HISTORICAL EVIDENCE

*Thomas Jefferson’s metaphor of a “wall of separation between church and state” is a constitutionally justified and appropriate guide for interpreting the language and purpose of the First Amendment’s Establishment Clause.*

**Declaration of Independence:**

“When in the Course of human events, it becomes necessary for one people to Dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.”

“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”

**Jefferson’s Letter to the Danbury Baptists:**

“Believing with you that religion is a matter which lies solely between Man & his God, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, & not opinions…”

“Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties.”

**FBI Notes on Jefferson’s Letter:**

“The Supreme Court turned the spotlight on the ‘wall of separation’ phrase in 1878 by declaring in *Reynolds v. United States*‘that it may be accepted almost as an authoritative declaration of the scope and effect of the [first] amendment.’”

* Court held in *Reynolds* that Congress has the power to prohibit polygamy. Although it could not outlaw a belief in the correctness of polygamy, it could outlaw the practice thereof. No religious exception was necessary. (1879)

“The high court took the same position in widely publicized decisions in 1947 and 1948, asserting in the latter case, *McCollum v. Board of Education,*that, ‘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.'’”

* In *McCollum v. Board,* the Court ruled that religious material couldn’t be taught in schools. Allowing third-party religious leaders to provide spiritual instruction at schools during “free periods” was "beyond question a utilization of the tax-established and tax-supported public school system to aid religious groups and to spread the faith" and violated the Establishment clause.

“In his New Year's note to Lincoln, Jefferson revealed that he hoped to accomplish two things by replying to the Danbury Baptists. One was to issue a ‘condemnation of the alliance between church and state’”

Omitted Text:

“Congress thus inhibited from acts respecting religion, and the Executive authorised only to execute their acts, I have refrained from prescribing even those occasional performances of devotion, practiced indeed by the Executive of another nation as the legal head of its church, but subject here, as religious exercises only to the voluntary regulations and discipline of each respective sect, confining myself therefore to the duties of my station, which are merely temporal, be assured that your religious rights shall never be infringed by any act of mine and that.”

* Upon removing this section, Jefferson wrote in the margins: “paragraph was omitted on the suggestion that it might give uneasiness to some of our republican friends in the eastern states where the proclamation of thanksgivings etc. by their Executives is an antient habit & is respected.”

**A Bill for Establishing Religious Freedom, written by Jefferson (1777)**

“that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical”

“that our civil rights have no dependence on our religious opinions, more than our opinions in physics or geometry; that, therefore, the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to the offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which in common with his fellow citizens he has a natural right”

* Can’t withhold generally available benefits from some people on the basis of religious OPINION
* Feel like the emphasis/distinction for OPINION could be important

“that to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles, on the supposition of their ill tendency, is a dangerous fallacy, which at once destroys all religious liberty, because he being of course judge of that tendency, will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own”

* Says judges can’t decide if some religions are good and others bad, whether a person’s sincerely held religious beliefs are legitimate, or if faiths are duly constituted.
* LOOK FOR CONTRADICTIONS WITH THIS

“That it is time enough for the rightful purposes of civil government, for its offices to interfere when principles break out into overt acts against peace and good order”

* There are legitimate cases where the Government can constrain religious CONDUCT

“Be it therefore enacted by the General Assembly, 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; but that all men shall be free to profess, add by argument to maintain, their opinions in matters of religion, and that the same shall in nowise diminish, enlarge, or affect their civil capacities.”

* People cannot be coerced into supporting some religion practice or organization they don’t follow.
* Also, cannot be harmed on account of religious opinion or belief. They are free to express these allegiances and beliefs without benefiting, harming, or in any way affection “civil capacities”

**Notes on the State of Virginia, written by Jefferson (1782):**

“The rights of conscience we never submitted, we could not submit. We are answerable for them to our God. The legitimate powers of government extend to such acts only as are injurious to others.”

First section details the history of religious persecution which Virginias should seek to prevent.

“Reason and free inquiry are the only effectual agents against error. Give a loose to them, they will support the true religion by bringing every false one to their tribunal, to the test of their investigation. They are the natural enemies of error, and of error only.”

“Difference of opinion is advantageous in religion. The several sects perform the office of a censor morum over such other…if a sect arises, whose tenets would subvert morals, good sense has fair play, and reasons and laughs it out of doors, without suffering the State to be troubled with it.”

“On the contrary, their harmony is unparalleled, and can be ascribed to nothing but their unbounded tolerance, because there is no other circumstance in which they differ from every nation on earth. They have made the happy discovery, that the way to silence religious disputes, is to take no notice of them.”

“Let us too give this experiment fair play, and get rid, while we may, of those tyrannical laws. It is true, we are as yet secured against them by the spirit of the times… Besides, the spirit of the times may alter, will alter. Our rulers will become corrupt, our people careless.”

**A Memorial and Remonstrance on Freedom of Conscience**

“The Religion, then, of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it, as these may dictate.”

* Does this include conduct?

“We maintain, therefore, that in matters of Religion no man's right is abridged by the institution of Civil Society, and that Religion is wholly exempt from its cognizance.”

* Religion has NO PLACE in civil society, and man’s religious liberty cannot be limited by any civil authority.

“That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?”

* Can’t tax people to support a religion they don’t follow

“Whilst we assert for ourselves a freedom to embrace, to profess, and to observe, the Religion which we believe to be of divine origin, we cannot deny an equal freedom to them whose minds have not yet yielded to the evidence which has convinced us.”

“As the bill violates equality by subjecting some to peculiar burdens, so it violates the same principle by granting to others peculiar exemptions.”

* Can’t have legislation that targets or specially exempts particular faiths so as to uniquely aid that religion.

“Because the Bill implies, either that the civil Magistrate is a competent Judge of Religious truths, or that he may employ Religion as an engine of civil policy. The first is an arrogant pretension, falsified by the contradictory opinions of Rulers in all ages, and throughout the world; the second, an unhallowed perversion of the means of salvation.”

* Government can’t be in the business of determining which religions are good/bad or which beliefs sincere and important

“Such a Government will be best supported by protecting every citizen in the enjoyment of his Religion with the same equal hand which protects his person and his property; by neither invading the equal rights of any Sect, nor suffering any sect to invade those of another.”

* Gov. can’t handcuff certain religions by taking away their rights
* BUT government doesn’t need to be actively hostile. CAN do things that are GOOD for RELIGION so long as all faiths enjoy the benefits equally.

“Because it will destroy that moderation and harmony which the forbearance of our laws to intermeddle with Religion has produced among its several Sects.”