

# The Editor's Desk

## Senator Sam

Visitors who saw Senator Sam Ervin, Jr., ambling along the Senate Office Building hallway may have mentally catalogued him as a country bumpkin in town to see the sights. Others, hearing his drawing wit and back-fence banter likely conjured up images of checkerboards and cracker-box philosophers. It took the Watergate hearings to expose the nation to the sharp, Harvard Law School-honed mind that his fellow Senators had already learned to respect.

I published the Senator's first submission to LIBERTY only two years after I became editor. Titled "Why I Believe Federal Tax Aid to Parochial Schools Is Both Unwise and Unconstitutional," it appeared in the September-October, 1961, issue. His last article, sent to LIBERTY a few months before

his death on April 23, appears on page 10. It reveals that Ervin didn't change his mind on aid or other related means of emasculating the First Amendment.

Soon after he retired, in 1974, I prefaced a LIBERTY interview with Ervin with these words: "When former Senator Sam J. Ervin's role in investigating Watergate has been forgotten, he will still be remembered for his contributions in defense of the United States Constitution."

With his heroes Madison and Jefferson, Ervin rests—as he once wrote after a visit to Jefferson's gravesite—"in the tongueless silence of the dreamless dust." I'm glad to give him voice again through LIBERTY. And to invite you to listen—and to dream of an America freed from religious strife by the wise provisions of the First Amendment.

Senator Sam would approve.—R.R.H.



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Dear Mr. President:

The Constitution is the wisest instrument of government the earth has ever known. If America is to endure as a free republic as ordained by it, Presidents, Supreme Court Justices, and other public officers must do what they have sworn to do, that is, support it.

Recognizing these truths, I spent my major efforts during my 20 years as a Senator from North Carolina trying to persuade government to obey the Constitution.

Despite my admiration for you, I am constrained by my duty to our country to assert that what you say, do, and advocate in respect to religion shows that you do not understand the religious clauses of the First Amendment and how obedience to them is essential to the preservation of the religious freedom they are designed to secure to all Americans of all faiths.

You urge Congress to give federal tax credits to parents who send their children to private schools to be taught the creeds of their churches. Your action in this respect violates the First Amendment, which forbids government to use the taxes of Caesar to finance the things of God.

You named an ambassador to the Vatican—an act in violation of the Establishment Clause, which in the words of its drafter, James Madison, forbids government to establish an official relationship with any religion.

You urge the adoption of a constitutional amendment to authorize prayer in the public schools. The adoption of such an amendment would drastically alter the First Amendment, which commands the government to be strictly neutral in respect to religion, and leaves the task of teaching religion to children to the homes and churches of our land.

The Founding Fathers rightly believed that the great diversity of religious faiths in America makes governmental neutrality in religion essential if our people are to live together in peace.

The Michie Company, of Charlottesville, Virginia, has just published my autobiography, *Preserving the Constitution*, and it explains the religious clauses of the First Amendment in plain English. I send you a copy of *Preserving the Constitution* and urge you to read and ponder the chapters on "The Constitution and Religion" and "Prayer in the Public Schools." These chapters make it manifest that there is a total repugnancy between what you say, do, and advocate concerning governmental action in religion and the religious clauses of the First Amendment.

The government must keep its hands off religion if our people are to enjoy religious freedom—our most precious freedom.

Sincerely yours,

*Sam J. Ervin, Jr.*

Sam J. Ervin, Jr.  
Former U.S. Senator

# Why I Believe in the FIRST AMENDMENT

By SAM J. ERVIN JR.

*Shortly before he died on April 23, 1985, Sam J. Ervin, Jr., for 20 years (1954-1974) a U.S. Senator from North Carolina, sent LIBERTY the following article. Drawing from his autobiography, Preserving the Constitution (Michie Co., \$19.95), Ervin updated a familiar theme: the perils and vicissitudes of the First Amendment. With the article was an open letter to President Reagan, written, Ervin noted, "in plain English." Believing with the Senator that the First Amendment is being misrepresented and assaulted by those who should know better and those who do not, we share his views on these pages.*

**A**s a Presbyterian whose Scotch-Irish, English, and French Huguenot ancestors dissented from the established churches in the lands of their origin, I cherish the First Amendment. Its religion clauses—"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof"—have saved our nation from a multitude of sins committed in the name of religion. It is hard for me to understand, therefore, why numerous Americans of utmost sincerity are not in intellectual rapport with the amendment's separation of government and religion. Whether they are hostile to the principle of separation itself or do not understand what it entails, I do not know and will not surmise.

One group demands that the public schools teach religion to students; another group demands that government provide



Senator Sam Ervin (right), serving as chairman of the Senate Watergate Committee, researches the Scriptures with Deputy Counsel Rufus Edmisten. The senior senator from North Carolina, a Democrat and a Presbyterian, quoted the Bible often during the Watergate hearings.

funds to aid parochial schools, which churches maintain to teach their doctrines. In so doing, the second group demands that the taxes of Caesar be used to finance the things of God.

While one group is concerned with the public schools and the other with parochial schools, both base their demands on the assumption that governmental fidelity to the First Amendment frustrates the religious education of children.

Is the assumption valid? I believe the answer resides in the experience of our American forefathers. What were they fleeing when they came to our shores? What did they intend when they wrote the First Amendment? Were they concerned only, as some insist, that one Christian church not be favored over other Christian churches?

Much more than an arcane constitutional exercise is at stake in our response. I believe that nothing less than religious liberty itself is in the balance.

To understand the First Amendment—and Article 6, Section 3 of the original Constitution, which provides that “no religious test shall ever be required as a qualification to any office or public trust under the United States”—we must understand the historic events that prompted the Founding Fathers to embody these restrictions in the Constitution.

### Religious Intolerance

Among the ugliest chapters in history are those that recount the religious intolerance of the civil and ecclesiastical rulers of the Old and New worlds and their puppets during the generations preceding the framing and

ratifying of the First Amendment.

These chapters reveal the casting of Christians to the lions in the Colosseum at Rome; bloody Christian Crusades against the Saracens for possession of the shrines hallowed by the footsteps of the Prince of Peace; papal use of the dungeon and the rack to coerce conformity and of the fiery faggot to exterminate heresy; unspeakable cruelties of the Spanish Inquisition; slaughter of the Waldenses in the Piedmont, Italy; jailing and hanging by Protestant kings of English Catholics for abiding with the faith of their fathers; jailing and hanging by a Catholic queen of English Protestants for reading English Scriptures and praying Protestant prayers; hunting down and slaying of the Covenanters upon the crags and moors of Scotland for worshiping God according to conscience; decimating of the people of the German states in the Thirty Years' War between Catholics and Protestants; massacre of the Huguenots in France; pogroms and persecutions of the Jews in many lands; banishing of Baptists and other dissenters by Puritan Massachusetts; persecution and imprisonment of Quakers by England for refusing to pay tithes to the established church and to take the oaths of supremacy and allegiance; banishing, branding, imprisoning, and whipping of Quakers, and hanging of the alleged witches at Salem by Puritan Massachusetts; and hundreds of other atrocities perpetrated in the name of religion.

Blaise Pascal, the French mathematician and philosopher, was moved more than 300 years ago to proclaim this tragic

truth: "Men never do evil so completely and cheerfully as when they do it from religious conviction."

The late chief justice Walter P. Stacy—one of America's wisest jurists—with whom I served on the North Carolina Supreme Court, phrased a similar truth in unforgettable words:

"Men have gone to war and cut each other's throats because they could not agree as to what was to become of them after their throats were cut. Many sins have been committed in the name of religion. Alas! the spirit of proscription is never kind. It is the unhappy quality of religious disputes that they are always bitter. For some reason, too deep to fathom, men contest more furiously over the road to heaven, which they cannot see, than over their visible walks on earth."

Religious intolerance was fostered in Great Britain and virtually all Europe by unholy alliances between governments and particular churches recognized and established by law as the sole custodians of religious truth.

The objective of the unholy alliance in each nation was to persuade or coerce the people to accept and practice the political and religious orthodoxy sanctioned by the state and the established church. State and church sought to accomplish this objective by imprisoning the minds and spirits of the people within intellectual and spiritual jails.

The British Parliament made the Church of England the established church in Great Britain. It created the crime of seditious libel to punish those who spoke ill of the government or its officers, and the crime of blasphemous libel to punish those who spoke ill of the established church. Besides, the British Parliament enacted laws compelling the people to pay tithes or taxes for the support of the established church, and to attend its worship services. Dissenters from its doctrines were denied civil office, and ministers of dissenting congregations could not administer the sacraments to their members.

As a consequence of these attempts to regulate relations between men and religion, dissenters from the established church were compelled to make contributions of money for the propagation of religious opinions they disbelieved, required to listen to the exposition of religious doctrines they rejected, and denied the right to hold civil offices. They sometimes had their marriages annulled, and their children adjudged illegitimate, for daring to speak their marital vows before ministers of their own faith rather than clergymen of the established church.

### Established Churches in the Colonies

A substantial proportion of the colonists, most of whom were from the British Isles, were dissenters from the churches established by law in the lands of their origins. When they reached America, however, they discovered to their disappointment that predominant groups had set up established churches here and that they were compelled in such colonies to pay taxes for the support of established churches whose doctrines they disbelieved. Moreover, most colonies had established religious qualifications in their oaths for public office holders. As a rule these tests were designed to exclude dissenters, Catholics, Jews, deists, or unbelievers.

Artemas Ward, a humorist of a bygone generation, observed: "The Puritans nobly fled from a land of despotism to a land of freedom, where they could not only enjoy their own religion, but could prevent everybody else from enjoying his."

The colonies of Virginia, North Carolina, South Carolina, Georgia, and Maryland had established churches, and the Anglican Church was the favorite under their laws. In the colonies of Massachusetts, Connecticut, and New Hampshire, the Congregational Church was established. In the colony of New York, the Dutch Reformed and Anglican churches were, in turn, established by law. The people in these nine colonies were compelled by law to pay taxes for the support of established churches, and in some cases to attend their services.

The dissenters were outraged by these requirements. They believed it tyrannical for government to attempt to regulate the relationship between an individual and his God. Moreover, as they pondered Matthew 22:15-22—"Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's" (verse 21)—they concluded that in addition to being tyrannical, the attempt to regulate religion by law was sinful.

### Separation of Church and State in the States

The dissenters accepted as absolute truth this declaration, which had its origin in the North Carolina Constitution of 1776: "All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience." As a consequence, they demanded separation of church and state in America.

During the Revolution and the years immediately following, dissenters found staunch allies, in their fight for separation of church and state, among nonchurch members and those adherents of established churches who believed it abhorrent for government to regulate the relationship between human beings and religion.

Separation of church and state presented no problems in Rhode Island, where Baptists led by Roger Williams had settled under a royal charter granting complete religious freedom to all, and in Delaware, New Jersey, and Pennsylvania, where establishment never acquired a foothold.

When their revolt against Great Britain converted the 13 colonies into self-governing states, Rhode Island retained separation under its original charter, and Delaware, New Jersey, and Pennsylvania did so under constitutions adopted in 1776. North Carolina, New York, Georgia, and Virginia granted freedom of worship to all and disestablished religion before the drafting of the First Amendment, and South Carolina did likewise before the amendment was ratified.

The states maintaining financial and legal relationship to religion at the time the First Amendment became a part of the Constitution were Connecticut, Maryland, Massachusetts, and New Hampshire. These four states were able to retain this relationship because the amendment applied originally to the federal government and not to the states.

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# FIRST AMENDMENT

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But in these four states there was no single established church at that time. As a concession to those demanding complete separation of church and state, these states had substituted for single established churches multiple establishments and were providing for impartial use of taxes to support all churches they deemed respectable. The last of the four to terminate such relationship to religion was Massachusetts, which did so in 1833.

## The Statute of Virginia for Religious Liberty

It is not surprising that James Madison hated religious intolerance and loved religious liberty. As a student at what is now Princeton University, he sat at the feet of the great educator and patriot John Witherspoon, the Scottish-American divine, who taught that mere tolerance of differing religious views was not enough, that every man was entitled to worship God as he chose or not at all, and that every church should be supported by the contributions of its own members and not by taxation.

On entering politics in his native Virginia, Madison adopted as his wise and trusted counselor Thomas Jefferson, who had sworn on the altar of God eternal hostility to all forms of tyranny over the mind of man. Jefferson, the theorist, and Madison, the pragmatist, were an ideal combination. They led the fight for disestablishment of religion in Virginia. Madison subsequently authored the religious clauses of the First Amendment. The fight for religious freedom in Virginia illuminates the meaning of these clauses, and merits detailing.

In 1776, Virginia, as an independent commonwealth, adopted a new constitution. A member of the constitutional convention that drafted it, Madison succeeded in writing into it the proposition that all men are equally entitled to the free exercise of religion according to the dictates of conscience.

Shortly after adoption of the constitution, the Virginia legislature met, and a conflict ensued between members who demanded total separation of church and state and those who favored supplanting the single established Anglican Church by an establishment of all churches deemed to be respectable.

As a member of this legislature, James Madison persuaded his colleagues to provide that no dissenters should be compelled to pay taxes to the Anglican Church, which had been established in Virginia in 1629. He also secured enactment of a law that suspended the requirement that members of the Anglican Church pay taxes for its support. But the legislature of 1776 put off the crucial decision of whether general taxes should be levied for support of all denominations deemed respectable.

The conflict was renewed in 1779, when James Henry introduced a bill for multiple establishment, and John Harvie, a member of the general assembly, introduced a bill, drafted by Thomas Jefferson, that is known to history as the Bill for Establishing Religious Freedom.

Henry's bill undertook to establish virtually all Christian churches of Virginia and to levy taxes for their support on an impartial basis. Reference to an establishment appears in contexts clearly showing that James Henry and the others of his day understood the term "an establishment of religion" to mean an official connection between the state and one or more churches whereby the state recognized such church or churches and provided for taxation for its or their support.

The bill for religious freedom is one of the great documents preceding the Constitution. Designed to effect complete separation of church and state in Virginia, the bill laid down seven propositions in its preamble. The first two indicate the tone of all: 1. "Almighty God hath created the mind free." 2. "To compel a man to furnish contributions of money for the propagation of opinions he disbelieves is sinful and tyrannical."

On the basis of the seven propositions, the bill proposed that the Virginia legislature make these enactments: first, "that no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever"; second, that no man "shall be enforced, restrained, molested, or burthened in his body or goods" or "otherwise suffer on account of his religious opinions, or beliefs"; third, "that all men shall be free to profess, and by argument to maintain, their opinion in all matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities"; and fourth, that "the rights hereby asserted are of the natural rights of mankind, and . . . if any act shall be hereafter passed to repeal the present or to narrow its application, such act shall be an infringement of natural right."

The opposing forces in the legislature of 1779 were so nearly equal that it was impossible to secure enactment of either the James Henry bill for a multiple establishment of religion or the Jefferson bill for complete religious freedom.

The contest was renewed in 1784. This time James Madison presented Jefferson's bill for religious freedom, and Patrick Henry sponsored a new bill for multiple establishment. Henry's bill, entitled "A Bill Establishing a Provision for Teachers of the Christian Religion," recognized Virginia's legal interest in virtually all the Christian churches functioning within its borders, and in imposing taxes on all Virginians for their support.

With the legislature apparently on the verge of passing Patrick Henry's bill, Madison persuaded it to postpone a final vote until its next session, scheduled for November, 1785. Before the next meeting of the legislature, Madison composed a most convincing and eloquent appeal for religious freedom, which he called "The Memorial and Remonstrance Against Religious Assessments." In it he said:

"It is proper to take alarm at the first experiment on our liberties. . . . 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 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."

In this document—a protest against the bill sponsored by

Patrick Henry to levy taxes for the support of virtually all Christian churches in Virginia—Madison used the word *establishment* at least five times. The context shows that in his mind “an establishment of religion” meant an official relationship between the state and one church or many churches or all churches, and the imposition of taxation for the support of one church or many churches or all churches.

Madison caused “The Memorial and Remonstrance Against Religious Assessments” to be widely distributed throughout Virginia. By so doing he ensured his victory. When members of the legislature that was scheduled to convene in November, 1785, were elected, those who supported Jefferson and Madison were in the overwhelming majority. Upon convening, they enacted into law Jefferson’s bill for religious freedom.

### Jefferson’s Appraisal of the Statute

We cannot overmagnify the importance that Jefferson and Madison attributed to the Virginia Statute for Religious Liberty. Jefferson gave cogent testimony on this score when he chose the epitaph to be carved upon his gravestone:

“Here was buried Thomas Jefferson, author of the Declaration of American Independence, of the Statute of Virginia for religious freedom, and father of the University of Virginia.”

At the time Jefferson decided on these words, he had been a member of the legislature of Virginia; he had been governor of Virginia; he had represented Virginia in the Continental Congress; he had served as American minister to France; he had officiated as secretary of state in George Washington’s cabinet; he had been Vice President of the United States under John Adams; and he had been twice elected to the highest office within the gift of the American people—the Presidency itself.

Yet Thomas Jefferson was not concerned that he should be remembered for the high offices he had filled; he was concerned that he should be remembered as the author of the Virginia Statute for Religious Liberty.

### The First Amendment

After the Constitution was drafted and submitted to the states for ratification, many Americans were dissatisfied because it did not contain a bill of rights or any provision relating to religious freedom other than Article 6, Section 3, which prescribed that no religious test should “be required as a qualification to any office or public trust under the United States.”

When New York, New Hampshire, and Virginia ratified the Constitution, they adopted resolutions insisting that it should be amended by incorporating guaranties of religious freedom and freedom from taxation for the support of religion. North Carolina and Rhode Island both refused to ratify the Constitution unless it was amended to provide for the disestablishment of religion.

As soon as Congress convened, Madison began his great fight to have the First Amendment added to the Constitution. Some colleagues did not want the amendment to deny government the power to support religion, and others insisted that the religious clauses should merely prohibit a *single*

established church. But Madison contended that Congress should be prohibited from passing any law respecting an establishment of religion or prohibiting its free exercise.

On September 23, 1789, the conference committee of the Senate and House, which had been appointed to reconcile varying views as to the language, agreed with Madison and recommended the words now incorporated in the First Amendment. Hence James Madison, whom historians call the Father of the Constitution, really phrased the Establishment and Free Exercise clauses of the First Amendment.

In July, 1868, the Fourteenth Amendment was added to the Constitution. Section 1 provides that no state shall deprive any person of liberty without due process of law. In 1940 the Supreme Court decided that the First and Fourteenth amendments in combination forbid the states as well as the federal government to make any law or take any action respecting the establishment of religion or prohibiting its free exercise, and thus secure to all people in the United States religious freedom. This ruling has been subsequently reaffirmed by the Supreme Court in many cases.

The constitutional separation of government and religion is best for government and best for religion. It enables each to seek to achieve its rightful aims without interference from the other. Besides, it is wise. History reveals that political freedom cannot exist in any nation where religion controls government, and that religious freedom cannot survive in any nation where government controls religion.

Moreover, constitutional separation of government and religion is indispensable to the domestic tranquility of the United States.

By securing equality before the law of all religious sects and requiring government to be neutral in respect to them, the constitutional separation of government and religion makes the love of religious freedom and the other values that unite our people stronger than their diversities and enables Americans of varying religious faiths to live with one another in peace.

### Opposition to the First Amendment

What, then, must we conclude about the First Amendment? Does it in fact frustrate the religious education of children? I believe that the experience of our American forefathers, both in Europe and in their relationship to the emerging Constitution, can lead to only one fair conclusion: The assumption is without foundation. While it forbids government to teach religion, the First Amendment leaves individuals, homes, and nongovernmental institutions, such as Sunday schools, churches, and private schools, free to do so. Indeed it encourages them to do so by securing religious freedom to all.

Churches should look only to their members and their friends for the financing of their undertakings. No church should engage in any undertaking, no matter how laudable, that its members and friends are unable or unwilling to finance.

It is just as sinful and tyrannical now as in the day of Jefferson and Madison for government to tell people what they must think about religion, or to compel them to pay taxes for the propagation of religious opinions they disbelieve and may even abhor.

