

## Appendix B:

### What about the Separation of Church and State

(excerpted from Chapter 7 of Freedom's Frame by Rick Green)

Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers, and our Country.

These are the simple words of a voluntary prayer, which the Supreme Court ruled as being unconstitutional in 1962 and banned it from being recited by children in our public schools. The court based their actions entirely upon one phrase, "separation of church and state."

Wherever I speak on college campuses, almost every student in the audience is familiar with that phrase. The words, "separation of church and state" have become the political mantra of this generation. However, those same students are seldom as familiar with quotes taken from the Declaration of Independence or the Constitution, and when I ask them to tell me in which document the phrase "separation of church and state" is found, invariably someone will respond, "It is in the Declaration of Independence."

When I answer, "No, you will not find it in the Declaration," someone else will respond, "It is in the Constitution."

An answer of, "No, it is not in the Constitution either," often sparks a heated debate (especially at law schools) with a chorus of objectors clamoring to remind me of the Constitutional Separation of Church and State found in the First Amendment.

To which I reply, "Are you sure it is found in the First Amendment? Let's look and see..."

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

...anyone see the word "separation?" How about the words "church" or "state?"

Of course, someone will then say, "Well, that is not what it says, but that is what it means." Already convinced they can determine the intent of the statute, we begin a discussion on legislative intent.

## **The Meaning of “is”**

To understand the “intent” of the legislators who pass any law, one must look at the journal that recorded the discussions that took place at the time the law was being debated. Or one must read the writings of the legislators who passed the law. Doing so is akin to cracking open their heads and peering into their minds to find out what they were thinking and, therefore, what they were intending.

The system still works the same way today as it did in the beginning. A legislator will address the floor from the front of the room and explain the bill, stating the case for why it should become law. The debate then begins. Opponents will ask questions or challenge sections of the bill. Supporters will throw “softball questions” at the author to help bring out the full meaning of the bill. All of this discussion is then transcribed and included in the journal, which can then be read by any interested person.

Why do they do this? Because, if years after a law is passed, confusion arises about certain portions of its meaning, or questions are raised of its intent, the answers can be found in the Annals. Let’s face it, sometimes the legal language that is found in pieces of legislation can be hard to decipher, even for our elected officials who have been trained in understanding these documents. At times, even Presidents can have difficulty with grasping the true meaning of the simplest of language, (such as the meaning of the word “is”) and they may need some help in coming to a fuller comprehension of the intent and meaning of the law.

The journal allows us to go back and discover what the legislators were thinking on the day they were discussing the law. What did they envision as the intended and expected application? This information was deemed so necessary to our correct interpretation of intent that a provision in the Constitution requires that everything said on the floor of the House and Senate be recorded in a journal, for this very purpose.

This means that we can go all the way back to the discussions held between our Founding Fathers and discover exactly what those Congressmen intended when they passed the laws that govern us today. All we need to do is simply open up the Annals of Congress.

If we go back and read those transcripts, we will find that considerable time was spent debating the First Amendment to the Constitution. From June 8th to September 25th 1789, Congress discussed the details and parameters of this amendment. Yet nowhere in the Annals of Congress or the writings of the Founding Fathers who drafted the First Amendment, will you find the phrase “separation of church and state.”

## **Original Intent of the First Amendment**

Fisher Ames provided the wording for the First Amendment in the House of Representatives. He did not say anything about “separation of church and state” in his debate, nor may it be inferred as his intent. In fact, Fisher Ames said something that would be ruled unconstitutional because of the court’s modern application of that very phrase, “separation of

church and state.” He said, “Not only should the Bible be in our schools, it should be the primary textbook of our schools.”

Earlier, at the time of the Constitutional Convention, the founders discussed the individual rights of American citizens, which would later become the Bill of Rights. How many times did they mention the phrase “separation of church and state?” Zero. They did not talk about it once.

The phrase “separation of church and state” was not even introduced into the American vernacular until a little over a decade after the First Amendment was adopted. The phrase is exactly that – a phrase. It is not a statute, it is not a law, and it is not an amendment to the Constitution. It is simply a phrase lifted from a letter written by one of our Founding Fathers, Thomas Jefferson.

Jefferson was writing to the Danbury Baptist Association on January 1, 1802, in response to a letter wherein they raised their concerns about religious liberty ever being infringed by the American government. Jefferson responded that this would not occur because the Constitution builds “a wall of separation between Church and State.”

So much has been erroneously inferred from that one statement. (I encourage you to read David Barton’s article in the November 2003 issue of the Notre Dame Law Review for a more thorough treatment of Jefferson’s intent.)

Simply stated, Jefferson was using the phrase to describe the Free Exercise Clause of the First Amendment, which says, “or prohibiting the free exercise thereof.” The protection of our rights to live out our faith without government interference is what was being expressed both in the letter and in the First Amendment.

The Supreme Court twisted the meaning of the First Amendment by isolating those eight words from this personal letter from Jefferson.

They did not even consider the letter in its full context.

Then, in 1962, the Court used the phrase to completely remove God from all governmental institutions.

It is amazing how the court can ignore history and rewrite it to fulfill their particular agenda and purpose.

**We’ve Got the Wrong Guy**

Perhaps even worse than misapplying Jefferson's words is the fact that Jefferson's words were used in the first place as a means for discovering the intent of the First Amendment. Actually, Thomas Jefferson and his words "separation of church and state"<sup>44</sup> are irrelevant when it comes to interpreting the intended meaning of the First Amendment because Jefferson did not give us the Constitution or the Bill of Rights.

When a biographer wrote to Thomas Jefferson, to congratulate him for his influence on the Constitution, his response was,

One passage of the paper you enclosed must be corrected. It is the following. 'I will say it was yourself more than any other individual that planned and established the Constitution.'

Jefferson pointed out to the biographer that he "was in Europe when the Constitution was planned, and never saw it until after it had been established."

Nor was Thomas Jefferson one of the Congressmen that passed the Bill of Rights, which contains the First Amendment.

So, arguing what the framers' intent was by using Thomas Jefferson as an expert witness on the First Amendment is the same as having a murder trial where the judge allows those who were not at the scene of the murder to come forth and tell us what happened. It is intellectually dishonest and a piece of cleverly crafted creative history at best, to say that Thomas Jefferson's words provide the intent for the First Amendment. To understand the original intent of the First Amendment, you must scrutinize the thoughts of those who took part in the debate, the ones who actually gave us the First Amendment.

That debate emphasized the need to avoid another Church of England being established in America. In other words, they were trying to prevent a national denomination from being forced upon the citizens. None of their comments reflected intent to separate religious principles from government or from the public square. Just the opposite: they wanted to foster free expression, not political oppression.

For those who still want to rely on Jefferson as their expert regarding the First Amendment, it should not go unnoticed that exactly two days after writing his letter to the Danbury Baptists, he attended the weekly church service being held at the U.S. Capitol. These were religious services that he had helped to start and faithfully attended throughout the remainder of his presidency.

It appears that Jefferson's views were far removed from the interpretation of them by our modern courts today. Would Jefferson, a man who himself established and attended religious services on federal property while holding the office of the President, really think that it was against the good of our nation or our citizens for children to pray for their teachers, parents, and country at the beginning of each school day? You decide.