

AMENDMENTS TO THE CONSTITUTION

BILL OF RIGHTS

First Through Tenth Amendments

On September 12, five days before the Convention adjourned, Mason and Gerry raised the question of adding a bill of rights to the Constitution. Mason said: "It would give great quiet to the people; and with the aid of the State declarations, a bill might be prepared in a few hours." But the motion of Gerry and Mason to appoint a committee for the purpose of drafting a bill of rights was rejected.¹ Again, on September 14, Pinckney and Gerry sought to add a provision "that the liberty of the Press should be inviolably observed—." But after Sherman observed that such a declaration was unnecessary, because "[t]he power of Congress does not extend to the Press," this suggestion too was rejected.² It cannot be known accurately why the Convention opposed these suggestions. Perhaps the lateness of the Convention, perhaps the desire not to present more opportunity for controversy when the document was forwarded to the states, perhaps the belief, asserted by the defenders of the Constitution when the absence of a bill of rights became critical, that no bill was needed because Congress was delegated none of the powers which such a declaration would deny, perhaps all these contributed to the rejection.³

In any event, the opponents of ratification soon made the absence of a bill of rights a major argument,⁴ and some friends of the document, such as Jefferson,⁵ strongly urged amendment to in-

¹ 2 M. FARRAND, *THE RECORDS OF THE FEDERAL CONVENTION OF 1787* 587–88 (rev. ed. 1937).

² *Id.* at 617–618.

³ The argument most used by proponents of the Constitution was that inasmuch as Congress was delegated no power to do those things which a bill of rights would proscribe no bill of rights was necessary and that it might be dangerous because it would contain exceptions to powers not granted and might therefore afford a basis for claiming more than was granted. *THE FEDERALIST* No. 84 at 555–67 (Alexander Hamilton) (Modern Library ed. 1937).

⁴ Substantial excerpts from the debate in the country and in the ratifying conventions are set out in 1 *THE BILL OF RIGHTS: A DOCUMENTARY HISTORY* 435–620 (B. Schwartz ed., 1971); 2 *id.* at 627–980. The earlier portions of volume 1 trace the origins of the various guarantees back to the Magna Carta.

⁵ In a letter to Madison, Jefferson indicated what he did not like about the proposed Constitution. "First the omission of a bill of rights providing clearly and without the aid of sophisms for freedom of religion, freedom of the press, protection against standing armies, restriction against monopolies, the eternal and unremitting force of the habeas corpus laws, and trials by jury in all matters of the fact triable by the laws of the land and not by the law of Nations. . . . Let me add that a bill of rights