

RELIGION AND FREE EXPRESSION

FIRST AMENDMENT

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

RELIGION

An Overview

Madison's original proposal for a bill of rights provision concerning religion read: "The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretence, infringed."¹ The language was altered in the House to read: "Congress shall make no law establishing religion, or to prevent the free exercise thereof, or to infringe the rights of conscience."² In the Senate, the section adopted read: "Congress shall make no law establishing articles of faith, or a mode of worship, or prohibiting the free exercise of religion. . . ."³ It was in the conference committee of the two bodies, chaired by Madison, that the present language was written with

¹ 1 ANNALS OF CONGRESS 434 (June 8, 1789).

² The committee appointed to consider Madison's proposals, and on which Madison served, with Vining as chairman, had rewritten the religion section to read: "No religion shall be established by law, nor shall the equal rights of conscience be infringed." After some debate during which Madison suggested that the word "national" might be inserted before the word "religion" as "point[ing] the amendment directly to the object it was intended to prevent," the House adopted a substitute reading: "Congress shall make no laws touching religion, or infringing the rights of conscience." 1 ANNALS OF CONGRESS 729–31 (August 15, 1789). On August 20, on motion of Fisher Ames, the language of the clause as quoted in the text was adopted. *Id.* at 766. According to Madison's biographer, "[t]here can be little doubt that this was written by Madison." I. BRANT, JAMES MADISON: FATHER OF THE CONSTITUTION 1787–1800 at 271 (1950).

³ This text, taken from the Senate Journal of September 9, 1789, appears in 2 THE BILL OF RIGHTS: A DOCUMENTARY HISTORY 1153 (B. Schwartz ed., 1971). It was at this point that the religion clauses were joined with the freedom of expression clauses.