

STATEMENTS BY EARLIER AMERICANS ON THE MEANING OF THE ESTABLISHMENT CLAUSE

THE RIGHT TO RELIGIOUS LIBERTY: EACH ONE HAS FREEDOM TO DECIDE HIS OWN RELIGIOUS BELIEFS

This is the Establishment Clause of the First Amendment to the U.S. Constitution:
**"Congress shall make no law respecting an establishment of religion
or prohibiting the free exercise thereof."**

Who should we go to in order to learn the meaning of the First Amendment? We should learn the original objectives of the Founding Fathers of our nation and the statesmen who followed not long after:

"On every question of construction, [we should] carry ourselves back to the time when the Constitution was adopted, recollect the spirit manifested in the debates, and instead of trying what meaning may be squeezed out of the text, or invented against it, conform to the probable one in which it was passed."—*U.S. Supreme Court Justice William Johnson, Engel v. Vitale; 370 U.S. 421 (1963).*

"I entirely concur in the propriety of resorting to the sense in which the Constitution was accepted and ratified by the nation. In that sense alone it is the legitimate Constitution. And if that be not the guide in expounding it, there can be no security for a consistent and stable government, more than for a faithful exercise of its powers."—*James Madison, quoted in Abington v. Schempp; 374 U.S. 203 (1963).*

"The first and governing maxim in the interpretation of a statute is to discover the meaning of those who made it."—*Justice James Wilson, quoted in Commissioner of Education v. School Committee of Leyden; 267 N.E. 2d 226 (Supreme Court, Mass. 1971), cert. denied, 404 U.S. 849. [Only one of only six men who signed both the Declaration of Independence and the Constitution, he was nominated by President George Washington as an original Justice on the U.S. Supreme Court.]*

"The first and fundamental rule in the interpretation of all instruments [legal documents] is to construe them according to the sense of the terms and the intention of the parties."—*Justice Story, Commentaries on the Constitution of the United States, Vol. 3, p. 383. [He was the founder of Harvard Law School].*

In view of the above statements, let us consider the original objectives the Founding Fathers had in mind when they drafted the Establishment Clause of the First Amendment.

This has been done in this research paper. But after completing it, the discovery was made that, according to their own statements, they had, not one, but two objectives in mind.

1 - Religious liberty: The government is not to ban or restrict personal religious freedoms. Each person has the right to select and practice his own religious worship, and practice it according to the dictates of his own conscience, without government interference or domination.

2 - No State Church: No one church, or group of churches working together, should be able to gain the ascendancy by coercing the government to enact one or more laws requiring the acceptance and practice of certain church beliefs, forms, ceremonies, practices, times, or methods of worship.

A third objective was also noted:

3 - The government should not oppose religion, but encourage it. It is to do this by leaving it alone, so that it can grow and the numbers of its adherents can increase. Neither should atheism be favored by the government above that of religious belief. Only a religious citizenry is able to benefit the prosperity of the nation.

Those are the three objectives of the Establishment Clause of the First Amendment.

In view of the importance of these three objectives, numbers have been added at the beginning of each statement that follows, indicating which of the three objectives it is referring to. By doing this, the reader is more likely to reread each statement and better grasp its importance, and to be assured that these are the three objectives which the Founding Fathers had in mind.

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2 1, 2 "All men have an equal, natural and unalienable right to the free exercise of religion, according to the dictates of conscience; and that no particular sect or society of Christians ought to be favored or established by law in preference to others."—*George Mason, Bishop v. Aronov*; 926 F. 2d 1066 (11th Cir. 1991). [Mason was a member of the Constitutional Convention, which drafted the Constitution, and is called "the Father of the Bill of Rights" because of his importance in drafting it.]

1, 2 "The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established."—*James Madison, quoted in Duran v. Nitsche*; 780 F. Supp. 1048 (E.D. Pa. 1991).

1, 2 "I consider the government of the United States as interdicted [banned] by the Constitution from intermeddling with religious institutions, their doctrines, discipline, or exercises. This results not only from the provision that no law shall be made respecting the establishment or free exercise of religion [the First Amendment] . . . Certainly, no power to prescribe any religious exercise or to assume authority in any religious discipline has been delegated to the General Government."—*Thomas Jefferson, January 23, 1808*; also quoted in *Doe v. Aldine Independent School District*; 563 F. Supp. 883 (U.S.D.C. S.D. Tx. 1982).

2 "The real object of the [First] Amendment was not to countenance, much less to advance . . . infidelity, by prostrating Christianity; but to exclude all rivalry among Christian sects."—*Justice Joseph Story, Commentaries on the Constitution of the United States, Vol. 3, p. 731*. [A leading Supreme Court justice, nominated to that position by President James Madison, he was called "the foremost of American legal writers."]

The above principles have been adhered to by many subsequent courts. The following five are among many which could be cited:

2 "And every denomination of Christians . . . shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established."—*New Hampshire: Kuhn v. City of Rolling Meadows*; 937 F. 2d 1401 (7th Cir. 1991), cert. denied, 112 S.Ct. 3025 (1992).

2 "There shall be no establishment of any one religious church or denomination in this State in preference to another one."—*North Carolina: Jane Doe v. Santa Fe Independent School District; Civil Action No. G-95-176 (US.D.C. S.D. Tx. 1995)*.

2 "And each and every society or denomination of Christians in this State shall have and enjoy the same equal powers, rights, and privileges."—*Connecticut: Washegesic v. Bloomindale Public School*; 813 F. Supp. 559 (W.D. Mt. S.D. 1993).

2 "There shall be no establishment of any one religious sect . . . in preference to another."—*New Jersey: Friedman v. Board of County Commissioners*; 781 F. 2d 777 (10th Cir. 1985), cert. denied, 476 U.S. 1169 (1986).

2 "To obtain religious as well as civil liberty I entered into the Revolution, and observing the Christian

religion divided into many sects, I founded the hope that no one would be so predominant as to become the religion of the State. That hope was thus early entertained, because all of them joined in the same cause, with few exceptions of individuals."—*Charles Carroll, quoted in Harris v. Joint School District No. 241*; 41 F. 3d 447 (9th Cir. 1994). [Carroll, a Roman Catholic, was one of the signers of the Declaration of Independence.]

The entire Annals of Congress from June 7, 1789, to September 25, 1789, contain the complete official records of those who drafted and approved the First Amendment. Here are excerpts from official transcripts of their conversations at that time:

1, 2, 3 "August 15, 1789. Mr. [Peter] Sylvester [of New York] had some doubts . . . He feared it [the First Amendment] might be thought to have a tendency to abolish religion altogether . . . Mr. [Elbridge] Gerry [of Massachusetts] said it would read better if it was that 'no religious doctrine shall be established by law' . . . Mr. [James] Madison [of Virginia] said he apprehended the meaning of the words to be, that 'Congress should not establish a religion, and enforce the legal observance of it by law.'"—*Annals of Congress for August 15, 1789, quoted in Stone v. Graham*; 449 U.S. 39 (1980).

Here are two revealing mid-19th century Congressional reports. In each, the meaning of the Establishment of Religion Clause in the First Amendment was carefully discussed. The first is by a House Judiciary Committee; the second is by a Senate Judiciary Committee:

1, 2, 3 "What is an 'establishment of religion'? It must have a creed defining what a man must believe; it must have rites and ordinances which believers must observe; it must have ministers of defined qualifications to teach the doctrines and administer the rites; it must have tests for the submissive and penalties for the nonconformist. There never was an established religion without all these . . . Had the people, during the Revolution, had a suspicion of any attempt to war against Christianity, that Revolution would have been strangled in its cradle. At the time of the adoption of the Constitution and the Amendments, the universal sentiment was that Christianity should be encouraged, [but] not any one sect [denomination]. Any attempt to level and discard all religion would have been viewed with universal indignation . . . It [religion] must be considered as the foundation on which the whole structure rests . . . In this age, there can be no substitute for Christianity; that, in its general principles, is the great conservative element on which we must rely for the purity and permanence of free institutions. That was the religion of the founders of the republic, and they expected it to remain the religion of their descendents."—*The Reports of Committees of the House of Representatives Made During the First Session of the Thirty-third Congress (published 1854), pp. 1, 6, 8-9*.

1, 2, 3 "The clause speaks of an 'establishment of religion.' What is meant by that expression? It referred, without doubt, to that establishment which existed in the mother-country [England] . . . [which was an] endowment, at the public expense, in exclusion of or in preference to

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any other, by giving to its members exclusive political rights, and by compelling the attendance of those who rejected its communion upon its worship or religious observances. These three particulars constituted that union of church and state of which our ancestors were so justly jealous, and against which they so widely and carefully provided . . . They [the Founders] intended, by this Amendment, to prohibit 'an establishment of religion' such as the English Church presented, or anything like it. But they had no fear or jealousy of religion itself, nor did they wish to see us an irreligious people . . . They did not intend to spread over all the public authorities and the whole public action of the nation the dead and revolting spectacle of atheistical apathy."—*The Reports of Committees of the Senate of the United States for the Second Session of the Thirty-second Congress, 1852-1853 (published 1853), pp. 104.*

Next, we turn our attention to a more basic fact: The First Amendment grants to every man the right to individual freedom in the selection and practice of his own religion, free from the interference of governmental powers. Here is what the Founders had in mind:

1 "No power over the freedom of religion . . . is delegated to the United States by the Constitution."—*Thomas Jefferson, Kentucky Resolution, 1798, quoted in Documents of American History (1948), p. 179.*

1 "In matters of religion, I have considered that its free exercise is placed by the Constitution independent of the powers of general government."—*Thomas Jefferson, Second Inaugural Address, March 4, 1805; quoted in Messages and Papers of the Presidents, Vol. 1, p. 379.*

1 "Our excellent Constitution . . . has not placed our religious rights under the power of any public functionary."—*Thomas Jefferson, Letter to the Methodist Episcopal Church, December 9, 1808.*

1 "As neither reason requires nor religion permits the contrary, every man living in or out of a state of civil society has a right peaceably and quietly to worship God according to the dictates of his own conscience . . . The right to freedom is the gift of God."—*Samuel Adams, "The Rights of the Colonists as Men," November 20, 1772.*

The Founding Fathers of our nation recognized the utter importance of personal religious freedom, free from governmental interference, in order to ensure the welfare of the entire nation. Sincere Christians are hardworking and productive citizens.

1, 3 "Statesmen, my dear Sirs, you may plan and speculate for liberty, but it is Religion and Morality alone which can establish the Principles upon which Freedom can securely stand. The only foundation of a free Constitution is pure Virtue, and this cannot be inspired into our People in a greater Measure, than they have it now. They may change their Rulers and the forms of Government, but they will not obtain a lasting liberty."—*John Adams, June 21, 1776. The Works of John Adams, Vol. 9, p. 401. [John Adams was the second president of the United States (1797-1801).]*

1, 3 "Pursuing with peace and loyal minds, their

sober, serious and religious intentions of godly edifying themselves and one another in the holy Christian faith, . . . a most flourishing civil state may stand and best be maintained . . . with a full liberty in religious concerns."—*John Adams, quoted in 1663 Charter for Rhode Island.*

1, 3 "The general principles on which the [founding] fathers achieved independence were . . . the general principles of Christianity . . . I will avow that I then believed, and now believe, that those general principles of Christianity are as eternal and immutable as the existence and attributes of God; and those principles of liberty are as unalterable as human nature."—*John Adams, quoted in William & Mary Rules (1792), p. 6.*

1, 3 "Love to God and love to man is the substance of religion; when these prevail, civil laws will have little to do."—*John Witherspoon, Works (1815), Vol. 4, p. 265. [He was a signer of the Declaration of Independence.]*

1, 3 "All the miseries and evils which men suffer from vice, crime, ambition, injustice, oppression, slavery and war, proceed from their despising or neglecting the precepts contained in the Bible."—*Noah Webster, History, p. 339.*

1, 3 "Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other."—*John Adams, Works, Vol. 9, p. 229.*

1, 3 "The rights essential to happiness . . . We claim them from a higher source—from the King of kings and Lord of all the earth."—*John Dickinson, Political Writings of Dickinson, Vol. 1, p. 111. [He was a signer of the Constitution and governor of Pennsylvania.]*

1, 3 "If there is anything in my thoughts or style to commend, the credit is due to my parents for instilling in me an early love of the Scriptures. If we abide by the principles taught in the Bible, our country will go on prospering and to prosper . . . But if we and our posterity neglect religious instruction; violate the rules of eternal justice, trifle with the injunctions of morality . . . no man can tell how sudden a catastrophe may overwhelm us and bury all our glory in profound obscurity."—*Daniel Webster, quoted in B.F. Morris, Christian Life and character of the Civil Institutions of the U.S., p. 270. [He is recognized as one of the five greatest senators in U.S. history.]*

1, 3 "Suppose a nation in some distant region should take the Bible for their only law Book, and every member should regulate his conduct by the precepts there exhibited! Every member would be obliged in conscience, to temperance, frugality, and industry; to justice, kindness, and charity towards his fellow men; and to piety, love, and reverence toward Almighty God . . . What a Eutopia, what a Paradise would this region be!"—*John Adams, Diary, February 22, 1756.*

1, 3 "Have you ever found in history, one single example of a Nation thoroughly corrupted that was afterwards restored to Virtue? . . . And without virtue, there can be no political liberty."—*John Adams, Letter to Thomas Jefferson, quoted in Dialogue (of their Correspondence), pp. 330-331.*

1, 3 "If you accept freedom, you've got to have principles about the responsibility. You can't do this without a Biblical foundation. Your Founding Fathers came over with that. They came over with the doctrines of the New Testa-

4 ment as well as the Old. They looked after one another, not only as a matter of necessity, but as a matter of duty to their God. There is no other country in the world which started that way.”—*Margaret Thatcher, New York City interview, February 5, 1996.*

[Thomas Paine sent a preliminary copy of his book, *Age of Reason*, in which he attacked Christianity, to Benjamin Franklin. Here was Franklin’s reply:]

3 “I have read your manuscript with some attention. By the argument it contains against a particular Providence, . . . you strike at the foundations of all religion. For without the belief of a Providence that takes cognizance of, guards, and guides, and may favor particular persons, there is no motive to worship a Deity, to fear His displeasure, or to pray for His protection. I will not enter into any discussion of your principles, though you seem to desire it. At present, I shall only give you my opinion that . . . the consequence of printing this piece will be a great deal of odium drawn upon yourself, mischief to you, and no benefit to others. He that spits into the wind, spits in his own face. But were you to succeed, do you imagine any good would be done by it?”—*Benjamin Franklin, quoted in Laws of the College of New Jersey (1794), pp. 28-29.*

3 “The Christian religion is, above all the religions that ever prevailed or existed in ancient or modern times, the religion of wisdom, virtue, equity and humanity.”—*Benjamin Franklin, quoted in Discourse at Dartmouth College (1853), p. 33.*

3 “Rendering thanks to my Creator for my existence and station among His works, for my birth in a country enlightened by the Gospel and enjoying freedom.”—*John Dickinson (signer of the Constitution), at the time of his death.*

3 “In the beginning of the contest with Great Britain, when we were sensible of danger, we had daily prayer in this room for the Divine protection. Our prayers, Sir, were heard, and they were graciously answered . . . I therefore beg leave to move—that henceforth prayers imploring the assistance of Heaven, and its blessings on our deliberations, be held in this Assembly every morning before we proceed to business.”—*Benjamin Franklin, June 28, 1787, quoted in Papers of James Madison (1840), Vol. 2, pp. 284-286.*

In order to properly understand the concern of the Founding Fathers, we need to learn the threat to religious freedom they fled from when they came to America. In England, unless they submitted to certain requirements of the State Church, they were persecuted, fined, and imprisoned by government police. The following statement, from a book deeply concerned about safeguarding our religious freedoms, will help us understand this:

“At the opening of the seventeenth century the monarch who had just ascended the throne of England declared his determination to make the Puritans ‘conform, or . . . harry them out of the land, or else worse’ (*George Bancroft, History of the United States of America, pt. 1,*

ch. 12, par. 6). Hunted, persecuted, and imprisoned, they could discern in the future no promise of better days, and many yielded to the conviction that for such as would serve God according to the dictates of their conscience, ‘England was ceasing forever to be a habitable place’ (*J.G. Palfrey, History of New England, ch. 3, par. 43*) . . .

“The fundamental principle of Roger Williams’s colony was ‘that every man should have liberty to worship God according to the light of his own conscience’ (*Ibid., vol. 5, p. 354*). His little state, Rhode Island, became the asylum of the oppressed, and it increased and prospered until its foundation principles—civil and religious liberties—became the cornerstones of the American Republic.

“In that grand old document which our forefathers set forth as their bill of rights—the *Declaration of Independence*—they declared: ‘We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness.’ And the *Constitution* guarantees, in the most explicit terms, the inviolability of conscience: ‘No religious test shall ever be required as a qualification to any office of public trust under the United States.’ ‘Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.’

“ ‘The framers of the Constitution recognized the eternal principle that man’s relation with his God is above human legislation, and his rights of conscience inalienable. Reasoning was not necessary to establish this truth; we are conscious of it in our own bosoms. It is this consciousness which, in defiance of human laws, has sustained so many martyrs in tortures and flames. They felt that their duty to God was superior to human enactments, and that man could exercise no authority over their consciences. It is an inborn principle which nothing can eradicate’ (*Congressional documents, Serial No. 200, Document No. 271*).”—*Great Controversy, 290, 295-296.*

We dare never let it occur that any of “the leading churches of the United States, uniting upon such points of doctrine as are held by them in common, shall influence the state to enforce their decrees and to sustain their institutions,” for then “the infliction of civil penalties upon dissenters will inevitably result.” No churches should be permitted to “seek the aid of the civil power for the enforcement of their dogmas” (*Great Controversy, 445*).

“You whose high prerogative it is to invest with office and authority, or to withhold them, and in whose power it is to save or destroy your country, consider well the important trust which God has put into your hands. Let not your children curse you for giving up those rights which your fathers delivered to you.”—*Matthias Burnet, “Warning to our Citizens,” Address given at Hartford, CT (May 12, 1803).*