semitism in Confederate Thomasville," *American Jewish Archives* 45 (Spring/Summer 1993): 13; "A Retrospect—The Rich—The Poor—Speculators," *North Carolina Argus*, November 27, 1862; "The Cry for Bread," *Christian Advocate* (Raleigh, NC), April 9, 1863.

[113] Selig Adler, "Zebulon B. Vance and the 'Scattered Nation,'" *Journal of Southern History* 7 (August 1941): 370; *Morning Star* (Wilmington, NC), February 17, 1874; Leonard Dinnerstein, "A Note on Southern Attitudes Toward Jews," *Jewish Social Studies* 32 (January 1970): 44; Zebulon Baird Vance, *The Scattered Nation* (New York, 1916), 53, 42.

[114] Powell, *North Carolina Through Four Centuries*, 381–82; "Constitution of North Carolina," *Weekly Standard*, July 3, 1866; "The new Constitution—The Jews," *Daily Sentinel*, July 31, 1866; "North Carolina and the Jews," *New Berne (NC) Times*, August 2, 1866.

[115] The Mortara case, which ignited global outrage in the 1850s and 1860s, revolved around the seizure and captivity by the Papal States of a Jewish boy from Bologna who was thought to have been baptized by a family servant. Myer S. Isaacs, "Religious Liberty in North Carolina," *Daily Journal*, August 3, 1866; Bertram Wallace Korn, *The American Reaction to the Mortara Case, 1858–1859* (Cincinnati, 1957); Mark K. Bauman, "Variations on the Mortara Case in Midnineteenth-Century New Orleans," *American Jewish Archives Journal* 55 (2003): 43–58, reprinted in Mark K. Bauman, *A New Vision of Southern Jewish History: Studies in Institution Building, Leadership, Interaction, and Mobility* (Tuscaloosa, 2019): 15–24.

[116] "North Carolina," *Occident* 24 (1866): 281; "North Carolina," *Jewish Messenger*, July 27, 1866; *Israelite*, July 20, 1866; "North Carolina," *Occident* 19 (1861) 190–91; *Israelite*, July 12, 1861; "North Carolina," *Occident* 24 (1866): 281.

[117] "The new Constitution—The Jews," *Daily Standard*, July 31, 1866; "North Carolina and the Jews," *New Berne Times*, August 2, 1866; "North Carolina and the Jews," *Daily Sentinel*, July 30, 1866; "Religious Liberty in North Carolina," *Wilmington Journal*, August 9, 1866; "North Carolina and the Jews," *Daily Sentinel*, July 30, 1866.

[118] Orth, "North Carolina Constitutional History," 1771–72, 1775–76; Powell, *North Carolina Through Four Centuries*, 280, 382; Robert N. Hunter, Jr., "The Past as Prologue: Albion Tourgée and the North Carolina Constitution," *Elon Law Review* 5 (July 2013): 95–97.

[119] *Israelite*, September 28, 1866; "North Carolina," *Occident* 24 (1866): 382.

[120] John Hope Franklin, *Reconstruction: After the Civil War* (Chicago, 1961), 69–73; Powell, *North Carolina Through Four Centuries*, 385.

[121] Leonard Bernstein claims that there were thirteen Black delegates while Karin Zipf places the number at fifteen. Evidence from newspapers and the census shows that the two

disputed delegates, John W. Peterson and Samuel Highsmith, were both White, making thirteen the correct figure. Leonard Bernstein, "The Participation of Negro Delegates in the Constitutional Convention of 1868 in North Carolina," *Journal of Negro History* 34 (October 1949): 391, 394; Zipf, "Whites Shall Rule," 505; "Republican Candidates for the Constitutional Convention," *Tri-Weekly Standard* (Raleigh, NC), November 5, 1867 (marking the Black candidates with the parenthetical "colored"); Jno. W. Peterson, Ninth Census of the United States, 1870, Duplin County, North Carolina; S. Love Highsmith, Tenth Census of the United States, 1880, Pender County, North Carolina.

[122] Zipf, "Whites Shall Rule," 499–534.

[123] North Carolina Constitution of 1868, art. VI, sect. 5; North Carolina Constitution of 1776, art. XXXII.

[124] According to John V. Orth, Article 32, in its 1776 formulation, "was aimed at (respectively) atheists, Roman Catholics, Jews, and Christian pacifists like Quakers and Moravians." Orth, "North Carolina Constitutional History," 1764. Although the 1835 change removed Catholics from this list and the 1861 change removed Jews, the 1868 test did not change the position of atheists. Any otherwise eligible person who accepted "Almighty God," but accepted neither the Old nor New Testament, or who held "religious principles incompatible with the freedom and safety of the State," also won the formal right to hold office only in 1868. According to Leon Hühner, Article 32 barred, among others, "Jews, Quakers, Mohammedans, [and] Deists," but the 1868 constitution excluded only "atheists and infidels." Hühner, "The Struggle for Religious Liberty," 41, 63, 66, 68.

[125] *Greensborough Patriot*, June 14, 1861; Rogoff, *Down Home*, 81–82. In 1866, Thaddeus Stevens introduced a bill in Congress requiring delegates to the North Carolina constitutional convention to "swear on the holy Evangelists of Almighty God (or affirm as the case may be)." The board of delegates complained, and the objectionable oath did not become law. The 1861 amendment to the North Carolina constitution did not eliminate all threats to the political inclusion of North Carolina Jewry. "Civil Government in North-Carolina," *Tri-Weekly Standard*, December 20, 1866; "A Test Oath," *Occident* 25 (1867): 251; "You Shall Have Him," *Israelite*, January 11, 1867; "The Israelites," *Charleston Daily Courier*, June 14, 1867.

[126] North Carolina Constitution of 1868, art. VI, sect. 5; Tennessee Constitution of 1870, art. IX, sect. 2; *The Constitution of New Hampshire as Amended*, 9, 11, 15; *Torcaso v. Watkins*, 367 U. S. 488 (1961).

[127] *Raleigh Register*, March 3, 1826; *Journal of the Convention*, 218, 244; Orth, "North Carolina Constitutional History," 1773; *Proceedings and Debates of the Convention*, 80–81, 331–32.