CONSTITUTIONAL DEBATES ON FREEDOM OF RELIGION

A Documentary History

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Primary Documents in American History and Contemporary Issues

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Contents

Introduction

The Constitution of the United States of America, written in 1787 and ratified in 1788, includes only one reference to religion. In Article VI, there is a clause stating that ''no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.'' This prohibition of religious requirements for eligibility for United States government offices has never been at issue in a federal court of law. And this clause of Article VI has been a generally accepted constitutional standard for religious liberty in the United States government from the founding era until today.

The First Amendment of the U.S. Constitution, proposed in 1789 and ratified in 1791, includes two clauses on religion. It says, ''Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.'' From 1791 until today, Americans generally have agreed that the ''establishment clause'' and the ''free exercise clause'' limit the power of the U.S. government in order to protect the religious liberty of individuals under the authority of the Constitution.

During the nineteenth century, the constitutional principles of free exercise of religion and prohibition of government-sanctioned religious establishments prevailed throughout the several states of the American federal union. Legally established religion, banned at the federal level of government in 1791 by the First Amendment, was abolished by the few state governments that had mandated it. But if blatant de jure or legal establishments of religion had passed from the United States, a de facto or informal type of religious establishment persisted. It involved a culturally rooted and voluntary preference among most Americans for Protestant Christianity.

The leading Protestant denominations during the nineteenth century were the Baptists, Congregationalists, Disciples of Christ, Episcopalians,

Lutherans, Methodists, Presbyterians, Quakers, and members of Reformed Christian churches. Most members of these various Protestant Christian churches were descendants of settlers who had come to North America from western and northern Europe during the seventeenth and eighteenth centuries.[1] Their ancestors had founded the United States of America, and they intended to maintain cultural dominance in their country, especially with regard to religious traditions. So, they simultaneously and paradoxically affirmed American constitutional principles on religious liberty and promoted generally held religious traditions through nongovernmental organizations of civil society and informal accommodation with the local, state, and federal governments.

The famous French visitor to the United States in the 1830s, Alexis de Tocqueville, noted positively the informal, nonlegal, yet tight tie in the United States between the general Protestant form of Christianity and the social/political order. In his acclaimed two-volume work, *Democracy in America*, Tocqueville wrote:

> The sects that exist in the United States are innumerable. . . . [B]ut there is no country in the world where the Christian religion retains a greater influence over the souls of men than in America. . . .
>
> Religion in the United States takes no direct part in the government of society, but it must be regarded as the first of their political institutions; for if it does not impart a taste for freedom, it facilitates the use of it. Indeed, it is in this same point of view that the inhabitants of the United States themselves look upon religious belief. . . .
>
> Upon my arrival in the United States the religious aspect of the country was the first thing that struck my attention; and the longer I stayed there, the more I perceived the great political consequences resulting from this new state of things. . . . [T]hey all [the Americans] attributed the peaceful dominion of religion in their country to the separation of church and state.[2]

As a member of the Roman Catholic Church, Alexis de Tocqueville was concerned about the marginal place of his co-religionists in American life, which resulted from the Protestant domination of political and social affairs. Nonetheless, he observed with satisfaction the growing numbers of Catholics in America due to immigration from Ireland, the south German states, and other Catholic regions of Europe. And he predicted, presciently, that Roman Catholicism would eventually become a significant part of the vast religious diversity that distinguished American society from the countries of Europe and elsewhere.[3]

More than fifty years after Alexis de Tocqueville visited and wrote memorably about America, a distinguished British scholar, James Bryce, visited the United States to inquire and report about its political and social life. In his three-volume work, Lord Bryce, like Tocqueville, observed the indirect and informal yet close connection between Chris-

tianity and government, which persisted, paradoxically, in relative harmony with federal and state constitutional proscriptions against any establishment of religion. Lord Bryce wrote:

> The whole matter may, I think, be summed up by saying that Christianity is in fact understood to be, though not the legally established religion, yet the national religion. So far from thinking their commonwealth godless, the Americans conceive that the religious character of a government consists in nothing but the religious belief of the individual citizens, and the conformity of their conduct to that belief.[4]

The unofficial and extralegal Protestant establishment, woven into the social and cultural fabric of nineteenth-century America, was challenged and changed during a period extending from the 1880s until the 1940s. During this time, there were massive waves of immigration to the United States that changed the ethnic composition of the American population. Newcomers streamed in from southern and eastern Europe, and these were mostly a non-Protestant mixture of peoples including Roman Catholics, Orthodox Christians, and Jews. During this period Roman Catholicism became, by far, the largest religious denomination in the United States, although Catholics were still collectively outnumbered by the various Protestant churches.[5] From the middle to the end of the twentieth century, the religious and ethnic diversity of the United States became enriched by significant numbers of newcomers from all regions of the world. And, of course, the religious traditions they carried to America, including Buddhism, Hinduism, and Islam, continued the expansion of religious pluralism that has distinguished the United States of America from its origins until today.

In combination with the global secular trends of modern life, the enhanced religious diversity of twentieth-century America has influenced a reconception of the so-called unofficial or de facto Protestant Christian establishment and a reinterpretation of the religion clauses of the First Amendment. After nearly 150 years of relative amity and comity, controversial cases on the relationship between religion and government began to come to the federal courts of law. This entry of religious/political issues into the legal arena has continued, with increasing momentum, from the 1940s through the 1990s.

During the second half of the twentieth century, Americans have argued sharply and heatedly about the exact meaning and correct applications of the First Amendment's clauses on religious establishment and free exercise of religion. These arguments have resulted in many U.S. Supreme Court cases and decisions, which have produced a substantial body of constitutional law on the establishment and free exercise clauses.

Supreme Court decisions in thirty-four key cases on issues of religious

establishments and free exercise are treated in detail in Parts III and IV of this volume. But the Court's decisions have not ended public controversy about the relationships between church and state or religion and government. Indeed, the Court's decisions on some cases have exacerbated old tensions and generated new issues. The hot constitutional controversies of the 1990s about government and religion are treated in Part V of this volume. And the historical background to twentieth-century constitutional issues, the antecedent ideas and issues of the American colonial era and the founding era, are addressed in Parts I and II.

The documents in this volume were selected to exemplify the key ideas and issues on the interpretation of the Constitution's First Amendment clauses pertaining to establishment and free exercise of religion. The focus throughout is on the connection between the U.S. Constitution and freedom of religion in the United States. So documents from the colonial and founding eras, included in Parts I and II, were selected for their applicability to the constitutional issues decided by the U.S. Supreme Court in the twentieth century, which are treated in Parts III, IV, and V.

Alternative opinions are emphasized by inclusion of both significant concurring and dissenting opinions in the key cases presented in Parts III, IV, and V. Thus, alternative viewpoints on these constitutional issues, which continue to divide Americans, are highlighted in the decisions of the Court. Further, two federal statutes—the Equal Access Act of 1984 and the Religious Freedom Restoration Act of 1993—are included and discussed to emphasize interaction of Congress and the Supreme Court on Constitution-based issues of religion and government. The Equal Access Act continues to be controversial, but the Court has upheld it. By contrast, the Court has struck down as unconstitutional the Religious Freedom Restoration Act.

The text of this volume begins with a chronology of key events. An introductory essay presents the main themes, ideas, and issues of each part, I through V. Documents that pertain to the main themes, ideas, and issues are presented chronologically within each part. Each document is prefaced with an explanatory headnote, which includes questions to guide the reader's analysis of the primary source. At the end of each part, there is a select bibliography, including suggestions for further reading on the theories, ideas, and issues raised by the preceding documents.

Treatments of cases in this volume clearly reveal that many issues on government and religion decided by the Court in recent years have not been definitively settled. And the hot issues about separation or accommodation of religion and government are likely to continue to divide Americans. The framework within which these constitutional controversies are addressed, however, has long been settled, even as variations of opinions abound within, but not outside of, the prevailing constitutional

system. The principles of liberty and order by which Americans deal peacefully, civilly, and lawfully with their severest controversies indeed are ''a lustre to our country''—as James Madison, the primary author of the Constitution's First Amendment, noted long ago.[6] He urged us to preserve these valuable principles of liberty and order, which is our continuing challenge as responsible citizens of a constitutional democracy dedicated to security for certain inviolable rights of individuals, including the right to freedom of religion.

NOTES

1. Robert T. Handy, *Undermined Establishment: Church-State Relations in America, 1880–1920* (Princeton, N.J.: Princeton University Press, 1991), pp. 8–9.
2. Alexis de Tocqueville, *Democracy in America*, Volume 1 (New York: Alfred A. Knopf, 1987), pp. 303, 305, 308; the first volume of Tocqueville's two-volume work was published originally in France in 1835, and the second volume in 1840.
3. Ibid., pp. 300–302.
4. James Bryce, *The American Commonwealth*, Volume 2 (London: Macmillan, 1888), pp. 576–577.
5. Handy, pp. 162–193.
6. James Madison, *Memorial and Remonstrance Against Religious Assessments*, Article 9, 1785 (see Document 22).

Part II

Religious Liberty in the Founding of the United States, 1776–1791

On July 4, 1776, the second Continental Congress approved the Declaration of Independence that forever severed the union of thirteen American colonies from the United Kingdom of Great Britain. More than seven years later, on September 3, 1783, representatives of the United States of America and Great Britain signed the Treaty of Paris, which signified British recognition of American independence.

In their 1776 declaration, Americans announced that ''Governments are instituted among Men'' to secure certain ''Unalienable Rights,'' among which are ''Life, Liberty, and the Pursuit of Happiness.'' Most Americans of the founding era agreed that the individual's freedom of conscience or religious liberty was one of the ''Unalienable Rights'' that a good government should protect. But they argued robustly about the meaning of religious liberty, about who should or should not have it, and about how the government should act to protect it.

Public opinion about religious liberty and governmental actions to secure it varied within and between the different states. And in general, public conceptions of religious liberty were a bit different from the prevailing opinions in America today. For example, in the founding era the right to freedom of conscience usually was not extended to non-Christians or nonbelievers. And among Christians, Roman Catholics often faced discrimination and occasionally even persecution.

After 1776, the newly independent American states established new constitutions and declarations of rights, including statements about religious liberty and the relationships between churches and government. And each of the thirteen American states changed, some more and others less, the government-church arrangements of the colonial era. By 1786, for example, the five southern states—Maryland, Virginia, North Carolina, South Carolina, and Georgia—had all disestab-

lished the Church of England or Episcopal Church. However, they tended to reserve complete freedom of religion only for Protestant Christians and required a religious oath to qualify for public office, which excluded non-Christians and nonbelievers. (See, for example, the articles on religion in the 1776 Maryland Declaration of Rights, Document 17.)

John Carroll, a Roman Catholic priest, was pleased by the trend toward religious toleration for all denominations of Christians, which he perceived in his own state, Maryland, and in other parts of America. In a public statement issued in 1784, he expressed the hope that ''America may come to exhibit a proof to the world, that general and equal toleration, by giving a free circulation to fair arguments, is the most effectual method to bring all denominations of Christians to a unity of faith.''[1]

Father Carroll wanted to encourage acceptance of Roman Catholics and to erode the discrimination against them that had persisted variously throughout the United States. So Carroll influenced the Pope and other administrative leaders of the Catholic Church in Rome to allow American Catholics to oversee their own selection of bishops and other church leaders in America (see Document 21). Thus, Carroll tried to overcome the opinion of many Protestants in America that Roman Catholics could not be loyal citizens of the United States because of their allegiance to a pope in Rome. In 1790, John Carroll became the first Roman Catholic bishop in the United States and did much to advance the cause of religious toleration in America.

From 1776 to 1786, Roman Catholics and other Christians enjoyed the greatest latitude for religious liberty in four states: Pennsylvania, Delaware, New Jersey, and Rhode Island. As in colonial times, these four states established no churches, levied no taxes to support religion, and proclaimed freedom of conscience. The Pennsylvania Constitution broadened its religious test for public office beyond Protestant Christianity to include all believers in God and the Old and New Testaments (see Document 16). And Rhode Island abolished its colonial-era law excluding Roman Catholics from public office.

The 1777 New York State Constitution guaranteed the ''free exercise and enjoyment of religious profession and worship, without discrimination or preference'' and prohibited the establishment of a preferred state church. However, a New York law in 1788 required an oath for government office that excluded Roman Catholics.[2]

Three New England states—Connecticut, Massachusetts, and New Hampshire—enacted constitutions and declarations of rights that provided state support for all Christian denominations and guaranteed free exercise of religion for all Christians. (See, for example, Document 18, which includes articles on religion in the 1780 Massachusetts Decla-

ration of Rights.) Although these three New England states instituted constitutional governments that were supposed to equally and nonpreferentially support all Christian churches, the Congregational Church tended to be favored over the others, which reflected its majority status relative to such minority denominations as the Baptists and Presbyterians.

Public debates in Virginia on church-state arrangements and freedom of religion were especially acute from 1776 to 1786. The issues and arguments in Virginia generated ideas that eventually influenced other American states and pointed the way to clauses on religion in the United States Constitution.

The debates on religious liberty in Virginia began in 1776 during discussions about the state's Declaration of Rights. During deliberations on Article XVI of the Declaration of Rights, James Madison objected to the provision ''that all men should enjoy the fullest toleration in the exercise of religion.'' Madison wanted to move beyond the tradition of religious toleration introduced by John Locke and the English Toleration Act of 1689 (see Document 11). So the twenty-five-year-old delegate from Orange County to Virginia's constitutional convention put forward these words: ''All men are equally entitled to the free exercise of religion.''[3]

Madison's proposal that a right to ''free exercise of religion'' should replace the phrase on religious toleration was approved, and his words were included in Article XVI of the Virginia Declaration of Rights (see Document 15). Thus, James Madison acted decisively in 1776 for the principle that every person has an equal right to free exercise of religion, which was a forerunner of his sponsorship of religious liberty in the First Amendment of the 1791 Bill of Rights.

In 1785, Madison was embroiled in another critical issue on religious liberty in Virginia that had consequences for the United States from the founding era until today. The controversy was about nonpreferential state support for all Christian churches or sects. Should the state government raise taxes for the specific purpose of supporting equally the various Christian denominations of the state?

Patrick Henry, Virginia's most popular politician, proposed that the General Assembly enact a tax law to provide public support equally and nonpreferentially for religious education and support of ministers of all Christian churches of the state. According to Henry's bill, each taxpayer could designate which church (Episcopal, Methodist, Baptist, etc.) would receive his tax payment. This was a significant departure from the colonial-era situation in which the Church of England was the only tax-supported religion in Virginia. Henry was not in favor of a single established or state-supported church for the state of Virginia. Instead, he proposed through his ''Bill Establishing a Provision for

Teachers of the Christian Religion'' a ''general assessment'' that would establish nonpreferentially all Christian churches in his state.

Patrick Henry spoke in the General Assembly for his bill and emphasized the following points:

- A free and stable government cannot be sustained without the support of Christian institutions.
- Public and private morality will suffer unless Christian religious institutions in the state are strong and active.
- History records the decline and fall of nations that failed to support their religious institutions.
- Christian institutions in Virginia are suffering from lack of voluntary financial support.
- Therefore, it is proper, for the good of the state, to require citizens of Virginia to pay a tax for support of ministers and their churches.

James Madison opposed Patrick Henry's arguments. He argued that the general assessment bill was an unacceptable limitation on the individual's freedom of conscience. Further, Madison argued that Henry's bill was an unacceptable state establishment of Christianity in general, even if it did not specify a single Christian church as preferred over others.

Henry's bill for nondiscriminatory tax support of all Christian churches, which would give no state preference to one Christian denomination over the others, was popular. Such luminaries as Edmund Randolph, Richard Henry Lee, and George Washington backed it. And other states were acting similarly, such as New Hampshire, Massachusetts, Connecticut, Maryland, South Carolina, and Georgia.

Madison, however, opposed Henry's bill, because he feared that any kind of tax-based support of religion was a dangerous intrusion into a personal and private matter, which should be free of entanglement with the state. To Madison, nonpreferential state support of religion was still an establishment of religion that violated his principle of separation of church and state.

Madison tried to mobilize public opinion in Virginia against Henry's bill for nonpreferential state support of the Christian religion. He wrote a fifteen-point protest, ''Memorial and Remonstrance Against Religious Assessments,'' and circulated this petition throughout Virginia (see Document 22). Madison's ''remonstrances'' or protests were a compelling argument for broad religious liberty and against any kind of state-established religion, even a general and equal establishment of all Christian churches.

Members of the Virginia General Assembly saw many petitions when

they met in October 1785. About 1,200 signatures were attached to pro-assessment petitions. More than 10,000 Virginians signed petitions against the general assessment bill. Most of the anti-assessment petitions either included Madison's statements or reflected them. Thus, at the outset of the autumn session of the General Assembly, the fate of the bill was sealed. It was referred to committee and never reported back to the General Assembly. Madison had won his campaign to defeat this proposal for state support of religion.

Madison quickly pushed for passage of Thomas Jefferson's bill for religious freedom, which had been introduced initially in 1779. Again, he was successful, and Jefferson's bill became law on January 16, 1786 (see Document 23). Madison wrote to Jefferson, then serving in Paris as the U.S. diplomatic representative to the French government, that the key ideas of the bill on religious freedom were enacted unchanged ''and I flatter myself have in this country extinguished forever the ambitious hope of making laws for the human mind.''[4]

Madison's hope, though genuine, was exaggerated, as many issues about religious liberty and freedom of conscience continued from his lifetime into our contemporary era. However, he had significantly advanced the cause for free exercise of religion and against any kind of state establishment of religion.

The ideas of Madison and Jefferson on the individual's right to freedom of religion were based on the doctrine of natural rights advanced by the English philosopher John Locke in his *Second Treatise of Government* (1689). According to this doctrine, the right to liberty, including the right to free exercise of religion, belongs equally to every person by virtue of the individual's membership in the human species. Thus, a good government may not justly deprive an individual of her or his natural rights, including the right to free exercise of religion. Rather, it is the duty of a good government to secure or protect the natural rights of individuals. Jefferson's discussions of religious liberty in *Notes on the State of Virginia* (1782) and the Virginia Statute for Religious Freedom (1786) are rooted in Locke's doctrine of natural rights (see Documents 20 and 23).

Ideas on religious liberty developed by Madison and Jefferson (see Documents 20, 22, 23, and 27) became foundations for the two clauses on religious liberty in the First Amendment to the United States Constitution, ratified in 1791. And the outcome of the Virginia controversy about general tax support for the Christian religion pointed to the eventual end of established religions in all the state constitutions in the United States.

By 1787, on the eve of the Constitutional Convention in Philadelphia that brought a new frame of government to the United States of America, the idea of a single state established church was dead. And even

the idea of a multiple establishment—the nonpreferential state support of all Christian churches—was a hot issue in several states or had been rejected in others, such as Virginia in 1786. In 1802, for example, Thomas Jefferson wrote a letter to the Baptist Association of Danbury, Connecticut, in which he advocated ''building a wall of separation between church and state.''[5] Jefferson, serving his first term as President of the United States, offered his highly respected opinion in support of the Baptists' petition to end taxation in general support of the Christian religion in Connecticut. The General Assembly rejected the anti-tax petition. But sixteen years later, in 1818, Connecticut abolished its state government's support of religion. In 1833, Massachusetts became the last American state to overturn its establishment of religion.

The right to free exercise of religion, while generally undisputed and legally sanctioned, tended to be restricted in practice to Protestant Christians. Jefferson's Virginia Statute for Religious Freedom was exceptional in its broad claims for religious liberty. However, the United States generally exhibited more toleration and freedom of religion than existed anywhere else in the world of the 1780s.

The Northwest Ordinance, enacted by Congress in 1787 to establish law and order in the U.S. government's territories north and west of the Ohio River, exemplified the general American support for freedom of religion. Section 14, Article I of this law stated, ''No person demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship, or religious sentiments, in the said territory.''[6] The Northwest Ordinance of 1787 also reflected the general American opinion that religion was the foundation for public morality and civil society. It proclaimed in Section 14, Article III, ''Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.''[7]

Delegates to the 1787 Constitutional Convention focused on the challenge of designing an effective but limited federal government for the United States. They hardly discussed rights of religious liberty, which were assumed to be the business of citizens at the state level of government. The new constitutional government would be granted no power to act with regard to religion. And one very significant limitation was specified in Article VI of the 1787 constitution, which prohibited any religious qualification for federal government officials (see Document 24).

During the nationwide debates on ratification of the 1787 Constitution, many Anti-Federalists, opponents of the proposed frame of government, objected, among other things, to this prohibition of a religious test for office. They feared that the way was open to the possibility that a non-Christian or an atheist might become President. Federalists ef-

fectively rebutted this Anti-Federalist objection to the 1787 Constitution. (See, for example, Document 25.) However, eleven of the original thirteen states required some kind of oath or religious test to qualify for public office.[8] During the nineteenth and twentieth centuries, most states either deleted or omitted from their constitutions any religious tests for public office. Maryland was the last state to have such a constitutional provision, and it was voided in 1961.[9]

During the ratification debates, Anti-Federalists scored points against the proposed 1787 Constitution by pointing to its lack of a declaration on rights or bill of rights. They feared that a powerful federal government, if not constitutionally restricted, would violate individual rights, such as free exercise of religion. In reply, James Madison and other Federalist defenders of the 1787 Constitution pointed to the great social diversity of the United States, including religious diversity, as a protection for rights, such as the free exercise of religion. Madison argued in *Federalist Papers 10* and *51* that the multiplicity of religious sects in America would prevent any one of them from dominating the others and violating their rights of religious liberty (see Document 26). A French immigrant to America, Hector St. John de Crevecoeur, also wrote that the extraordinary diversity of religious denominations in the United States was a strong force for toleration of differences. Since no sect could be a controlling majority with power to coerce the others, the different groups seemed ready to tolerate each other (see Document 19).

In order to win majority support for the 1787 Constitution at several state ratifying conventions, James Madison and other Federalists promised to support constitutional amendments on rights, including religious liberty, at the First Federal Congress in 1789. True to this promise, Madison, a representative to Congress from Virginia, proposed several constitutional amendments in a stirring speech on June 8, 1789 (see Document 27). Among his amendments were proposals for free exercise of religion and against any establishment of a ''national religion.''

Madison's proposed amendments on rights, including religious liberty, were discussed by members of the House of Representatives and the Senate, as called for by the Constitution. (See Documents 28 and 29 for examples of discussions on freedom of religion and religious establishments.) On September 25, 1789, a modified version of Madison's proposals on rights was approved by both houses of Congress and sent to the states for ratification, which occurred December 15, 1791. (See Document 30 for the First Amendment of the Bill of Rights.)

The two clauses on religion in the First Amendment, pertaining to free exercise of religion and no establishment of religion, have been constitutionally mandated in the United States from December 15, 1791, until today. And during the twentieth century, they have been

controversial subjects of divisive public debates and landmark Supreme Court cases. In particular, arguments about the establishment of religion by government and separation of church and state, which were confronted by Virginians in 1785, are still with us. Issues raised during America's founding era about nonpreferential state support for religion have been confronted and adjudicated, but not definitively resolved.

NOTES

1. John Carroll, ''An Address to the Roman Catholics of the United States of America,'' in John Tracy Ellis, ed., *Documents of American Catholic History* (Milwaukee: Bruce Publishing, 1962), pp. 146–147.

2. Thomas J. Curry, *The First Freedoms: Church and State in America to the Passage of the First Amendment* (New York: Oxford University Press, 1986), p. 162. Curry notes that a New York law of 1788 required all government officials to renounce all foreign authorities, ''ecclesiastical as well as civil,'' which was aimed at excluding Roman Catholics with loyalty to their pope in Rome.

3. Lance Banning, ''James Madison, the Statute for Religious Freedom, and the Crisis of Republican Convictions,'' in Merrill D. Peterson and Robert C. Vaughan, eds., *The Virginia Statute for Religious Freedom: Its Evolution and Consequences in American History* (Cambridge, England: Cambridge University Press, 1988), p. 111.

4. Ibid., p. 124.

5. Leonard W. Levy, *The Establishment Clause: Religion and the First Amendment* (New York: Macmillan, 1986), p. 182.

6. Bernard Schwartz, *The Great Rights of Mankind: A History of the American Bill of Rights* (Madison, Wis.: Madison House, 1992), pp. 101–103.

7. David Lowenthal, *No Liberty for License: The Forgotten Logic of the First Amendment* (Dallas: Spence Publishing, 1997), p. 193.

8. Isaac Kramnick and R. Laurence Moore, *The Godless Constitution: The Case Against Religious Correctness* (New York: W. W. Norton, 1997), pp. 29–31. Kramnick and Moore note that by 1787, the year of the Constitutional Convention, only Virginia and New York had eliminated religious tests for public office. But a New York state law still discriminated against Roman Catholics (see note 2 above).

9. *Torcaso v. Watkins*, 367 U.S. 488 (1961). In this case, the U.S. Supreme Court invalidated a part of the Maryland Constitution that required state government officeholders to profess belief in God.

DOCUMENT 15: The Virginia Declaration of Rights (June 12, 1776)

Virginia was prominent among the first group of newly independent American states to adopt a constitution. The task of constitution-making

was assigned to a twenty-eight-man committee, appointed by a convention whose members were elected by Virginia's voters to govern the colony in the absence of British authority.

The constitutional committee's first achievement was a Declaration of Rights, written primarily by George Mason and submitted to the convention on May 27, 1776. It was passed unanimously on June 11, and then the convention turned its attention to drafting a plan of government, the body of the constitution, which would be placed after the document on rights. The Virginia Declaration of Rights was an extraordinary statement of the natural rights doctrine, which held that all persons, by virtue of their membership in the human species, possessed equally certain rights. Governments could not claim to be the source of these rights because they are rooted in human nature, and governments could not legitimately deprive people of them. Rather, the primary purpose of a good government was to secure these rights for people living under its authority. Among the natural rights proclaimed in this document are freedom of speech, religious liberty, and certain legal protections for persons accused of crimes. Further, the ideas of limited government and the rule of law pervaded the document.

The Virginia Declaration of Rights influenced similar statements of rights that preceded six other state constitutions, including those of Pennsylvania and Massachusetts (see Documents 16 and 18). Further, the federal Bill of Rights, adopted in 1791, was influenced by the Virginia Declaration of Rights. With regard to separation of church and state, however, Article VI of the U.S. Constitution and the First Amendment went beyond the protections for religious liberty provided by the Virginia Declaration of Rights, which did not disestablish the legally privileged Episcopal Church (formerly called the Church of England).

Articles I, II, III, and XVI of the sixteen-article Virginia Declaration of Rights are presented below. Only Article XVI pertains specifically to religion. The other three articles presented here pertain generally to the idea of individual rights and the responsibility of government to secure these rights. What does this document say in general about the rights of individuals and their relationship to government? What does Article XVI say about religious liberty? What is the relationship between the ideas in Articles I–III and the right to religious liberty in Article XVI?

* * *

A Declaration of Rights made by the Representatives of the good People of Virginia, assembled in full and free Convention, which rights to pertain to them and their posterity as the basis and foundation of government.

I. That all men are by nature equally free and independent, and have

certain inherent rights, of which, when they enter into a state of society, they cannot by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

II. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.

III. That government is, or ought to be, instituted for the common benefit, protection and security of the people, nation, or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and that, when a government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable and indefeasible right to reform, alter or abolish it, in such manner as shall be judged most conducive to the public weal. . . .

XVI. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the duty of all to practice Christian forbearance, love and charity towards each other.

Source: Francis N. Thorpe, ed., *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America*, Volume 7 (Washington, D.C., 1909), pp. 3812–3814.

DOCUMENT 16: Articles on Religion in the Pennsylvania Declaration of Rights and Constitution (1776)

Pennsylvania quickly followed Virginia in the enactment of a Declaration of Rights and Frame of Government or Constitution to assert its newly declared status as a sovereign state within the United States of America. Like several other newly written American state constitutions, the Pennsylvania document proclaimed freedom of religion and disclaimed establishment of any church or sect. However, it strongly supported the idea of religion and religious institutions. And it prohibited non-Christians from holding public office through a mandated oath or test of religious belief. This religious test for public office was dropped in the 1790 Constitution and replaced with an oath that only required belief in God. However, this Constitution limited religious freedom to

believers; atheists were excluded from constitutional protection for their beliefs.

What does the Pennsylvania Declaration of Rights say about freedom of conscience? How does it promote Christian churches or denominations? What limits does it place on freedom of religion? How are the Pennsylvania Declaration of Rights and Frame of Government similar to and different from the documents of Virginia, Maryland, and Massachusetts in treatment of religion? (See Documents 15, 17, and 18.)

* * *

From Article 2 of the Declaration of Rights

That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and understandings: And that no man ought or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any ministry, contrary to, or against, his own free will and consent: Nor can any man, who acknowledges the being of a God, be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments or peculiar mode of religious worship: And that no authority can or ought to be vested in, or assumed by any power whatever, that shall in any case interfere with, or in any manner control, the right of conscience in the free exercise of religious worship.

From Article 10 of the Frame of Government

And each member, before he takes his seat, shall make and subscribe the following declaration, viz:

I do believe in one God, the creator and governor of the universe, the rewarder of the good and the punisher of the wicked. And I do acknowledge the Scriptures of the Old and New Testament to be given by Divine inspiration.

And no further or other religious test shall ever hereafter be required of any civil officer or magistrate in this State.

From Article 45 of the Frame of Government

Laws for the encouragement of virtue, and prevention of vice and immorality, shall be made and constantly kept in force, and provision shall be made for their due execution: And all religious societies or bodies of men heretofore united or incorporated for the advancement of religion or learning, or for other pious and charitable purposes, shall be encouraged and protected in the enjoyment of the privileges, immunities and estates which they were accustomed to enjoy, or could of right have enjoyed under the laws and former constitution of this state.

Source: Francis N. Thorpe, ed., *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore*

Forming the United States of America, Volume 5 (Washington, D.C., 1909), pp. 3082, 3085, 3100.

DOCUMENT 17: Articles on Religion in the Maryland Declaration of Rights (1776)

The Maryland Declaration of Rights was written in August 1776 and approved in November. This document included forty-two articles. Articles 33 and 35, which pertain to religion, are presented below. These articles guarantee an equal right to freedom of religion for all Christians, but not for non-Christians or nonbelievers. They also provide for taxation and public support for Christian ministers and churches. And there is a religious test for governmental office that excludes all non-Christians.

Compare the articles on religion in this document with the treatment of religious liberty in the declarations of rights and constitutions of Virginia, Pennsylvania, and Massachusetts. (See Documents 15, 16, and 18.)

* * *

XXXIII. That, as it is the duty of every man to worship God in such manner as he thinks most acceptable to him; all persons, professing the Christian religion, are equally entitled to protection in their religious liberty; wherefore no person ought by any law to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice; unless, under color of religion, any man shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others, in their natural, civil, or religious rights; nor ought any person to be compelled to frequent or maintain, or contribute, unless on contract, to maintain any particular place of worship, or any particular ministry: yet the Legislature may, in their discretion, lay a general and equal tax, for the support of the Christian religion; leaving to each individual the power of appointing the payment over the money, collected from him, to the support of any particular place of worship or minister, or for the benefit of the poor of his own denomination, or the poor in general of any particular county. . . .

XXXV. That no other test or qualification ought to be required, on admission to any office of trust or profit, than such oath of support and fidelity to this State, and such oath of office, as shall be directed by this

Convention, or the Legislature of this State, and a declaration of a belief in the Christian religion.

Source: Francis N. Thorpe, ed., *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America*, Volume 3 (Washington, D.C., 1909), pp. 1687–1688.

DOCUMENT 18: The Massachusetts Declaration of Rights (1780)

In September 1779, John Adams was elected to be a delegate to the Constitutional Convention of Massachusetts. At the convention, Adams was named to a three-man committee, with Samuel Adams and James Bowdoin, to draft a Declaration of Rights and Frame of Government or Constitution. Adams took on this task for the committee and submitted a draft of his work to the convention, which approved it with minor changes on March 2, 1780. The people of the state, voting in their town meetings, ratified the Declaration of Rights and Frame of Government on June 15, 1780, and the Constitution was implemented on October 25, 1780.

This Declaration of Rights owed much to the Virginia Declaration, as did the other original state declarations of rights. For example, as with the Virginia Declaration of Rights, this document stressed the natural rights doctrine, separation of powers, legal protections for the rights of persons accused of crimes, and the rule of law. Unlike the Virginia document, however, the Massachusetts Declaration of Rights emphatically provided for the state government's general and nonpreferential support of the Christian religion. It also provided for free exercise of religion among Christians of any sect or denomination. It did not, however, guarantee freedom of conscience for nonbelievers or non-Christians.

Articles I–III of the thirty-article Massachusetts Declaration of Rights are presented below. Article I pertains generally to the idea of rights and the state government's obligation to protect them. Articles II and III, which pertain directly to religion, assert the fundamental importance of religion to good government. Article II provides for free exercise of religion so long as it does not violate the rights of others or threaten the common good. Article III proclaims the authority of the state government to raise taxes to support nonpreferentially all Christian denominations.

What does the Massachusetts Declaration of Rights say about the

state's authority and responsibility to support or promote religion? Why do these provisions constitute a state establishment of religion? What is the relationship of Article I, below, to Articles II and III?

* * *

ART. I.—ALL men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.

II.—IT is the right as well as the duty of all men in society, publicly, and at stated seasons, to worship the SUPREME BEING, the great creator and preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping GOD in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship.

III.—AS the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion and morality; and as these cannot be generally diffused through a community, but by the institution of the public worship of GOD, and of public instructions in piety, religion and morality: Therefore, to promote their happiness and to secure the good order and preservation of their government, the people of this Commonwealth have a right to invest their legislature with power to authorize and require, the several towns, parishes, precincts, and other bodies-politic, or religious societies, to make suitable provision, at their own expense, for the institution of the public worship of GOD, and for the support and maintenance of public Protestant teachers of piety, religion and morality, in all cases where such provision shall not be made voluntarily.

AND the people of this Commonwealth have also a right to, and do, invest their legislature with authority to enjoin upon all the subjects an attendance upon the instructions of the public teachers aforesaid, at stated times and seasons, if there be any on whose instructions they can conscientiously and conveniently attend.

PROVIDED notwithstanding, that the several towns, parishes, precincts, and other bodies-politic, or religious societies, shall, at all times, have the exclusive right of electing their public teachers, and of contracting with them for their support and maintenance.

AND all monies paid by the subject to the support of public worship, and of the public teachers aforesaid, shall, if he require it, be uniformly applied to the support of the public teacher or teachers of his own religious sect or denomination, provided there be any on whose instructions

he attends: otherwise it may be paid towards the support of the teacher or teachers of the parish or precinct in which the said monies are raised.

AND every denomination of Christians, demeaning themselves peaceably, and as good subjects of the Commonwealth, shall be equally under the protection of the law: And no subordination of any one sect or denomination to another shall ever be established by law.

Source: The Journal of the Convention for Framing a Constitution of Government for the State of Massachusetts-Bay (Boston, 1832), pp. 225–249.

DOCUMENT 19: Liberty of Worship in America (Hector St. John de Crevecoeur, 1782)

In 1755, Michel Guillaume Jean de Crevecoeur traveled from the country of his birth, France, to the colony of New France (Quebec) in North America, where he served in the French army. Crevecoeur fought against the British during the French and Indian War and was wounded during the pivotal battle at the Plains of Abraham on September 13, 1759. This defeat led to the French loss of Canada to the British. Following his discharge from the French army, Crevecoeur migrated southward to the British colony of New York, where he changed his name to Hector St. John and became a farmer. He also became the celebrated author of *Letters from an American Farmer*. In one of these published letters, ''What Is an American?,'' Crevecoeur described the distinguishing characteristics of the people in the new nation, the United States of America, that in 1776 proclaimed its independence from Great Britain.

Among the key characteristics of the Americans, according to Crevecoeur, was the propensity for freedom, especially freedom of conscience. According to Crevecoeur, religious toleration in America was based on diversity of religious beliefs and practices throughout the nation. Crevecoeur described religious liberty in America as something very different from that of the countries of Europe. According to Crevecoeur, the transplanted Frenchman, what factors in America influenced the development of religious liberty and toleration?

* * *

. . . The American is a new man, who acts upon new principles; he must therefore entertain new ideas, and form new opinions. . . .

. . . As Christians, religion curbs them not in their opinions; the general indulgence leaves every one to think for themselves in spiritual mat-

ters; the laws inspect our actions, our thoughts are left to God. Industry, good living, selfishness, litigiousness, country politics, the pride of freemen, religious indifference, are their characteristics. . . .

As I have endeavored to show you how Europeans become Americans; it may not be disagreeable to show you likewise how the various Christian sects introduced, wear out, and how religious indifference becomes prevalent. When any considerable number of a particular sect happen to dwell contiguous to each other, they immediately erect a temple, and there worship the Divinity agreeably to their own peculiar ideas. Nobody disturbs them. If any new sect springs up in Europe it may happen that many of its professors will come and settle in America. As they bring their zeal with them, they are at liberty to make proselytes if they can, and to build a meeting and to follow the dictates of their consciences; for neither the government nor any other power interferes. If they are peaceable subjects, and are industrious, what is it to their neighbors how and in what manner they think fit to address their prayers to the Supreme Being? But if the sectaries are not settled close together, if they are mixed with other denominations, their zeal will cool for want of fuel, and will be extinguished in a little time. Then the Americans become as to religion, what they are as to country, allied to all. In them the name of Englishman, Frenchman, and European is lost, and in like manner, the strict modes of Christianity as practiced in Europe are lost also. This effect will extend itself still farther hereafter, and though this may appear to you as a strange idea, yet it is a very true one. . . .

. . . Thus all sects are mixed as well as all nations; thus religious indifference is imperceptibly disseminated from one end of the continent to the other, which is at present one of the strongest characteristics of the Americans. Where this will reach no one can tell, perhaps it may leave a vacuum fit to receive other systems. Persecution, religious pride, the love of contradiction, are the food of what the world commonly calls religion. These motives have ceased here; zeal in Europe is confined; here it evaporates in the great distance it has to travel; there it is a grain of powder enclosed, here it burns away in the open air, and consumes without effect. . . .

Source: Hector St. John de Crevecoeur, *Letters from an American Farmer* (London, 1912), pp. 44–51.

DOCUMENT 20: An Argument for Religious Liberty in *Notes on the State of Virginia* (Thomas Jefferson, 1782)

Thomas Jefferson, third President of the United States and writer of the Declaration of Independence, was the author of one book, *Notes on*

the State of Virginia, which is considered an American classic. Jefferson discussed many topics in his book, including religious diversity in the United States and the individual's right to freedom of religion. Like his friend James Madison and the French immigrant Crevecoeur, Jefferson connected the fact of religious diversity in America to the trend toward toleration of religious differences. (See Documents 19 and 26.) And Jefferson argued strongly for the right to freedom of conscience and free exercise of religion. What does he say in this document about the person's right to religious liberty?

* * *

. . . [O]ur rulers can have no authority over . . . natural rights, only as we have submitted to them. The rights of conscience we never submitted, we could not submit. We are answerable for them to our God. The legitimate powers of government extend to such acts only as are injurious to others. But it does me no injury for my neighbor to say there are twenty gods, or no God. It neither picks my pocket nor breaks my leg. . . . Reason and free inquiry are the only effectual agents against error. Give a loose to them, they will support the true religion by bringing every false one to their tribunal, to the test of their investigation. They are the natural enemies of error, and of error only. . . . Was the government to prescribe to us our medicine and diet, our bodies would be in such keeping as our souls are now. Thus in France the emetic was once forbidden as a medicine, the potato as an article of food. Government is just as infallible, too, when it fixes systems in physics. Galileo was sent to the Inquisition for affirming that the earth was a sphere; the government had declared it to be as flat as a trencher, and Galileo was obliged to abjure his error. This error, however, at length prevailed, the earth became a globe, and Descartes declared it was whirled round its axis by a vortex. The government in which he lives was wise enough to see that this was no question of civil jurisdiction, or we should all have been involved by authority in vortices. In fact, the vortices have been exploded, and the Newtonian principle of gravitation is now more firmly established, on the basis of reason, than it would be were the government to step in, and to make it an article of necessary faith. Reason and experiment have been indulged, and error has fled before them. It is error alone which needs the support of government. Truth can stand by itself. Subject opinions to coercion: whom will you make your inquisitors? Fallible men; men governed by bad passions, by private as well as public reasons. And why subject it to coercion? To produce uniformity. But is uniformity of opinion desirable? No more than of face and stature. . . . Difference of opinion is advantageous in religion. The several sects perform the office of a *censor morum* over each other. . . . Reason and persuasion are the only practicable instruments. To make way for these, free

inquiry must be indulged; and how can we wish others to indulge it while we refuse it ourselves. . . .

Source: H. A. Washington, ed., *The Writings of Thomas Jefferson*, Volume 8 (Philadelphia, 1781), pp. 376–377.

DOCUMENT 21: Letter on the Selection of a Roman Catholic Bishop in the United States of America (Father John Carroll, February 27, 1785)

John Carroll was ordained a priest of the Roman Catholic Church in 1769. He studied and taught in Europe before returning in 1774 to Maryland, where he was born and raised. During the conflict between the British and their American colonies, Father Carroll sided with the American patriots. After the War of Independence, the Pope appointed him to be Superior of Catholic Missions for the United States of America.

Father Carroll was concerned about the anti-Catholic sentiment that prevailed in most parts of the United States. He wanted to reassure the Protestant majority that Catholics were good citizens and that their primary loyalty in political matters was to the United States and not to the Pope in Rome. Toward this goal, he wrote to Catholic Church officials in Rome with an important request. Father Carroll wanted the Catholic clergymen in the United States to have authority to elect their own bishop, who would be the head of the Church in their own country.

Father Carroll's request was granted, and he was consecrated the first Roman Catholic bishop in America in 1790. He founded Georgetown University in 1791 and became the first archbishop of Baltimore in 1811.

Beginning with his letter to Rome in 1785, Father Carroll did much to advance tolerance for the Roman Catholic Church in America. What reasons did he put forth in his letter to convince authorities in Rome to permit American clergy to select their own bishop? What does his letter suggest about difficulties faced by the Catholic Church in the United States?

* * *

THE MOST EMINENT CARDINAL may rest assured that the greatest evils would be borne by us rather than renounce the divine authority of the Holy See; that not only we priests who are here, but the Catholic

people, seem so firm in the faith that they will never withdraw from obedience to the sovereign pontiff. The Catholic body, however, think that some favor should be granted to them by the Holy Father, necessary for their permanent enjoyment of the civil rights which they now enjoy, and to avert the dangers which they fear. From what I have said, and from the framework of public affairs here, Your Eminence must see how objectionable all foreign jurisdiction will be to them. The Catholics therefore desire that no pretext be given to the enemies of our religion to accuse us of depending unnecessarily on a foreign authority; and that some plan may be adopted by which hereafter an ecclesiastical superior may be appointed for this country in such a way as to retain absolutely the spiritual jurisdiction of the Holy See and at the same time remove all ground of objecting to us, as though we held anything hostile to the national independence. . . .

We desire, therefore, Most Eminent Cardinal, to provide in every way, that the faith in its integrity, due obedience toward the Apostolic See, and perfect union should flourish, and at the same time that whatever can with safety to religion be granted, shall be conceded to American Catholics in ecclesiastical government; in this way we hope that the distrust of Protestants now full of suspicion will be diminished, and that thus our affairs can be solidly established.

You have indicated, Most Eminent Cardinal, that it was the intention and design of His Holiness to appoint a Vicar Apostolic for these states, invested with the Episcopal character and title. While this paternal solicitude for us has filled us with great joy, it also at first inspired some fear; for we knew that heretofore American Protestants never could be induced to allow even a bishop of their own sect, when the attempt was made during the subjection of these provinces to the king of England; hence a fear arose that we would not be permitted to have one. But some months since in a convention of Protestant ministers of the Anglican, or as it is here called, the Episcopal Church, they decreed that as by authority of law they enjoyed the full exercise of their religion, they therefore had the right of appointing for themselves such ministers of holy things as the system and discipline [of] their sect required; namely bishops, priests, and deacons. This decision on their part was not censured by the Congress appointed to frame our laws. As the same liberty in the exercise of religion is granted to us, it necessarily follows that we enjoy the same right in regard to adopting laws for our government.

While the matter stands thus, the Holy Father will decide, and you, Most Eminent Cardinal, will consider whether the time is now opportune for appointing a bishop, what his qualifications should be, and how he should be nominated. On all these points, not as if seeking to obtain my own judgment, but to make this relation more ample, I shall note a few facts.

First, as regards the seasonableness of the step, it may be noted that there will be no excitement in the public mind if a bishop be appointed, as Protestants think of appointing one for themselves. Nay, they even hope to acquire some importance for their sect among the people from the Episcopal dignity. So, too, we trust that we shall not only acquire the same, but that great advantages will follow; inasmuch as this church will then be governed in that manner which Christ our Lord instituted. On the other hand, however, it occurs that as the Most Holy Father has already deigned to provide otherwise for conferring the sacrament of confirmation, there is no actual need for the appointment of a bishop until some candidates are found fitted to receive holy orders; this we hope will be the case in a few years, as you will understand, Most Eminent Cardinal, from a special relation which I propose writing. When that time comes, we shall perhaps be better able to make a suitable provision for a bishop than from our slender resources we can now do.

In the next place, if it shall seem best to His Holiness to assign a bishop to this country, will it be best to appoint a vicar apostolic or an ordinary with a see of his own? Which will conduce more to the progress of Catholicity; which will contribute most to remove Protestant jealousy of foreign jurisdiction? I know with certainty that this fear will increase if they know that an ecclesiastical superior is so appointed as to be removable from office at the pleasure of the Sacred Congregation *de Propaganda Fide*, or any other tribunal out of the country, or that he has no power to admit any priest to exercise the sacred function, unless that congregation has approved and sent him to us.

As to the method of nominating a bishop, I will say no more at present than this, that we are imploring God in His wisdom and mercy to guide the judgment of the Holy See, that if it does not seem proper to allow the priests who have labored for so many years in this vineyard of the Lord to propose to the Holy See the one whom they deem most fit, that some method will be adopted by which a bad feeling may not be excited among the people of this country, Catholic and Protestant.

Source: John G. Shea, *Life and Times of the Most Reverend John Carroll* (New York, 1888), pp. 251–256.

DOCUMENT 22: Memorial and Remonstrance Against Religious Assessments (James Madison, June 20, 1785)

James Madison of Orange County, Virginia, was a staunch supporter of the individual's rights to freedom from unjust or unnatural coercion by the state. He was particularly committed to the cause of religious

liberty, and he believed separation of church and state to be a necessary condition of this fundamental freedom. So, in 1784–1785, as a member of the Virginia General Assembly, he led opposition to a bill that would have levied a state tax on Virginians ''to restore and propagate the holy Christian religion'' through financial support of Christian clergymen.

Madison certainly was not opposed to the needs and mission of organized religion. Rather, he believed these needs and this mission should be addressed in the private sphere of society, free of entanglement with and possible coercion by government. Madison's Memorial and Remonstrance was written to arouse statewide opposition to the proposed law on assessments to support religion, and it succeeded. The General Assembly set aside this bill in October 1785 in response to an outpouring of public opposition.

Madison presented fifteen distinct arguments against the proposed tax to support nonpreferentially all Christian denominations of the state. He argued that religion should neither be promoted nor interfered with by the government, because it was the individual's natural right freely to exercise it in accord with his or her conscience.

According to Madison, why would the proposed tax law in support of religious education have a harmful effect on the rights and liberties of individuals? Why, according to Madison, would this proposed law not be necessary for the well-being of the state government and society? Why would it even be harmful to the government and society? Why does Madison say that the proposed tax to support all Christian churches nonpreferentially would nonetheless constitute a state establishment of religion? What reasons does Madison present against an establishment of religion by the state government?

* * *

To The Honorable The General Assembly of
The Commonwealth Of Virginia.
A Memorial and Remonstrance.

We, the subscribers, citizens of the said Commonwealth, having taken into serious consideration, a Bill printed by order of the last Session of General Assembly, entitled ''A Bill establishing a provision for Teachers of the Christian Religion,'' and conceiving that the same, if finally armed with the sanctions of a law, will be a dangerous abuse of power, are bound as faithful members of a free State, to remonstrate against it, and to declare the reasons by which we are determined. We remonstrate against the said Bill,

1. Because we hold it for a fundamental and undeniable truth, ''that

Religion or the duty which we owe to our Creator and the Manner of discharging it, can be directed only by reason and conviction, not by force or violence.'' The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable; because the opinions of men, depending only on the evidence contemplated by their own minds, cannot follow the dictates of other men: It is unalienable also; because what is here a right towards men, is a duty towards the Creator. It is the duty of every man to render to the Creator such homage, and such only, as he believes to be acceptable to him. This duty is precedent both in order of time and degree of obligation, to the claims of Civil Society. . . . We maintain therefore that in matters of Religion, no man's right is abridged by the institution of Civil Society, and that Religion is wholly exempt from its cognizance. True it is, that no other rule exists, by which any question which may divide a Society, can be ultimately determined, but the will of the majority; but it is also true, that the majority may trespass on the rights of the minority.

2. Because if religion be exempt from the authority of the Society at large, still less can it be subject to that of the Legislative Body. The latter are but the creatures and vicegerents [deputies] of the former. Their jurisdiction is both derivative and limited: it is limited with regard to the co-ordinate departments, more necessarily is it limited with regard to the constituents. The preservation of a free government requires not merely, that the metes and bounds which separate each department of power may be invariably maintained; but more especially, that neither of them be suffered to overleap the great Barrier which defends the rights of the people. The Rulers who are guilty of such an encroachment, exceed the commission from which they derive their authority, and are Tyrants. The People who submit to it are governed by laws made neither by themselves, nor by an authority derived from them, and are slaves.

3. Because, it is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of citizens, and one of [the] noblest characteristics of the late Revolution. . . . Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?

4. Because, the bill violates that equality which ought to be the basis of every law. . . . If ''all men are by nature equally free and independent,'' all men are to be considered as entering into Society on equal conditions; as relinquishing no more, and therefore retaining no less, one than an-

other, of their natural rights. Above all are they to be considered as retaining an ''*equal* title to the free exercise of Religion according to the dictates of conscience.'' Whilst we assert for ourselves a freedom to embrace, to profess and to observe the Religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us. If this freedom be abused, it is an offense against God, not against man: To God, therefore, not to men, must an account of it be rendered. As the Bill violates equality by subjecting some to peculiar burdens; so it violates the same principle, by granting to others peculiar exemptions. . . .

5. Because the bill implies either that the Civil Magistrate is a competent Judge of Religious truth; or that he may employ Religion as an engine of Civil policy. The first is an arrogant pretension falsified by the contradictory opinions of Rulers in all ages, and throughout the world: The second an unhallowed perversion of the means of salvation.

6. Because the establishment proposed by the Bill is not requisite for the support of the Christian Religion. To say that it is, is a contradiction to the Christian Religion itself; for every page of it disavows a dependence on the powers of this world: it is a contradiction to fact; for it is known that this Religion both existed and flourished, not only without the support of human laws, but in spite of every opposition from them; and not only during the period of miraculous aid, but long after it had been left to its own evidence, and the ordinary care of Providence: Nay, it is a contradiction in terms; for a Religion not invented by human policy, must have pre-existed and been supported, before it was established by human policy. It is moreover to weaken in those who profess this Religion a pious confidence in its innate excellence, and the patronage of its Author; and to foster in those who still reject it, a suspicion that its friends are too conscious of its fallacies, to trust it to its own merits.

7. Because experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation. . . .

8. Because the establishment in question is not necessary for the Support of Civil Government. If it be urged as necessary for the support of Civil Government only as it is a means of supporting Religion, and it be not necessary for the latter purpose, it cannot be necessary for the former. . . .

9. Because the proposed establishment is a departure from that generous policy, which, offering an asylum to the persecuted and oppressed of every Nation and Religion, promised a lustre to our country, and an accession to the number of its citizens. . . .

10. Because, it will have a like tendency to banish our Citizens. The allurements presented by other situations are every day thinning their number. To superadd a fresh motive to emigration, by revoking the lib-

erty which they now enjoy, would be the same species of folly which has dishonored and depopulated flourishing kingdoms.

11. Because, it will destroy that moderation and harmony which the forbearance of our laws to intermeddle with Religion, has produced amongst its several sects. Torrents of blood have been spilt in the old world, by vain attempts of the secular arm to extinguish Religious discord, by proscribing all difference in Religious opinions. Time has at length revealed the true remedy. Every relaxation of narrow and rigorous policy, wherever it has been tried, has been found to assuage the disease. The American Theatre has exhibited proofs, that equal and complete liberty, if it does not wholly eradicate it, sufficiently destroys its malignant influence on the health and prosperity of the State. . . .

12. Because, the policy of the bill is adverse to the diffusion of the light of Christianity. The first wish of those who enjoy this precious gift, ought to be that it may be imparted to the whole race of mankind. Compare the number of those who have as yet received it with the number still remaining under the dominion of false Religions; and how small is the former! Does the policy of the Bill tend to lessen the disproportion? No; it at once discourages those who are strangers to the light of [revelation] from coming into the Region of it; and countenances, by example the nations who continue in darkness, in shutting out those who might convey it to them. Instead of leveling as far as possible, every obstacle to the victorious progress of truth, the Bill with an ignoble and unchristian timidity would circumscribe it, with a wall of defense, against the encroachments of error.

13. Because attempts to enforce by legal sanctions, acts obnoxious to so great a proportion of Citizens, tend to enervate the laws in general, and to slacken the bands of Society. If it be difficult to execute any law which is not generally deemed necessary or salutary, what must be the effect of so striking an example of impotency in the Government, on its general authority.

14. Because a measure of such singular magnitude and delicacy ought not to be imposed, without the clearest evidence that it is called for by a majority of citizens: and no satisfactory method is yet proposed by which the voice of the majority in this case may be determined, or its influence secured. . . .

15. Because, finally, ''the equal right of every citizen to the free exercise of his Religion according to the dictates of conscience'' is held by the same tenure with all our other rights. If we recur to its origin, it is equally the gift of nature; if we weigh its importance, it cannot be less dear to us; if we consult the Declaration of those rights which pertain to the good people of Virginia, as the ''basis and foundation of government,'' it is enumerated with equal solemnity, or rather studied emphasis. . . .

Source: Gaillard Hunt, ed., *The Writings of James Madison*, Volume 2 (New York, 1910), pp. 183–191.

DOCUMENT 23: The Virginia Statute for Religious Freedom (Thomas Jefferson, January 16, 1786)

Thomas Jefferson, a friend and neighbor of James Madison in the piedmont region of Virginia, drafted a bill to buttress and enlarge the principle of religious liberty expressed in Section XVI of the 1776 Virginia Declaration of Rights. This proposed statute was introduced to the Virginia General Assembly in 1779, but it languished without adequate support for six years, until James Madison promoted its passage in the wake of his successful campaign against a proposed law that would have levied taxes for the nonpreferential support of the state's various Christian denominations.

Jefferson's bill became law in January 1786, and Virginia moved to the forefront of American states in the cause of religious liberty. Jefferson's statute is introduced by a preamble, Section I, and followed by a concluding statement, Section III. The preamble is a profound argument for freedom of expression, with particular emphasis on every person's inherent right to free exercise of religious belief. According to Jefferson, government should be prohibited by law from interfering with a person's natural right to freedom of expression, which is the intent of Section II, the statute. Section III states that the individual's right to religious liberty does not come from government; rather, it is a natural right of individuals, based in human nature, that supersedes the power of government.

How did Jefferson use the natural rights doctrine in Sections I and III to justify this statute? Compare Section II, the statute, with Section XVI of the Virginia Declaration of Rights (see Document 15). How did Jefferson's statute support and expand upon the protections for religious liberty expressed in the Virginia Declaration of Rights? Compare this statute with constitutional laws on religious liberty in other states during the founding era. (See Documents 16, 17, and 18.)

* * *

I. Whereas Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy Author of our religion, who being Lord both of body and mind, yet chose not to propagate it by

coercions on either, as was in His Almighty power to do; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world, and through all time; that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical; that even forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor, whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness, and is withdrawing from the ministry those temporary rewards, which proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labors for the instruction of mankind; that our civil rights have no dependence on our religious opinions, any more than our opinions in physics or geometry; that therefore the proscribing [of] any citizen as unworthy [of] the public confidence by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which in common with his fellow-citizens he has a natural right; that it tends only to corrupt the principles of that religion it is meant to encourage, by bribing with a monopoly of worldly honors and emoluments, those who will externally profess and conform to it; that though indeed these are criminal who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy, which at once destroys all religious liberty, because he being of course judge of that tendency will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of civil government, for its officers to interfere when principles break out into overt acts against peace and good order; and finally, that truth is great and will prevail if left to herself, that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons, free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them:

II. *Be it enacted by the General Assembly*, That no man shall be compelled to frequent or support any religious worship, place or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his

body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.

III. And though we well know that this Assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding Assemblies, constituted with powers equal to our own, and that therefore to declare this act to be irrevocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present, or to narrow its operation, such act will be an infringement of natural right.

Source: W. W. Hening, ed., *Statutes at Large of Virginia*, Volume 12 (Richmond, 1836), pp. 84–86.

DOCUMENT 24: Article VI of the United States Constitution (1787)

The federal Constitutional Convention voted to approve the Constitution on September 15, 1787, signed it on September 17, and submitted it to the Continental Congress, still operating under the Articles of Confederation. This Constitution of 1787 included seven articles, which listed powers granted in the name of the people to the U.S. government, and by implication, powers reserved to the state governments. Limitations on the powers of both the U.S. government and the state governments were expressed. According to Article VI, the U.S. Constitution, plus laws and treaties enacted in conformity with it, would be the supreme law of the country which the states would be obligated to uphold. Article VI also prohibits any religious test or oath as a condition of eligibility for public office in the U.S. government. This is the only statement on religion in the 1787 Constitution. Compare the article on religion in the 1787 Constitution with the articles on religion in state constitutions and declarations of rights of the founding era. What are the similarities and differences? (See Documents 15, 16, 17, and 18.)

* * *

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by

Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Source: Francis N. Thorpe, ed., *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America*, Volume 1 (Washington, D.C., 1909), p. 27.

DOCUMENT 25: An Argument Against a Religious Test for Public Office (Oliver Ellsworth, December 17, 1787)

Oliver Ellsworth represented Connecticut at the 1787 Constitutional Convention. During the debates on ratification of the Constitution, he wrote letters for publication to counter criticisms of the Anti-Federalists, opponents of the 1787 Constitution. The following letter argues for the clause that prohibits religious tests for public office in Article VI. This provision of Article VI was the target of criticism by Anti-Federalists, who claimed it would open the way to non-Christian or atheistic public officials, who would corrupt the public morals and civic virtue of the country. They also argued that it was antagonistic to religion. In reply, Oliver Ellsworth argued that this provision of Article VI would provide equal protection to all citizens with regard to their freedom of conscience. What does Ellsworth say in opposition to these critics of the religion clause of Article VI? What reasons does he present in favor of prohibiting religious tests for public office?

* * *

Some very worthy persons who have not had great advantages for information have objected against that clause in the Constitution which provides that no religious test shall ever be required as a qualification to any office or public trust under the United States. They have been afraid that this clause is unfavorable to religion. But, my countrymen, the sole purpose and effect of it is to exclude persecution and to secure to you the important right of religious liberty. We are almost the only people in the world who have a full enjoyment of this important right of human nature. In our country every man has a right to worship God in that way which is most agreeable to his conscience. If he be a good and peaceable person, he is liable to no penalties or incapacities on account of his religious sentiments; or, in other words, he is not subject to persecution.

But in other parts of the world it has been, and still is, far different. . . .

It was the universal opinion that one religion must be established by law; and that all who differed in their religious opinions must suffer the vengeance of persecution. In pursuance of this opinion, when popery was abolished in England and the Church of England was established in its stead, severe penalties were inflicted upon all who dissented from the established church. In the time of the civil wars, in the reign of Charles I, the Presbyterians got the upper hand and inflicted legal penalties upon all who differed from them in their sentiments respecting religious doctrines and discipline. When Charles II was restored, the Church of England was likewise restored, and the Presbyterians and other dissenters were laid under legal penalties and incapacities.

It was in this reign that a religious test was established as a qualification for office. . . .

A religious test is an act to be done or profession to be made relating to religion (such as partaking of the sacrament according to certain rites and forms, or declaring one's belief of certain doctrines) for the purpose of determining whether his religious opinions are such that he is admissible to a public office. A test in favor of any one denomination of Christians would be to the last degree absurd in the United States. If it were in favor of either Congregationalists, Presbyterians, Episcopalians, Baptists, or Quakers, it would incapacitate more than three-fourths of the American citizens for any public office and thus degrade them from the rank of freemen. There need be no argument to prove that the majority of our citizens would never submit to this indignity. . . .

If we mean to have those appointed to public offices who are sincere friends to religion, we, the people who appoint them, must take care to choose such characters, and not rely upon such cobweb barriers as test laws are.

But to come to the true principle by which this question ought to be determined: *The business of a civil government is to protect the citizen in his rights, to defend the community from hostile powers, and to promote the general welfare. Civil government has no business to meddle with the private opinions of the people.* If I demean myself as a good citizen, I am accountable not to man but to God for the religious opinions which I embrace and the manner in which I worship the Supreme Being. If such had been the universal sentiments of mankind and they had acted accordingly, persecution, the bane of truth and nurse of error, with her bloody axe and flaming brand, would never have turned so great a part of the world into a field of blood.

But while I assert the rights of religious liberty, I would not deny that the civil power has a right, in some cases, to interfere in matters of religion. It has a right to prohibit and punish gross immoralities and impieties; because the open practice of these is of evil example and detriment. . . .

Test laws are useless and ineffectual, unjust and tyrannical; therefore the Convention have done wisely in excluding this engine of persecution, and providing that no religious test shall ever be required.

Source: E. H. Scott, ed., *The Federalist and Other Constitutional Papers by Hamilton, Jay, Madison and Other Statesmen of Their Time*, Volume 2 (Chicago, 1894), pp. 582–583.

DOCUMENT 26: *The Federalist 51* (Publius [James Madison], February 6, 1788)

Alexander Hamilton planned a series of newspaper articles to advocate ratification of the 1787 Constitution and to thwart its opponents, the Anti-Federalists. He was joined by James Madison and John Jay in writing eighty-five *Federalist Papers*, each signed with a pseudonym, Publius.

In *Federalist Paper 51*, James Madison discussed the great social and religious diversity in the United States as a factor in diminishing the possibility of majority tyranny against unpopular minority groups. He contended that the greater the diversity of political interests or religious sects in a society, the lesser the likelihood that a permanent majority would form around a single interest or sect and use its power persistently and tyrannically against minorities. According to Madison, the great diversity of religious denominations or sects in America would generate countervailing forces against the possibility of a single established church that could dominate all the other churches.

Compare Madison's ideas about religious diversity and religious liberty with the views of Crevecoeur (see Document 19). Do you agree with Madison's contention that religious diversity is a force for religious liberty for minority groups?

* * *

It is of great importance in a republic, not only to guard the society against the oppression of its rulers; but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: The one by creating a will in the community independent of the majority, that is, of the society itself; the other by comprehending in the society so many separate descriptions of citizens, as will render an unjust combination of a majority of the whole,

very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self appointed authority. This at best is but a precarious security; because a power independent of the society may as well espouse the unjust views of the major, as the rightful interests, of the minor party, and may possibly be turned against both parties. The second method will be exemplified in the federal republic of the United States. Wilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests and classes of citizens, that the rights of individuals or of the minority, will be in little danger from interested combinations of the majority. In a free government, the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other, in the multiplicity of sects. The degree of security in both cases will depend on the number of interests and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government. This view of the subject must particularly recommend a proper federal system to all the sincere and considerate friends of republican government: Since it shows that in exact proportion as the territory of the union may be formed into more circumscribed confederacies or states, oppressive combinations of a majority will be facilitated, the best security under the republican form, for the rights of every class of citizens, will be diminished; and consequently, the stability and independence of some member of the government, the only other security, must be proportionally increased. Justice is the end of government. It is the end of civil society. It ever has been, and ever will be pursued, until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign, as in a state of nature where the weaker individual is not secured against the violence of the stronger: And as in the latter state even the stronger individuals are prompted by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves: So in the former state, will the more powerful factions or parties be gradually induced by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful. It can be little doubted, that if the state of Rhode Island was separated from the confederacy, and left to itself, the insecurity of rights under the popular form of government within such narrow limits, would be displayed by such reiterated oppressions of factious majorities, that some power altogether independent of the people would soon be called for by the voice of the very factions whose misrule had proved the necessity of it. In the extended republic of the United States, and among the great variety of interests, parties and sects which it embraces, a coalition of a majority of the whole society could seldom take

place on any other principles than those of justice and the general good; and there being thus less danger to a minor from the will of the major party, there must be less pretext also, to provide for the security of the former, by introducing into the government a will not dependent on the latter; or in other words, a will independent of the society itself. It is no less certain than it is important notwithstanding the contrary opinions which have been entertained, that the larger the society, provided it lie within a practicable sphere, the more duly capable it will be of self government. And happily for the *republican cause*, the practicable sphere may be carried to a very great extent, by a judicious modification and mixture of the *federal principle*.

Source: Independent Journal (New York), February 6, 1788. See also Clinton Rossiter, ed., *The Federalist Papers* (New York: New American Library, 1965), pp. 323–325.

DOCUMENT 27: Speech on Rights in the U.S. House of Representatives (James Madison, June 8, 1789)

In a carefully prepared speech in the House of Representatives, James Madison of Virginia introduced proposals for a bill of rights in the U.S. Constitution. The proposals on religion were influenced by the 1776 Virginia Declaration of Rights and by the 1786 Virginia Statute for Religious Freedom. He recommended that the amendments be inserted into sections of the Constitution rather than appended to it. Roger Sherman of Connecticut, however, rallied opposition to this recommendation about placement of the amendments, and the House of Representatives decided that they should be appended to the Constitution as a separate Bill of Rights.

Item four in Madison's speech proposed constitutional guarantees against the establishment of a national religion and for the individual's right to free exercise of religion. The proposals in item four influenced the religion clauses of the First Amendment in the 1791 Bill of Rights.

Madison emphasized item five in his list of proposals on rights. If enacted, it would have guaranteed fundamental individual rights, including the right of religious liberty, against the power of state governments. This proposal was passed by the House of Representatives, but it was defeated by the Senate. So not until passage of the Fourteenth Amendment in 1868 was there a federal constitutional basis for limiting the power of state governments to protect rights to religious liberty. (See Document 33 in Part III for an example of the use of Fourteenth

Amendment provisions to guarantee rights of individuals against the power of a state government.)

Madison predicted that the federal courts would become ''the guardians of these rights'' in the Bill of Rights. He said in this speech that the federal judges ''will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights.''

What specific guarantees of rights of individuals on religion did Madison propose to include in the Constitution? What were his reasons for proposing these amendments? What were the similarities of Madison's proposals to the Virginia Declaration of Rights and to the Virginia Statute on Religious Freedom?

* * *

. . . I will state my reasons why I think it proper to propose amendments, and state the amendments themselves. . . .

It cannot be a secret to the gentlemen in this House, that, notwithstanding the ratification of this system of Government by eleven of the thirteen United States, in some cases unanimously, in others by large majorities; yet still there is a great number of our constituents who are dissatisfied with it, among whom are many respectable for their talents and patriotism, and respectable for the jealousy they have for their liberty, which, though mistaken in its object is laudable in its motive. There is a great body of the people falling under this description, who at present feel much inclined to join their support to the cause of Federalism, if they were satisfied on this one point. We ought not to disregard their inclination, but, on principles of amity and moderation, conform to their wishes, and expressly declare the great rights of mankind secured under this Constitution. . . .

The amendments which have occurred to me, proper to be recommended by Congress to the State Legislatures, are these:

First. That there be prefixed to the Constitution a declaration, that all power is originally vested in, and consequently derived from, the people.

That Government is instituted and ought to be exercised for the benefit of the people; which consists in the enjoyment of life and liberty, with the right of acquiring and using property, and generally of pursuing and obtaining happiness and safety.

That the people have an indubitable, unalienable, and indefeasible right to reform or change their Government, whenever it be found adverse or inadequate to the purposes of its institution. . . .

Fourthly. That in article 1st, section 9, between clauses 3 and 4, be inserted these clauses, to wit: 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 pretext, infringed.

The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable.

The people shall not be restrained from peaceably assembling and consulting for their common good; nor from applying to the Legislature by petitions, or remonstrances, for redress of their grievances. . . .

Fifthly. That in article 1st, section 10, between clauses 1 and 2, be inserted this clause, to wit:

No State shall violate the equal rights of conscience, or the freedom of the press, or the trial by jury in criminal cases. . . .

I wish also, in revising the constitution, we may throw into the section, which interdicts the abuse of certain powers in the state legislatures, some other provisions of equal if not greater importance than those already made. The words, ''No state shall pass any bill of attainder, ex post facto law, &c.'' were wise and proper restrictions in the constitution. I think there is more danger of those powers being abused by the state governments than by the government of the United States. The same may be said of other powers which they possess, if not controlled by the general principle, that laws are unconstitutional which infringe the rights of the community. I should therefore wish to extend this interdiction, and add, as I have stated in the 5th resolution, that no state shall violate the equal right of conscience, freedom of the press, or trial by jury in criminal cases; because it is proper that every government should be disarmed of powers which trench upon those particular rights. I know in some of the state constitutions the power of the government is controlled by such a declaration, but others are not. I cannot see any reason against obtaining even a double security on those points; and nothing can give a more sincere proof of the attachment of those who opposed this constitution to those great and important rights, than to see them join in obtaining the security I have now proposed; because it must be admitted, on all hands, that the state governments are as liable to attack those invaluable privileges as the general government is, and therefore ought to be as cautiously guarded against. . . .

Having done what I conceived was my duty in bringing before this House the subject of amendments, and also stated such as I wish for and approve, and offered the reasons which occurred to me in their support I shall content myself, for the present, with moving ''that a committee be appointed to consider of and report such amendments as ought to be proposed by Congress to the Legislatures of the States, to become, if ratified by three-fourths thereof, part of the Constitution of the United States.'' By agreeing to this motion, the subject may be going on in the

committee, while other important business is proceeding to a conclusion in the House. I should advocate greater dispatch in the business of amendments, if I were not convinced of the absolute necessity there is of pursuing the organization of the Government; because I think we should obtain the confidence of our fellow-citizens, in proportion as we fortify the rights of the people against the encroachments of the Government.

Source: Gaillard Hunt, ed., *The Writings of James Madison*, Volume 5 (New York, 1910), pp. 370–389.

DOCUMENT 28: Discussion in the House of Representatives on Constitutional Guarantees of Religious Liberty (August 15, 1789)

On June 10, 1789, the House of Representatives agreed to consider James Madison's proposed constitutional amendments on rights, including rights to religious liberty. From July 21 to 28, Madison participated in a committee to study the proposed amendments and report on them to a meeting of the House of Representatives. On August 15, the House debated the part of the committee report on prohibiting the government of the United States from acting to establish a religion.

In his June 8, 1789 speech in Congress, Madison had proposed an amendment with the wording ''nor shall any national religion be established.'' (See Document 27.) His use of the word ''national'' was debated in the House discussion of August 15 and was deleted. What reasons did Madison offer to defend his use of this word in regard to prohibiting an establishment of religion? Why did others oppose it? Why did Madison and others in the House agree to omit the word ''national'' from a proposed amendment against an establishment of religion?

There was general agreement among members of Congress that they were acting to restrict the government of the United States from interfering with the religious rights of individuals and legal practices in the several state governments with regard to rights of religious liberty. What was the opinion of Roger Sherman of Connecticut about this point?

* * *

The House again went into a Committee of the Whole on the proposed amendments to the constitution, Mr. Boudinot in the chair.

The fourth proposition being under consideration, as follows:

Article I. Section 9. Between paragraphs two and three insert ''no religion shall be established by law, nor shall the equal rights of conscience be infringed.''

Mr. Sylvester had some doubts of the propriety of the mode of expression used in this paragraph. He apprehended that it was liable to a construction different from what had been made by the committee. He feared it might be thought to have a tendency to abolish religion altogether.

Mr. Vining suggested the propriety of transposing the two members of the sentence.

Mr. Gerry said it would read better if it was, that no religious doctrine shall be established by law.

Mr. Sherman thought the amendment altogether unnecessary, inasmuch as Congress had no authority whatever delegated to them by the constitution to make religious establishments; he would, therefore, move to have it struck out.

Mr. Carroll—As the rights of conscience are, in their nature, of peculiar delicacy, and will little bear the gentlest touch of governmental hand; and as many sects have concurred in opinion that they are not well secured under the present constitution, he said he was much in favor of adopting the words. He thought it would tend more towards conciliating the minds of the people to the Government than almost any other amendment he had heard proposed. He would not contend with gentlemen about the phraseology, his object was to secure the substance in such a manner as to satisfy the wishes of the honest part of the community.

Mr. Madison said, 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*. Whether the words are necessary or not, he did not mean to say, but they had been required by some of the State Conventions, who seemed to entertain an opinion that under the clause of the constitution, which gave power to Congress to make all laws necessary and proper to carry into execution the constitution, and the laws made under it, enabled them to make laws of such a nature as might infringe the rights of conscience, and establish a national religion; to prevent these effects he presumed the amendment was intended, and he thought it as well expressed as the nature of the language would admit.

Mr. Huntington said that he feared, with the gentleman first up on this subject, that the words might be taken in such latitude as to be extremely harmful to the cause of religion. He understood the amendment to mean what had been expressed by the gentleman from Virginia; but others might find it convenient to put another construction upon it.

The ministers of their congregations to the Eastward were maintained by the contributions of those who belonged to their society; the expense of building meeting-houses was contributed in the same manner. These things were regulated by by-laws. If an action was brought before a Federal Court on any of these cases, the person who had neglected to perform his engagements could not be compelled to do it; for a support of ministers, or building of places of worship might be construed into a religious establishment.

By the charter of Rhode Island, no religion could be established by law; he could give a history of the effects of such a regulation; indeed the people were now enjoying the blessed fruits of it. He hoped, therefore, the amendment would be made in such a way as to secure the rights of conscience, and a free exercise of the rights of religion, but not to patronize those who professed no religion at all.

Mr. Madison thought, if the word national was inserted before religion, it would satisfy the minds of honorable gentlemen. He believed that the people feared one sect might obtain a pre-eminence, or two combine together, and establish a religion to which they would compel others to conform. He thought if the word national was introduced, it would point the amendment directly to the object it was intended to prevent.

Mr. Livermore was not satisfied with that amendment; but he did not wish them to dwell long on the subject. He thought it would be better if it was altered, and made to read in this manner, that Congress shall make no laws touching religion, or infringing the rights of conscience.

Mr. Gerry did not like the term national, proposed by the gentleman from Virginia, and he hoped it would not be adopted by the House. It brought to his mind some observations that had taken place in the conventions at the time they were considering the present constitution. It had been insisted upon by those who were called antifederalists, that this form of Government consolidated the Union, the honorable gentleman's motion shows that he considers it in the same light. Those who were called antifederalists at that time complained that they had injustice done them by the title, because they were in favor of a Federal Government, and the others were in favor of a national one; the federalists were for ratifying the constitution as it stood, and the others not until amendments were made. Their names then ought not to have been distinguished by federalists and antifederalists, but rats and antirats.

Mr. Madison withdrew his motion, but observed that the words ''no national religion shall be established by law,'' did not imply that the Government was a national one; the question was then taken on Mr. Livermore's motion, and passed in the affirmative, thirty-one for, and twenty against it.

Source: Joseph Gales and W. W. Seaton, eds., *The Debates and Proceedings in the Congress of the United States, Compiled from Authentic Materials*, Volume 1 (Washington, D.C., 1834), pp. 448–459.

DOCUMENT 29: Action in the Senate on Constitutional Guarantees of Religious Liberty (September 3 and 9, 1789)

On August 24, 1789, the House of Representatives voted to send several proposed amendments to the Senate for its approval, including the following one on religion: ''Congress shall make no law establishing religion, or to prevent the free exercise thereof, or to infringe the rights of conscience.'' From September 3 to 9, the Senate considered the proposed amendment on religion. Compare the proposed amendment approved by the Senate on September 9 with the proposal submitted to it by the House of Representatives. Also, compare it with the clauses on religion in the First Amendment, ratified in 1791 (see Document 30).

* * *

September 3, 1789

On Motion, To amend the third Article, to read thus—''Congress shall make no law establishing any particular denomination of religion in preference to another, or prohibiting the free exercise thereof, nor shall the rights of conscience be infringed''—It passed. . . .

On Motion, To adopt the third Article proposed in the Resolve of the House of Representatives, amended by striking out these words—''Nor shall the rights of conscience be infringed''—It passed. . . .

September 9, 1789

[The Senate agreed] To amend Article the third, to read as follows, ''Congress shall make no law establishing articles of faith or a mode of worship, or prohibiting the free exercise of religion.''

Source: Linda Grant DePauw, ed., *Documentary History of the First Federal Congress of the United States of America*, Volume 1 (Baltimore, 1977), pp. 151, 166.

DOCUMENT 30: Clauses on Religion in the First Amendment of the United States Constitution (December 15, 1791)

On September 24, 1789, a joint committee of the Senate and House of Representatives agreed to the final wording of the religion clauses of the third of twelve proposed amendments to the Constitution. On September 25, these twelve amendments were approved by two-thirds of both houses of Congress and sent to the states for ratification.

On December 15, 1791, Virginia became the eleventh of the fourteen American states to ratify ten articles of the proposed Bill of Rights. (Vermont had become the fourteenth state in 1791.) Thus, three-fourths of the states had approved these ten amendments, which then became part of the U.S. Constitution.

During the process to ratify the twelve proposed amendments, two of them, Amendments I and II, were rejected. So proposed Amendment III, the one with clauses on religion, was renumbered to become the First Amendment of the Bill of Rights.

The First Amendment includes two clauses on religion. One of the religion clauses prevents the United States government from making any law pertaining to the establishment of a religion. This is the clause on separation of church and state at the federal level of government. The other religion clause prevents the federal government from prohibiting the free exercise of religion. This is the clause that limits the federal government to guarantee the individual's freedom of conscience. Compare these religion clauses to articles on religion in state constitutions and declarations of rights of the founding era. (See Documents 15, 16, 17, 18.) To what extent do the religion clauses of the First Amendment agree or disagree with the Virginia Statute for Religious Freedom written by Thomas Jefferson? (See Document 24.)

* * *

The 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.

Source: National Archives and Records Administration, *The Bill of Rights: Milestone Documents in the National Archives* (Washington, D.C., 1986), p. 25.

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