

clude a declaration of rights.<sup>6</sup> Several state conventions ratified while urging that the new Congress to be convened propose such amendments, 124 amendments in all being put forward by these states.<sup>7</sup> Although some dispute has occurred with regard to the obligation of the first Congress to propose amendments, Madison at least had no doubts<sup>8</sup> and introduced a series of proposals,<sup>9</sup> which he had difficulty claiming the interest of the rest of Congress in considering.

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is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse, or rest on inference." 12 *THE PAPERS OF THOMAS JEFFERSON* 438, 440 (J. Boyd ed., 1958). He suggested that nine States should ratify and four withhold ratification until amendments adding a bill of rights were adopted. *Id.* at 557, 570, 583. Jefferson still later endorsed the plan put forward by Massachusetts to ratify and propose amendments. 14 *id.* at 649.

<sup>6</sup> Thus, George Washington observed in letters that a ratified Constitution could be amended but that making such amendments conditions for ratification was ill-advised. 11 *THE WRITINGS OF GEORGE WASHINGTON* 249 (W. Ford ed., 1891).

<sup>7</sup> 2 *THE BILL OF RIGHTS: A DOCUMENTARY HISTORY* 627-980 (B. Schwartz ed., 1971). See also H. AMES, *THE PROPOSED AMENDMENTS TO THE CONSTITUTION* 19 (1896).

<sup>8</sup> Madison began as a doubter, writing Jefferson that while "[m]y own opinion has always been in favor of a bill of rights," still "I have never thought the omission a material defect, nor been anxious to supply it even by subsequent amendment. . . ." 5 *THE WRITINGS OF JAMES MADISON* 269 (G. Hunt ed., 1904). His reasons were four. (1) The Federal Government was not granted the powers to do what a bill of rights would proscribe. (2) There was reason "to fear that a positive declaration of some of the most essential rights could not be obtained in the requisite latitude. I am sure that the rights of conscience in particular, if submitted to public definition would be narrowed much more than they are likely ever to be by an assumed power." (3) A greater security was afforded by the jealousy of the States of the national government. (4) "[E]xperience proves the inefficacy of a bill of rights on those occasions when its controul is most needed. Repeated violations of these parchment barriers have been committed by overbearing majorities in every State. . . . Wherever the real power in a Government lies, there is the danger of oppression. In our Governments the real power lies in the majority of the Community, and the invasion of private rights is chiefly to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the government is the mere instrument of the major number of the Constituents. . . . Wherever there is a interest and power to do wrong, wrong will generally be done, and not less readily by a powerful & interested party than by a powerful and interested prince." *Id.* at 272-73. Jefferson's response acknowledged the potency of Madison's reservations and attempted to answer them, in the course of which he called Madison's attention to an argument in favor not considered by Madison "which has great weight with me, the legal check which it puts into the hands of the judiciary. This is a body, which if rendered independent, and kept strictly to their own department merits great confidence for their learning and integrity." 14 *THE PAPERS OF THOMAS JEFFERSON* 659 (J. Boyd ed., 1958). Madison was to assert this point when he introduced his proposals for a bill of rights in the House of Representatives. 1 *ANNALS OF CONGRESS* 439 (June 8, 1789).

In any event, following ratification, Madison in his successful campaign for a seat in the House firmly endorsed the proposal of a bill of rights. "[I]t is my sincere opinion that the Constitution ought to be revised, and that the first Congress meeting under it ought to prepare and recommend to the States for ratification, the most satisfactory provisions for all essential rights, particularly the rights of Conscience in the fullest latitude, the freedom of the press, trials by jury, security against general warrants & c." 5 *THE WRITINGS OF JAMES MADISON* 319 (G. Hunt ed., 1904).

<sup>9</sup> 1 *ANNALS OF CONGRESS* 424-50 (June 8, 1789). The proposals as introduced are at pp. 433-36. The Members of the House were indisposed to moving on the proposals.