

its somewhat more indefinite “respecting” phraseology.⁴ Debate in Congress lends little assistance in interpreting the religion clauses; Madison’s position, as well as that of Jefferson, who influenced him, is fairly clear,⁵ but the intent, insofar as there was one, of the others in Congress who voted for the language and those in the states who voted to ratify is subject to speculation.

Scholarly Commentary.—The explication of the religion clauses by scholars in the nineteenth century gave a restrained sense of their meaning. Story, who thought that “the right of a society or government to interfere in matters of religion will hardly be contested by any persons, who believe that piety, religion, and morality are intimately connected with the well being of the state, and indispensable to the administration of civil justice,”⁶ looked upon the prohibition simply as an exclusion from the Federal Government of all power to act upon the subject. “The situation . . . of the different states equally proclaimed the policy, as well as the necessity of such an exclusion. In some of the states, episcopalians constituted the predominant sect; in others presbyterians; in others, congregationalists; in others, quakers; and in others again, there was a close numerical rivalry among contending sects. It was impossible, that there should not arise perpetual strife and perpetual jealousy on the subject of ecclesiastical ascendancy, if the national government were left free to create a religious establishment. The only security was in extirpating the power. But this alone would have been an imperfect security, if it had not been followed up by a

⁴ 1 ANNALS OF CONGRESS 913 (September 24, 1789). The Senate concurred the same day. See I. BRANT, JAMES MADISON: FATHER OF THE CONSTITUTION 1787–1800 at 271–72 (1950).

⁵ During House debate, Madison told his fellow Members that “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.” 1 ANNALS OF CONGRESS 730 (August 15, 1789). That his conception of “establishment” was quite broad is revealed in his veto as President in 1811 of a bill which in granting land reserved a parcel for a Baptist Church in Salem, Mississippi; the action, explained President Madison, “comprises a principle and precedent for the appropriation of funds of the United States for the use and support of religious societies, contrary to the article of the Constitution which declares that ‘Congress shall make no law respecting a religious establishment.’” 8 THE WRITINGS OF JAMES MADISON (G. Hunt, ed.) 132–33 (1904). Madison’s views were no doubt influenced by the fight in the Virginia legislature in 1784–1785 in which he successfully led the opposition to a tax to support teachers of religion in Virginia and in the course of which he drafted his “Memorial and Remonstrance against Religious Assessments” setting forth his thoughts. *Id.* at 183–91; I. BRANT, JAMES MADISON: THE NATIONALIST 1780–1787 at 343–55 (1948). Acting on the momentum of this effort, Madison secured passage of Jefferson’s “Bill for Religious Liberty.” *Id.* at 354; D. MALONE, JEFFERSON THE VIRGINIAN 274–280 (1948). The theme of the writings of both was that it was wrong to offer public support of any religion in particular or of religion in general.

⁶ 3 J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 1865 (1833).