

## ISSUE BRIEF

### *“Information to Action”*

**Topic:** The First Amendment

**Title:** *THE FIRST AMENDMENT DIDN'T INITIALLY MEAN WHAT WE THINK* by Joshua Charles

The First Amendment is one of the most fundamental parts of our Constitution. And yet, when it comes to religion, in the early days of our Republic, it didn't mean what it has come to mean today.

With respect to religion, the text of the First Amendment reads as follows:

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

From this, many have inferred a general “separation of church and state.” However, in the early days of our Republic, this meant only one thing: the separation of church and the *federal* government, not the state governments, which continued to have religious establishments of one kind or another until the 1890's, and in many places continued to sponsor religious education, Bible reading, and prayer in schools until the 1960's.

The establishment and free exercise clauses of the First Amendment were not applied to *state* governments until [the Supreme Court case of \*Everson v. Board of Education\* \(1947\)](#). As Justice Hugo Black said in the decision:

*“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.”*

But this was not the case in American history up to that point. This is proven by none other than Thomas Jefferson himself, the originator of the famous phrase “separation of church and state.” In his famous letter to the Danbury Baptists, [President Jefferson wrote as follows](#):

*“I contemplate with sovereign reverence that act **of the whole American people** [the Constitution] which declared that **their legislature** [Congress] should make no law respecting an establishment of religion, or prohibiting the free exercise thereof; thus building a wall of separation between church and state. **Congress thus inhibited** from acts respecting religion, and the Executive authorized only to execute their acts, I have refrained from prescribing even occasional performances of devotion prescribed indeed legally where an Executive is the legal head of a national church, but subject here, as religious exercises only to the voluntary regulations and discipline of each respective sect.” [Emphasis added]*

For Jefferson, the First Amendment was as clear as its text: Congress, not the states, were prohibited from erecting religious establishments, or prohibiting the free exercise thereof. The “occasional performances of devotion” President Jefferson referred to were the various national days of thanksgiving, fasting, and prayer

that had been called by Presidents George Washington and John Adams. After Jefferson left office, President Madison again reissued such calls for national thanksgiving, prayer, and fasting (though he later concluded Presidents should not do so), and many Presidents have followed suit. As governor of Virginia, [Jefferson had issued](#) just such a call for thanksgiving and prayer during the Revolutionary War. But since the First Amendment clearly interdicted *Congress* from doing so, he concluded he should refrain as President of the United States.

At the end of his time in office, the same man who had asserted “separation of church and state” for the federal government explicitly acknowledged that no such power had been denied to the states. Jefferson laid this out clearly [in a letter to Rev. Samuel Miller in 1808](#):

*“I consider **the government of the US** as interdicted by the Constitution from intermeddling with religious institutions, their doctrines, discipline, or exercises. This results not only from the provision that no law shall be made respecting the establishment, or free exercise, of religion, but from **that also which reserves to the states the powers not delegated to the US**. Certainly no power to prescribe any religious exercise, or to assume authority in religious discipline, has been delegated **to the general government**. **It must then rest with the states**, as far as it can be in any human authority.”* [Emphasis added]

Thus, while today we take it for granted that the First Amendment was a general provision applying to all governments in these United States—both federal and state—that was not the case between 1791 (when the First Amendment was ratified) and 1947, a total of 156 years, or more than two thirds of our national history.