

General Electric,”³⁷³ but held that this concern was not at issue regarding the closely-held corporations before the Court, whose owner’s religious beliefs had not been disputed.³⁷⁴

FREEDOM OF EXPRESSION—SPEECH AND PRESS

Adoption and the Common Law Background

Madison’s version of the speech and press clauses, introduced in the House of Representatives on June 8, 1789, provided: “The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable.”³⁷⁵ The special committee rewrote the language to some extent, adding other provisions from Madison’s draft, to make it read: “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 redress of grievances, shall not be infringed.”³⁷⁶ In this form it went to the Senate, which rewrote it to read: “That Congress shall make no law abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and consult for their common good, and to petition the government for a redress of grievances.”³⁷⁷ Subsequently, the religion clauses and these clauses were combined by the Senate.³⁷⁸ The final language was agreed upon in conference.

Debate in the House is unenlightening with regard to the meaning the Members ascribed to the speech and press clause, and there is no record of debate in the Senate.³⁷⁹ In the course of debate, Madison warned against the dangers that would arise “from discussing

³⁷³ The dissent, in an opinion authored by Justice Ginsburg, noted that the majority would rely on state corporate law to resolve disputes among corporate owners over religious values and accommodations, despite the majority having elsewhere suggested that “courts have no business addressing [whether an asserted religious belief] is substantial,” 573 U.S. ___, No. 13–354, slip op. at 19–20 (Ginsburg, J., dissenting) *quoting* slip op. at 36.

³⁷⁴ 573 U.S. ___, No. 13–354, slip op. at 58.

³⁷⁵ 1 ANNALS OF CONGRESS 434 (1789). Madison had also proposed language limiting the power of the states in a number of respects, including a guarantee of freedom of the press. *Id.* at 435. Although passed by the House, the amendment was defeated by the Senate. *See* “Amendments to the Constitution, Bill of Rights and the States,” *supra*.

³⁷⁶ *Id.* at 731 (August 15, 1789).

³⁷⁷ THE BILL OF RIGHTS: A DOCUMENTARY HISTORY 1148–49 (B. Schwartz ed. 1971).

³⁷⁸ *Id.* at 1153.

³⁷⁹ The House debate insofar as it touched upon this amendment was concerned almost exclusively with a motion to strike the right to assemble and an amendment to add a right of the people to instruct their Representatives. 1 ANNALS OF CONGRESS 731–749 (August 15, 1789). There are no records of debates in the states on ratification.