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SCHOOL PRAYER IS CONSTITUTIONAL AFTER ALL

In a sensational decision, a U.S. District Court has held that prayers offered by teachers in public schools are NOT unconstitutional. This scholarly 66-page decision in Jaffree v. James is making waves in legal circles because it holds that U.S. Supreme Court decisions to the contrary are wrong.

The Jaffree court decision gives us quite a lesson in U.S. history and constitutional law. It overturns popular myths about the First Amendment and explains what the First Amendment really means in terms of freedom of religion.

The Establishment Clause in the First Amendment had a dual purpose: (1) to guarantee to each individual that Congress would not impose a national religion, and (2) to guarantee to each state that it was free to define the relationship of the state and religion under its own state constitution and laws.

The "separation of church and state" myth has been carefully cultivated in recent years to make people believe that America was founded on the principle that religion should be totally separate from government. That is a falsification of history.

At the start of the American Revolution, nine of the colonies had established churches. Rhode Island and Virginia were the only states where all religious denominations were disestablished, but even those states acknowledged the Christian religion.

The establishment of specific Protestant religions by states was gradually abandoned, but the quasi-establishment of religion in general replaced it. Even at the start of the 20th century, no person who denied the existence of God could hold office in many states.

The Jaffree court carefully reviewed the historical record, including the Congressional chaplain system, the Federal moneys appropriated for the education of the Indians, and the Thanksgiving Day proclamations. The court concluded that it is "abundantly clear" that the Founding Fathers and the authors of the First Amendment "never intended the Establishment Clause to erect an absolute wall of separation between the Federal Government and religion."

Massive historical and constitutional research proves that Jefferson's phrase "wall of separation" referred only to a "wall" that should prohibit action such as Federal laws establishing a national religion or prohibiting the free exercise of worship. All evidence indicates that Thomas Jefferson and James Madison, even though they led the fight in Virginia for the separation of church and state, both believed that the First Amendment only forbade the establishment of a religion by the national government, and also believed that the states were free to establish religions as they saw fit.

The famous "wall of separation" was actually put into Jefferson's mouth by Justice Hugo Black in Everson v. Board of Education (1947). It took on a life of its own and this nonconstitutional "wall" grew higher and higher in subsequent Supreme Court opinions.

The Jaffree court then tackled the oft-repeated argument that the First Amendment was made applicable to the states by the Fourteenth Amendment. This notion began with an assertion by Justice Black in Adamson v. California (1947).

The Jaffree court examined and summarized the extensive research by distinguished professors who had studied the Congressional debates on which Black based his notion. They all concluded that Black had misread the debate on the Fourteenth Amendment, that it simply did not do what Black pretended it did.

The court reviewed scholarly papers, the Fourteenth Amendment ratification debates, and U.S. Supreme Court decisions in the years following the adoption of the Fourteenth Amendment. All the evidence shows that no legislature and no court believed that the Fourteenth Amendment incorporated the First Amendment against the states until Black invented this theory in 1947.

Another conclusive argument is the debate over the Blaine Amendment proposed in 1875. It would have specifically applied the First Amendment language to the states; but it was defeated.

The Jaffree v. James court concluded that the U.S. Supreme Court "has erred in its reading of history," and that it really "amended the Constitution to the consternation of the republic." A careful review of the legislative history of both the First and the Fourteenth Amendments, together with their plain langauge, "leaves no doubt that those Amendments were not intended to forbid religious prayers in the schools which the states and their political subdivisions mandate."