Scope of the Amendment.—The language of the provision that became the Fourth Amendment underwent some modest changes on its passage through the Congress, and it is possible that the changes reflected more than a modest significance in the interpretation of the relationship of the two clauses. Madison's introduced version provided "The rights to be secured in their persons, their houses, their papers, and their other property, from all unreasonable searches and seizures, shall not be violated by warrants issued without probable cause, supported by oath or affirmation, or not particularly describing the places to be searched, or the persons or things to be seized."[8] As reported from committee, with an inadvertent omission corrected on the floor,[9] the section was almost identical to the introduced version, and the House defeated a motion to substitute "and no warrant shall issue" for "by warrants issuing" in the committee draft. In some fashion, the rejected amendment was inserted in the language before passage by the House and is the language of the ratified constitutional provision.[10]

As noted above, the noteworthy disputes over search and seizure in England and the colonies revolved about the character of warrants. There were, however, lawful warrantless searches, primarily searches incident to arrest, and these apparently gave rise to no disputes. Thus, the question arises whether the Fourth Amendment's two clauses must be read together to mean that the only searches and seizures which are "reasonable" are those which meet the requirements of the second clause, that is, are pursuant to warrants issued under the prescribed safeguards, or whether the two clauses are independent, so that searches under warrant must comply with the second clause but that there are "reasonable" searches under the first clause that need not comply with the second clause.[11] This issue has divided the Court for some time, has seen several reversals of precedents, and is important for the resolution of many

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[8] 1 Annals of Congress 434–35 (June 8, 1789).

[9] The word "secured" was changed to "secure" and the phrase "against unreasonable searches and seizures" was reinstated. Id. at 754 (August 17, 1789).

[10] Id. It has been theorized that the author of the defeated revision, who was chairman of the committee appointed to arrange the amendments prior to House passage, simply inserted his provision and that it passed unnoticed. N. Lasson, The History and Development of the Fourth Amendment to the United States Constitution 101–03 (1937).

[11] The amendment was originally in one clause as quoted above; it was the insertion of the defeated amendment to the language which changed the text into two clauses and arguably had the effect of extending the protection against unreasonable searches and seizures beyond the requirements imposed on the issuance of warrants. It is also possible to read the two clauses together to mean that some seizures even under warrants would be unreasonable, and this reading has indeed been effectuated in certain cases, although for independent reasons. Boyd v. United States, 116 U.S. 616 (1886); Gouled v. United States, 255 U.S. 298 (1921), overruled by War-