

1789 Congressional Debates Religious Amendments

The following excerpts have been selected from the records of the First Federal Congress debates on the Constitutional Amendments. These are the only references regarding what eventually became the religious freedom clause of the First Amendment.

Researched
and edited by
Jim Allison

June 8, 1789--first Federal Congress (Amendments-religious reference) [House of Representatives]

(religious reference)

(James Madison speaking)

Fourthly, That in article 1st, section 5, between clauses 3 and 4, be inserted these clauses, to wit:

The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed.

(end of religious reference)

and

(religious reference)

The right of the people to keep and bear arms shall not be infringed; a well armed and well regulated militia being the best security of a free country; **but no person religiously scrupulous of bearing arms shall be compelled to render military service in person.**

(end of religious reference)

and

(religious reference)

Fifthly, That in article 1st, section 10, between clauses 1 and 2, be inserted this clause, to wit:

No State shall violate the equal rights of conscience, or the freedom of the press, or the trial by jury in criminal cases.

(end of religious reference)

and

(religious reference)

Although I know whenever the great rights, the trial by jury, freedom of the press, or liberty of conscience. come in question in that body, the invasion of them is resisted by able advocates, yet their Magna Charta does not contain any one provision for the security of those rights, respecting which the people of America are most alarmed. The freedom of the press and rights of conscience those choicest privileges of the people, are unguarded in the British constitution.

(end of religious reference)

and

(religious reference)

I wish also, in revising the constitution, we may throw into that section, which interdict the abuse of certain powers in the State Legislatures, some other provisions of equal, if not greater importance than those already made. The words, "No State shall pass any bill of attainder. ex post facto law," &c. were wise and proper restrictions in the constitution. I think there is more danger of those powers being abused by the State Governments than by the Government of the United States. The same may be said of other powers which they possess, if not controlled by the general principle, that laws are unconstitutional which infringe the rights of the community. I should therefore wish to extend this interdiction, and add, as I have stated in the 5th resolution, that no State shall violate the equal right of conscience, freedom of the press, or trial by jury in criminal cases; because it is proper that every Government should be disarmed of powers which trench upon those particular rights. I know, in some of the State constitutions, the power of the Government is controlled by such a declaration; but others are not. I cannot see any reason against obtaining even a double security on those points; and nothing can give a more sincere proof of the attachment of those who opposed this constitution to these great and important rights, than to see them join in obtaining the security I have now proposed; because it must be admitted, on all hands, that the State Governments are as liable to attack the invaluable privileges as the General Government is, and therefore ought to be as cautiously guarded against.(1)

(end of religious reference)

July 21 - 28, 1789 (Amendments - religious reference)

[House of Representatives]

Report as their Opinion, that the following articles be proposed by Congress to the legislatures of the Several States to be adopted by them as amendments of the Constitution of the United States, and when ratified by the legislatures of three fourths (at least) of the Said States in the union, to

become a part of the Constitution of the United States, pursuant to the fifth Article of the Said Constitution.

(religious reference)

The people have certain natural rights which are retained by them when they enter into society, Such are **the rights of conscience in matters of religion**; of acquiring property, and of pursuing happiness & safety; of Speaking, writing and publishing their Sentiments with decency and freedom; of peaceably Assembling to consult their common good, and of applying to Government by petition or remonstrance for redress of grievances. Of these rights therefore they Shall not be deprived by the government of the united States.

(end religious reference)

(religious reference)

The Militia shall be under the government of the laws of the respective States, when not in the actual Service of the united States, but Such rules as may be prescribed by Congress for their uniform organization & discipline shall be observed in officering and training them, **but military Service Shall not be required of persons religiously Scrupulous of bearing arms.**(2)

(end of religious reference)

July 21, 1789 First Federal Congress (Amendments)

[House of Representatives]

The question on discharging the Committee of the whole on the state of the Union from proceeding on the subject of amendments, as referred to them, was put, and carried in the affirmative--the House divided. 34 for it, and 15 against it.

It was then ordered that Mr. Madison's motion, stating certain specific amendments, proper to be proposed by Congress to the Legislatures of the States, to become, if ratified by three-fourths thereof, part of the constitution of the United States, together with the amendments to the said constitution, as proposed by the several States, be referred to a committee, to consist of a member from each State, with instruction to take the subject of amendments to the constitution of the United States generally into their consideration, and to report thereupon to the House. The committee appointed were, Messrs. Vining, Madison, Baldwin, Sherman, Burke, Gilman, Clymer, Benson, Goodhue, Boudinot, and Gale.

Then the House adjourned.(3)

July 28, 1789 First Federal Congress (Amendments-religious reference)

[House of Representatives]

Report of House Committee of Eleven

(religious reference)

Art.1, Sec. 9 Between Par. 2 and 3 insert, "**no religion shall be established by law, nor shall the equal rights of conscience be infringed.**"(4)

(end of religious reference)

August 15, 1789 First Federal Congress (Amendments-religious reference)

[House of Representatives]

The House again went into a Committee of the Whole on the proposed amendments to the Constitution. Mr. Boudinot in the chair.

The fourth proposition being under consideration, as follows:

(Religious Reference)

Article 1. Section 9. Between paragraphs two and three insert '**no religion shall be established by law, nor shall the equal rights of conscience be infringed.**

Mr. SYLVESTER had some doubts of the propriety of the mode of expression used in this paragraph. He apprehended that it was liable to a construction different from what had been made by the committee. He feared it might be thought to abolish religion altogether.

Mr. VINING suggested the propriety of transposing the two members of the sentence.

Mr. GERRY said it would read better if it was no religious doctrine shall be established by law.

Mr. SHERMAN thought the amendment altogether unnecessary, inasmuch as Congress had 'no authority whatever delegated to them by the Constitution to make religious establishments; he would, therefore, move to have it struck out.'

Mr. CARROLL As the rights of conscience are, in their nature, a peculiar delicacy, and will little bear the gentlest touch of governmental hand; and as many sects have concurred in opinion that they are not well secured under the present constitution, he said he was much in favor of adopting the words. He thought it would tend more towards conciliating the minds of the people to the government than almost any other opinion he heard proposed. He would not contend with gentlemen about the phraseology, his object was to secure the substance in such a manner as to satisfy the wishes of the honest part of the community.

Mr. MADISON said he apprehended the meaning of the words to be, that Congress should not establish a religion, and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience. Whether the words are necessary or not, he did

not mean to say, but they had been required by some of the state conventions, who seemed to entertain an opinion, that under the clause of the Constitution, which gave power to Congress to make all laws necessary and proper to carry into execution the constitution, and the laws made under it, enabled them to make laws of such a nature as might infringe the rights of conscience, and establish a national religion; to prevent these effects he presumed the amendment was intended, and he thought it as well expressed as the nature of the language would admit.

Mr. HUNTINGTON said that he feared, with the gentleman first up on this subject, that the words might be taken in such latitude as to be extremely hurtful to the cause of religion. He understood the amendment to mean what had been expressed by the gentleman from Virginia; but others might find it convenient to put another construction on it. The ministers of their congregations to the eastward were maintained by contributions of those who belong to their society; the expense of building meeting houses was contributed in the same manner. These things were regulated by bylaws. If an action was brought before a federal court on any of these cases, the person who had neglected to perform his engagements could not be compelled to do it; for a support of ministers or buildings of places of worship might be construed into a religious establishment.

By the charter of Rhode Island, no religion could be established by law; he could give a history of the effects of such a regulation; indeed the people were now enjoying the blessed fruits of it. He hoped, therefore, the amendment would be made in such a way as to secure the rights of conscience, and the free exercise of religion, but not to patronize those who professed no religion at all.

Mr. MADISON thought, if the word 'National' was inserted before religion, it would satisfy the minds of honorable gentlemen. He believed that the people feared one sect might obtain a pre-eminence, or two combined together, and establish a religion, to which they would compel others to conform. He thought if the word 'National' was introduced, it would point the amendment directly to the object it was intended to prevent.

Mr. LIVERMORE was not satisfied with the amendment; but he did not wish them to dwell long on the subject. He thought it would be better if it were altered, and made to read in this manner, that Congress shall make no laws touching religion, or infringing the rights of conscience.

Mr. GERRY did not like the term National, proposed by the gentleman from Virginia, and he hoped it would not be adopted by the House. It brought to his mind some observations that had taken place in the Conventions at the time they were considering the present constitution. It had been insisted upon by those who were called anti-federalists, that this form of government consolidated the union; the honorable gentleman's motion shows that he considers it in the same light. Those who were called anti-federalists at that time, complained that they were in favor of a federal government, and the others were in favor of a National one; the federalists were for ratifying the constitution as it stood, and the others did not until amendments were made. Their names then ought not to have been distinguished by federalists and anti-federalists, but rats and anti-rats.

Mr. MADISON withdrew his motion but observed that the words single 'no National religion shall be established by law', did not apply that the government was a national one; the question was then taken on MR. LIVERMORE's motion, and passed in the affirmative 31 for it, and 20 against it.(5)

(End of Religious Reference)

August 17, 1789-- First Federal Congress (Amendments-religious reference)

[House of Representatives]

The House again resolved itself into a committee, Mr. Boudinot in the chair, on the proposed amendments to the constitution. The third clause of the fourth proposition in the report was taken into consideration, being as follows:

(Religious Reference)

"A well regulated militia, composed of the body of the people, being the best security of a free state, the right of the people to keep and bear arms shall not be infringed; **but no person religiously scrupulous shall be compelled to bear arms.**"

Mr. GERRY: This declaration of rights, I take it, is intended to secure the people against the mal-administration of the Government; if we could suppose that, in all cases, the rights of the people would be attended to, the occasion for guards of this kind would be removed. Now, I am apprehensive, sir, that this clause would give an opportunity to the people in power to destroy the constitution itself. They can declare who are those religiously scrupulous and prevent them from bearing arms.

What, sir, is the use of a militia? It is to prevent the establishment of a standing army, the bane of liberty. Now, it must be evident, that, under this provision, together with their other powers, Congress could take such measures, with respect to a militia as to make a standing army necessary. Whenever Governments mean to invade the rights and liberties of the people, they always attempt to destroy the militia, in order to raise an army upon their ruins. This was actually done by Great Britain at the commencement of the late revolution. They used every means in their power to prevent the establishment of an effective militia to the eastward. The Assembly of Massachusetts, seeing the rapid progress that administration were making to divest them of their inherent privileges, endeavored to counteract them by the organization of the militia; but they were always defeated by the influence of the Crown.

Mr. SENEY wished to know what question there was before the committee in order to ascertain the point upon which the gentleman was speaking.

Mr. GERRY replied that he meant to make a motion, as he disapproved of the words as they stood. He then proceeded. No attempts that they made were successful. until they engaged in the

struggle which emancipated them at once from their thralldom. Now, if we give a discretionary power to exclude those from militia duty who have religious scruples, we may as well make no provision on this head. For this reason, he wished the words to be altered so as to be confined to persons belonging to a religious sect scrupulous of bearing arms.

Mr. JACKSON did not expect that all the people of the United States would turn Quakers or Moravians; consequently, one part would have to defend the other in case of invasion. Now this, in his opinion, was unjust, unless the constitution secured an equivalent: for this reason he moved to amend the clause, by inserting at the end of it, "upon paying an equivalent. to be established by law."

Mr. SMITH, of South Carolina, inquired what were the words used by the conventions respecting this amendment. If the gentleman would conform to what was proposed by Virginia and Carolina, he would second him. He thought they were to be excused provided they found a substitute.

Mr. JACKSON was willing to accommodate. He thought the expression was, "No one, religiously scrupulous of bearing arms, shall be compelled to render military service, in person. upon paying an equivalent."

Mr. SHERMAN conceived it difficult to modify the clause and make it better. It is well known that those who are religiously scrupulous of bearing arms, are equally scrupulous of getting substitutes or paying an equivalent. Many of them would rather die than do either one or the other: but he did not see an absolute necessity for a clause of this kind. We do not live under an arbitrary Government, said he and the States, respectively, will have the government of the militia, unless when called into actual service; besides, it would not do to alter it so as to exclude the whole of any sect, because there are men amongst the Quakers who will turn out, notwithstanding the religious principles of the society, and defend the cause of their country. Certainly it will be improper to present the exercise of such favorable dispositions, at least whilst it is the practice of nations to determine their contests by the slaughter of their citizens and subjects.

Mr. VINING hoped the clause would be suffered to remain as it stood, because he saw no use in it if it was amended so as to compel a man to find a substitute, which, with respect to the Government, was the same as if the person himself turned out to fight.

Mr. STONE inquired what the words "**religiously scrupulous**" had reference to: was it of bearing arms? If it was, it ought so to be expressed.

Mr. BENSON moved to have the words "**but to person religiously scrupulous shall be compelled to bear arms.**" struck out. He would always leave it to the benevolence of the Legislature, for, modify it as you please, it will be impossible to express it in such a manner as to clear it from ambiguity. No man can claim this indulgence of right. It may be a religious persuasion, but it is no natural right, and therefore ought to be left to the discretion of the Government. If this stands part of the constitution, it will be a question before the Judiciary on every regulation you make with respect to the organization of the militia, whether it comports

with this declaration or not. It is extremely injudicious to intermix matters of doubt with fundamentals.

I have no reason to believe but the Legislature will always possess humanity enough to indulge this class of citizens in a matter they are so desirous of; but they ought to be left to their discretion.

The motion for striking out the whole clause being seconded. was put, and decided in the negative--22 members voting for it. and 24 against it.

(end of religious reference)

and

religious reference)

The committee then proceeded to the fifth proposition:

Article I, Section 10 between the first and second paragraph, insert '**No state shall infringe the equal rights of conscience, nor the freedom of speech or of the press, nor of the right of trial by jury in criminal cases.**'

Mr. TUCKER this is offered, I presume, as an amendment to the constitution of the United States, but it goes only to the alteration of constitutions of particular states. It will be much better, I apprehend, to leave the state governments to themselves, and not to interfere with them more than we already do; and that is thought by many to be rather too much. I therefore move, Sir, to strike out these words.

Mr. MADISON conceives this to be the most valuable amendment in the whole list. If there were any reason to restrain the government of the United States from infringing upon these essential rights, it was equally necessary that they should be secured against the state governments. He thought that if they provided against one, it was as necessary to provide against the other, and it was satisfied that it would be equally grateful to the people.

Mr. LIVERMORE had no great objection to the sentiment, but he thought it not well expressed. He wished to make it an affirmative proposition; '**the equal rights of conscience**, the freedom of speech or of the press, and the right of trial by jury in criminal cases, shall not be infringed by any state.'

This transposition being agreed to, and Mr. TUCKER'S motion being rejected, the clause was adopted.(6)

(In the final wording of the amendments that was sent to the Senate the transposition had not taken place. No reason for that mistake is recorded.)

(end of religious reference)

August 18, 1789--First Federal Congress (Amendments-religious reference)

[House of Representatives]

Mr. TUCKER then moved that the following propositions of amendment to the constitution of the United States, be referred to a Committee of the whole House, to wit:

(There then followed a list of 16 potential additional changes to the Constitution over and above those proposed by Madison. The religious reference that follows was one of those additional changes.)

(religious reference)

Article 6. clause 3. Between the word "**no**" and the word "**religious**," insert the word "**other.**"(7)

(It is important to note that this was an attempt to change the wording of the "but no religious test shall ever be required as a qualification to any office or public trust under the United States."

(end of religious reference)

August 20, 1789--First Federal Congress (Amendments-religious reference)

[House of Representatives]

The House resumed the consideration of the report of the Committee of the whole on the subject of amendment to the constitution.

Mr. AMES's proposition was taken up. Five or six other members introduced propositions on the same point, and the whole were, by mutual consent, laid on the table. After which, the House proceeded to the third amendment, and agreed to the same.

(religious reference)

On motion of Mr. AMES, the fourth amendment was altered so as to read

"Congress shall make no law establishing religion, or to prevent the free exercise thereof, or to infringe the rights of conscience." This being adopted,

["Although unrecorded in the *Annals of Congress*, the House of Representatives altered slightly the Ames version on the following day, presumably to improve its grammar. The revised Ames version read:

'Congress shall make no law establishing religion, or prohibiting the free exercise thereof, nor shall the rights of conscience be infringed.'(8)

The first proposition was agreed to.

Mr. SCOTT objected to the clause in the sixth amendment--"**No person religiously scrupulous shall be compelled to bear arms.**" He observed that if this becomes part of the constitution, such persons can neither be called upon for their services, nor can an equivalent be demanded; it is also attended with still further difficulties, for a militia can never be depended upon. This would lead to the violation of another article in the constitution, which secures to the people the right of keeping arms, and in this case recourse must be had to a standing army. I conceive it, said he, to be a legislative right altogether. There are many sects I know, who are religiously scrupulous in this respect; I do not mean to deprive them of any indulgence the law affords; my design is to guard against those who are of no religion. It has been urged that religion is on the decline; if so, the argument is more strong in my favor for when the time comes that religion shall be discarded, the generality of persons will have recourse to these pretexts to get excused from bearing arms.

Mr. BOUDINOT thought the provision in the clause, or something similar to it, was necessary. Can any dependence, said he, be placed in men who are conscientious in this respect? Or what justice can there be in compelling them to bear arms, when, according to their religious principles, they would rather die than use them? He adverted to several instances of oppression on this point, that occurred during the war. In forming a militia, an effectual defence ought to be calculated, and no characters of this religious description ought to be compelled to take up arms. I hope that in establishing this Government we may show the world that proper care is taken that the Government may not interfere with the religious sentiments of any person. Now, by striking out the clause, people may be led to believe that there is an intention in the General Government to compel all its citizens to bear arms.

Some further desultory conversation arose, and it was agreed to insert the words "in person," to the end of the clause; after which it was adopted.(9)

(end of religious reference)

August 22, 1789--First Federal Congress (Amendments-religious reference)

[House of Representatives]

The House resumed the consideration of the amendments to the constitution.

(religious reference)

In the third section of the sixth article insert the word "**other**" between the word "**no**" and the word "**religious.**"

And on the question that the House do agree to the said amendment:

It passed in the negative.(10)

(end of religious reference)

August 24, 1789--First Federal Congress (Amendments-religious reference)

[House of Representatives]

House Resolution and Articles of Amendment,

August 24, 1789

CONGRESS OF THE UNITED STATES

In the HOUSE OF REPRESENTATIVES

Monday, 14th August, 1789,

RESOLVED, BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, two thirds of both Houses deeming it necessary, that the following Articles be proposed to the Legislatures of the several States, as Amendments to the Constitution of the United States, all or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes as part of the said Constitution--Viz.

ARTICLES in addition to, and amendment of, the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

ARTICLE THE FIRST.

After the first enumeration, required by the first Article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress, that there shall be not less than one hundred Representatives, nor less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred, after which the proportion shall be so regulated by Congress, that there shall not be less than two hundred Representatives, nor less than one Representative for every fifty thousand persons.

ARTICLE THE SECOND.

No law varying the compensation to the members of Congress, shall take effect, until an election of Representatives shall have intervened.

ARTICLE THE THIRD.

Congress shall make no law establishing religion or prohibiting the free exercise thereof, nor shall the rights of Conscience be infringed.

ARTICLE THE FOURTH.

The Freedom of Speech, and of the Press, and the right of the People peaceably to assemble, and consult for their common good, and to apply to the Government for a redress of grievances, shall nor be infringed.

ARTICLE THE FIFTH.

A well regulated militia, composed of the body of the People, being the best security of a free Scare, the right of the People to keep and bear arms, shall not be infringed, **but no one religiously scrupulous of bearing arms, shall be compelled to render military service in person.**

ARTICLE THE SIXTH.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE THE SEVENTH.

The right of the People to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE THE EIGHTH.

No person shall be subject, except in case of impeachment, to more than one trial, or one punishment for the same offense, nor shall be compelled in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE THE NINTH.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against

him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

ARTICLE THE TENTH.

The trial of all crimes (except in cases of impeachment, and in cases arising in the land or naval forces, or in the militia when in actual service in time of War or public danger) shall be by an impartial jury of the Vicinage, with the requisite of unanimity for conviction, the right of challenge, and other accustomed requisites; and no person shall be held to answer for a capital, or other ways infamous crime, unless on a presentment or indictment by a Grand Jury; but if a crime be committed in a place in the possession of an enemy, or in which an insurrection may prevail, the indictment and trial may by law be authorized in some other place within the same State.

ARTICLE THE ELEVENTH.

No appeal to the Supreme Court of the United States, shall be allowed, where the value in controversy shall not amount to one thousand dollars, nor shall any fact, trial by a jury according to the course of the common law, be otherwise re-examinable, than according to the rules of common law.

ARTICLE THE TWELFTH.

In suits at common law, the right of trial by Jury shall be preserved.

ARTICLE THE THIRTEENTH.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE THE FOURTEENTH.

No State shall infringe the right of trial by Jury in criminal cases, nor the rights of conscience, nor the freedom of speech, or of the press.

ARTICLE THE FIFTEENTH.

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE THE SIXTEENTH.

The powers delegated by the Constitution to the government of the United States, shall be exercised as therein appropriated, so that the Legislative shall never exercise the powers vested in the Executive or judicial; nor the Executive the powers vested in the Legislative or Judicial; nor the Judicial the powers vested in the Legislative or Executive.

ARTICLE THE SEVENTEENTH.

The powers not delegated by the Constitution, nor prohibited by it, to the States, are reserved to the States respectively.

Teste,

JOHN BECKLEY, CLERK

In Senate, August 25, 1789

Read and ordered to be printed for the consideration of the Senate. (11)

August 25, 1789--First Federal Congress (Amendments)

[Senate]

. . .;after this the amendments to the Constitution sent from the House of Representatives. They were treated contemptuously by Izard, Langdon, and Mr. Morris. Izard moved they they should be postponed till next session. Langdon seconded, and Mr. Morris got up and spoke angrily but not well. They, however, lost their motion, and Monday was assigned for taking them up. I could not help observing the six year-class [of Senators] hung together on this business, or most of them.(12)

September 3, 1789--First Federal Congress (Amendments-religious reference)

[Senate]

The Senate resumed the consideration of the Resolve of the House of Representatives on the Amendments to the Constitution of the United States.

(religious reference)

The third article, as it passed the house, stand thus:

"Congress shall make no law establishing religion, or prohibiting the free exercise thereof; nor shall the rights of conscience be infringed."

On motion, To amend Article third, and to strike out these words. **"Religion or prohibiting the free Exercise thereof,"** and Insert, **"One Religious Sect or Society in preference to others,"**

It passed in the Negative.

On motion, For reconsideration,

It passed in the Affirmative.

On motion, That Article the third be stricken out,

It passed in the Negative.

On motion, To adopt the following, in lieu of the third Article, "**Congress shall not make any law, infringing the rights of conscience or establishing any Religious Sect or Society,**"

It passed in the Negative.

On motion, To amend the third Article, to read thus- "**Congress shall make no law establishing any particular denomination of religion in preference to another, or prohibiting the free exercise thereof, nor shall the rights of conscience be infringed.**"

It passed in the Negative.

On the question upon the third Article as it came from the House of Representatives-

It passed in the Negative.

On motion, To adopt the third Article proposed in the Resolve of the House of Representatives, amended by striking out these words- "**Nor shall the rights of conscience be infringed.**"

It passed in the Affirmative.(13)

(end of religious reference)

September 7, 1789--First Federal Congress (Amendments-religious reference)

[Senate]

The Senate resumed the consideration of the resolve of the House of Representatives of the 24th of August, on "Articles to be proposed to the Legislatures of the several States as amendments to the constitution of the United States."

(religious reference)

On motion, to adopt the Fourteenth Article of the Amendments proposed by the House of Representatives--

It passed in the negative

On motion to add the following to the proposed amendments, viz: "That the third section of the

sixth article of the Constitution of the United States ought to be amended, by inserting the word "**other**" between the words "**no**" and "**religious**":

It passed in the negative.(14)

(end of religious reference)

September 9, 1789--First Federal Congress (Amendments-religious reference)

[Senate]

(religious reference)

On Motion, To amend Article the Third, to read as follows:

"Congress shall make no law establishing articles of faith, or a mode of worship, or prohibiting the free exercise of religion, or abridging the freedom of speech, or the press, or the right of the people peaceably to assemble. and petition to the government for the redress of grievances."(15)

(end of religious reference)

and

(religious reference)

On motion, On Article the fifth, to strike out the word "Fifth," after "Article the," and insert "Fourth" — And to amend the Article to read as follows,

"A well regulated militia being the security of a free State, the right of the people to keep and bear arms, shall not be infringed"

Printed Senate Journal, p. 129 ("It passed in the Affirmative.").

4.1.1.18.d To erase the word "fifth" -- & insert -- fourth -- & to erase from the fifth article the words, "composed of the body of the people" -- the word "best" -- & the words "**but no one religiously scrupulous of bearing arms shall be compelled to render military service in person**" (16)

(end of religious reference)

September 19 - 23, 1789--First Federal Congress (Amendments--religious reference)

September 19, 1789

On the 19th of September, the House of Representatives made some progress in the consideration of the amendments made by the Senate.

September 21, 1789

The House adopted the following resolutions:

Resolved--That this house doth agree to the second, fourth, eighth, twelfth, thirteenth, sixteenth, eighteenth, nineteenth, twenty-fifth, and twenty-sixth amendments: and doth disagree to the first, third, fifth, sixth, seventh, ninth, tenth, eleventh, fourteenth, fifteenth, seventeenth, twentieth, twenty-first, twenty-second, twenty-third, and twenty-fourth amendments, proposed by the Senate to the said articles, two-thirds of the members present concurring on each vote:

Resolved--That a conference be desired with the Senate on the subject matter of the amendments disagreed to, and that Mr. Madison, Mr. Sherman, and Mr. Vining, be appointed managers of the same on the part of this house.

On receiving these resolutions from the house, the Senate determined to recede from their third amendment, and to insist on all the others: at the same time the Senate passed the following resolution:

Resolved--That the Senate do concur with the House of Representatives in a conference on the subject matter of disagreement on the said articles of amendment, and that Messrs. Ellsworth, Carroll, and Paterson. be managers of the conference on the part of the Senate.

September 23, 1789

Mr. Madison made a report to the House of Representatives on the subject.

September 24, 1789

Taken up for consideration on the 24th: whereupon,

Resolved--That this house doth recede from their disagreement to the first, third, fifth, sixth, seventh, ninth, tenth, eleventh, fourteenth, fifteenth, seventeenth, twentieth, twenty-first, twenty-second, twenty-third, and twenty-fourth amendments, insisted on by the Senate: Provided, That the two articles which by the amendments of the Senate are now proposed to be inserted as the third and eighth articles, shall be amended to read as followeth:

(religious reference)

Article the third. **Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;** or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.(17)

(end of religious reference)

September 28, 1789

The Amendments as Passed by Congress And Sent to The States For Ratification

AMENDMENTS TO THE CONSTITUTION

September 28, 1789

THE Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of Its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution.

RESOLVED, BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, two thirds of both Houses concurring, that the following Articles be proposed to the Legislatures of the several States, as Amendments to the Constitution of the United States, all or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes as part of the said Constitution--Viz.

ARTICLES in addition to, and amendment of, the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

ARTICLE THE FIRST

After the first enumeration, required by the first article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred; after which, the proportion shall be so regulated by Congress, that there be not less than one hundred, after which the proportion shall be so regulated by Congress, then there shall not be less than two hundred Representatives, nor more than the one Representative for every fifty thousand persons.

ARTICLE THE SECOND.

No law, varying the compensation for the services of the Senators and Representatives. shall take effect, until an election of Representatives shall have intervened.

ARTICLE THE THIRD.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition to the government for a redress of grievances.

ARTICLE THE FOURTH.

A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

ARTICLE THE FIFTH.

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE THE SIXTH.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE THE SEVENTH.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE THE EIGHTH.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE THE NINTH.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by Jury shall be preserved, and no fact, tried by a Jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE THE TENTH.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE THE ELEVENTH.

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE THE TWELFTH.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

FREDERICK AUGUSTUS MUHLENBERG

Speaker of the House of Representatives

JOHN ADAMS

Vice-President of the United States,

and President of the Senate.(18)

Articles (amendments) 3-12 were passed by the several states. The Articles were renumbered (3-12 becoming 1 -10) and became law and part of the Constitution on December 15, 1891.

FOOTNOTES:

(1). *The Debates and Proceedings in the Congress of the United States* (Annals of Congress), June 8, 1789, Vol. I, Joseph Gales, published by Gales and Seaton, Washington, 1834, PP 434-436, 440-441.

(2). Roger Sherman's Apparent Proposed Select Committee Report, July 21 - 28, 1789. *James Madison Papers*, Library of Congress.. This document is apparently Sherman's proposal to the House select committee, showing how Madison's amendments could be revised and placed at the end of the Constitution. *Creating the Bill of Rights, The Documentary Record from the First Federal Congress*, Edited by Helen E. Veit, Kenneth R. Bowling, Charlene Bangs Bickford, The John Hopkins University Press, Baltimore and London, (1991), pp 266-68.

(3) *The Debates and Proceedings in the Congress of the United States* (Annals of Congress), Vol. I, Joseph Gales, published by Gales and Seaton, Washington, 1834, pp. 660-665.

(4). Broadside Collection, Library of Congress, Washington, D. C. 1.1.1.3 & 4.1.1.3 Report of the House Committee of Eleven, July 28, 1789. *The Complete Bill Of Rights, The Drafts, Debates, Sources, and Origins*. Edited by Neil H. Cogan, Oxford University Press, New York, Oxford. (1997) pp. 2, 170.

(5). *The Debates and Proceedings in the Congress of the United States* (Annals of Congress), August 15, 1789, Vol. I, Joseph Gales, published by Gales and Seaton, Washington, 1834, pp 729-749.

(6). *The Debates and Proceedings in the Congress of the United States* (Annals of Congress),

August 17, 1789, Vol. I, Joseph Gales, published by Gales and Seaton, Washington, 1834, pp 749-755 .

(7). *The Debates and Proceedings in the Congress of the United States* (Annals of Congress), August 18, 1789, Vol. I, Joseph Gales, published by Gales and Seaton, Washington, 1834, pp 761-763.

(8). *Documentary History of the First Federal Congress of the United States of America*, March 4, 1789-March 3, 1791. Volume 3 pp 159 166, Volume 1 pp 136. Linda Grant De Pauw, Editor. The John Hopkins University Press (1972) *A Standard for Repair, The Establishment Clause, Equality, and Natural rights*, by T. Jeremy Gunn. Garland Publishing, Inc. N. Y. (1992) pp 61.

(9). *The Debates and Proceedings in the Congress of the United States* (Annals of Congress), August 20, 1789, Vol. I, Joseph Gales, published by Gales and Seaton, Washington, 1834, pp 766-767.

(10). *The Debates and Proceedings in the Congress of the United States* (Annals of Congress), August 22, 1789, Vol. I, Joseph Gales, published by Gales and Seaton, Washington, 1834, pp 778.

(11). *Creating the Bill of Rights, The Documentary Record from the First Federal Congress*, Edited by Helen E. Veit, Kenneth R. Bowling, Charlene Bangs Bickford, The John Hopkins University Press, Baltimore and London, 1991, pp 37-41.

(12). *Documentary History of the First Federal Congress of the United States of America*, March 4, 1789-March 3, 1791. Volume 9, The Diary of William Maclay and Other Notes on Senate debates. Charlene Bangs Bickford, Editor. The John Hopkins University Press p. 131.

(13). *Documentary History of the First Federal Congress of the United States of America*, March 4, 1789-March 3, 1791. Volume 1, Senate Legislative Journal. Linda Grant De Pauw, Editor. The John Hopkins University Press (1972) p. 151.

(14). *Documentary History of the First Federal Congress of the United States of America*, March 4, 1789-March 3, 1791. Volume 1, Senate Legislative Journal. Linda Grant De Pauw, Editor. The John Hopkins University Press (1972) p. 158.

(15). *Documentary History of the First Federal Congress of the United States of America*, March 4, 1789-March 3, 1791. Volume 1, Senate Legislative Journal. Linda Grant De Pauw, Editor. The John Hopkins University Press (1972) p. 166.

(16). Ellsworth MS, p. 2, RG 46, DNA. *The Complete Bill Of Rights, The Drafts, Debates, Sources and Origins*, Edited by Neil H. Cogan Oxford University Press, (1997) p. 175-176

(17). "House of Representatives Journal, September, 1789, History of Congress Exhibiting a Classification of the Proceedings of the Senate and the House of Representatives from March 4, 1789 to March 3, 1793", pp. 169-70, *The Bill Of Rights: A Documentary History*, Vol. II, Bernard Schwartz, Chelsea House Publishers, in association with McGraw Hill Book Company, N.Y. Toronto, London, Sydney (1971) pp 1160-61.

(18). *Creating the Bill of Rights, The Documentary Record from the First Federal Congress*, Edited by Helen E. Veit, Kenneth R. Bowling, Charlene Bangs Bickford, The John Hopkins University Press, Baltimore and London, 1991, pp 3-5.