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Author(s): John W. Welch

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Editor(s): Gordon A. Madsen, Jeffrey N. Walker, and John W. Welch

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Chapter Two

The Smiths and Religious Freedom: Jesse Smith's 1814 Church Tax Protest

John W. Welch

From the beginning, Vermont and its Green Mountain tradition placed prominence on freedom. Born in Sharon, Vermont, and describing himself in the opening line of his campaign literature as he ran in 1844 for President of the United States as having been “born in a land of liberty,”¹ Joseph Smith carried with him throughout his life a high regard for religious freedom. While he was still at an impressionable age, as young as eight or nine, his first lesson concerning the jarring pressures and legal practicalities that composed the free exercise of religion and the disestablishment of state involvement in church affairs probably came through the eyes of his uncle Jesse.

Over a period of about fifty years, the new American Republic cut official ties between church and state. This was a step by step process, known as disestablishmentarianism.² Separating church and state was not simply a matter of expelling the King of England (the head of the Church of England) from the thirteen American colonies. Even after the Revolution, state taxes continued to support all kinds of schools, including church run schools, and local taxes also paid for church buildings and the salaries of ministers, to say nothing of so-called state “Blue Laws” that prohibited such religious offenses as

1. *General Smith's Views of the Powers and Policy of the Government of the United States* (Nauvoo, Ill., 1844), 1, reprinted in Joseph Smith Jr., *History of The Church of Jesus Christ of Latter-day Saints*, ed. B. H. Roberts, 2d ed., rev., 7 vols. (Salt Lake City: Deseret Book, 1971), 6:197.

2. As an example of this process, see appendix 3, “Disestablishment and the Right to Perform Marriages,” at the end of M. Scott Bradshaw, “Joseph Smith's Performance of Marriages in Ohio,” *BYU Studies* 39 no. 4 (2000): 61–69.

blasphemy, idolatry, or not attending church on the Sabbath. Joseph Smith's immediate family experienced firsthand numerous changes during this invigorating time of separation.

Illustrating one phase of this transition is the following 1814 document, which was handed down from generation to generation among the descendants of Silas Sanford Smith, brother to Jesse Smith (1768–1853), the eldest brother of Joseph Smith's father. This document, donated to The Church of Jesus Christ of Latter-day Saints by George Smith Dibble in the early 1990s, provides several interesting insights into the character of Jesse Smith as well as perspectives on the religious background of this member of the extended family of the Prophet Joseph Smith.

Uncle Jesse was the first son of Mary Duty and Asael Smith, the paternal grandparents of Joseph Smith Jr. These people were strong-willed individuals who stood by their convictions. In his certificate of 1814, Jesse stated that he stood alone as the only one opposed to an action taken in 1813 by the Presbyterian congregation to which he belonged.³ Being the eldest in his family, Jesse naturally commanded considerable respect from his siblings, and this document evidences a skillful Smith family ability to state opinions clearly and forcefully.

What was Jesse's objection? His controversy with his fellow church members in Tunbridge, Vermont, arose over a set of resolutions that they had adopted on June 5, 1813, voting to return to congregational autonomy and to employ Jacob Allen, a Congregationalist, as their minister.⁴ In the process, as Jesse objected, they had "assume[d] the right to bind and loose" and had dissolved "the government and dicipline [*sic*] of the [central] church." In addition, they had rejected "the idea of infant or minor membership."

Sharing some of his father's "desire to test all religious opinions by the holy scriptures and sound reason," he objected to these resolutions primarily on scriptural grounds. For example, in Jesus' blessing of the children, Jesse found evidence that all family members should be allowed to partake of the blessings of the church directly. He recoiled at the idea of membership in a church congregation where his entire family could not participate.

3. The Tunbridge community church operated under the Presbyterian form of church government for eight years, deciding in 1813 to return to Congregationalism. James Ramage, *Centennial Celebration of the Congregational Church, Tunbridge, Vermont* (Montpelier, VT.: Watchman, 1892, 25–26.

4. Under the Plan of Union, Presbyterian and Congregationalist churches could hire ministers from either faith. Albert E. Dunning, *Congregationalists in America* (Boston: Pilgrim, 1894), 321–33; Gaius Glenn Atkins and Frederick L. Fagley, *History of American Congregationalism* (Boston: Pilgrim, 1942), 142–46.

Likewise, concerning “the right to bind and loose,” Jesse also found in the New Testament clear evidence that church authority “to bind or loose, to make laws or administer government or discipline” or “to transfer this power to others by the Imposition of their hands” was given only to the apostles and elders; authority could not be reconstituted in a mere determination of “the body of the church.” Jesse cited the apostolic council in Acts 15 and the procedures of Deuteronomy 17 as examples that only a representative body of central church leaders “having jurisdiction over lesser bodies” had exclusive authority to decide issues of church governance, such as the adoption of the local resolutions to which Jesse objected. Accordingly, Jesse rejected the action taken by these local citizens because they were acting outside the “mode of government” authorized for the church by Jesus Christ.

While his protest certificate itself contains no information about the immediate circumstances that finally provoked Jesse Smith, on November 18, 1814, to memorialize his religious convictions and reasons for disagreeing with his Presbyterian brethren in Tunbridge, he had waited long enough. For seventeen months, he had hoped for a change, but at length “imperious necessity” compelled him to action. Perhaps his position had been misunderstood or misrepresented in the congregation; he probably had been subjected to social criticism; he was eventually excommunicated.

How did Vermont law get involved in this religious matter? In several ways. First off, well-meaning state laws had inserted themselves into the configuration of church government. The Articles of Agreement, by which the local congregation in Tunbridge had been organized, were constituted under the laws of the state of Vermont, particularly under a law entitled *An Act for the Support of the Gospel*.⁵ This law and these articles gave the

5. Jesse Smith refers here to a series of Vermont laws dealing with the establishment of churches in Vermont. As the following sequence demonstrates, many issues in this regard were regularly discussed, contested, and modified in the early years of Vermont history. Initially, the 1777 Constitution of Vermont, section 41, provided: “All religious societies or bodies of men, that have or may be hereafter united and incorporated, for the advancement of religion and learning, or for other pious and charitable purposes, shall be encouraged and protected in the enjoyment of the privileges, immunities and estates which they, in justice, ought to enjoy, under such regulations as the General Assembly of this State shall direct.” In 1783, the basic act was passed “to Enable Towns and Parishes to erect proper Houses for public Worship, and support Ministers of the Gospel.” See *Acts and Laws of Vermont* (Oct. 1783). This law was modified in 1787 as *An Act for supporting Ministers of the Gospel*. See *Acts and Laws of Vermont* (Oct. 1787), restated a decade later as *An act for the support of the Gospel* (Oct. 26, 1797). In 1801, this law was modified in a bill entitled *An act in addition to, and alteration of an act, entitled “An Act for the support of the gospel.”* See *Acts and Laws of Vermont* (passed Nov. 3, 1801), 17–20. In 1807, a bill was

local populace (not the church hierarchy) considerable control over “every attempt of the church to call and settle [employ] a minister.” Moreover, these legal provisions and instruments gave the state courts power to foreclose on a person’s “houses or lands or both as surety” for the collection of any delinquent salaries owed by a local congregation to a minister of the gospel. Thus, it is even possible that Jesse had refused to pay his share of the salary of Jacob Allen, the minister whose hiring he had opposed, and someone was threatening legal action to compel Jesse to pay. In the end, Jesse followed the procedure outlined in Vermont law by which an objector could secure exemption from that local assessment.

By way of legal background, in 1783 the general assembly of Vermont had passed a law enabling towns and parishes to build churches and to provide for the support of ministers of the gospel. By a majority vote, a town or parish could levy a tax sufficient to cover the costs of hiring a minister, “to be assessed on the Polls [individual persons] and rateable Estates [appraised property] of Persons Living [residing], or Estates lying, within the Limits of such Town or Parish.” In addition, the statute recognized that many people within the town or parish might be of different sentiments in respect to their religious duties, “whose conscience this act is not to control: and likewise some, perhaps, who pretend to differ from the Majority with a Design only to escape Taxation.” Therefore, the act provided that a person who belonged to a different church could dissent from the majority view and be exempt from the tax, but only if “he, she, or they, shall bring a Certificate, signed by some Minister of the

passed entitled “an act to repeal a certain act, and parts of an act”; it repealed sections 2–6 of the 1797 act. See *Vermont Laws* (passed Oct. 24, 1807), 22. In 1812, an explanatory act clarified that all contracts made before the 1807 repeals were still enforceable. See *Vermont Laws* (passed Nov. 6, 1812), 159–60. The resolution of Jesse’s Tunbridge Presbyterian congregation were adopted June 5, 1813; later that year an act was passed authorizing voluntary associations to enter into binding agreements to hire a minister, even though “it is not agreeable to the principles or practice of people of the Presbyterian denomination, to make such contracts with particular ministers.” See *Vermont Laws* (passed Oct. 28, 1813), 5. And in 1814, an act “in addition to an act, for the support of the gospel” empowered a voluntary association to become “a body corporate and politic . . . to carry into effect any agreement by them made, for the settlement or support of a minister . . . and have all the powers incident and necessary to corporations,” having “full power to make their own by-laws, and regulations concerning the times and places of holding their meetings, and the mode of warning such meetings, the election and duties of the several officers, the manner of admitting and discharging member, and managing all other interests and concerns of said associations or societies, which shall not be repugnant to the constitution and laws of this state.” *Vermont Laws* (passed Nov. 10, 1814), 112–14. Jesse’s protest was dated eight days later, November 18, 1814.

Gospel, Deacon, or Elder, or the Moderator in the Church of Congregation to which he, she or they, pretend to belong, being of a different Persuasion.”

Over time, the law changed concerning the procedures to be followed and the contents to be required in filing a certificate of dissent. In 1787 a law entitled An Act for Supporting Ministers of the Gospel (restating the 1783 law) required that the “certificate shall make known . . . the religious sentiments of the signer thereof.” In 1801 the Act for the Support of the Gospel was amended to provide simply that any person “who was either in the minority of said vote, or who was not at the meeting, at the time of passing such vote, . . . shall have liberty to enter his dissent, in writing, on the records of the town or parish,” without stating any particular religious sentiments, but only after “paying up all taxes and assessments until that time, and for the whole of the year in which such dissent is made,” and this shall release the person “from any further taxation, for the support of such minister.”⁶ Although the law of 1801 did not expressly require the townspeople to state any particular religious grounds for his dissent, Jesse Smith’s statement followed the earlier convention, setting forth at great length his beliefs and making known his religious sentiments with respect to the entire issue.

A copy of this legal document was written into the Tunbridge town records. That recorded version begins, “Protest of Brother Jesse Smith against a Vote of the Ch[urc]h passed June 25th 1813.”⁷ There, Jesse declared himself unable to continue in fellowship with the church so long as the offending resolutions remained in force. Nevertheless, he went out of his way in the end to affirm his open-mindedness, his eagerness to be convinced otherwise should he be in error, his willingness to assume personal responsibility for any public harm he might have caused by any such error, and his community spirit and goodwill toward those of the opposing view.

Other traits of character are revealed in Jesse’s certificate. For example, it confirms that the Smiths were very family oriented. Jesse insisted, on scriptural authority, that admitting a man to the privileges of the church required

6. 1801 *Vermont Laws*, November 3, 1801, Section 3, Proviso 2. Also pursuant to this law, Joseph Smith Sr., like several other citizens of Randolph, Vermont, recorded a protest in the Randolph town records on July 1, 1802, stating, “I Do not agree in Religious opinion With a Majority of the Inhabitants of this Town.” *Randolph Liber Primus*, miscellaneous records (commencing 1790), 71.

7. The private text published below conforms with the public document in almost all substantive respects, and the recorded version has been used to clarify obscure places and torn edges in the private document with those words shown in brackets. Some punctuation has also been added in the transcript below.

also the admission of all or any of his household. He objected to membership in any society “where my family could not partake of the benefit directly.”

Moreover, this document shows Jesse Smith as a God-fearing, religious man, even though he was not satisfied with the events in his church. He questioned unauthorized church acts and hoped that his church brethren would return to the “former vows” they had made, which he understood to be more in harmony with the practices of the New Testament church, or if change was in order, God would spiritually confirm the decision of his congregation. Until such spiritual guidance was forthcoming, Jesse was willing to leave one church and look elsewhere for religious affiliation. While he comes across as very conservative in his Presbyterian views, uncompromisingly entrenched as he was in Calvinistic theology throughout his life, here in 1814 he also shows himself to be willing to change his stance if shown by God or scripture to be wrong.

Interestingly, and in several ways, this legal document can readily be seen as part of the background for the Restoration of the gospel of Jesus Christ through the Prophet Joseph Smith. It illustrates the intensity of religious debates and study occurring during the period shortly before the youthful Joseph entered the grove where he received his first vision six years later in 1820. In articulating his religious persuasions, Jesse here discusses doctrinal issues with a remarkable scriptural facility. He quotes the Bible extensively, accurately, and readily; he has given considerable thought to the practical implications of several passages in the Bible. For example, he realized the importance of being led by apostles and elders, of conferring authority by the laying on of hands, and of applying the divine instructions and institutions of the Old Testament even in the new age under Christ.

Even more specifically, in 1813, the seven-year-old Joseph underwent a searing leg-saving operation following an infection that had resulted from typhoid.⁸ As part of his recovery from this surgery, he traveled with his uncle Jesse to Salem, Massachusetts, where the sea air was thought to be therapeutic. Although no evidence exists of what these two traveling companions talked about as they passed the long hours coming and going over the remote buggy roads, it is not hard to imagine that topics of religion often came up. Their conversations could well have turned to the subjects that Jesse felt so strongly about at this very time and which he expressed so clearly in his 1814 protest. One can well imagine the impact Jesse’s bold action might have had on the young Joseph’s views of many matters concerning religious freedom and doctrinal necessity.

8. See LeRoy S. Wirthlin, “Nathan Smith (1762–1828): Surgical Consultant to Joseph Smith,” *BYU Studies*, 17 no. 3 (1977): 319–37.

Jesse Smith's certificate legally opting out of the Tunbridge congregation reads as follows:

On the 30th of July 1809 I was admitted to the fellowship and Communion of the Ch[urc]h in this Town organised and officered with ruling elders in Presbyterian form, but destitute of a stated Gospel ministry: we had a teaching Elder who was by profession a presbyterian having charge of a congregational Church in this vicinity whose steadfast belief and uniform declaration was that Presbyterian church government and decipline was (in his opinion) the only form recognized in scripture. The Church having no teaching Priest was not united to any particular Presbytery. being but few in number I believe all expected to make slow progress, but as far as I understood anything of the matter no one thot of going back or returning like the dog to his vomit or like the sow that was washed to her wallowing in the mire [2 Pet. 2:22]. For we are assured that no one putting his hand to the plow and looking back is fit for the kingdom of heaven [Luke 9:62] undoubtedly meaning the Church. It was also understood that every baptised child was a member of the church and thus acknowledged by by [sic] receiving the seal of the covenant which ordinance, say the Assembly of divines, doth signify and seal our ingrafting into Christ and our engagement to be the Lords; this is true otherwise I know of no meaning to the command the Lord is said to have given concerning the poor debtor who owed ten thousand talents (viz) that he his wife and children of all that he had should be sold and payment should be made [Matt. 18:24-25]..... Thus encouraged by the prospect that I and mine might walk in the light of the church be ruled and diciplined by men in the vineyard of the Lord elected for the purpose set apart and qualified for the office and they with him who should labor in word and doctrine if God should favor us with a wat[c]hman on this part of the wall together with the whole body of the church each in their station should come forward with mutual endeavor for the instruction of our children in the ways of thrut [truth] and righteousness teaching them to mind the same things for the edification of themselves and others and of building them up in the most holy faith according

to those precepts (and those only) which are laid down in that gospel thro which life and immortality are brot to light. . . . This appeared to me and still does appear like building again the Tabernacle of David together with the ruins thereof that the residue of men might seek the Lord [Acts 15:16]. These are some of my reasons for joining the church and such was the Ch[urc]h when I did join it. . I came forward I trust under the Influence of the Holy Ghost. I still hope I did not trust in a vain thing, the vanity of the Gentiles or an arm of flesh but I think I had and still have some reason to believe that my cheif hope and dependance was and is on him who inhabits the praises of Israel before whom the nations are counted as the small dust of the balamce [*sic*] and who taketh up the Isles as very little thing. Lebanon is not sufficient to burn nor the beasts thereof for a burnt offering [Isa. 40:15–16]. . . before whom all nations are counted as nothing yea less than nothing and vanity [Isa. 40:17]. Notwithstanding my remaining corruptions which at times seem to be carrying me away as with a whirlwind, my motives were good. My object was and is to come up to the help of the Lord against the mighty [Judg. 5:23]. . . . The church remained in this situation till the memorable 5th of June 1813 about which time Mr Jacob Allen appeared as a candidate for the ministry of the congregational order so called, the members of the church generaly esteemed the man and finally sett[l]ed him as their minister but as a preliminary the then government and discipline of the church must be abolished, for it seems the man was honest he would not act contrary to his own understanding of the scripture as he had been taught . . . at this time the members of the church in general meeting for the purpose did, to my astonishment and in opposition to all I could say or do, assume the right to bind and loose [Matt. 16:19; 18:18], passed a decree dissolving the government and dicipline of the church together with the Idea of infant or minor membership and to my understanding the church also I was then in the minority with only one other person who has sinse gone with the multitude so far as to attend for the present on the ministry and the ordinances . . I now stand alone the only opposer to the decree and the maner of passing the same . .

I have waited more than 17 months hoping and praying that the church would return to their former vows as I understood them or that God would open the eyes of my understanding so as to see them in the right if they were so .. but neither of these have as yet come to pass and the time has arrived when imperious necessity compells me to enter solemnly my protest against this unprecedented act of the church in decreeing its own dissolution as I understand the measure I now therefore declare in presence of these men whom I have considered as my brethren who were mine acquaintance with whom I took sweet council and with whom I walked to the house of God in company feeling willing to appeal to that God who trieth the reins and searches the hearts of the children of men. for the purity of my motives. that I cannot (with grief do I reflect on the causes that have led to this) in consience subscribe to this decree or consider myself bound by this act of the church of the said 5th of June, neither can I fellowship the church while under the guidance of this decree and the subsequent proceedings arising therefrom so as stately or occasionally to commune with them in the ordinance of the Lords super [*sic*] [or] attend on the ministry supported in the ^present form . . . for the following reasons 1st I never did agree to any such thing . . 2nd I cannot find in the scriptures any precepts or example for admitting a man to the priviliges of the church and [ex]cluding all or any of his houshold. Our Lord said suffer little children and forbid them not to come unto me for of such is the kingdom of heaven [Matt. 19:14] meaning the church. he took them up in his arms put his hands upon them and blessed them. I never had a serious wish to become a member of the church or any other society where my family could not partake of the benefit directly. 3rd because I find no warrent in the scripture for the church collectively to make laws or decrees to bind any either themselves or others. the great head of the church gave to his Apostles the keys of the kingdom of heaven [Matt. 16:19] or church . and to no other[.] he authorized them to bind & loose ^& to transfer this power to others by the Imposition of their hands & says upon this rock will I build my church and the gates of hell shall not prevail against it [Matt. 16:18],

meaning by the rock I believe the mode of government. I do not believe that Jesus Christ in any instance has authorized the whole body of the church to bind or loose to make laws or administer government or discipline. The church is called the kingdom of heaven and a kingdom cannot exist according to the common acceptance of the term without rulers and ruled, kings and subjects. The first disputation which arose in the christian church in the Apostolic age was not determined by the members or brotherhood, but Paul & Silas and certain others went up to Jerusalem unto Apostles and elders about this question [Acts 15:22–29]. this I understand was a representative body when convened having jurisdiction over lesser bodies. this was not an advisory council, there is there no advice offered. but they utter their sentence and the assembly agree to lay no greater burden than these necessary things &c [Acts 15:28] (this burden these rulers did lay & bind upon the subjects of the kingdom) in what country Soever they might reside. This mode of procedure was in strict conformity to the plain command of God in the 17th chapter of Deuteronomy. If there arise a matter too hard for the[e] in Judgement between blood and blood between plea and plea and between stroke and stroke being matters of controversy within thy gates. then shalt thou arise and get thee up unto the place which the Lord thy God shalt choose and thou shalt come unto the p[r]iests the Levites and unto the judge that should be in those days and enquire and they shall shew thee the sentence of judgment and thou shalt do according to the sentence which they of that place which the Lord shall choose shalt show thee and thou shalt observe to do according to all that they inform the[e] according to the sentences of the law which they shall teach thee and according to the judgment which they shall tell the[e] thou shalt do thou shalt not decline from the sentence which they shall shew the[e] to the right hand or to the left [Deut. 17:8–11]... I am aware some will say this was in another age and a new order of things have succeeded. I reply we have the same Lawgiver under the new as under the old dispensation. I state also that this command has never been repealed again I understand Jerusalem to be the only place God had at that time made known as the place of his

chosen for the seat of Judgment and it seems the Apostles and elders together with a representation of the whole church thought of going to no other place for a decision about this controversy between plea and plea. much scripture I believe might be brot in support of this mode of procedure but I am not allowed to be lengthy-. my 4th and last re[a]son for absenting myself from the church is the manner of settling and supporting the minister. I am not able to learn from the scriptures of the old and new testament that the church of Christ in any age of the world had any right to form any connection with those without concerning the calling settling suporting or dismissing their pastor or teacher but in looking over the ground work of the call settlement and support of the minister & also provision for his dismission if need be. I do find the whole predicated upon a legislative act of the state of Vermont which by the authority of the ^{s[ai]ld} state is declared to be an act entitled an for the support of the Gospel.⁹ Here are articles of agreement called the constitution of the first congregational or Presbyterian church and society in Tunbridge. These articles are fourteen in number signed if I mistake not by nearly all the male members of the church and a number of others & declared to be binding on them and those who shall come after them except the eighth article In these articles there is pointed out and defined the right of the church and the colateral rights of the society or those without as relates to the call settlement and support of the minister so long as he lives or till he is dismissed in the transaction of all this business. The people without the church by these articles of agreement or this constitution have in their power if they please to defeat every attempt of the church to call and settle a minister. There is no higher authority quoted in all or any of these articles than that of the state of Vermont. There is not a single expression in this whole instrument which is copied from the word of God or anything which alludes to divine revelation, there is no law recognized for the collection even among the [Saints for] the suport of the ministry but the political code of our country which is [ever varying its course and object.] The church or as many of them and others as have signed this instrument

9. See note 5 above.

have bound themselves to mortgage their houses or lands or both as surety for the fulfillment of their contracts with the minister and one another which mortgage is liable to foreclosure by order of a political court of Judicature at any time on the failure of the mortgagor to pay the interest of the money he has funded Therefore considering as I do this constitution as it is called to be, to say the least, not in conformity to the word of God I must I am constrained to protest against the measure in all its bearings. I cannot I dare not proceed on this ground, the consequences to myself and family notwithstanding I fear God and not man and wish to worship him in the beauty of holiness and in conformity to his own appointment. I cannot subscribe to this mode of procedure. I must now commit my character to the mercy of that God who knows my motives & to the impartial judgement of the church so far as it by them may be known at the period when the greatness of the kingdom under the whole heaven shall be given to the people of the saints of the most High.

Arise O God plead thine own cause [Ps. 74:22] O let not the oppressed return ashamed let the poor and needy praise thy name [Ps. 74:21] blessed be the Lord God the God of Isreal who only doth wondrous things [Ps. 72:13] and let the whole earth be filled with his glory [Ps. 72:19] I now subscribe this my protest with some reasons which have operated to [produce it, with mine own hand] and in presense of the Lord of all the earth promising his grace assisting, that if ever I should be convinced that I ought not to have done this thing, I will use of all the means which may then be in my power to retract and that in the most suitable public manner if I continue to think I am right I feel a determination, God willing, to use my best endeavor to bring the church back to a sense of their duty and to this purpose I mean to employ my influence if any I have and to these purposes I mean to devote myself either to be convinced myself or to convince my opposers done this 18th day of Nov. in the year of our Lord Christ 1814.

Jesse Smith

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