

## THE TRUE MEANING OF SEPARATION OF CHURCH AND STATE

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**1785:** James Madison, future 4<sup>th</sup> president of the United States, who collaborated on religious liberty issues with Thomas Jefferson, wrote the *Memorial and Remonstrance Against Religious Assessments* in opposition to a proposal in the Virginia Legislature to use government funds for the support of any ministry. Madison wrote that the religion of each individual must be left to the conviction and conscience of each individual. He also said that such a right is inalienable because each of us makes up our minds about religion on only that evidence which our minds contemplate and thus we cannot follow the dictates of others.

**1786:** The Virginia Legislature passes into law the *Bill for Religious Freedom*, written by both future 3<sup>d</sup> President of the United States, Thomas Jefferson, and Madison. In this measure, they wrote that a person's civil rights should not depend in any way on that person's opinions on religion. They also wrote that everyone should be free to profess and to argue for any view on matters of religion, and that no one's legal rights should depend in any way on those views, whatever they may be.

**1787:** Jefferson publishes his *Notes on the State of Virginia*, in which he wrote: "It does me no injury for my neighbor to say there are 20 gods or no god. It neither picks my pocket nor breaks my leg." This is unmistakable evidence that Jefferson was striving toward a society in which believer and non believer would be fully equal. Delegates to the Constitutional Convention create our national Constitution. There is no reference to God in it. The only reference to religion is a negative one. **Article VI, Section III**, prohibits any religious test for public office.

**1788:** In the *Federalist Papers, No 52*, Madison strongly supported the prohibition against any religious test for office. He wrote that the door of government is open to merit of every description, without regard to any particular profession of religious faith. Future Associate Justice of the United States Supreme Court, James Iredell, writes that it would be fine if Americans would choose representatives with no religion or choose pagans. The Constitution is, in fact, ratified as written.

**1789:** By this time, many people, under our new Constitutional system, were uneasy about the absence of a Bill of Rights that would restrain popular majorities from oppressing minorities and that would restrain government's power to oppress, generally. As the Congress took up the issue of amending the original Constitution to include a Bill of Rights, Madison introduced the initial draft of what was to ultimately emerge as the **First Amendment**. The House of Representatives, in which Madison served, initially adopted language that began: "Congress shall make no law establishing religion..." The measure was then sent to the Senate. The Senate reworked the language and adopted wording that began: "Congress shall make no law establishing articles of faith or a mode of worship..." This language was then sent back to the House, which rejected the Senate's version and called for a joint conference committee. The Senate agreed to a joint conference. The ultimate language to emerge from both Houses of Congress, to be ratified by the states and to become the initial words of the **First Amendment**, began: "Congress shall make no law respecting an establishment of religion..." This is much stronger than just declaring that there shall be no law establishing religion. To say that there can be no law even respecting an establishment of religion means that there can be no law that shows any special respect for any religious establishment. The history of how the First Congress molded the language of the **First Amendment** into its final form demonstrates the commitment that the Congress had to creating a **First Amendment** that would bar the government from giving any special preference or benefit to religion. Most importantly, on September 3, 1789, the Senate rejected, twice, language that would have only prevented government from favoring one religion over others. The first such rejected proposed wording read: "Congress shall make no law establishing one religious sect or society in preference to others." The second such rejected wording read: Congress shall make no law establishing any particular denomination of religion in preference to any other." These proposals were defeated and never again entertained. This clearly demonstrates that Congress considered but intentionally rejected the notion that government should only be prevented from favoring one religion over others, but should still be free to favor religion collectively over nonbelief. Further, as sparse as the record was of the debate in Congress, what we do have demonstrates that the uppermost concern of the Framers of the **First Amendment** was the protection of the rights of conscience of everyone in matters of matters of religion, regardless of whether someone is a believer or nonbeliever. Thus, the bedrock foundation of the concern of the Framers was that all perspectives on questions of religion should enjoy equality before the law. There was accordingly no room for any legal scheme that would betray greater favoritism toward those who believed in a supernatural over those who did not. This is evidenced by a statement from the House debate, on August 20, 1789, by Representative Daniel Carroll, "...the rights of conscience are, in their nature, of peculiar delicacy, and will little bear the gentlest touch of governmental hand."

**1802:** Jefferson, as President, writes to the Danbury Baptist Association that the **First Amendment** has built "a wall of separation between church and state."

**1868:** The states ratify the **Fourteenth Amendment** to the United States Constitution.

**1947:** The U.S. Supreme Court explicitly states that the **Fourteenth Amendment** makes the "no law respecting an establishment of religion" clause of the **First Amendment** applicable to the states in **Everson v. Board of Education, 330 U.S. 1, 15**. The Court in **Everson** defined the no establishment clause of the **First Amendment** as prohibiting all levels of government, state and federal, from passing laws that aid one religion, aid all religions, or prefer one religion over another. No branch of government can force nor influence a person to go to or remain away from church against that person's will. No one can be forced to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, **330 U.S., at pages 15-16**.

**1961:** The Supreme Court in **Torcaso v. Watkins, 367 U.S. 488, 495**, restates the requirement that no branch of government betray any favoritism for religion by essentially repeating the points made in **Everson**, above, and also declaring that no branch of government may undertake any activity that favors or assists all religions as against non believers.

**2000:** By a 6 to 3 majority, the Supreme Court in **Santa Fe School District v. Doe, 530 U.S. 290, 309-310** affirmed that no government body can favor believers over nonbelievers by stating that no branch of government can communicate the message to anyone that because of either accepting or rejecting any religious belief "they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community." The Court in so doing adopted the **1984** language of Justice O'Connor from her concurring opinion in **Lynch v. Donnelly, 465 U.S. 668, 688**.

The truth, then, is that the **First Amendment** was designed, as Justice O'Connor has said, so that no branch of government can "treat people differently based on the God or gods they worship, or do not worship, **Board of Education of Kiryas Joel v. Grumet, 512 U.S. 687, 714 (1994)**.