Excerpts re: History and Religion Clauses
US Supreme Court Cases:

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***Engel v. Vitale*, 370 U.S. 421 (1962)**

It is a matter of history that this very practice of establishing governmentally composed prayers for religious services was one of the reasons which caused many of our early colonists to leave England and seek religious freedom in America. The Book of Common Prayer, [370 U.S. 421, 426] which was created under governmental direction and which was approved by Acts of Parliament in 1548 and 1549, 5 set out in minute detail the accepted form and content of prayer and other religious ceremonies to be used in the established, tax-supported Church of England. 6 The controversies over the Book and what should be its content repeatedly threatened to disrupt the peace of that country as the accepted forms of prayer in the established church changed with the views of the particular ruler that happened to be in control at the time. 7 Powerful groups representing some of the varying religious views of the people struggled among themselves to impress their particular views upon the Government and [370 U.S. 421, 427] obtain amendments of the Book more suitable to their respective notions of how religious services should be conducted in order that the official religious establishment would advance their particular religious beliefs. 8 Other groups, lacking the necessary political power to influence the Government on the matter, decided to leave England and its established church and seek freedom in America from England's governmentally ordained and supported religion.

It is an unfortunate fact of history that when some of the very groups which had most strenuously opposed the established Church of England found themselves sufficiently in control of colonial governments in this country to write their own prayers into law, they passed laws making their own religion the official religion of their respective colonies. 9 Indeed, as late as the time of the Revolutionary [370 U.S. 421, 428] War, there were established churches in at least eight of the thirteen former colonies and established religions in at least four of the other five. 10 But the successful Revolution against English political domination was shortly followed by intense opposition to the practice of establishing religion by law. This opposition crystallized rapidly into an effective political force in Virginia where the minority religious groups such as Presbyterians, Lutherans, Quakers and Baptists had gained such strength that the adherents to the established Episcopal Church were actually a minority themselves. In 1785-1786, those opposed to the established Church, led by James Madison and Thomas Jefferson, who, though themselves not members of any of these dissenting religious groups, opposed all religious establishments by law on grounds of principle, obtained the enactment of the famous "Virginia Bill for Religious Liberty" by which all religious groups were placed on an equal footing so far as the State was concerned. 11 Similar though less far-reaching [370 U.S. 421, 429] legislation was being considered and passed in other States. 12

By the time of the adoption of the Constitution, our history shows that there was a widespread awareness among many Americans of the dangers of a union of Church and State. These people knew, some of them from bitter personal experience, that one of the greatest dangers to the freedom of the individual to worship in his own way lay in the Government's placing its official stamp of approval upon one particular kind of prayer or one particular form of religious services. They knew the anguish, hardship and bitter strife that could come when zealous religious groups struggled with one another to obtain the Government's stamp of approval from each King, Queen, or Protector that came to temporary power. The Constitution was intended to avert a part of this danger by leaving the government of this country in the hands of the people rather than in the hands of any monarch. But this safeguard was not enough. Our Founders were no more willing to let the content of their prayers and their privilege of praying whenever they pleased be influenced by the ballot box than they were to let these vital matters of personal conscience depend upon the succession of monarchs. The First Amendment was added to the Constitution to stand as a guarantee that neither the power nor the prestige of the Federal Government would be used to control, support or influence the kinds of prayer the American people can say - [370 U.S. 421, 430] that the people's religious must not be subjected to the pressures of government for change each time a new political administration is elected to office. Under that Amendment's prohibition against governmental establishment of religion, as reinforced by the provisions of the Fourteenth Amendment, government in this country, be it state or federal, is without power to prescribe by law any particular form of prayer which is to be used as an official prayer in carrying on any program of governmentally sponsored religious activity.

...

The history of governmentally established religion, both in England and in this country, showed that whenever government had allied itself with one particular form of religion, the inevitable result had been that it had incurred the hatred, disrespect and even contempt of those who held contrary beliefs. 13 That same history showed that many people had lost their respect for any religion that had relied upon the support of government to spread its faith. 14 The Establishment Clause [370 U.S. 421, 432] thus stands as an expression of principle on the part of the Founders of our Constitution that religion is too personal, too sacred, too holy, to permit its "unhallowed perversion" by a civil magistrate. 15 Another purpose of the Establishment Clause rested upon an awareness of the historical fact that governmentally established religions and religious persecutions go hand in hand. 16 The Founders knew that only a few years after the Book of Common Prayer became the only accepted form of religious services in the established Church of England, an Act of Uniformity was passed to compel all Englishmen to attend those services and to make it a criminal offense to conduct or attend religious gatherings of any other kind 17 - a law [370 U.S. 421, 433] which was consistently flouted by dissenting religious groups in England and which contributed to widespread persecutions of people like John Bunyan who persisted in holding "unlawful [religious] meetings . . . to the great disturbance and distraction of the good subjects of this kingdom . . . ." 18 And they knew that similar persecutions had received the sanction of law in several of the colonies in this country soon after the establishment of official religions in those colonies.

19 It was in large part to get completely away from this sort of systematic religious persecution that the Founders brought into being our Nation, our Constitution, and our Bill of Rights with its prohibition against any governmental establishment of religion. The New York laws officially prescribing the Regents' prayer are inconsistent both with the purposes of the Establishment Clause and with the Establishment Clause itself.

The history of man is inseparable from the history of religion. And perhaps it is not too much to say that since the beginning of that history many people have devoutly believed that "More things are wrought by prayer than this world dreams of." It was doubtless largely due to men who believed this that there grew up a sentiment that caused men to leave the cross-currents of officially established state religions and religious persecution in Europe and come to this country filled with the hope that they could find a place in which they could pray when they pleased to the God of their faith in the language they chose. 20 And there were men of this same faith in the [370 U.S. 421, 435] power of prayer who led the fight for adoption of our Constitution and also for our Bill of Rights with the very guarantees of religious freedom that forbid the sort of governmental activity which New York has attempted here. These men knew that the First Amendment, which tried to put an end to governmental control of religion and of prayer, was not written to destroy either. They knew rather that it was written to quiet well-justified fears which nearly all of them felt arising out of an awareness that governments of the past had shackled men's tongues to make them speak only the religious thoughts that government wanted them to speak and to pray only to the God that government wanted them to pray to. It is neither sacrilegious nor antireligious to say that each separate government in this country should stay out of the business of writing or sanctioning official prayers and leave that purely religious function to the people themselves and to those the people choose to look to for religious guidance. 21 [370 U.S. 421, 436]

[Footnote 5] 2 & 3 Edward VI, c. 1, entitled "An Act for Uniformity of Service and Administration of the Sacraments throughout the Realm"; 3 & 4 Edward VI, c. 10, entitled "An Act for the abolishing and putting away of divers Books and Images."

[Footnote 6] The provisions of the various versions of the Book of Common Prayer are set out in broad outline in the Encyclopedia Britannica, Vol. 18 (1957 ed.), pp. 420-423. For a more complete description, see Pullan, The History of the Book of Common Prayer (1900).

[Footnote 7] The first major revision of the Book of Common Prayer was made in 1552 during the reign of Edward VI. 5 & 6 Edward VI, c. 1. In 1553, Edward VI died and was succeeded by Mary who abolished the Book of Common Prayer entirely. 1 Mary, c. 2. But upon the accession of Elizabeth in 1558, the Book was restored with important alterations from the form it had been given by Edward VI. 1 Elizabeth, c. 2. The resentment to this amended form of the Book was kept firmly under control during the reign of Elizabeth but, upon her death in 1603, a petition signed by more than 1,000 Puritan ministers was presented to King James I asking for further alterations in the Book. Some alterations were made and the Book retained substantially this form until it was completely suppressed again in

1645 as a result of the successful Puritan Revolution. Shortly after the restoration in 1660 of Charles II, the Book was again reintroduced, 13 & 14 Charles II, c. 4, and again with alterations. Rather than accept this form of the Book some 2,000 Puritan ministers vacated their benefices. See generally Pullan, The History of the Book of Common Prayer (1900), pp. vii-xvi; Encyclopaedia Britannica (1957 ed.), Vol. 18, pp. 421-422.

[Footnote 8] For example, the Puritans twice attempted to modify the Book of Common Prayer and once attempted to destroy it. The story of their struggle to modify the Book in the reign of Charles I is vividly summarized in Pullan, History of the Book of Common Prayer, at p. xiii: "The King actively supported those members of the Church of England who were anxious to vindicate its Catholic character and maintain the ceremonial which Elizabeth had approved. Laud, Archbishop of Canterbury, was the leader of this school. Equally resolute in his opposition to the distinctive tenets of Rome and of Geneva, he enjoyed the hatred of both Jesuit and Calvinist. He helped the Scottish bishops, who had made large concessions to the uncouth habits of Presbyterian worship, to draw up a Book of Common Prayer for Scotland. It contained a Communion Office resembling that of the book of 1549. It came into use in 1637, and met with a bitter and barbarous opposition. The vigour of the Scottish Protestants strengthened the hands of their English sympathisers. Laud and Charles were executed, Episcopacy was abolished, the use of the Book of Common Prayer was prohibited."

[Footnote 9] For a description of some of the laws enacted by early theocratic governments in New England, see Parrington, Main Currents in American Thought (1930), Vol. 1, pp. 5-50; Whipple, Our Ancient Liberties (1927), pp. 63-78; Wertenbaker, The Puritan Oligarchy (1947).

[Footnote 10] The Church of England was the established church of at least five colonies: Maryland, Virginia, North Carolina, South Carolina and Georgia. There seems to be some controversy as to whether that church was officially established in New York and New Jersey but there is no doubt that it received substantial support from those States. See Cobb, The Rise of Religious Liberty in America (1902), pp. 338, 408. In Massachusetts, New Hampshire and Connecticut, the Congregationalist Church was officially established. In Pennsylvania and Delaware, all Christian sects were treated equally in most situations but Catholics were discriminated against in some respects. See generally Cobb, The Rise of Religious Liberty in America (1902). In Rhode Island all Protestants enjoyed equal privileges but it is not clear whether Catholics were allowed to vote. Compare Fiske, The Critical Period in American History (1899), p. 76 with Cobb, The Rise of Religious Liberty in America (1902), pp. 437-438.

[Footnote 11] 12 Hening, Statutes of Virginia (1823), 84, entitled "An act for establishing religious freedom." The story of the events surrounding the enactment of this law was reviewed in Everson v. Board of Education, 330 U.S. 1 , both by the Court, at pp. 11-13, and in the [370 U.S. 421, 429] dissenting

opinion of Mr. Justice Rutledge, at pp. 33-42. See also Fiske, The Critical Period in American History (1899), pp. 78-82; James, The Struggle for Religious Liberty in Virginia (1900); Thom, The Struggle for Religious Freedom in Virginia: The Baptists (1900); Cobb, The Rise of Religious Liberty in America (1902), pp. 74-115, 482-499.

[Footnote 12] See Cobb, The Rise of Religious Liberty in America (1902), pp. 482-509.

[Footnote 13] "[A]ttempts to enforce by legal sanctions, acts obnoxious to so great a proportion of Citizens, tend to enervate the laws in general, and to slacken the bands of Society. If it be difficult to execute any law which is not generally deemed necessary or salutary, what must be the case where it is deemed invalid and dangerous? and what may be the effect of so striking an example of impotency in the Government, on its general authority." Memorial and Remonstrance against Religious Assessments, II Writings of Madison 183, 190.

[Footnote 14] "It is moreover to weaken in those who profess this Religion a pious confidence in its innate excellence, and the patronage of its Author; and to foster in those who still reject it, a suspicion that its friends are too conscious of its fallacies, to trust it to its own merits. . . . [E]xperience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation. During almost fifteen centuries, has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the Clergy; ignorance and servility in the laity; in both, superstition, [370 U.S. 421, 432] bigotry and persecution. Enquire of the Teachers of Christianity for the ages in which it appeared in its greatest lustre; those of every sect, point to the ages prior to its incorporation with Civil policy." Id., at 187.

[Footnote 15] Memorial and Remonstrance against Religious Assessments, II Writings of Madison, at 187.

[Footnote 16] "[T]he proposed establishment is a departure from that generous policy, which, offering an asylum to the persecuted and oppressed of every Nation and Religion, promised a lustre to our country, and an accession to the number of its citizens. What a melancholy mark is the Bill of sudden degeneracy? Instead of holding forth an asylum to the persecuted, it is itself a signal of persecution. . . . Distant as it may be, in its present form, from the Inquisition it differs from it only in degree. The one is the first step, the other the last in the career of intolerance. The magnanimous sufferer under this cruel scourge in foreign Regions, must view the Bill as a Beacon on our Coast, warning him to seek some other haven, where liberty and philanthropy in their due extent may offer a more certain repose from his troubles." Id., at 188.

[Footnote 17] 5 & 6 Edward VI, c. 1, entitled "An Act for the Uniformity of Service and Administration of Sacraments throughout the Realm." This Act was

repealed during the reign of Mary but revived upon the accession of Elizabeth. See note 7, supra. The reasons which led to the enactment of this statute were set out in its preamble: "Where there hath been a very godly Order set forth by the Authority of Parliament, for Common Prayer and Administration of the Sacraments [370 U.S. 421, 433] to be used in the Mother Tongue within the Church of England, agreeable to the Word of God and the Primitive Church, very comfortable to all good People desiring to live in Christian Conversation, and most profitable to the Estate of this Realm, upon the which the Mercy, Favour and Blessing of Almighty God is in no wise so readily and plenteously poured as by Common Prayers, due using of the Sacraments, and often preaching of the Gospel, with the Devotion of the Hearers: (1) And yet this notwithstanding, a great Number of People in divers Parts of this Realm, following their own Sensuality, and living either without Knowledge or due Fear of God, do wilfully and damnably before Almighty God abstain and refuse to come to their Parish Churches and other Places where Common Prayer, Administration of the Sacraments, and Preaching of the Word of God, is used upon Sundays and other Days ordained to be Holydays."

[Footnote 18] Bunyan's own account of his trial is set forth in A Relation of the Imprisonment of Mr. John Bunyan, reprinted in Grace Abounding and The Pilgrim's Progress (Brown ed. 1907), at 103-132.

[Footnote 19] For a vivid account of some of these persecutions, see Wertenbaker, The Puritan Oligarchy (1947).

[Footnote 20] Perhaps the best example of the sort of men who came to this country for precisely that reason is Roger Williams, the founder of Rhode Island, who has been described as "the truest Christian amongst many who sincerely desired to be Christian." Parrington, Main Currents in American Thought (1930), Vol. 1, at p. 74. Williams, who was one of the earliest exponents of the doctrine of separation of church and state, believed that separation was necessary in order to protect the church from the danger of destruction which he thought inevitably flowed from control by even the best-intentioned civil authorities: "The unknowing zeale of Constantine and other Emperours, did more hurt to Christ Jesus his Crowne and Kingdome, then the raging fury of the most bloody Neroes. In the persecutions of the later, Christians were sweet and fragrant, like spice pounded and beaten in morters: But those good Emperours, persecuting some erroneous persons, Arrius, & c. and advancing the professours of some Truths of Christ (for there was no small number of Truths lost in those times) and maintaining their Religion by the materiall Sword, I say by this meanes Christianity was ecclipsed, and the Professors of it fell asleep . . . ." Williams, The Bloudy Tenent, of Persecution, for cause of Conscience, discussed in A Conference between Truth and Peace (London, 1644), reprinted in Narragansett Club Publications, Vol. III, p. 184. To Williams, it was no part of the business or competence of a civil magistrate to interfere in religious matters: "[W]hat imprudence and indiscretion is it in the most common [370 U.S. 421, 435] affaires of Life, to conceive that Emperours, Kings and Rulers of the earth must

not only be qualified with politicall and state abilities to make and execute such Civill Lawes which may concerne the common rights, peace and safety (which is worke and businesse, load and burthen enough for the ablest shoulders in the Commonweal) but also furnished with such Spirituall and heavenly abilities to governe the Spirituall and Christian Commonweale . . . ." Id., at 366. See also id., at 136-137.

[Footnote 21] There is of course nothing in the decision reached here that is inconsistent with the fact that school children and others are officially encouraged to express love for our country by reciting historical documents such as the Declaration of Independence which contain references to the Deity or by singing officially espoused anthems which include the composer's professions of faith in a Supreme Being, or with the fact that there are many manifestations in our public life of belief in God. Such patriotic or ceremonial occasions bear no true resemblance to the unquestioned religious exercise that the State of New York has sponsored in this instance.

***Everson v. Bd. of Educ. of Ewing Tp.*, 330 U.S. 1 (1947)**

A large proportion of the early settlers of this country came here from Europe to escape the bondage of laws which compelled them to support and attend government favored churches. The centuries immediately before and contemporaneous with the colonization of America had been filled with turmoil, civil strife, and persecutions, generated in large part by established sects determined to [330 U.S. 1, 9] maintain their absolute political and religious supremacy. With the power of government supporting them, at various times and places, Catholics had persecuted Protestants, Protestants had persecuted Catholics, Protestant sects had persecuted other Protestant sects, Catholics of one shade of belief had persecuted Catholics of another shade of belief, and all of these had from time to time persecuted Jews. In efforts to force loyalty to whatever religious group happened to be on top and in league with the government of a particular time and place, men and women had been fined, cast in jail, cruelly tortured, and killed. Among the offenses for which these punishments had been inflicted were such things as speaking disrespectfully of the views of ministers of government-established churches, nonattendance at those churches, expressions of non-belief in their doctrines, and failure to pay taxes and tithes to support them. 5

These practices of the old world were transplanted to and began to thrive in the soil of the new America. The very charters granted by the English Crown to the individuals and companies designated to make the laws which would control the destinies of the colonials authorized these individuals and companies to erect religious establishments which all, whether believers or non-believers, would be required to support and attend. 6 An exercise of [330 U.S. 1, 10] this authority was accompanied by a repetition of many of the old world practices and persecutions. Catholics found themselves hounded and proscribed because of their faith; Quakers who followed their conscience went to jail; Baptists were peculiarly obnoxious to certain dominant Protestant sects; men and women of varied faiths who happened to be in a minority in a particular locality were persecuted

because they steadfastly persisted in worshipping God only as their own consciences dictated. 7 And all of these dissenters were compelled to pay tithes and taxes8 to support government-sponsored churches whose ministers preached inflammatory sermons designed to strengthen and consolidate the established faith by generating a burning hatred against dissenters. [330 U.S. 1, 11] These practices became so commonplace as to shock the freedom-loving colonials into a feeling of abhorrence. 9 The imposition of taxes to pay ministers' salaries and to build and maintain churches and church property aroused their indignation. 10 It was these feelings which found expression in the First Amendment. No one locality and no one group throughout the Colonies can rightly be given entire credit for having aroused the sentiment that culminated in adoption of the Bill of Rights' provisions embracing religious liberty. But Virginia, where the established church had achieved a dominant influence in political affairs and where many excesses attracted wide public attention, provided a great stimulus and able leadership for the movement. The people there, as elsewhere, reached the conviction that individual religious liberty could be achieved best under a government which was stripped of all power to tax, to support, or otherwise to assist any or all religions, or to interfere with the beliefs of any religious individual or group.

The movement toward this end reached its dramatic climax in Virginia in 1785-86 when the Virginia legislative body was about to renew Virginia's tax levy for the support of the established church. Thomas Jeffer- [330 U.S. 1, 12] son and James Madison led the fight against this tax. Madison wrote his great Memorial and Remonstrance against the law. 11 In it, he eloquently argued that a true religion did not need the support of law; that no person, either believer or non-believer, should be taxed to support a religious institution of any kind; that the best interest of a society required that the minds of men always be wholly free; and that cruel persecutions were the inevitable result of government-established religions. Madison's Remonstrance received strong support throughout Virginia, 12 and the Assembly postponed consideration of the proposed tax measure until its next session. When the proposal came up for consideration at that session, it not only died in committee, but the Assembly enacted the famous 'Virginia Bill for Religious Liberty' originally written by Thomas Jefferson. 13 The preamble to that Bill stated among other things that

. 'Almighty God hath created the mind free; that all attempts to influence it by temporal punishments, or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are [330 U.S. 1, 13] a departure from the plan of the Holy author of our religion who being Lord both of body and mind, yet chose not to propagate it by coercions on either . . .; that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor, whose morals he would make his pattern ...'

And the statute itself enacted

. 'That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened, in

his body or goods, nor shall otherwise suffer on account of his religious opinions or belief. . . .'14

This Court has previously recognized that the provisions of the First Amendment, in the drafting and adoption of which Madison and Jefferson played such leading roles, had the same objective and were intended to provide the same protection against governmental intrusion on religious liberty as the Virginia statute. Reynolds v. United States, supra, 98 U.S. at page 164; Watson v. Jones, 13 Wall. 679; Davis v. Beason, 133 U.S. 333, 342 , 10 S.Ct. 299, 300. Prior to the adoption of the Fourteenth Amendment, the First Amendment did not apply as a restraint against the states. 15 Most of them did soon provide similar constitutional protections [330 U.S. 1, 14] for religious liberty. 16 But some states persisted for about half a century in imposing restraints upon the free exercise of religion and in discriminating against particular religious groups. 17 In recent years, so far as the provision against the establishment of a religion is concerned, the question has most frequently arisen in connection with proposed state aid to church schools and efforts to carry on religious teachings in the public schools in accordance with the tenets of a particular sect. 18 Some churches have either sought or accepted state financial support for their schools. Here again the efforts to obtain state aid or acceptance of it have not been limited to any one particular faith. 19 The state courts, in the main, have remained faithful to the language of their own constitutional provisions designed to protect religious freedom and to separate religious and governments. Their decisions, however, show the difficulty in drawing the line between tax legislation which provides funds for the welfare of the general public and that which is designed to support institutions which teach religion. 20

The meaning and scope of the First Amendment, preventing establishment of religion or prohibiting the free exercise thereof, in the light of its history and the evils it [330 U.S. 1, 15] was designed forever to suppress, have been several times elaborated by the decisions of this Court prior to the application of the First Amendment to the states by the Fourteenth. 21 The broad meaning given the Amendment by these earlier cases has been accepted by this Court in its decisions concerning an individual's religious freedom rendered since the Fourteenth Amendment was interpreted to make the prohibitions of the First applicable to state action abridging religious freedom. 22 There is every reason to give the sam application and broad interpretation to the 'establishment of religion' clause. The interrelation of these complementary clauses was well summarized in a statement of the Court of Appeals of South Carolina,23 quoted with approval by this Court, in Watson v. Jones, 13 Wall. 679, 730: 'The structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasions of the civil authority.'

The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertain- [330 U.S. 1, 16] ing or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any

religious activities or institutions, whatever they may be called, or whatever from they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State.' Reynolds v. United States, supra, 98 U.S. at page 164.

[Footnote 5] See e.g. Macaulay, History of England (1849) I, cc. 2, 4; The Cambridge Modern History (1908) V, cc. V, IX, XI; Beard, Rise of American Civilization (1937) I, 60; Cobb, Religious Liberty in America (1902) c. II; Sweet, The Story of Religion in America (1939) c. II; Sweet, Religion in Colonial America (194) 320-322.

[Footnote 6] See e.g. the charter of the colony of Carolina which gave the grantees the right of 'patronage and advowsons of all the churches and chapels ... together with licence and power to build and found churches, chapels and oratories ... and to cause them to be dedicated and consecrated, according to the ecclesiastical laws of our kingdom of England.' Poore, Constitutions (1878) II, 1390, 1391. That of Maryland gave to the grantee Lord Baltimore 'the Patronages and Advowsons of all Churches which ... shall happen to be built, together with Licence and Faculty of erecting and founding Churches, Chapels, and Places of Worship ... and of causing the same to be dedicated and consecrated according to the Ecclesiastical Laws of our Kingdom of England, with all, and singular such, and as ample Rights, Jurisdictions, Privileges, ... as any Bishop ... in our Kingdom of England ever ... hath had. ...' McDonald, Documentary Source Book of American History (1934) 31, 33. The Commission of New Hampshire of 1680, Poore, supra, II, 1277, stated: 'And above all things We do by these presents will, require and comand our said Councill to take all possible care for ye discountenancing of vice and encouraging of virtue and good living; and that by such examples ye infidle may be invited and desire to partake of ye Christian Religion, and for ye greater ease and satisfaction of ye sd loving subjects in matters of religion, We do hereby require and comand yt liberty of conscience shall be allowed unto all protestants; yt such especially as shall be conformable to ye rites of ye Church of Engd shall be particularly countenanced and encouraged.' See also Town of Pawlet v. Clark, 9 Cranch 292.

[Footnote 7] See e.g. Semple, Baptists in Virginia (1894); Sweet, Religion in Colonial America, supra at 131-152, 322-339.

[Footnote 8] Almost every colony exacted some kind of tax for church support. See e.g. Cobb, op. cit. supra, note 5, 110 (Virginia); 131 (North Carolina); 169 (Massachusetts); 270 (Connecticut); 304, 310, 339 (New York); 386 (Maryland); 295 (New Hampshire).

[Footnote 9] Madison wrote to a friend in 1774: 'That diabolical, hell-conceived principle of persecution rages among some. ... This vexes me the worst of anything whatever. There are at this time in the adjacent country not less than five

or six well-meaning men in close jail for publishing their religious sentiments, which in the main are very orthodox. I have neither patience to hear, talk, or think of anything relative to this matter; for I have squabbled and scolded, abused and ridiculed, so long about it to little purpose, that I am without common patience. So I must beg you to pity me, and pray for liberty of conscience to all.' I Writings of James Madison (1900) 18, 21.

[Footnote 10] Virginia's resistance to taxation for church support was crystalized in the famous 'Parson's Case' argued by Patrick Henry in 1763. For an account see Cobb, op. cit., supra, note 5, 108-111.

[Footnote 11] II Writings of James Madison, 183.

[Footnote 12] In a recently discovered collection of Madison's papers, Madison recollected that his Remonstrance 'met with the approbation of the Baptists, the Presby-terians, the Quakers, and the few Roman Catholics, universally; of the Methodists in part; and even of not a few of the Sect formerly established by law.' Madison, Monopolies, Perpetuities, Corporations, Ecclesiastical Endowments, in Fleet, Madison's 'Detached Memorandum,' 3 William and Mary Q. (1946) 534, 551, 555.

[Footnote 13] For accounts of background and evolution of the Virginia Bill for Religious Liberty see e.g. James, The Struggle for Religious Liberty in Virginia (1900); Thom, The Struggle for Religious Freedom in Virginia; the Baptists (1900); Cobb, op. cit., supra, note 5, 74-115; Madison, Monopolies, Perpetuities, Corporations, Ecclesiastical Endowments, op. cit ., supra, note 12, 554, 556.

[Footnote 14] 12 Hening, Statutes of Virginia (1823) 84; Commager, Documents of American History (1944) 125.

[Footnote 15] Permoli v. Municipality No. 1 of City of New Orleans, 3 How. 589. Cf. Barron, for Use of Tiernan v. Mayor and City Council of City of Baltimore, 7 Pet. 243.

[Footnote 16] For a collection of state constitutional provisions on freedom of religion see Gavel, Public Funds for Church and Private Schools (1937) 148- 149. See also 2 Cooley, Constitutional Limitations (1927) 960-985.

[Footnote 17] Test provisions forbade office holders to 'deny ... the truth of the Protestant religion,' e.g. Constitution of North Carolina 1776, XXXII, II Poore, supra, 1413. Maryland permitted taxation for support of the Christian religion and limited civil office to Christians until 1818, Id., I, 819, 820, 832.

[Footnote 18] See Note 50 Yale L.J. (1941) 917; see also cases collected Synod of Dakota v. State, 2 S.D. 366, 50 N.W. 632, 14 L.R.A. 418; 5 A.L.R. 879; 141 A.L.R. 1148.

[Footnote 19] See cases collected Synod of Dakota v. State, 2 S.D. 366, 50 N.W.

632, 14 L.R.A. 418; 5 A.L.R. 879; 141 A.L.R. 1148.

[Footnote 20] Ibid. See also Cooley, op. cit., supra, note 16.

[Footnote 21] Terrett v. Taylor, 9 Cranch 43; Watson v. Jones, 13 Wall. 679; Davis v. Beason, 133 U.S. 333 , 10 S.Ct. 299; Cf. Reynolds v. United States, supra, 98 U.S. 162 ; Reuben Quick Bear v. Leupp, 210 U.S. 50 , 28 S.Ct. 690.

[Footnote 22] Cantwell v. State of Conn., 310 U.S. 296 , 60 S.Ct. 900, 128 A.L.R. 1352; Jamison v. State of Texas, 318 U.S. 413 , 63 S.Ct. 669; Largent v. State of Texas, 318 U.S. 418 , 63 S.Ct. 667; Murdock v. Commonwealth of Pennsylvania, supra; West Virginia State Board of Education v. Barnette, 319 U.S. 624 , 63 S.Ct. 1178, 147 A.L.R. 674; Follett v. Town of McCormick, 321 U.S. 573 , 64 S.Ct. 717, 152 A.L.R. 317; Marsh v. State of Alabama, 326 U.S. 501 , 66 S.Ct. 276; Cf. Bradfield v. Roberts, 175 U.S. 291 , 20 S.Ct. 121.

[Footnote 23] Harmon v. Dreher, 1843, Speer's Eq., S.C., 87, 120.

***Lee v. Weisman*, 505 U.S. 577 (1992)**
Souter, J., concurring

While a case has been made for this position, it is not so convincing as to warrant reconsideration of our settled law; indeed, I find in the history of the Clause's textual development a more powerful argument supporting the Court's jurisprudence following Everson.

When James Madison arrived at the First Congress with a series of proposals to amend the National Constitution, one of the provisions read that "[t]he civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed." 1 Annals of Cong. 434 (1789). Madison's language did not last long. It was sent to a Select Committee of the House, which, without explanation, changed it to read that "no religion shall be established by law, nor shall the equal rights of conscience be infringed." Id., at 729. Thence the proposal went to the Committee of the Whole, which was, in turn, dissatisfied with the Select Committee's language and adopted an alternative proposed by Samuel Livermore of New Hampshire: "Congress shall make no laws touching religion, or infringing the rights of conscience." See id., at 731. Livermore's proposal would have forbidden laws having anything to do with religion, and was thus not [505 U.S. 577, 613] only far broader than Madison's version, but broader even than the scope of the Establishment Clause as we now understand it. See, e.g., Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos, 483 U.S. 327 (1987) (upholding legislative exemption of religious groups from certain obligations under civil rights laws).

The House rewrote the amendment once more before sending it to the Senate, this time adopting, without recorded debate, language derived from a proposal by Fisher Ames of

Massachusetts: "Congress shall make no law establishing Religion, or prohibiting the free exercise thereof, nor shall the rights of conscience be infringed." 1 Documentary History of the First Federal Congress of the United States of America 136 (Senate Journal) (L. de Pauw ed. 1972); see 1 Annals of Cong. 765 (1789). Perhaps, on further reflection, the Representatives had thought Livermore's proposal too expansive, or perhaps, as one historian has suggested, they had simply worried that his language would not "satisfy the demands of those who wanted something said specifically against establishments of religion." L. Levy, The Establishment Clause 81 (1986) (hereinafter Levy). We do not know; what we do know is that the House rejected the Select Committee's version, which arguably ensured only that "no religion" enjoyed an official preference over others, and deliberately chose instead a prohibition extending to laws establishing "religion" in general.

The sequence of the Senate's treatment of this House proposal, and the House's response to the Senate, confirm that the Framers meant the Establishment Clause's prohibition to encompass nonpreferential aid to religion. In September, 1789, the Senate considered a number of provisions that would have permitted such aid, and ultimately it adopted one of them. First, it briefly entertained this language: "Congress shall make no law establishing One Religious Sect or Society in preference to others, nor shall the rights of conscience be infringed." See 1 Documentary History, supra, at 151 [505 U.S. 577, 614] (Senate Journal); id., at 136. After rejecting two minor amendments to that proposal, see ibid., the Senate dropped it altogether and chose a provision identical to the House's proposal, but without the clause protecting the "rights of conscience," ibid. With no record of the Senate debates, we cannot know what prompted these changes, but the record does tell us that, six days later, the Senate went half circle and adopted its narrowest language yet: "Congress shall make no law establishing articles of faith or a mode of worship, or prohibiting the free exercise of religion." Id., at 166. The Senate sent this proposal to the House, along with its versions of the other constitutional amendments proposed.

Though it accepted much of the Senate's work on the Bill of Rights, the House rejected the Senate's version of the Establishment Clause, and called for a joint conference committee, to which the Senate agreed. The House conferees ultimately won out, persuading the Senate to accept this as the final text of the Religion Clauses: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." What is remarkable is that, unlike the earliest House drafts or the final Senate proposal, the prevailing language is not limited to laws respecting an establishment of "a religion," "a national religion," "one religious sect," or specific "articles of faith." 2 The Framers [505 U.S. 577, 615] repeatedly considered and deliberately rejected such narrow language, and instead extended their prohibition to state support for "religion" in general.

Implicit in their choice is the distinction between preferential and nonpreferential establishments, which the weight of evidence suggests the Framers appreciated. See, e.g., Laycock, "Nonpreferential" Aid 902-906; Levy 91-119. But cf. T. Curry, The First Freedoms 208-222 (1986). Of particular note, the Framers were vividly familiar with efforts in the colonies and, later, the States to impose general, nondenominational

assessments and other incidents of ostensibly ecumenical establishments. See generally Levy 1-62. The Virginia statute for religious freedom, written by Jefferson and sponsored by Madison, captured the separationist response to such measures. Condemning all establishments, however nonpreferentialist, the statute broadly guaranteed that "no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever," including his own. Act for Establishing Religious Freedom (1785), in 5 The Founders' Constitution 84, 85 (P. Kurland & R. Lerner eds. 1987). Forcing a citizen to support even his own church would, among other things, deny "the ministry those temporary rewards which, proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labours for the instruction of mankind." Id., at 84. In general, Madison later added, "religion & Govt. will both exist in greater purity, the less they are mixed together." Letter from J. Madison to E. Livingston July (10, 1822), in 5 The Founders' Constitution, at 105, 106.

What we thus know of the Framers' experience underscores the observation of one prominent commentator that confining the Establishment Clause to a prohibition on preferential aid "requires a premise that the Framers were extraordinarily bad drafters - that they believed one thing, but adopted language that said something substantially different, and that they did so after repeatedly attending to the [505 U.S. 577, 616] choice of language." Laycock, "Nonpreferential" Aid 882-883; see also County of Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter, 492 U.S. 573, 647 -648 (1989) (opinion of STEVENS, J.). We must presume, since there is no conclusive evidence to the contrary, that the Framers embraced the significance of their textual judgment. 3 Thus, on balance, history neither contradicts nor warrants reconsideration of the settled principle that the Establishment Clause forbids support for religion in general no less than support for one religion or some.

[Footnote 2] Some commentators have suggested that, by targeting laws respecting "an" establishment of religion, the Framers adopted the very nonpreferentialist position whose much clearer articulation they repeatedly rejected. See, e.g., R. Cord, Separation of Church and State 11-12 (1988). Yet the indefinite article before the word "establishment" is better seen as evidence that the Clause forbids any kind of establishment, including a nonpreferential one. If the Framers had wished, for some reason, to use the indefinite term to achieve a narrow meaning for the Clause, they could far more aptly have placed it before the word "religion." See Laycock, "Non preferential" Aid to Religion: A False Claim About Original Intent, 27 Wm. & Mary L.Rev. 875, 884-885 (1986) (hereinafter Laycock, "Nonpreferential" Aid).

[Footnote 3] In his dissent in Wallace v. Jaffree, 472 U.S. 38 (1985), THE CHIEF JUSTICE rested his nonpreferentialist interpretation partly on the post-ratification actions of the early National Government. Aside from the willingness of some (but not all) early Presidents to issue ceremonial religious proclamations, which were, at worst, trivial breaches of the Establishment Clause, see infra, at 22-23, he cited such seemingly preferential aid as a treaty provision, signed by Jefferson, authorizing federal subsidization of a Roman Catholic priest and church for the Kaskaskia Indians. 472 U.S., at 103 . But this proves too much, for if the

> Establishment Clause permits a special appropriation of tax money for the religious activities of a particular sect, it forbids virtually nothing. See Laycock, "Nonpreferential" Aid 915. Although evidence of historical practice can indeed furnish valuable aid in the interpretation of contemporary language, acts like the one in question prove only that public officials, no matter when they serve, can turn a blind eye to constitutional principle. See infra, at 626.

Nor does it solve the problem to say that the State should promote a "diversity" of religious views; that position would necessarily compel the government and, inevitably, the courts to make wholly inappropriate judgments about the number of religions the State should sponsor and the relative frequency with which it should sponsor each. In fact, the prospect would be even worse than that. As Madison observed in criticizing religious presidential proclamations, the practice of sponsoring religious messages tends, over time, "to narrow the recommendation to the standard of the predominant sect." Madison's "Detached Memoranda," 3 Wm. & Mary Q. 534, 561 (E. Fleet ed. 1946) (hereinafter Madison's "Detached Memoranda"). We have not changed much since the days of Madison, and the judiciary should not [505 U.S. 577, 618] willingly enter the political arena to battle the centripetal force leading from religious pluralism to official preference for the faith with the most votes.

...

A

Over the years, this Court has declared the invalidity of many noncoercive state laws and practices conveying a message of religious endorsement. For example, in County of Allegheny, supra, we forbade the prominent display of a nativity scene on public property; without contesting the dissent's observation that the creche coerced no one into accepting or supporting whatever message it proclaimed, five Members of the Court found its display unconstitutional as a state endorsement of Christianity. Id., at 589-594, 598-602. Likewise, in Wallace v. Jaffree, 472 U.S. 38 (1985), we struck down a state law requiring a moment of silence in public classrooms not because the statute coerced students to participate in prayer (for it did not), but because the manner of [505 U.S. 577, 619] its enactment "convey[ed] a message of state approval of prayer activities in the public schools." Id., at 61; see also id., at 67-84 (O'CONNOR, J., concurring in judgment). Cf. Engel v. Vitale, 370 U.S., at 431 ("When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain. But the purposes underlying the Establishment Clause go much further than that").

In Epperson v. Arkansas, 393 U.S. 97 (1968), we invalidated a state law that barred the teaching of Darwin's theory of evolution because, even though the statute obviously did not coerce anyone to support religion or participate in any religious practice, it was enacted for a singularly religious purpose. See also Edwards v. Aguillard, 482 U.S. 578, 593 (1987) (statute requiring instruction in "creation science" "endorses religion in violation of the First Amendment"). And in School Dist. of Grand Rapids v. Ball, 473

U.S. 373 (1985), we invalidated a program whereby the State sent public school teachers to parochial schools to instruct students on ostensibly nonreligious matters; while the scheme clearly did not coerce anyone to receive or subsidize religious instruction, we held it invalid because, among other things, "[t]he symbolic union of church and state inherent in the [program] threatens to convey a message of state support for religion to students and to the general public. Id., at 397; see also Texas Monthly, Inc. v. Bullock, 489 U.S., at 17 (plurality opinion) (tax exemption benefiting only religious publications "effectively endorses religious belief"); id., at 28 (BLACKMUN, J., concurring in judgment) (exemption unconstitutional because State "engaged in preferential support for the communication of religious messages").

Our precedents may not always have drawn perfectly straight lines. They simply cannot, however, support the position that a showing of coercion is necessary to a successful Establishment Clause claim. [505 U.S. 577, 620]

B

Like the provisions about "due" process and "unreasonable" searches and seizures, the constitutional language forbidding laws "respecting an establishment of religion" is not pellucid. But virtually everyone acknowledges that the Clause bans more than formal establishments of religion in the traditional sense, that is, massive state support for religion through, among other means, comprehensive schemes of taxation. See generally Levy 1-62 (discussing such establishments in the Colonies and early States). This much follows from the Framers' explicit rejection of simpler provisions prohibiting either the establishment of a religion or laws "establishing religion" in favor of the broader ban on laws "respecting an establishment of religion." See supra, at 612-614.

While some argue that the Framers added the word "respecting" simply to foreclose federal interference with state establishments of religion, see, e.g., Amar, The Bill of Rights as a Constitution, 100 Yale L.J. 1131, 1157 (1991), the language sweeps more broadly than that. In Madison's words, the Clause in its final form forbids "everything like" a national religious establishment, see Madison's "Detached Memoranda" 558, and, after incorporation, it forbids "everything like" a state religious establishment. 4 Cf. County of Allegheny, 492 U.S., at 649 (opinion of STEVENS, J.). The sweep is broad enough that Madison himself characterized congressional provisions for legislative and military chaplains as unconstitutional "establishments." Madison's "Detached Memoranda" 558-559; see infra, at 16-17, and n. 6. [505 U.S. 577, 621]

While petitioners insist that the prohibition extends only to the "coercive" features and incident of establishment, they cannot easily square that claim with the constitutional text. The First Amendment forbids not just laws "respecting an establishment of religion," but also those "prohibiting the free exercise thereof." Yet laws that coerce nonadherents to "support or participate in any religion or its exercise," County of Allegheny, supra, at 659-660 (opinion of KENNEDY, J.), would, virtually by definition, violate their right to religious free exercise. See Employment Div., Dept. of Human Resources of Ore. v. Smith, 494 U.S. 872, 877 (1990) (under Free Exercise Clause, "government may not compel affirmation of religious belief"), citing Torcaso v. Watkins,

367 U.S. 488 (1961); see also J. Madison, Memorial and Remonstrance Against Religious Assessments (1785) (compelling support for religious establishments violates "free exercise of Religion"), quoted in 5 The Founders' Constitution, at 82, 84. Thus, a literal application of the coercion test would render the Establishment Clause a virtual nullity, as petitioners' counsel essentially conceded at oral argument. Tr. of Oral Arg. 18.

Our cases presuppose as much; as we said in School Dist. of Abington, "[t]he distinction between the two clauses is apparent - a violation of the Free Exercise Clause is predicated on coercion while the Establishment Clause violation need not be so attended." 374 U.S., at 223 ; see also Laycock, "Nonpreferential" Aid 922 ("If coercion is . . . an element of the establishment clause, establishment adds nothing to free exercise"). While one may argue that the Framers meant the Establishment Clause simply to ornament the First Amendment, cf. T. Curry, The First Freedoms 216-217 (1986), that must be a reading of last resort. Without compelling evidence to the contrary, we should presume that the Framers meant the Clause to stand for something more than petitioners attribute to it. [505 U.S. 577, 622]

C

Petitioners argue from the political setting in which the Establishment Clause was framed, and from the Framers' own political practices following ratification, that government may constitutionally endorse religion so long as it does not coerce religious conformity. The setting and the practices warrant canvassing, but while they yield some evidence for petitioners' argument, they do not reveal the degree of consensus in early constitutional thought that would raise a threat to stare decisis by challenging the presumption that the Establishment Clause adds something to the Free Exercise Clause that follows it.

The Framers adopted the Religion Clauses in response to a long tradition of coercive state support for religion, particularly in the form of tax assessments, but their special antipathy to religious coercion did not exhaust their hostility to the features and incidents of establishment. Indeed, Jefferson and Madison opposed any political appropriation of religion, see infra, at 15-18, and, even when challenging the hated assessments, they did not always temper their rhetoric with distinctions between coercive and noncoercive state action. When, for example, Madison criticized Virginia's general assessment bill, he invoked principles antithetical to all state efforts to promote religion. An assessment, he wrote, is improper not simply because it forces people to donate "three pence" to religion, but, more broadly, because "it is itself a signal of persecution. It degrades from the equal rank of Citizens all those whose opinions in Religion do not bend to those of the Legislative authority." J. Madison, Memorial and Remonstrance Against Religious Assessments (1785), in 5 The Founders' Constitution, at 83. Madison saw that, even without the tax collector's participation, an official endorsement of religion can impair religious liberty.

Petitioners contend that, because the early Presidents included religious messages in their inaugural and Thanksgiving Day addresses, the Framers could not have meant the [505 U.S. 577, 623] Establishment Clause to forbid noncoercive state endorsement of

religion. The argument ignores the fact, however, that Americans today find such proclamations less controversial than did the founding generation, whose published thoughts on the matter belie petitioners' claim. President Jefferson, for example, steadfastly refused to issue Thanksgiving proclamations of any kind, in part because he thought they violated the Religion Clauses. Letter from Thomas Jefferson to Rev. S. Miller (Jan. 23, 1808), in 5 The Founders' Constitution, at 98. In explaining his views to the Reverend Samuel Miller, Jefferson effectively anticipated, and rejected, petitioners' position:

> "[I]t is only proposed that I should recommend, not prescribe, a day of fasting & prayer. That is, that I should indirectly assume to the U.S. an authority over religious exercises which the Constitution has directly precluded from them. It must be meant too that this recommendation is to carry some authority, and to be sanctioned by some penalty on those who disregard it; not indeed of fine and imprisonment, but of some degree of proscription, perhaps in public opinion. Id., at 98-99 (emphasis in original).

By condemning such noncoercive state practices that, in "recommending" the majority faith, demean religious dissenters "in public opinion," Jefferson necessarily condemned what, in modern terms, we call official endorsement of religion. He accordingly construed the Establishment Clause to forbid not simply state coercion, but also state endorsement, of religious belief and observance. 5 And if he opposed [505 U.S. 577, 624] impersonal presidential addresses for inflicting "proscription in public opinion," all the more would he have condemned less diffuse expressions of official endorsement. During his first three years in office, James Madison also refused to call for days of thanksgiving and prayer, though later, amid the political turmoil of the War of 1812, he did so on four separate occasions. See Madison's "Detached Memoranda" 562, and n. 54. Upon retirement, in an essay condemning as an unconstitutional "establishment" the use of public money to support congressional and military chaplains, id., at 558-560, 6 he concluded that [r]eligious proclamations [505 U.S. 577, 625] by the Executive recommending thanksgivings & fasts are shoots from the same root with the legislative acts reviewed. Altho' recommendations only, they imply a religious agency, making no part of the trust delegated to political rulers. Id., at 560. Explaining that "[t]he members of a Govt . . . can in no sense be regarded as possessing an advisory trust from their Constituents in their religious capacities," ibid., he further observed that the state necessarily freights all of its religious messages with political ones: "the idea of policy [is] associated with religion, whatever be the mode or the occasion, when a function of the latter is assumed by those in power." Id., at 562 (footnote omitted).

Madison's failure to keep pace with his principles in the face of congressional pressure cannot erase the principles. He admitted to backsliding, and explained that he had made the content of his wartime proclamations inconsequential enough to mitigate much of their impropriety. See ibid; see also Letter from J. Madison to E. Livingston (July 10, 1822), in 5 The Founders' Constitution, at 105. While his writings suggest mild variations in his interpretation of the Establishment Clause, Madison was no different in that respect from the rest of his political generation. That he expressed so much doubt about the constitutionality of religious proclamations, however, suggests a brand of separationism

stronger even than that embodied in our traditional jurisprudence. So too does his characterization of public subsidies for legislative and military chaplains as unconstitutional "establishments," see supra, at 624 and this page, and n. 6, for the federal courts, however expansive their general view of the Establishment Clause, have upheld both practices. See Marsh v. Chambers, 463 U.S. 783 (1983) (legislative chaplains); [505 U.S. 577, 626] Katcoff v. Marsh, 755 F.2d 223 (CA2 1985) (military chaplains).
To be sure, the leaders of the young Republic engaged in some of the practices that separationists like Jefferson and Madison criticized. The First Congress did hire institutional chaplains, see Marsh v. Chambers, supra, at 788, and Presidents Washington and Adams unapologetically marked days of "`public thanksgiving and prayer,'" see R. Cord, Separation of Church and State 53 (1988). Yet in the face of the separationist dissent, those practices prove, at best, that the Framers simply did not share a common understanding of the Establishment Clause, and, at worst, that they, like other politicians, could raise constitutional ideals one day and turn their backs on them the next. "Indeed, by 1787, the provisions of the state bills of rights had become what Madison called mere "paper parchments" - expressions of the most laudable sentiments, observed as much in the breach as in practice." Kurland, The Origins of the Religion Clauses of the Constitution, 27 Wm. & Mary L.Rev. 839, 852 (1986) (footnote omitted). Sometimes the National Constitution fared no better. Ten years after proposing the First Amendment, Congress passed the Alien and Sedition Acts, measures patently unconstitutional by modern standards. If the early Congress's political actions were determinative, and not merely relevant, evidence of constitutional meaning, we would have to gut our current First Amendment doctrine to make room for political censor While we may be unable to know for certain what the Framers meant by the Clause, we do know that, around the time of its ratification, a respectable body of opinion supported a considerably broader reading than petitioners urge upon us. This consistency with the textual considerations is enough to preclude fundamentally reexamining our settled law, and I am accordingly left with the task of considering whether the state practice at issue here violates our traditional understanding of the Clause's proscriptions. [505 U.S. 577, 627]

[Footnote 4] In Everson v. Board of Ed. of Ewing, 330 U.S. 1 (1947), we unanimously incorporated the Establishment Clause into the Due Process Clause of the Fourteenth Amendment and, by so doing, extended its reach to the actions of States. Id., at 14-15,; see also Cantwell v. Connecticut, 310 U.S. 296, 303 (1940) (dictum). Since then, not one Member of this Court has proposed disincorporating the Clause.

[Footnote 5] Petitioners claim that the quoted passage shows that Jefferson regarded Thanksgiving proclamations as "coercive:" Thus, while one may disagree with Jefferson's view that a recommendatory Thanksgiving proclamation would nonetheless be coercive . . ., one cannot disagree that Jefferson believed coercion to be a necessary element of a First Amendment violation. Brief for Petitioners 34. But this is wordplay. The "proscription" to which Jefferson referred was, of course, by the public, and not [505 U.S. 577, 624] the government, whose only action was a noncoercive recommendation. And one can call any act of endorsement a form of coercion, but only if one is willing to dilute the meaning of "coercion" until there is no meaning left. Jefferson's position

straightforwardly contradicts the claim that a showing of "coercion," under any normal definition, is prerequisite to a successful Establishment Clause claim. At the same time, Jefferson's practice, like Madison's, see infra this page and 625, sometimes diverged from principle, for he did include religious references in his inaugural speeches. See Inaugural Addresses of the Presidents of the United States 17, 22-23 (1989); see also n. 3, supra.

Petitioners also seek comfort in a different passage of the same letter. Jefferson argued that presidential religious proclamations violate not just the Establishment Clause, but also the Tenth Amendment, for "what might be a right in a state government was a violation of that right when assumed by another." Letter from Thomas Jefferson to Rev. S. Miller (Jan. 23, 1808), in 5 The Founders' Constitution 99 (P. Kurland & R. Lerner eds. 1987). Jefferson did not, however, restrict himself to the Tenth Amendment in condemning such proclamations by a national officer. I do not, in any event, understand petitioners to be arguing that the Establishment Clause is exclusively a structural provision mediating the respective powers of the State and National Governments. Such a position would entail the argument, which petitioners do not make, and which we would almost certainly reject, that incorporation of the Establishment Clause under the Fourteenth Amendment was erroneous.

[Footnote 6] Madison found this practice "a palpable violation of . . . Constitutional principles." Madison's "Detached Memoranda" 558. Although he sat on the committee recommending the congressional chaplainship, see R. Cord, Separation of Church and State: Historical Fact and Current Fiction 23 [505 U.S. 577, 625] (1988), he later insisted that "it was not with my approbation that the deviation from [the immunity of religion from civil jurisdiction] took place in Congs., when they appointed Chaplains, to be paid from the Natl. Treasury." Letter from J. Madison to E. Livingston (July 10, 1822), in 5 The Founders' Constitution, at 105.