

Good afternoon, Mr. Chairman:

My name is Vicki Chekan. I am a US citizen living by choice in the State of Alaska, a former homeschooling parent, and part of the primary and secondary schools of ASD for the past decade. I am testifying on behalf of myself in support of SJR9.

The issue set before this assembled First Session of the 28th Legislature is to deeply ponder the implications of a change to the Constitution of the State of Alaska (CotSoA), and to decide whether to put to a vote, by the people they represent, a constitutional amendment regarding the fundamental basis that delineates the use of public funding toward education. This is by no means a trivial contemplation and should be considered with the most humble and sensitive approach, understanding from where the original language was derived and examining the historical interpretation against universal principles, not the "flavor of the day" controversy. I trust that each of you, as public servants impacting future generations into perpetuity, will not be swept by the current 'special interests' of personal benefit but rather base your vote on solid, factual information provided from many sources, seeing this from a purely objective vantage.

The following history of religion intended in the education sphere, along with excerpts from the Alaska Constitutional Convention, can provide context for your determination; it is incumbent upon you to seek the Truthful basis upon which your ultimate vote is made.

Excerpted from W. Cleon Skousen's *The Making of America: The Substance and Meaning of the Constitution* (pp 675-688, Appendix I), the First Amendment's origin is described from the perspectives of ideological intent and practical application. Quoting the opening section (my emphasis underlined):

"This provision [that 'Congress shall make NO law respecting an establishment of religion, or prohibiting the free exercise thereof.'] guaranteed to all Americans the RIGHT to enjoy the free exercise of the religion of their choice without the government giving any preference to one "establishment" or denomination over another.

There was some concern among the Founders lest this prohibition give the impression that the government was hostile to religion. They wanted it clearly understood that the universal, self-evident truths of religion were fundamental to the whole structure of the American system. This is such an important aspect of the nation's original culture that a comprehensive discussion of religion from the Founder's perspective might prove helpful."

Alaskan Americans of the 20th and 21st centuries have a hard time fathoming "the supreme importance which the Founding Fathers originally attached to the role of religion... fail to realize that the Founders felt the role of religion would be as important in our own day as it was in theirs."

In the Northwest Ordinance passed in 1787, the same body of Congress that approved the original US Constitution “emphasized the essential need to teach religion and morality in the schools. Here is the way they said it:

‘Article 3: Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.’

Notice that formal education was to include among its teaching responsibilities these three important subjects:

1. *Religion*, which might be defined as ‘a fundamental system of beliefs concerning man’s origin and relationship to the Creator, the cosmic universe, and his relationship with his fellowmen.’
2. *Morality*, which may be described as ‘a standard of behavior distinguishing right from wrong.’
3. *Knowledge*, which is ‘an intellectual awareness and understanding of established facts relating to any field of human experience or inquiry, i.e. history, geography, science, etc.”

Having virtually no reference to atheism in the American colonies, which were established in large part to freely worship God as Creator, religion was a given, a postulate (the challenge being that no one religion dominate as “established” to the suppression of all others, this being the essentiality of the First Amendment – that’s how important this liberty was to the Founding Fathers). Therefore, in supporting ‘equality’ to all people after establishing “that ‘religion’ is the foundation of morality and that both are essential to ‘good government and the happiness of mankind,’ the Founders then set about to ... make the teaching of religion a unifying cultural adhesive rather than a divisive apparatus.

There is more, much more, that you can learn if you choose to read the full section, but the intent was clearly NOT to remove religion, but to have no one religious doctrine dominate over all of the people. However, the very political power that the Founding Fathers sought to contain in enumerated powers, unleashed on the people over the course of a century, when schooling for literacy was turned into scientific management of society. In order to do this, control was necessary, and that control was put in place through prescription of public funding.

In the 1870s, a transition time between Southern reconstruction policy to enfranchise the recently emancipated African-Americans, coupled with “Americanizing” immigrants (especially Irish and German Catholics) for cultural homogeneity, and the need for a uniformly literate workforce for the impending Industrial Age, advancement of public schools put the control in the hands of government.

"President Ulysses S. Grant (1869-1877) in a speech in 1875 to a veteran's meeting, called for a Constitutional amendment that would mandate free public schools and prohibit the use of public money for sectarian schools. Grant laid out his agenda for "good common school education." He attacked government support for "sectarian schools" run by religious organizations, and called for the defense of public education "unmixed with sectarian, pagan or atheistical dogmas." Grant declared that "Church and State" should be "forever separate." Religion, he said, should be left to families, churches, and private schools devoid of public funds (DeForrest. 2003).

After Grant's speech Republican Congressman James G. Blaine (1830-1893) proposed the amendment to the federal Constitution. The proposed amendment passed by a vote of 180 to 7 in the House of Representatives, but failed by four votes to achieve the necessary two-thirds vote in the United States Senate (pre-Seventeenth Amendment when State Legislatures appointed US Senators). It never became law. The proposed text was:

"No State shall make any law respecting an establishment of religion, or prohibiting the free exercise thereof; and no money raised by taxation in any State for the support of public schools, or derived from any public fund therefor, nor any public lands devoted thereto, shall ever be under the control of any religious sect; nor shall any money so raised or lands so devoted be divided between religious sects or denominations."

Supporters of the proposal then turned their attention to state legislatures, where their efforts were met with far greater success: Eventually, all but 11 states (Arkansas, Connecticut, Louisiana, Maine, Maryland, New Jersey, North Carolina, Rhode Island, Tennessee, Vermont, and West Virginia) passed laws that meet the general criteria for designation as "Blaine Amendments," in that they ban the use of public funds to support sectarian private schools. In some states the laws were included in constitutions drafted by newly formed states concomitant with their admission to the Union and are thus technically not "amendments"." [Wikipedia, Blaine Amendment]

Post World Wars I & II brought additional belief in the need to "nationalize" and "patriotize" citizens, especially of the newer immigrant populations (Italians, Greeks, Hungarians, Poles, and Slavic descents in addition to British, Irish and Germans), leading to the Pledge of Allegiance (1942) and other "established indoctrinations" of governmental duty that were brought to the people through public schooling of young, impressionable minds across America by older generations seeking common ground for a unifying culture created by the new industrial and centralized society. In magnifying the focus of "separation of church and state" during these periods (1870s-1940s), morality was subjected to relative interpretation according to challenged laws decided by judiciaries and courts across the country rather than adhering to absolute Truth that these immigrants' religions espoused. In so doing, government was vilifying religion into the divisive apparatus opposed by the Founders rather than allowing the teaching of religion to be a unifying cultural adhesive.

Which brings us to the Alaska Constitutional Convention, where phrases from the 'Blaine Amendment' (as it has been dubbed) were debated for inclusion in the founding document of our great state at a time when the fervor of nationalism and patriotism (both collective in nature) dominated over the liberty of the individual to determine his/her life, liberty and pursuit of happiness, especially in their role of parental hegemony. The sentence to be deleted was brought to the convention floor to be debated, being deliberated and ultimately voted down. It is in closely examining these deliberations in light of the Founders' liberty-minded intentions that I would direct attention.

On the afternoon of Day 48, a motion made by Barrie White, to stricken the sentence from the section, was reinforced by Vic Fischer with the following oration:

V FISCHER: "I would just like to add, Mr. President, that while this Commissioner Dafoe points out education is an important field, I do not feel that when it comes to an appropriation of public funds it should receive any special, either more restrictive or more favored treatment. As Mr. White pointed out, the general stipulation is that funds be appropriated only for public purpose. Now it seems to me that the definition of public purpose must be made during every age in view of the conditions prevailing at that time. I think that has been one of the strong points of the Federal Constitution. The fact that it has left itself open to that kind of interpretation and, therefore, it seems that if we give favored treatment or discriminatory treatment to this education section, what are we going to do when it comes to health, welfare and just anything else that may come out. I think the public purpose provision should be the only guidance when it comes to appropriating public funds."

Skipping the portion of the Style and Drafting Committee to move the sentence to a new section, the following is the conclusion of argument against and for the deletion:

"W. O. SMITH: Mr. President, I merely wanted to point out that this problem has arisen in a good many of the States. It has arisen in connection with the education, and therefore I feel that this provision should remain in the section under education.

JACK COGHILL: Mr. White brought up the thought that the Federal Constitution was all-inclusive. However, it might be well to remember that during the years that they were writing the Federal Constitution they left all educational matters to the individual states, and the purpose of leaving these educational matters to them was because of the trouble they were having at that time between different groups and different communities and different states being quite well controlled by different churches of one sort and

another, such as the Quakers in Penn State and down in Virginia and over in Rhode Island and through that area. I feel that this should stay in the article, although my amendment did not ride, I am going to vote for it because I feel at least we have a certain provision for the direct benefit of tax dollars. I might, if I may, Mr. President, read the Supreme Court's decision of 1947 of the Emerson case, and I will not read the whole section but just in one part. It says, "No tax in any amount, large or small, can be levied to support any religious activities or institution whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither state nor federal government can openly or secretly participate in the affairs of any religious organizations or groups and vice versa."

BARRIE WHITE: If I may close briefly. I am not for or against bus transportation to certain institutions. I am not for or against hot lunches to certain institutions. I again think we would be much better advised to stick to the broad outlines. In partial reply to Mr. Coghill, I might mention that 100 years from now the state might wish to get involved in some sort of G.I. Bill of its own, following another war. I would not be in favor of it now, but 100 years from now I might. Why not leave ourselves open?

FRANK BARR: Point of information. I seem to remember when we first started out there was a sheet of paper on our desk to outline certain things that was mandatory to place in our constitution to conform with the Federal Constitution and with our accepted principles of American government. I will ask Mr. Armstrong, I believe, wasn't this practically the same wording in one of those paragraphs and did it not specifically mention schools? Mr. White has put in his amendment because he said the other phrasing in the Finance Committee report would take care of it. That mentioned public funds should be used for public purposes, but aren't we required to state in our constitution that public funds should not be used for private schools?

R. ROLAND ARMSTRONG: No sir, not according to the House Enabling Act that we have used as a guide. On page 3, line 14, it just makes the general provision that for the establishment and the maintenance of a system of public schools which shall be open to all children of the state and free from sectarian control. That is the only thing, but I might add that I believe that there are 39 states that have added some type of safeguard in their constitutions directly in connection with education, and I believe every new constitution that has come out has held to some provision of this type, practically in every case they have been written in at this point, so I don't know why we should be afraid to follow that pattern. I don't think it is unusual to keep it here. I think it is healthy to keep it here, and I believe this is where it belongs."

Several points are to be taken from this exchange. One is that Mr. Coghill is correct in the federal government leaving the decision to the States, but for different reasons than stated. With all due respect, at the time of the country's formation, the States were their own free and sovereign republics, given the liberty to govern under the language of the Tenth Amendment. While "forever encouraged" by the federal government, State education was out of its enumerated tasks (as we should seek to return it in the near future). The then-recent court decision of *Everson v. Board of Education* (1947) Mr. Coghill refers to was the first Supreme Court case that incorporated the Establishment Clause of the First Amendment as binding upon State law through the Due Process Clause of the Fourteenth Amendment – prior to this decision the First Amendment's language imposed limits on the federal government, while many States continued to grant certain religious denominations legislative or effective privileges, apparently aligned with their respective constitutions but in conflict with the liberty guaranteed by the First Amendment. Both of these taken together would indicate that we, the People of Alaska, have the right to scrutinize the laws by which we are governed through our constitution from time to time to ensure they retain our God-given rights of life, liberty and pursuit of happiness guaranteed by the US Constitution. We should not be denied the opportunity to examine, and put to a vote, those that are of questionable origin and intent. Mr. White's summary of wishing to keep the language in broad strokes rather than pointed, discriminatory language is admirable in not disenfranchising a significant number of the people who are the contributors to the local, and a portion of the state, treasuries which fund the education system. Education, whether provided publicly or privately, contributes to the "public purpose", the aim of educating the Alaskan population and therefore, as Mr. Fischer noted: "...that if we give favored treatment or discriminatory treatment to this education section, what are we going to do when it comes to health, welfare and just anything else that may come out. I think the public purpose provision should be the only guidance when it comes to appropriating public funds." Lastly, the other three gentlemen's comments regarding adding the language because other states have added similar clauses to their constitutions is far from sufficient justification for keeping it in our constitution; jumping on a bandwagon seems quite unlike the Alaska I've come to know. Deciding something based on merit and fact is far more credible and justifiable.

In closing, I hope you are in alignment with Truth and Justice as they pertain to providing equal opportunity for ALL of the people of Alaska – and to allow them to determine the future of their government and their lives. You are representatives of the people and, as such, must do their will as stated in Article 1, Section 2 of the Declaration of Rights in the CoSoA: "All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole." I wish you peace and wisdom in your contemplation of this issue. Thank you for the opportunity to testify.

[Other sources include John Taylor Gattos's *The Underground History of American Education* and www.alaska.edu/creating_alaska/constitutional-convention/day-48]

*THE BILL OF RIGHTS
AND
THE FIRST AMENDMENT*

Without the promise of a Bill of Rights, several of the large states would have remained outside of the Union. It was only when George Washington and others invited the states to accept the Constitution and make suggestions for additional improvements, including a Bill of Rights, that several of the states withdrew their opposition and ratified the Constitution.

As we have already pointed out, a total of 189 suggested amendments were submitted to Congress. James Madison boiled these down to 17, but the Congress approved only 12 of them. When these were sent to the states they ratified 10 of them, effective December 15, 1791.

Why the Founders Had Not Considered a Bill of Rights Necessary

Alexander Hamilton and others gave three reasons why a Bill of Rights was not necessary. (See *Federalist Papers*, No. 84.)

1. The Constitution is a declaration of rights from beginning to end. Nearly 300 rights are pinpointed in the document itself, as this study has demonstrated.
2. Under our limited form of government, with only twenty specific enumerated powers granted to the federal government, there is absolutely no authority included to regulate or invade a citizen's freedom of religion, freedom of press, freedom to assemble, or freedom to petition. Neither is there any federal authority granted to register or confiscate firearms, invade the privacy of citizens, quarter troops in the homes of the people, deprive a citizen of his common-law rights when charged with a crime, impose cruel or unusual punishment, or deprive citizens of any powers not specifically delegated to the government.
3. In addition, as Hamilton pointed out, there was danger in making a list of individual rights because under the law any rights accidentally left off the list might be presumed to be forfeited.

In spite of all this, however, the people insisted on a Bill of Rights. They feared, from bitter experience in the past, that the courts or government executives might somehow twist the meanings of certain words in the Constitution so as to deprive them of their rights, precisely as King George and his officers had done. This is why George Mason, a leading patriot from Virginia, declared that he

would rather have his right hand chopped off than sign a Constitution without a Bill of Rights.

Two Unique Features of the Bill of Rights

Today it is somewhat difficult to clearly perceive the Bill of Rights as the Founders gave them to us, because of several debilitating decisions of the Supreme Court in recent years. Nevertheless, the original intent of the Founders needs to be emphasized so that the Bill of Rights might be understood in terms of their original design.

The first feature of the Bill of Rights is the rather amazing fact that it is not a declaration of rights at all. It is a declaration of prohibitions against the federal government. In the minds of the Founders, usurpation and intervention by the federal government in the affairs of the states and the people were the most ominous threats to the happiness and welfare of the American society. Therefore, the Bill of Rights opens with a bold prohibition against federal intervention in specific areas by stating, "Congress shall make NO law ..."

The second unique feature is the repeated declaration that the Founders did not want to have the federal government serve as the watchdog over the states' responsibility to protect the rights of the people. If a state failed to function in protecting the rights of some of its citizens, the Founders wanted the pressure to build up, thus forcing correction within the confines of the state without any interference from the federal government whatsoever.

James Madison learned this lesson the hard way when he tried to include a provision in the Bill of Rights which said: "No state shall violate the equal rights of conscience, or

*the freedom of the press, or the trial by jury in criminal cases."*¹ Obviously, this was designed to authorize the federal government to intervene if a state failed to perform its duty. The Congress turned it down flat. They wanted the federal government to stay out of the business of the states. If the people found their state derelict they were to correct it on the state level and not come running to Washington or the federal courts to have it corrected. Whether they were right or wrong may be debated, but that was their position.

Purpose of the Bill of Rights

The real purpose of the Bill of Rights was set forth in a preamble which is seldom included in texts of the Constitution

anymore. Here is why the Founders said they were including the Bill of Rights as a group of amendments to the Constitution:

"The Conventions of a number of states, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses be added; and as extending the ground of public confidence in the government, will best insure the beneficent ends of its institution, [be it] resolved...."²

Then follows the text of the Bill of Rights. It is noteworthy that the Founders were trying to help the courts avoid any "misconstruction" and also add certain "restrictive clauses" to prevent government arrogance and abuse.

PROVISION

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From the First Amendment

Congress shall make NO law respecting an establishment of religion, or prohibiting the free exercise thereof.

This provision guaranteed to all Americans the RIGHT to enjoy the free exercise of the religion of their choice without the government giving any preference to one "establishment" or denomination over another.

There was some concern among the Founders lest this prohibition give the impression that the government was hostile to religion. They wanted it clearly understood that the universal, self-evident truths of religion were fundamental to the whole structure of the American system. This is such an important aspect of

the nation's original culture that a comprehensive discussion of religion from the Founders' perspective might prove helpful.

The Role of Religion in the Founding Fathers' Constitutional Formula

Americans of the twentieth century often fail to realize the supreme importance which the Founding Fathers originally attached to the role of religion in the unique experiment which they hoped would emerge as the first civilization of a free people in modern times. Many

Americans also fail to realize that the Founders felt the role of religion would be as important in our own day as it was in theirs.

In 1787, the very year the Constitution was written by the Convention and approved by Congress, that same body of Congress passed the famous Northwest Ordinance. In it they outlawed slavery in the Northwest Territory. They also enunciated the basic rights of citizens in language similar to that which was later incorporated in the Bill of Rights. And they emphasized the essential need to teach religion and morality in the schools. Here is the way they said it:

"Article 3: Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."³

Notice that formal education was to include among its teaching responsibilities these three important subjects:

1. *Religion*, which might be defined as "a fundamental system of beliefs concerning man's origin and relationship to the Creator, the cosmic universe, and his relationship with his fellowmen."
2. *Morality*, which may be described as "a standard of behavior distinguishing right from wrong."
3. *Knowledge*, which is "an intellectual awareness and understanding of established facts relating to any field of human experience or inquiry, i.e., history, geography, science, etc."⁴

We also notice that "religion and morality" were not required by the Founders as merely an intellectual exercise, but they positively declared their conviction that these were essential ingredients needed for "good government and the happiness of mankind."

Washington Describes the Founders' Position

The position set forth in the Northwest Ordinance was reemphasized by President George Washington in his Farewell Address. He wrote:

"Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports....

"And let us with caution indulge the supposition that morality can be maintained without religion.... Reason and experience both forbid us to expect that national morality can prevail to the exclusion of religious principle.

"It is substantially true that virtue or morality is a necessary spring of popular government."⁵

The Teaching of Religion in Schools Restricted to Universal Fundamentals

Having established that "religion" is the foundation of morality and that both are essential to "good government and the happiness of mankind," the Founders then set about to exclude the creeds and biases or dissensions of individual denominations so as to make the teaching of religion a unifying cultural adhesive rather than a divisive apparatus. Jefferson wrote a bill for the "Establishing of Elementary Schools" in Virginia and made this point clear by stating:

"No religious reading, instruction or exercise shall be prescribed or practiced inconsistent with the tenets of any religious sect or denomination."⁶

Obviously, under such restrictions the only religious tenets to be taught in public schools would have to be those which were universally accepted by all faiths and completely fundamental to their premises.

Franklin Describes the Five Fundamentals of "All Sound Religions"

Several of the Founders have left us with a description of their basic religious beliefs, and Benjamin Franklin summarized those which he felt were the "fundamental points in all sound religion." This is the way he said it in a letter to Ezra Stiles, president of Yale University:

"Here is my creed. I believe in one God, the Creator of the universe. That he governs it by his Providence. That he ought to be worshipped. That the most acceptable service we render to him is in doing good to his other children. That the soul of man is immortal, and will be treated with justice in another life respecting its conduct in this. These I take to be the fundamental points in all sound religion."⁷

The "Fundamental Points" to Be Taught in the Schools

The five points of fundamental religious belief which are to be found in all of the principal religions of the world are those expressed or implied in Franklin's statement:

1. Recognition and worship of a Creator who made all things.
2. That the Creator has revealed a moral code of behavior for happy living which distinguishes right from wrong.
3. That the Creator holds mankind responsible for the way they treat each other.
4. That all mankind live beyond this life.
5. That in the next life individuals are judged for their conduct in this one.

All five of these tenets run through practically all of the Founders' writings. These are the beliefs which the Founders sometimes referred to as the "religion of

America," and they felt these fundamentals were so important in providing "good government and the happiness of mankind" that they wanted them taught in the public schools along with morality and knowledge.

Statements of the Founders Concerning These Principles

Samuel Adams said these basic beliefs which constitute "the religion of America [are] the religion of all mankind."⁸ In other words, these fundamental beliefs belong to all world faiths and could therefore be taught without being offensive to any "sect or denomination," as indicated in the Virginia bill establishing elementary schools.

John Adams called these tenets the "general principles" on which the American civilization had been founded.⁹

Thomas Jefferson called these basic beliefs the principles "in which God has united us all."¹⁰

From these statements it is obvious how significantly the Founders looked upon the fundamental precepts of religion and morality as the cornerstones of a free government. This gives additional importance to the warning of Washington, previously mentioned, when he said: "Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports.... Who that is a sincere friend to it can look with indifference upon attempts to shake the foundation of the fabric?"¹¹

Washington issued this solemn warning because in France, shortly before Washington wrote his Farewell Address (1796), the promoters of atheism and amorality had seized control and turned the French Revolution into a shocking bloodbath of wild excesses and violence. Washington never wanted anything like

that to happen in the United States. Therefore he had said: "In vain would that man claim the tribute of patriotism who should labor to subvert these great pillars of human happiness [religion and morality]." ¹²

Alexis de Tocqueville Discovers the Importance of Religion in America

When Alexis de Tocqueville visited the United States in 1831 he became so impressed with what he saw that he went home and wrote *Democracy in America*, one of the most definitive studies on the American culture and constitutional system that had been published up to that time. Concerning religion in America, de Tocqueville said:

"On my arrival in the United States the religious aspect of the country was the first thing that struck my attention; and the longer I stayed there, the more I perceived the great political consequences resulting from this new state of things." ¹³

He described the situation as follows:

"Religion in America takes no direct part in the government of society, but it must be regarded as the first of their political institutions; . . . I do not know whether all Americans have a sincere faith in their religion—for who can search the human heart?—but I am certain that they hold it to be indispensable to the maintenance of republican institutions. This opinion is not peculiar to a class of citizens or to a party, but it belongs to the whole nation and to every rank of society." ¹⁴

European Philosophers Turned Out to Be Wrong

In Europe it had been popular to teach that religion and liberty were inimical to each other. De Tocqueville saw the oppo-

site happening in America. He wrote:

"The philosophers of the eighteenth century explained in a very simple manner the gradual decay of religious faith. Religious zeal, said they, must necessarily fail the more generally liberty is established and knowledge diffused. Unfortunately the facts by no means accord with their theory. There are certain populations in Europe whose unbelief is only equaled by their ignorance and debasement; while in America, one of the freest and most enlightened nations in the world, the people fulfill with fervor all the outward duties of religion." ¹⁵

De Tocqueville Describes the Role of Religion in the Schools

De Tocqueville found that the schools, especially in New England, incorporated the basic tenets of religion right along with history and political science in order to prepare the student for adult life. He wrote:

"In New England every citizen receives the elementary notions of human knowledge; he is taught, moreover, the doctrines and the evidences of his religion, the history of his country, and the leading features of the Constitution. In the states of Connecticut and Massachusetts, it is extremely rare to find a man imperfectly acquainted with all these things, and a person wholly ignorant of them is a sort of phenomenon." ¹⁶

De Tocqueville Describes the Role of the American Clergy

Alexis de Tocqueville saw a unique quality of cohesive strength emanating from the clergy of the various churches in America. After noting that all the clergy seemed anxious to maintain "separation of church and state," he nevertheless ob-

served that collectively they had a great influence on the morals and customs of public life. This indirectly reflected itself in formulating laws and, ultimately, in fixing the moral and political climate of the American commonwealth. As a result, he wrote:

"This led me to examine more attentively than I had hitherto done the station which the American clergy occupy in political society. I learned with surprise that they filled no public appointments; I did not see one of them in the administration, and they are not even represented in the legislative assemblies."¹⁷

How different this was from Europe, where the clergy belonged to a national church, subsidized by the government. He wrote:

"The unbelievers of Europe attack the Christians as their *political* opponents rather than as their religious adversaries; they hate the Christian religion as the opinion of a [political] party much more than as an error of belief; and they reject the clergy less because they are the representatives of the Deity than because they are the allies of government."¹⁸

In America, he noted, the clergy remain politically separated from the government but nevertheless provide a moral stability among the people which permits the government to prosper. In other words, there is a separation of church and state but *not a separation of religion and state.*

The Clergy Fuel the Flame of Freedom, Stress Morality, and Alert the Citizenry to Dangerous Trends

The role of the churches to perpetuate the social and political culture of the United States provoked the following comment from de Tocqueville:

"I have known of societies formed by Americans to send out ministers of the Gospel into the new Western states, to found schools and churches there, lest religion should be allowed to die away in those remote settlements, and the rising states be less fitted to enjoy free institutions than the people from whom they came."¹⁹

De Tocqueville discovered that while clergymen felt it would be demeaning to their profession to become involved in partisan politics, they nevertheless believed implicitly in their duty to keep religious principles and moral values flowing out to the people as the best safeguard for America's freedom and political security.

In one of de Tocqueville's most frequently quoted passages, he wrote:

"I sought for the greatness and genius of America in her commodious harbors and her ample rivers, and it was not there; in her fertile fields and boundless prairies, and it was not there; in her rich mines and her vast world commerce, and it was not there. Not until I went to the churches of America and heard her pulpits aflame with righteousness did I understand the secret of her genius and power. America is great because she is good and if America ever ceases to be good, America will cease to be great."²⁰



The Founders' Campaign for Equality of All Religions

One of the most remarkable efforts of the American Founders was their attempt to do something no other nation had ever successfully achieved—provide legal equality for all religions, both Chris-

tian and non-Christian.

Jefferson and Madison were undoubtedly the foremost among the Founders in pushing through the first "freedom of religion" statutes in Virginia. Jefferson sought to disestablish the official church of Virginia in 1776, but this effort was not completely successful until ten years later.

Meanwhile, in 1784, Patrick Henry was so enthusiastic about strengthening the whole spectrum of Christian churches that he introduced a bill "Establishing a Provision for Teachers of the Christian Religion."

It was the intention of this bill to allow each taxpayer to designate "to what society of Christians" his money would go. The funds collected by this means were to make "provision for a minister or teacher of the Gospel...or the providing of places of divine worship [for that denomination], and to none other use whatever."²¹

Madison immediately reacted with his famous *Memorial and Remonstrances*, in which he proclaimed with the greatest possible energy the principle that the state government should not prefer one religion over another. Equality of religions was the desired goal. He wrote:

"Who does not see that the same authority which can establish Christianity, in exclusion of all other religions, may establish with the same ease any particular sect of Christians, in exclusion of all other sects? ... The bill violates that equality which ought to be the basis of every law."²²

Why the Founders Wanted the Federal Government Excluded from All Problems Relating to Religion and Churches

The Supreme Court has stated on nu-

merous occasions that, to most people, freedom of religion is the most precious of all the inalienable rights, next to life itself. When the United States was founded, there were many Americans who were not enjoying freedom of religion to the fullest possible extent. At least seven of the states had officially established religions or denominations at the time the Constitution was adopted. These included:

- Connecticut (Congregational Church)
- New Hampshire (Protestant faith)
- Delaware (Christian faith)
- New Jersey (Protestant faith)
- Maryland (Christian faith)
- South Carolina (Protestant faith)
- Massachusetts (Congregational Church)²³

Under these circumstances the Founders felt it would have been catastrophic, and might have precipitated civil strife, if the federal government had tried to establish a national policy on religion or disestablish the denominations which the states had adopted. Nevertheless, the Founders who were examining this problem were anxious to eventually see complete freedom of all faiths and an equality of all religions, both Christian and non-Christian. How could this be accomplished without stirring up civil strife?

Justice Story Describes the Founders' Solution

In his famous *Commentaries on the Constitution*, Justice Joseph Story of the Supreme Court pointed out why the Founders, as well as the states themselves, felt the federal government should be absolutely excluded from any authority in the field of settling questions on religion. He explained:

"In some of the states, Episcopalians constituted the predominant sect; in others, Presbyterians; in others, Congrega-

tionalists; in others, Quakers; and in others again, there was a close numerical rivalry among contending sects. It was impossible that there should not arise perpetual strife and perpetual jealousy on the subject of ecclesiastical ascendancy, if the national government were left free to create a religious establishment. The only security was in extirpating the power. But this alone would have been an imperfect security, if it had not been followed by a declaration of the right of the free exercise of religion, and a prohibition (as we have seen) of all religious tests. *Thus the whole power over the subject of religion is left exclusive to the state governments, to be acted upon according to their own sense of justice, and the state constitutions.*"²⁴

This is why the First Amendment of the Constitution provides that "Congress shall make NO law respecting an establishment of religion or prohibiting the free exercise thereof." (Emphasis added.)

Jefferson and Madison Emphasize the Intent of the Founders

It is clear from the writings of the Founders as well as the *Commentaries* of Justice Story that the First Amendment was designed to eliminate forever the interference of the federal government in any religious matters within the various states. As Madison stated during the Virginia ratifying convention: "There is not a shadow of right in the general government to intermeddle with religion. Its least interference with it would be a most flagrant usurpation."²⁵

Jefferson took an identical position when he wrote the Kentucky Resolutions of 1798: "It is true, as a general principle, ... that no power over the freedom of religion, freedom of speech, or freedom of the press, [is] delegated to the United States by the Constitution.... All lawful

powers respecting the same did of right remain, and were reserved to the states, or to the people."²⁶

The Supreme Court, As Well As Congress, Excluded from Jurisdiction over Religion

In the Kentucky Resolutions, Thomas Jefferson also made it clear that the federal judicial system was likewise prohibited from intermeddling with religious matters within the states. He wrote:

"Special provision has been made by one of the amendments to the Constitution, which expressly declares that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, ...' thereby guarding in the same sentence, and under the same words, the freedom of religion, of speech, and of the press, insomuch that whatever violates either throws down the sanctuary which covers the others; and that libels, falsehood, and defamation, equally with heresy and false religion, ARE WITHHELD FROM THE COGNIZANCE OF FEDERAL TRIBUNALS."²⁷

The "Wall" Between Church and the Federal State

When Thomas Jefferson was serving in the Virginia legislature, he introduced a bill to have a day of fasting and prayer; but when he became President, Jefferson said there was no authority in the federal government to proclaim religious holidays. In a letter to the Danbury Baptist Association dated January 1, 1802, he explained his position and said the Constitution had created "a wall of separation between Church and State."²⁸

In recent years the Supreme Court has used this metaphor as an excuse for med-

dling in the religious issues arising within the various states. As we shall see later, it has not only presumed to take jurisdiction in these disputes, but has actually forced the states to take the same hands-off position toward religious matters, even though this restriction originally applied only to the federal government. This obvious distortion of the original intent of Jefferson (when he used the metaphor of a "wall" separating church and state) becomes entirely apparent when the statements and actions of Jefferson are examined in their historical context.

It will be recalled that Jefferson and Madison were anxious that the states intervene in religious matters until there was equality among all religions and that all churches or religions assigned preferential treatment should be disestablished from such preferment. They further joined with the other Founders in expressing an anxiety that ALL religions be encouraged in order to promote the moral fiber and religious tone of the people. This, of course, would be impossible if there were an impenetrable "wall" between church and state on the state level. Jefferson's "wall" was obviously intended only for the federal government, and the Supreme Court application of this metaphor to the states has come under severe criticism.²⁹

Religious Problems Must Be Solved Within the Various States

In Thomas Jefferson's second inaugural address, he virtually signalled the states to press forward in settling their religious issues, since it was within their jurisdiction and not that of the federal government:

"In matters of religion, I have considered that its free exercise is placed by the Constitution independent of the powers

of the general government. I have therefore undertaken, on no occasion, to prescribe the religious exercises suited to it; but have left them as the Constitution found them, under the direction and discipline of State or Church authorities acknowledged by the several religious societies."³⁰

Jefferson, along with the other Founders, believed that it was within the power of the various states to eliminate those inequities which existed between the various faiths and then pursue a policy of encouraging religious institutions of all kinds, because it was in the public interest to use their influence to provide the moral stability needed for "good government and the happiness of mankind."³¹

Jefferson's resolution for disestablishing the Church of England in Virginia was not to set up a wall between the state and the church, but simply, as he explained it, for the purpose of "taking away the privilege and preeminence of one religious sect over another, and thereby [establishing] ...EQUAL...RIGHTS AMONG ALL."³²

Affirmative Programs to Encourage All Religions on the State Level

In view of the extremely inflexible and rigid position which the U.S. Supreme Court has taken in recent years concerning the raising up of a "wall" between state government and religion, it is remarkable how radically different the Founders' feelings about such matters were.

Take, for example, the Founders' approval of religious meetings in tax-supported public buildings. The Founders had no objection to using public buildings for religious purposes; that was even to be encouraged. The only question was

whether or not the facilities could be made available EQUALLY to all denominations desiring them. Notice how Jefferson reflected his deep satisfaction in the way the churches were using the local courthouse in Charlottesville, near Jefferson's home:

"In our village of Charlottesville, there is a good degree of religion, with a small spice only of fanaticism. We have four sects, but without either church or meeting-house. The court-house is the common temple, one Sunday in the month to each. Here, Episcopalian and Presbyterian, Methodist and Baptist, meet together, join in hymning their Maker, listen with attention and devotion to each others' preachers, and all mix in society with perfect harmony."³³

One cannot help asking the modern Supreme Court: Where is the wall of separation between church and state when the courthouse is approved for the common temple of all the religious sects of a village?

Of course, Jefferson would be the first to require some other arrangement if all of the churches could not be accommodated equally, but so long as they were operating equally and harmoniously together, it was looked upon as a commendable situation. The fact that they were utilizing a tax-supported public building was not even made an issue.

Jefferson Proposes Accommodations for Religious Instructions at a State School

Not only did the Congress of the Founders' day provide in the Northwest Ordinance that the basic tenets of religion and the fundamentals of morality should be taught in the public schools, but Jefferson proposed that the University of Virginia extend its facilities to the

various denominations so that each student could worship and study in the church of his choice. Jefferson wrote:

"Can the liberties of a nation be thought secure when we have removed [by eliminating religious instruction] their only firm basis—a conviction in the minds of the people that these liberties are...the gift of God? That they are not to be violated but with his wrath?"³⁴

To encourage religious studies by college students of different faiths, Jefferson proposed the following:

1. The responsibility for teaching "the proofs of the being of a God, the creator, preserver, and supreme ruler of the universe, the author of all the relations of morality, and of the laws and obligations these infer, will be within the province of the professor of ethics."³⁵
2. If the university faculty will also teach "the developments of these moral obligations, of those in which all sects agree, [together with] a knowledge of the languages, Hebrew, Greek, and Latin, a basis will be formed common to all sects."³⁶
3. Encourage "the different religious sections to establish, each for itself, a professorship of their own tenets, on the confines [campus] of the university, so near... that their students may attend the lectures there, and have the free use of our library, and every other accommodation we can give them; preserving, however, their independence of us and of each other."³⁷
4. Enable "students of the University to attend religious exercises with the professor of their particular sect, either in the rooms of the buildings still to be erected [by each denomination on

campus| or ... in the lecturing room of such professor." ³⁸

5. Urge students to participate in regular religious exercises but do so without conflicting with the established schedule of the university. Said he: "Should the religious sects of this State, or any of them, according to the invitation held out to them, establish within or adjacent to, the precincts of the University, schools for instruction in the religion of their sect, the students of the University will be free, and *expected to attend* religious worship at the establishment of their respective sects ... in time to meet their school in the University at its stated hour." ³⁹

Summary of Jefferson's Views

From these various documented sources it is apparent that Thomas Jefferson had a number of clearly defined views which he hoped would become the traditional American life-style with reference to religion and the Constitution. Perhaps these views might be summarized as follows:

1. The First Amendment prohibits the federal government from intermeddling in religious matters in any way. It is not to take any positive action which would tend to create or favor some "establishment of religion," nor is it to interfere or prohibit the free exercise of any religion.
2. The individual state, however, has the responsibility to see that laws and conditions are such that all religious denominations or sects receive equal treatment.
3. There should be a regularly established policy of teaching the fundamentals of religion and morality in the public schools.

4. In addition, there should be an opportunity, on the university level at least, for each denomination to be invited to build facilities on or adjacent to the campus where the students of that particular denomination could be expected to attend regular worship services and receive instructions in their particular faith.
5. Professors might also hold special services or classes of religious instruction in the rooms assigned to them at the university in order to accommodate the needs of the students belonging to their particular faith.
6. Students studying for the ministry at nearby seminaries should be allowed to have full access to the resources of the university library.
7. However, in spite of all of these efforts to encourage religion indirectly, there must be no use of tax funds to subsidize any religion *directly*.

Jefferson Sees Great Advantages in Following These Guidelines

By leaving it exclusively to the states to work out the equal encouragement of all religions, at the same time giving them no direct subsidy, Jefferson felt the goals of the Founders would be achieved. He felt there was a need to fill "the chasm" of religious ignorance which constituted a liability to society and at the same time leave "inviolable the constitutional freedom of religion, the most unalienable and sacred of all human rights." ⁴⁰

Jefferson, like other leaders among the Founders, seemed anxious to not only encourage all religious faiths on a basis of equality, but also to have them develop a spirit of toleration for each other. In referring to the university campus and its immediate environs, where all faiths

would be invited to provide facilities, Jefferson wrote:

"By bringing the sects together, and mixing them with the mass of other students, we shall soften their asperities, liberalize and neutralize their prejudices and make the general religion a religion of peace, reason and morality."⁴¹

How the Courts Began Building a Wall Between Religion and the State

It is a well-known principle of substantive law that the Constitution and the law should be interpreted very strictly according to the original intent of those who created it. As Chief Justice Roger B. Taney stated in *Dred Scott v. Sanford*, "It [the Constitution] speaks not only in the same words, but with the same meaning and intent with which it spoke when it came from the hands of the framers."⁴²

In the case of *Barron v. Baltimore*,⁴³ Chief Justice Marshall affirmed that the Bill of Rights in the Constitution was a series of prohibitions against the federal government to prevent it from encroaching on the states.

Applying this to worship, the court's decision meant that there was a "wall" between the federal government and any "establishment of religion," just as Jefferson had said.

However, in the case of *Gitlow v. New York*,⁴⁴ the Supreme Court used certain provisions in the federal Bill of Rights and applied them to the states. The court justified this action on the basis of the Fourteenth Amendment, which provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person with-

in its jurisdiction the equal protection of the laws."

The opponents of traditional theistic religion and morality saw the *Gitlow* case as an opportunity to invoke the power of the federal courts to build a wall between each of the states and any form of religious encouragement, even though it was provided *indirectly*. In other words, they would reverse the Founders' original policy.

The case of *Cantwell v. Connecticut*⁴⁵ was the first ruling of the Supreme Court in which the "Gitlow doctrine" was applied to religious liberty, and *Everson v. Board of Education*⁴⁶ was the first time the Supreme Court applied the "due process" clause of the Fourteenth Amendment to make the federal wall of separation apply to religious matters among the individual states.

What this amounted to was the actual breaking down of the federal wall set up by the First Amendment so that the Supreme Court actually usurped jurisdiction over religious matters in the states and began dictating what the states could or could not do with reference to religious questions. Without a doubt, there has been a severe wrenching of the Constitution from its original First Amendment moorings ever since this new trend began.

The Supreme Court Prohibits Teaching Religion in Schools

It is interesting that in the debates over ratification Madison stated the position of the Founders when he said: "There is not a shadow of right in the general government to intermeddle with religion. Its least interference with it would be a most flagrant usurpation."⁴⁷ Nevertheless, in *McCullum v. Board of Education*⁴⁸ the Supreme Court intervened in a religious

question. It used the *Gitlow* doctrine to tell a state board of education that it would not allow children, even with their parents' consent, to take religion classes in school. The students had been authorized by the board of education to sign up for these classes, which were being taught by the representatives of their own particular faith. They then attended these classes as part of their regular studies, just as Jefferson had recommended for the University of Virginia. The court ignored the fact that there was equality of opportunity for any of the denominations to provide such classes and used the "wall" doctrine to outlaw use of tax-supported facilities for the teaching of religion by any denomination. There was a strong dissent by Justice Stanley F. Reed.

The Supreme Court Approves "Released Time" for Religious Education

It is of further interest that the Supreme Court took its newly acquired jurisdiction over religious questions in state schools to announce in *Zorach v. Clauson* that it was very solicitous of religion and would approve classes in religion during the regular school day, *providing* the classes were held separate from any tax-supported property. Justice William O. Douglas wrote the opinion from the following frame of reference:

"We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for a wide variety of beliefs and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma."⁴⁹

Justice Douglas went even further to state, "We find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence."⁵⁰

The Cultural Vacuum Created by the Court: So-Called "Neutrality"

However, in the case of *Everson v. Board of Education*⁵¹ the Supreme Court made it clear that neither the federal government nor a state government could encourage religion in any way. Justice Hugo L. Black spoke for the court and declared in his opinion, "Neither a State nor the Federal government . . . can pass laws which aid one religion, *aid all religions*, or prefer one religion over another."⁵²

The Founders would have heartily endorsed Justice Black's "no preference" doctrine, but they would, no doubt, have objected vigorously to outlawing indirect aid for, and encouragement to, "all religions." In the final analysis, it was "all religions" the Founders had said they were relying upon to undergird society with those moral teachings which are "necessary to good government and the happiness of mankind."⁵³

No doubt they would have further objected to the court's presumptive usurpation in taking jurisdiction over a religious question which had been specifically reserved, by the First and Tenth Amendments, to the states themselves.

The Founders seemed fully aware that failure to encourage "all religions" in their important role of teaching fundamental morality would leave a void or cultural vacuum in their formula for a great new civilization of freedom and prosperity. It seems that all empirical evidence of histo-

ry and human experience sustains their position. Then why did the court take the position it did?

All of the cases from then until now suggest that the court considered its position of "neutrality" more fair and more correct in administering true justice. What some legal scholars are beginning to point out, however, is that the position of so-called neutrality has not achieved what the court said it intended. It has indeed given "secularism," or the emphasis of nonspiritual and nonmoral principles, the clear advantage of a virtual monopoly in the arena of public education and the administration of public institutions.⁵⁴

The Supreme Court Outlaws Prescribed Prayers in Schools

In the case of *Engel v. Vitale*,⁵⁵ the issue was that the New York regents had prepared a nondenominational prayer for use in the public schools. The New York Court of Appeals upheld the prayer, but the Supreme Court once more intermeddled in a religious question of a state by ruling that a nondenominational prayer prescribed by the officials of the state was "establishing" a religion.

However, contrary to popular belief, the court did not say that prayers were unlawful, providing they were voluntary and *not* prescribed or set by the state. Nevertheless, this case gave the advocates of secularism an excuse to push through rulings in many states that prayer would not be allowed in the schools.

The Supreme Court Outlaws the Lord's Prayer and Bible Reading in the Public Schools

In *Abington School District v. Schempp*,⁵⁶ the Supreme Court ruled that opening exercises at the high school involving the recitation of the Lord's Prayer, as well as

reading Bible verses, were unconstitutional. The court rejected the proposition that the opening exercises had a secular purpose, namely, the "promotion of moral values, the contradiction to the materialistic trends of our times, the perpetuation of our institutions and the teachings of literature."

It was pointed out to the court that "unless these religious exercises are permitted, a 'religion of secularism' is established in the schools," but the Court rejected this argument.⁵⁷

At this point it appears that for all intents and purposes the design of the Founding Fathers to have the public schools teach the fundamental principles of religion and morality is dead.

Need for an Amendment

The intent of the Founding Fathers (and the desires of the vast majority of American parents) to have these ideals taught in the schools will probably never be restored without a constitutional amendment, which must further define the right of the states to have exclusive jurisdiction over the determination of religious questions. At the same time it would undoubtedly be the desire of the overwhelming majority of Americans that the states be required to give equal encouragement to all religions on a non-preference basis.

Daniel Webster Describes the Founders' Traditional Goal

In our own day of accelerating rates of crimes of violence, narcotics addiction, billion-dollar pornography sales, hedonistic sexual aberrations, high divorce rates, and deteriorating family life, the American people might well recall the stirring words of Daniel Webster, which he spoke to the New York Historical Society, February 22, 1852:

"Unborn ages and visions of glory crowd upon my soul, the realization of all which, however, is in the hands and good pleasure of Almighty God; but, under his divine blessing, it will be dependent on the character and virtues of ourselves and of our posterity. . . . If we and they shall live always in the fear of God, and shall respect his commandments . . . we may have the highest hopes of the future fortunes of our country. . . . It will have no decline and fall. It will go on prosper-

ing. . . . But if we and our posterity reject religious instruction and authority, violate the rules of eternal justice, trifle with the injunctions of morality, and recklessly destroy the political constitution which holds us together, no man can tell how sudden a catastrophe may overwhelm us, that shall bury all our glory in profound obscurity. Should that catastrophe happen, let it have no history! Let the horrible narrative never be written!"

PROVISION

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From the First Amendment

The Congress shall make NO law abridging the freedom of speech, or of the press.

This provision gave the American people the RIGHT to have the federal government prohibited from exercising any legal authority over the freedom of speech or the freedom of the press.

This provision does not in any way imply that the freedom of speech and the freedom of press are *absolute* rights. Both must necessarily operate under reasonable restrictions. However, the Founders wanted these regulations and standards of propriety to be established by the states, not the federal government.

On the state level it is necessary to prohibit freedom of speech in a number of ways. For example, it is not permissible to use freedom of speech to slander or libel another person. It is also unlawful to cry "Fire!" in a crowded auditorium or theater as a practical joke and thereby cause a

panic. There are also restrictions on where free speech may be exercised if it will attract a crowd and impede the use of a public thoroughfare or park without prior permission.

Freedom of the press has been a difficult right to protect and preserve.

Almost from the moment that the art of printing began to be a significant cultural influence, efforts were exerted to gain control of its use by the king or the central government. For example, Henry VIII (1509-1547) took absolute control of the press, both as to who could print and what could be printed. When Cromwell ruled during the period of the Lone Parliament, the same control continued. By 1758, however, freedom of the press had been established to the point where Blackstone could say, "Every freeman has