SE-03 · ARTICLE

The Key of the Constitution

Purpose, oath, and the republic that may not be consecrated

Article draft · November 2026 · S. Harrison Knudson, J.D.

Three vows

The Constitution speaks to three vows. Its Preamble says what the government is for. Its oath clauses say what officers must swear to. And by what it leaves out, and what its courts have struck down, it says what no citizen may be compelled to profess. The article argues that the three belong to a single design, and that we have them in the wrong order.

The Preamble is law

The first sentence has a subject, a verb, an object and a purpose clause: “in Order to” names six ends, and the whole instrument is the means. The ratifiers voted on that sentence with everything beneath it. Story called a preamble the key to the minds of its makers. James Monroe, who voted against ratification in Virginia, called the Preamble the key of the Constitution, and said power exercised against it is unconstitutionally exercised.

Jacobson v. Massachusetts (1905) holds that the Preamble grants no power, and that is correct. Its wider dismissal answered a question no party briefed. Every prohibition in the Story passage Jacobson relied on runs against enlargement. None runs against limits.

The purpose test

Every act of the government must serve at least one of the six ends. If an act does not do one of these things, it should not be done. The test asks three questions: name the end, show the link, and count the cost to the other five.

The qualifiers are the teeth. Not welfare but general welfare; not defence but common defence; liberty for ourselves and our Posterity. Maine’s highest court used exactly this reasoning in 1871 to refuse a tax for private manufacturers.

The oath, not the Pledge

The only vow the Constitution prescribes binds officers to a text, and when federal law uses the word allegiance it names one object: the Constitution. The Pledge, written in 1892, routes devotion through a symbol to the political order itself. The Court refused to compel it in Barnette and refused to consecrate the flag in Johnson.

The Preamble limits the government’s ends; the Bill of Rights limits its means. Together they were the settlement of 1791, and they remain the two walls of the cage.

> The full article sets out the remedy — no new cause of action, a burden to name the end, deferential review of means and de novo review of the qualifiers — and answers the objections, including that the test is Lochner by another name.