



THE "WALL OF SEPARATION" MYTH

Does the Constitution provide a "wall of separation" between church and state?

The short answer is "yes," but not as erroneously interpreted by judicial activists today.

Much to the vexation of the ACLU and their Leftist ilk, a group of religious leaders were invited to the East Room of the White House, and talked about the importance of prayer. Religious leaders have been high on the White House list of dignitary guests since our nation's founding. Along with the President George Bush, these leaders prayed for our nation -- and yes, they did so on government property.

In this enlightened era when progressive, free-thinking liberals insist on the removal of all religious references and symbols (Crosses, Ten Commandment monuments, etc.) from federal, state and local public places, how could the President of the United States impudently promoted the merits of prayer and encouraged all Americans to do the same.

But wait, it gets worse.

"We pray to give thanks for our freedom," the President said. "Freedom is our birthright because the Creator wrote it into our common human nature. No government can ever take a gift from God away." He then asserted that giving thanks to God is writ through and through upon American history, from Plymouth Rock to the Revolution and to this day. He reminded us that in our nation's supreme founding document, the Declaration of Independence, "...our Founders ... declared it a self-evident truth that our right to liberty comes from God." Then, he concluded, "We pray to acknowledge our dependence on the Almighty [and] we who ask for God's help for ourselves, [since we]

have a particular obligation to care for the least of our brothers and sisters within our midst."

How can he, and other elected leaders, get away with such a blatant breach of the "wall of separation" between church and state? Because, in short, there is no such doctrine supported in our Constitution or its superior guidance, our Declaration of Independence. In fact, the First Continental Congress called for national prayer.

President Bush's adversaries, those aforementioned "enlightened liberals," know that if they take him on, they will lose in both the national courts and the court of public opinion. After all, the Supreme Court affirmed the right of state legislatures to open their sessions with prayer (*Marsh v Chambers*, 1983), and liberals understand the extension of this ruling. They also understand that a vast majority of Americans honor God through prayer on a regular basis (though, unfortunately, many of them don't vote because they have little faith in our politicians).

Thus, liberals choose much smaller targets, like the celebrated removal of a Ten Commandments monument from state grounds in Alabama, or removal of a memorial Cross from a city park above San Diego. They carefully choose targets in those venues where they have stacked the federal Circuit Courts with judicial activists who do their bidding -- and that means most venues.

Nonetheless, inquiring minds want to know, doesn't the Constitution ensure a "wall of separation" between church and state?

No.

Unbeknown to many liberals, the words "wall of separation between church and state" do not appear in

our Constitution -- nor is this notion implied. Thomas Jefferson penned those words in an 1802 [letter to the Danbury Baptist Association](#) in response to a letter they wrote him objecting to Connecticut's establishment of Congregationalism as their state church. Jefferson assuaged their concerns, telling them the First Amendment prohibited the national government from establishing a "national church," but he concluded rightly that the Constitution (see the Tenth Amendment's federalism provision) prohibited the national government from interfering with the matters of state governments -- a "wall of separation," if you will, between the federal government and state governments.

There is ample evidence that Jefferson did not intend for that metaphor to become an iron curtain between church and state. Though he favored a secularist state, he knew that the Constitution offered no such proscription on religious observance and practice in the public square. Those, including judicial activists, who insist such was Jefferson's original intent, and that of our Constitution, are either historically nescient or they harbor a disingenuous motive to serve a secularist constituent agenda.

American University professor Daniel Dreisbach and University of Chicago law professor Philip Hamburger argue, correctly, that the "wall of separation" has its ironic and erroneous origin in 1947. It was then in the case of *Everson v. Board of Education* that conservative Supreme Court Justice Hugo Black wrote in the majority opinion that the First Amendment created a "wall of separation" between religion and government at the state level.

Black unwittingly opened the door for Fourteenth Amendment application of the First Amendment to the states. By invoking the Establishment Clause, he set legal precedent, and you know the rest of the story. The *Everson* decision launched a new era of constitutional interpretation by judicial activists, creating precedent to remove prayer and virtually all reference to religion from state and local public forums.

This fundamental violation of federalist principle was the central issue in 2003, when Alabama Supreme Court Justice Roy Moore defied an order by the 11th U.S. Circuit Court to remove a Ten Commandments monument from the state's justice building rotunda. Of such judicial diktats, Thomas Jefferson warned, "The Constitution [will become] a mere thing of wax in the hands of the judiciary which they may twist and shape into any form they please."

Indeed, it has become just that.

As for that utterly phony "wall of separation," Princeton scholar Stanley Katz says that correcting the "Jeffersonian myth" will have a "profound impact on the current law and politics of church and state." Joining the debate, Justice Clarence Thomas argues, "This doctrine, born of bigotry, should be buried now."

However, this issue is not merely about federalism and states' rights. It is about the rule of law and the future of our Constitutional Republic. That is precisely why Senate Democrats are so insistent on blocking the President's judicial nominations. They know that the real locus of central-government power now resides on the federal bench, not in the legislature. This struggle between judicial governance versus government of, by and for the people, is really at the core of the current filibuster debate.

As for the President's call to prayer this week, he is fully aware of his nation's heritage -- and fully in tune with its heart. He understands this admonition from Founder George Washington: "It is the duty of all Nations to acknowledge the providence of Almighty God, to obey His will, to be grateful for His benefits, and humbly to implore His protection and favors."

Unfortunately, if Congress is not able to vote on President Bush's constitutional-constructionist nominees for the circuit courts, then they will not be able to vote on his constructionist nominees for the Supreme Court. They are holding the Constitution hostage, and if they succeed, the next president may not be able to offer prayer in public.

Quote of the week...

"We pray as Americans have always prayed: with confidence in God's purpose, with hope for the future, and with the humility to ask God's help to do what is right." --President George W. Bush

On cross-examination...

"To those who cite the First Amendment as reason for excluding God from more and more of our institutions every day, I say: The First Amendment of the Constitution was not written to protect the people of this country from religious values; it was written to protect religious values from government tyranny." -- Ronald Reagan