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A vertical strip of marbled paper with swirling patterns in shades of blue, green, and brown runs along the left edge of the cover.

Congress Creates the Bill of Rights

**Go Inside the First Congress
Part II A**

Congress Seeks Compromise
Leaders of the House Debate
Issues and Positions
The Senate Markup

Congress Creates the Bill of Rights

Congress Creates the Bill of Rights consists of three elements: a mobile application for tablets, an eBook, and online resources for teachers and students on the Center for Legislative Archives website (<http://www.archives.gov/legislative/resources/bill-of-rights.html>). Each provides a distinct way of exploring how the First Congress proposed amendments to the Constitution in 1789.

This PDF contains all the content of the app divided into four sections:

- Get the Background (Part I);
- Go Inside the First Congress (Part II A);
- Amendments in Process (Part II B); and
- Join the Debate and Appendix (Part III).

Each part is sized so that it can be easily downloaded or printed on a wide variety of devices.

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Go Inside the First Congress

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Get the Background

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Go Inside the First Congress

Part II A



Go Inside the First Congress

Congress Seeks Compromise

The struggle over the Bill of Rights was one of many contested issues in the First Congress. Through compromise, the House and Senate demonstrated that the Constitution could be safely amended to protect the basic rights of citizens and correct perceived defects.

A fundamental divide existed between Federalists and Anti-Federalists on the question of amendments to the Constitution. Yet, James Madison found areas of common ground to build support for a set of amendments. He displayed his political genius by focusing on proposals that could win the support of a two-thirds majority in each house of Congress, and ratification by three-quarters of the states. Madison embraced the need to change the new charter in order to keep the majority of its provisions intact, and he skillfully used the self-correcting measures in Article V of the Constitution to amend it.

Article V sets a high bar and defines a unique process to propose and ratify amendments. These requirements include congressional passage by two-thirds majorities in both houses. Yet within the House and the Senate, and between those two chambers, many of the procedures, tactics, and tools remain the same as the normal legislative process for moving bills through the chambers to enact laws. This hard work of compromise between the House and the Senate is revealed in a compelling document, the *Senate Revisions to the House Proposed Amendments to the U.S. Constitution* (referred to as the Senate Mark-up).

The Founders saw Congress as the forum where representatives of the people and of the states would reach decisions through deliberation and debate on issues of national importance. With Madison's able guidance, the First Congress was able to reconcile differences and set in motion the ratification of the Bill of Rights.

Go Inside the First Congress

Leaders of the House Debate

The House of Representatives debated the Bill of Rights between June 8 and September 24, 1789, when the House voted on its final version of amendments. House debate was shaped by the extreme reluctance, if not the open hostility, of the members towards Madison's version of amendments. Despite this opposition, Madison's determination and skill guided the amendments to House approval by a two-thirds vote.

The Champion of Amendments

James Madison
Virginia

Federalist Position on Amendments

Roger Sherman
Connecticut

James Jackson
Georgia

Fisher Ames
Massachusetts

Anti-Federalist Position on Amendments

Aedanus Burke
South Carolina

Thomas Tudor Tucker
South Carolina

Elbridge Gerry
Massachusetts

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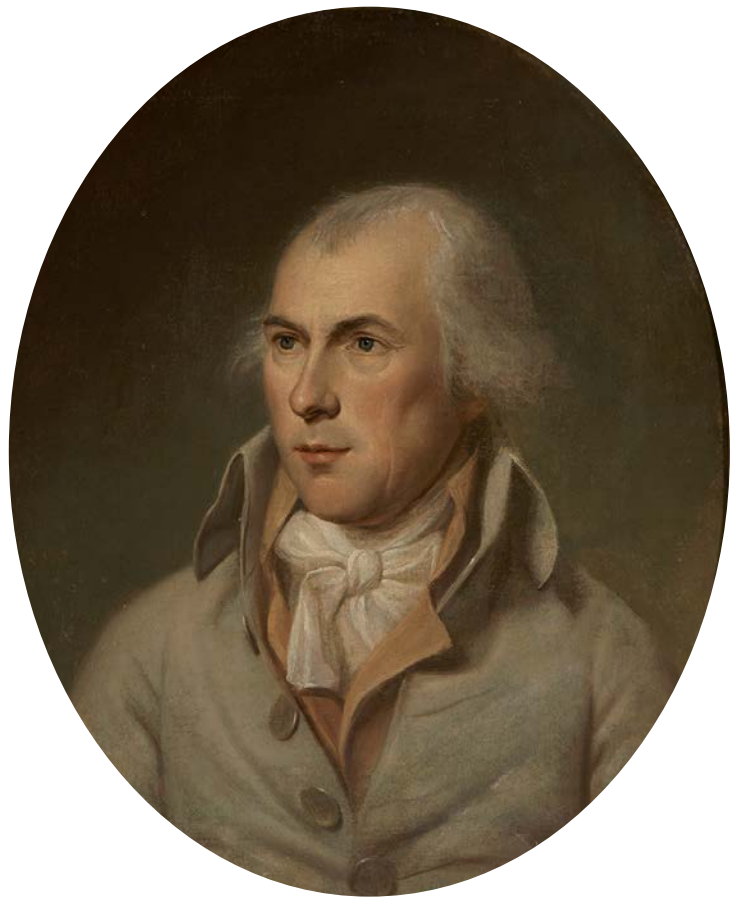
Leaders of the House Debate

The Champion of Amendments

James Madison played a critical role as instigator of the discussion on amendments, which many members wished to avoid. He put together a carefully crafted, lawyerly speech that called on the House to “expressly declare the great rights of mankind secured under this Constitution.”

James Madison (1751–1836) Virginia

Born in Virginia, James Madison trained as a lawyer at Princeton before settling in Orange County, Virginia. He represented the county in Virginia’s revolutionary and legislative bodies. He also represented Virginia in the Confederation Congress and at the Federal Convention. He promoted ratification of the Constitution in the press and as a delegate to the state convention. Madison was the author of the constitutional amendments considered by the House, and the floor leader who directed their passage. He believed that by passing his version of amendments, he could satisfy the public call to protect rights without endangering the Constitution and weakening the federal government.



James Madison by Charles Willson Peale
Gilcrease Museum, Tulsa, Oklahoma



Go Inside the First Congress

Leaders of the House Debate

Federalist Position on Amendments

When the first Congress convened, the Federalist-dominated House opposed amending the Constitution. Federalists generally believed that a bill of rights was unnecessary in a government of delegated powers. They were suspicious that the Anti-Federalists' primary motive was to undo critical provisions in the Constitution before the new government could be put into effect.

As the session progressed, Federalists came to realize that Madison's amendments neither weakened the federal government nor prevented it from fulfilling its national responsibilities. They voted for Madison's amendments, but without much enthusiasm. Joining Madison as leaders of the debate were Federalists Roger Sherman of Connecticut, Fisher Ames of Massachusetts, and James Jackson of Georgia.

Go Inside the First Congress

Leaders of the House Debate

Federalist Position on Amendments

Fisher Ames (1758–1808) Massachusetts

Ames was a Harvard-educated lawyer from Dedham, Massachusetts, who served in the Massachusetts House of Representatives before being elected as a Federalist to the First Congress. As a member of the Massachusetts convention, he ardently supported ratification. He was opposed to amending the Constitution, noting, “There would be no limits to the time necessary to discuss the subject ... the session would not be long enough.”



Fisher Ames by James Sharples
National Portrait Gallery,
Smithsonian Institution/Art Resource, NY

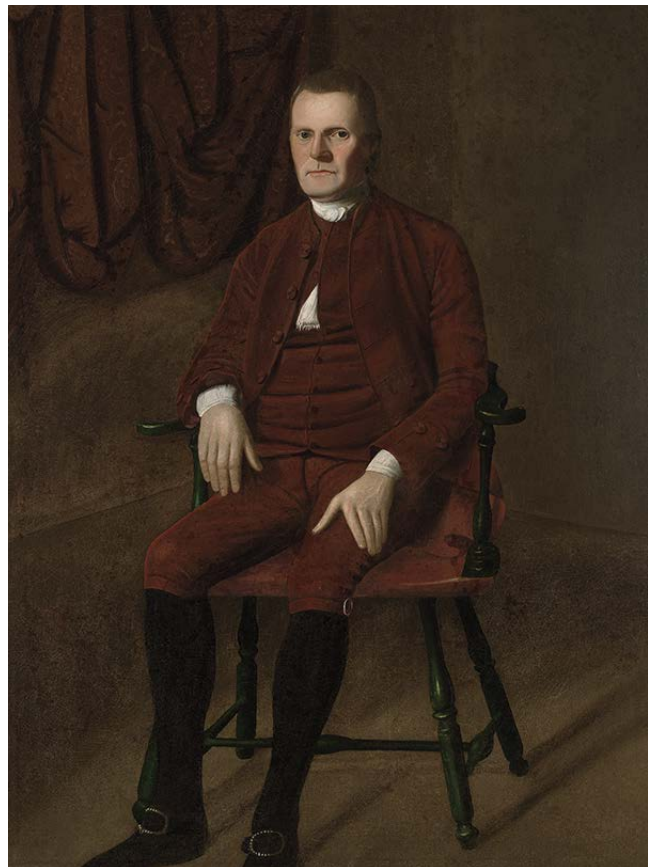
Go Inside the First Congress

Leaders of the House Debate

Federalist Position on Amendments

Roger Sherman (1721–1793) Connecticut

Born in Massachusetts, Sherman settled in New Haven, Connecticut, where he was a publisher, lawyer, merchant, judge, and municipal and state officeholder. Sherman served for many years in both the Continental Congress, where he signed the Declaration of Independence, and the Confederation Congress. He assumed an important role at the Federal Convention and actively supported ratification in both the press and the state convention. Sherman played a critical role in the history of the Bill of Rights when he proposed that the amendments be added to the end of the Constitution rather than written into its text, as Madison had proposed.



Roger Sherman by Ralph Earl
Yale University Art Gallery

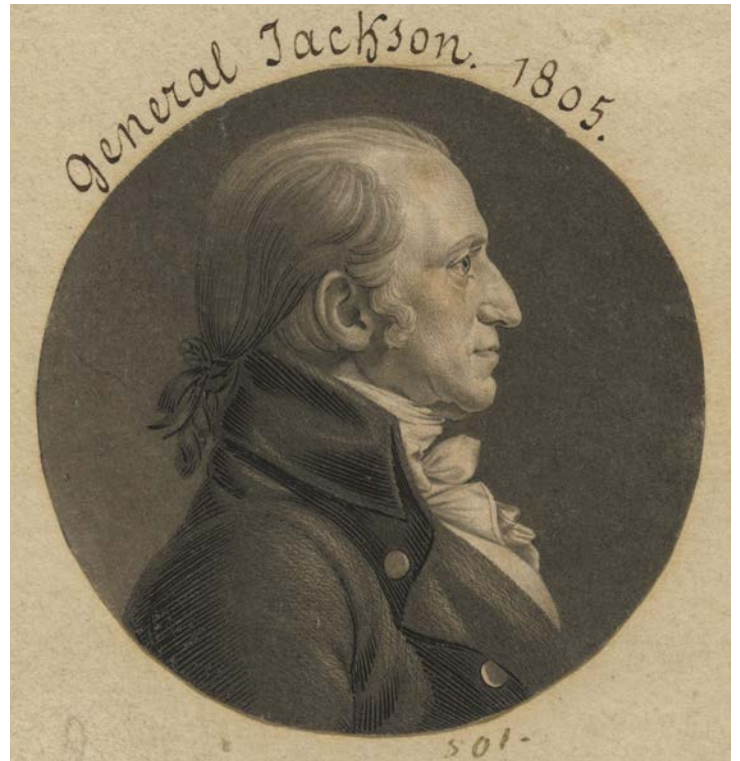
Go Inside the First Congress

Leaders of the House Debate

Federalist Position on Amendments

James Jackson (1757–1806) Georgia

Born in England, James Jackson immigrated to Savannah, Georgia, where he became a planter and lawyer. He served in the state assembly and was elected as a Federalist to the First Congress. Jackson adamantly opposed amending the Constitution, remarking, “This is not the time for bringing forward amendments.”



James Jackson by Charles B.J. Févret de Saint-Mémin
National Portrait Gallery, Smithsonian Institution/Art Resource, NY



Go Inside the First Congress

Leaders of the House Debate

Anti-Federalist Position on Amendments

Anti-Federalists wanted to add amendments to reduce the federal government's powers. These amendments took two forms: structural amendments that would transfer powers back to the states, and rights-related amendments that would define fundamental freedoms protected from federal government interference.

The Anti-Federalists proposed amendments designed to reduce Congress's power to tax, replace congressional control of federal elections with state control, eliminate the federal court system, limit the powers of the president, and place restrictions on a standing army. The Anti-Federalists believed that Madison had selected the least useful amendments from those proposed by the states, and they consistently voted against his version of amendments.

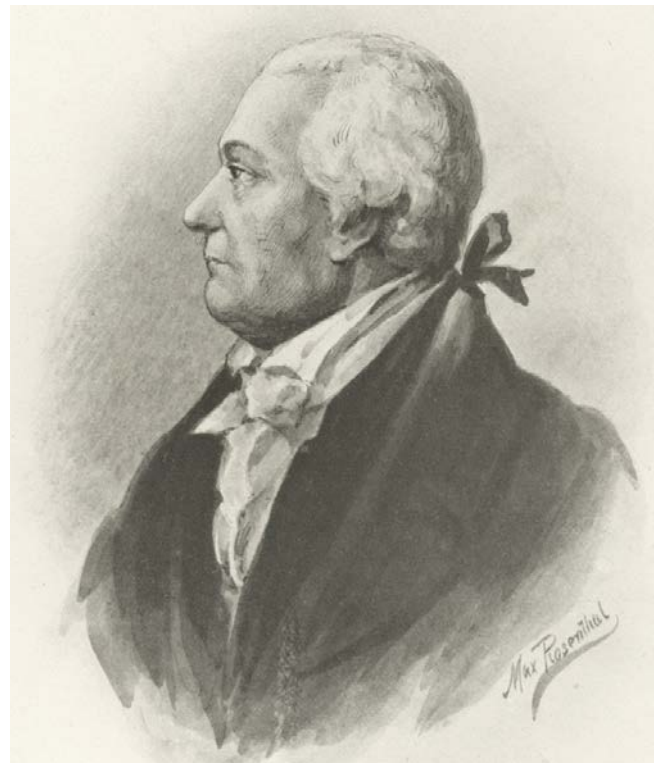
Go Inside the First Congress

Leaders of the House Debate

Anti-Federalist Position on Amendments

Aedanus Burke (1743–1802) South Carolina

Burke was born in Ireland and settled in Charleston, South Carolina, where he served as a judge in the state. He voted against ratification in South Carolina's convention. An advocate of imposing strict limits on federal power, Burke dismissed Madison's amendments as, "little better than whip-syllabub, frothy and full of wind, formed only to please the palate...."



Aedanus Burke by Max Rosenthal
Print Collection, Miriam and Ira D. Wallach Division of Art,
Prints and Photographs, The New York Public Library,
Astor, Lenox, and Tilden Foundations

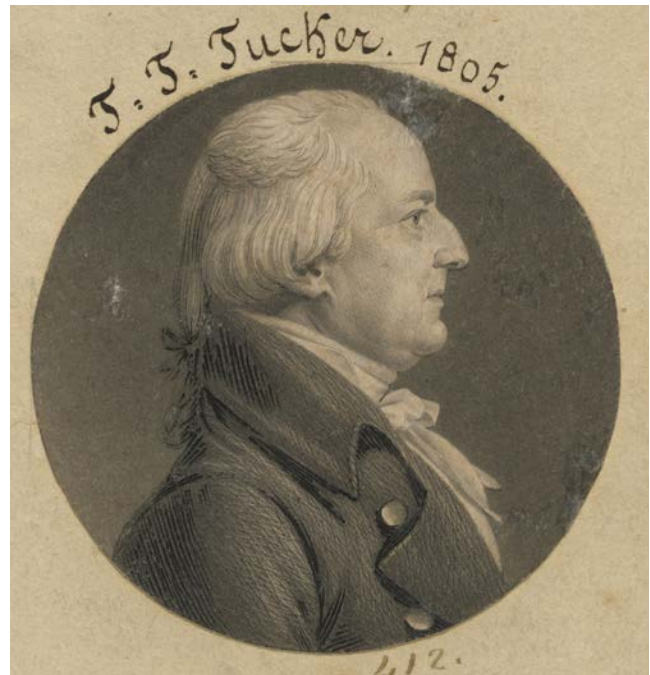
Go Inside the First Congress

Leaders of the House Debate

Anti-Federalist Position on Amendments

Thomas Tudor Tucker (1745–1828) South Carolina

Born in Bermuda, Tucker settled in Charleston, South Carolina. A lawyer, doctor, and planter, he was a delegate to the state legislature and, briefly, to the Confederation Congress. Tudor was the proponent of several amendments to limit federal power, all of which were defeated in the House. He captured the Anti-Federalist view of Madison's amendments when he complained to a political ally, "You will find our Amendments to the constitution calculated merely to amuse, or rather to deceive."



Thomas Tudor Tucker by Charles B.J. Févret de Saint-Mémin
National Portrait Gallery, Smithsonian Institution/
Art Resource, NY

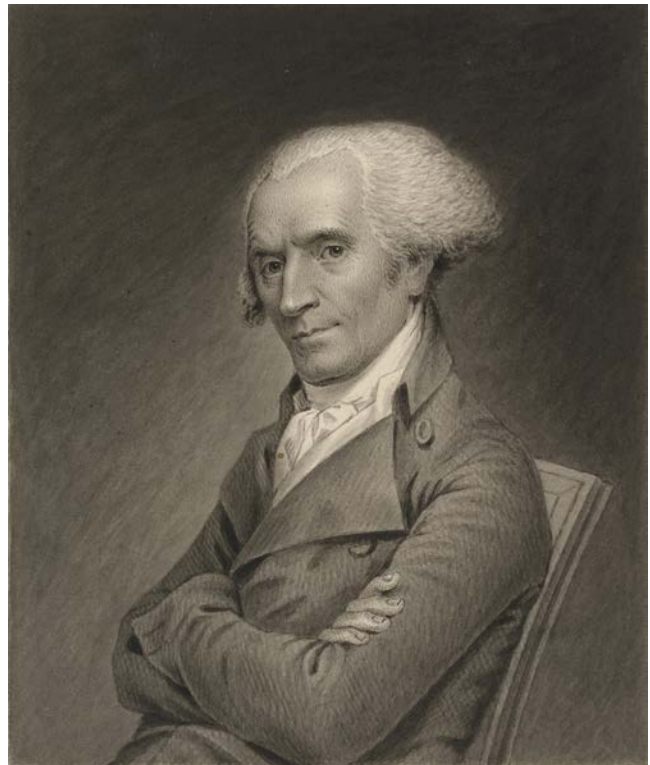
Go Inside the First Congress

Leaders of the House Debate

Anti-Federalist Position on Amendments

Elbridge Gerry (1744–1814) Massachusetts

A merchant and office holder, Gerry was born in Marblehead, Massachusetts. A graduate of Harvard College, he later resided in Cambridge, Massachusetts. Gerry attended the Continental Congress, where he signed the Declaration of Independence, and he was also a member of the Confederation Congress. A delegate to the Constitutional Convention, he refused to sign the Constitution and actively protested its ratification at the Massachusetts state convention, which he attended as an unofficial observer. He was among the most active participants in the House debate on amendments and insisted that “all the amendments proposed by the respective states” should be considered, rather than Madison’s limited set of proposals.



Elbridge Gerry by James Barton Longacre
National Portrait Gallery, Smithsonian Institution/
Art Resource, NY



Go Inside the First Congress

Issues and Positions

These five questions represent the most contested issues raised in the debate over the proposed amendments, and they best show the divide between the Federalists and the Anti-Federalists. Many of the amendments proposed in Congress, especially those that touched upon due process and other traditional rights, did not inspire discussion. These five triggered the most debate, beginning with the simple question of whether the Constitution should be amended at all.

Should the Constitution be amended?

Should the House of Representatives have few or many members?

Should the people have the authority to instruct representatives?

Should the federal Bill of Rights apply to the states?

Should the federal taxation power be further limited?

Go Inside the First Congress

Issues and Positions

Should the Constitution be amended?

Federalist Position

James Jackson
Georgia

“The more I consider the subject of amendments, the more ... I am convinced it is improper I am against inserting a declaration of rights in the constitution.... If such an addition is not dangerous or improper, it is at least unnecessary.... Unless you except every right from the grant of power, those omitted are inferred to be resigned to the discretion of the government.”

June 8, 1789



Anti-Federalist Position

Thomas Tudor Tucker
South Carolina

“Many citizens expected that the amendments proposed by the conventions would be attended to by the House ... and several members conceived it to be their duty to bring them forward.”

August 18, 1789



Go Inside the First Congress

Issues and Positions

Should the House of Representatives have few or many members?

Federalist Position

Fisher Ames
Massachusetts

“By enlarging the representation, we lessen the chance of selecting men of the greatest wisdom and abilities; because small district elections may be conducted by intrigue; but in large districts nothing but real dignity of character can secure election.... Numerous assemblies are supposed to be less under the guidance of reason than smaller ones.”

August 14, 1789

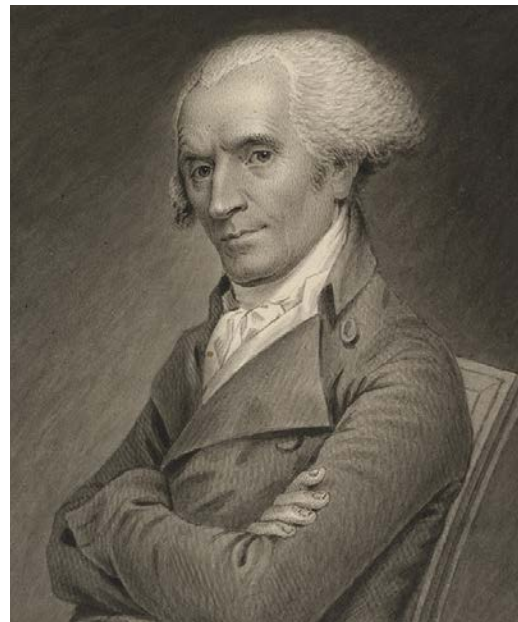


Anti-Federalist Position

Elbridge Gerry
Massachusetts

“Will that gentleman pretend to say we have as much security in a few representatives as in many? Certainly he will not. Not that I would insist upon a burthensome representation, but upon an adequate one ... [I am] in favor of extending the number to two hundred ...”

August 14, 1789



Go Inside the First Congress

Issues and Positions

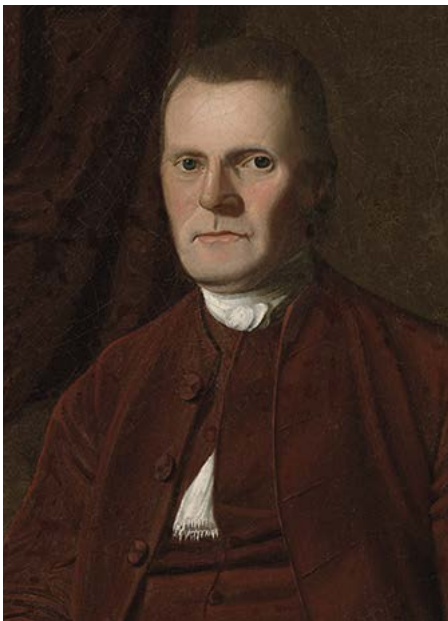
Should the people have the authority to instruct representatives?

Federalist Position

Roger Sherman
Connecticut

“Instructions cannot be considered as a proper rule for a representative to form his conduct by.... He is to consult the good of the whole; Should instructions therefore coincide with his ideas of the common good, they would be unnecessary. If they were contrary, he would be bound by every principle of justice to disregard them.”

August 15, 1789

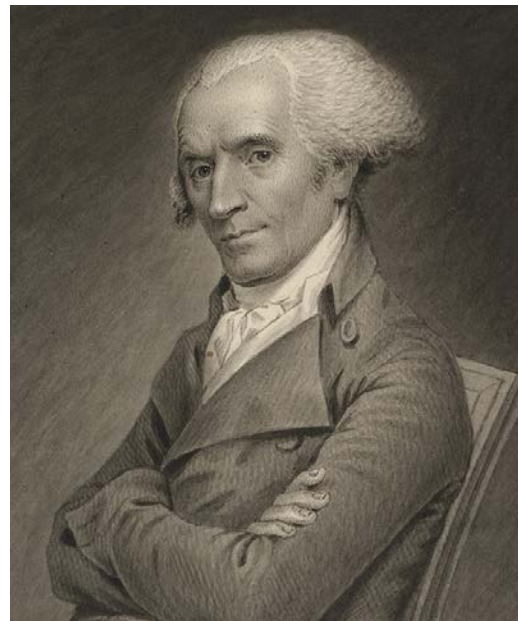


Anti-Federalist Position

Elbridge Gerry
Massachusetts

“The power of instruction is in my opinion essential to check an administration which should be guilty of abuses.... To deny the people this right is to arrogate to ourselves more wisdom than the whole body of the people possesses ... our constituents have not only a right to instruct, but to bind this legislature.”

August 15, 1789



Go Inside the First Congress

Issues and Positions

Should the federal Bill of Rights apply to the states?

Federalist Position

James Madison
Virginia

“No state shall infringe the equal rights of conscience, nor the freedom of speech, or of the press, nor of the right of trial by jury in criminal cases. [I] conceived this to be the most valuable amendment on the whole list; if there was any reason to restrain the government of the United States from infringing upon these essential rights, it was equally necessary that they should be secured against the state governments.”

August 17, 1789



Anti-Federalist Position

Thomas Tudor Tucker
South Carolina

“It will be much better, I apprehend, to leave the state governments to themselves, and not to interfere with them more than we already do, and that is thought by many to be rather too much.”

August 17, 1789



Go Inside the First Congress

Issues and Positions

Should the federal taxation power be further limited?

Federalist Position

James Jackson
Georgia

“I hope, sir, that the experience we have had will be sufficient to prevent Congress ever divesting themselves of [the taxing] power ... For if this power is taken from Congress, you divest the United States of the means of protecting the Union, or providing for the existence and continuation of the government.”

August 26, 1789



Anti-Federalist Position

Thomas Tudor Tucker
South Carolina

“That Congress shall not exercise the power of levying direct taxes, except in cases where any of the states shall refuse, or neglect to comply with their requisitions.”

August 26, 1789





Go Inside the First Congress

The Senate Markup

These four pages recorded on two sheets illustrate the process as seventeen House-proposed amendments (referred to as “Articles”) were revised in the Senate. The brown ink markings, made by the Secretary of the Senate, include cross-outs, combined amendments, and revised language. They record the actions taken in the Senate between August 25 and September 9, 1789. After the Senate passage by a two-thirds vote, the Senate version of twelve amendments was sent to the House for its consideration on September 14. The Bill of Rights was taking shape, although final congressional passage would not occur until September 25.

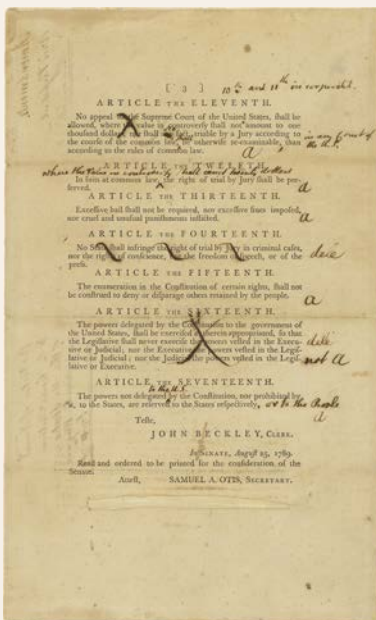
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PAGE THREE



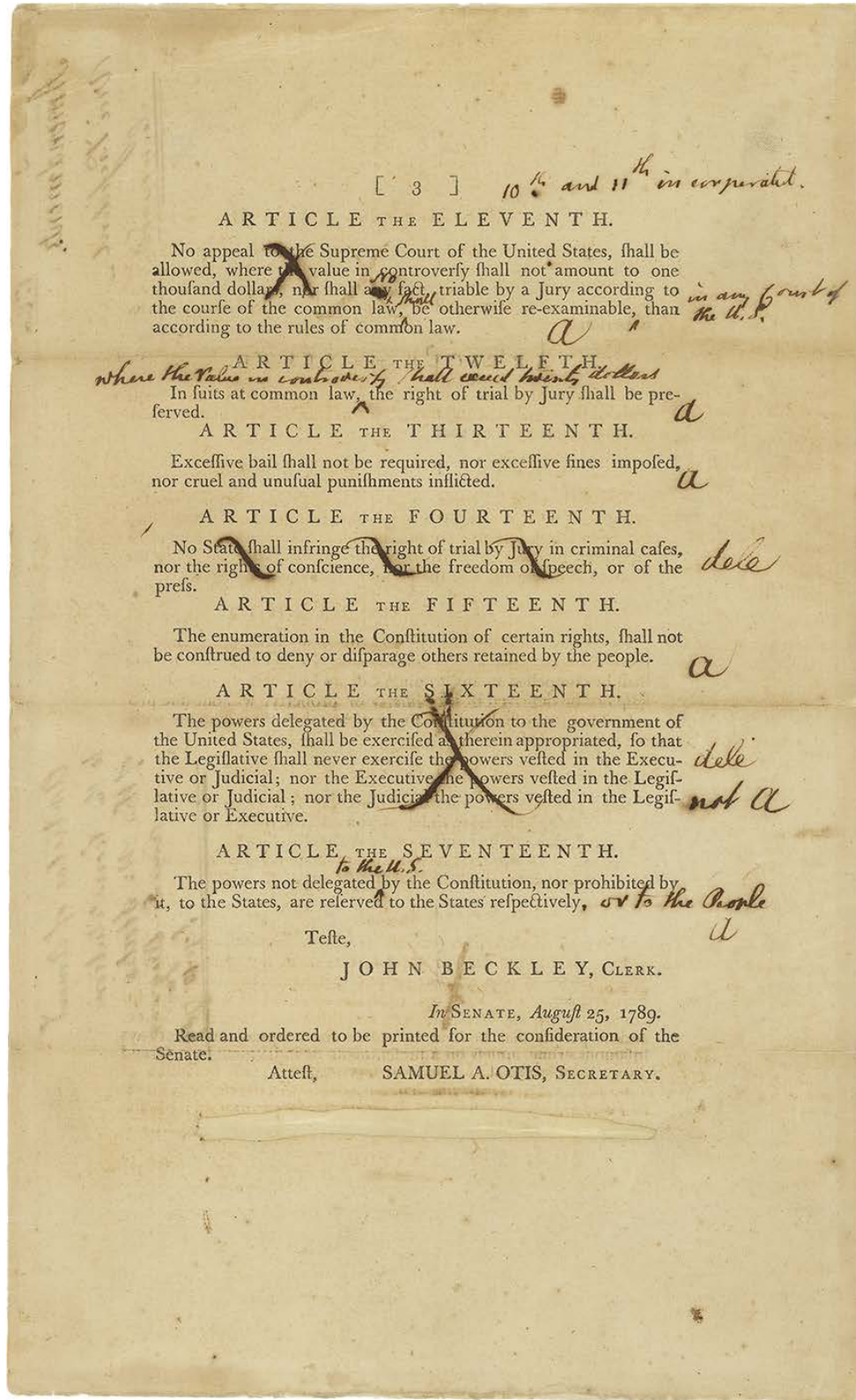
PAGE FOUR
ENDORSEMENT PAGE





Go Inside the First Congress

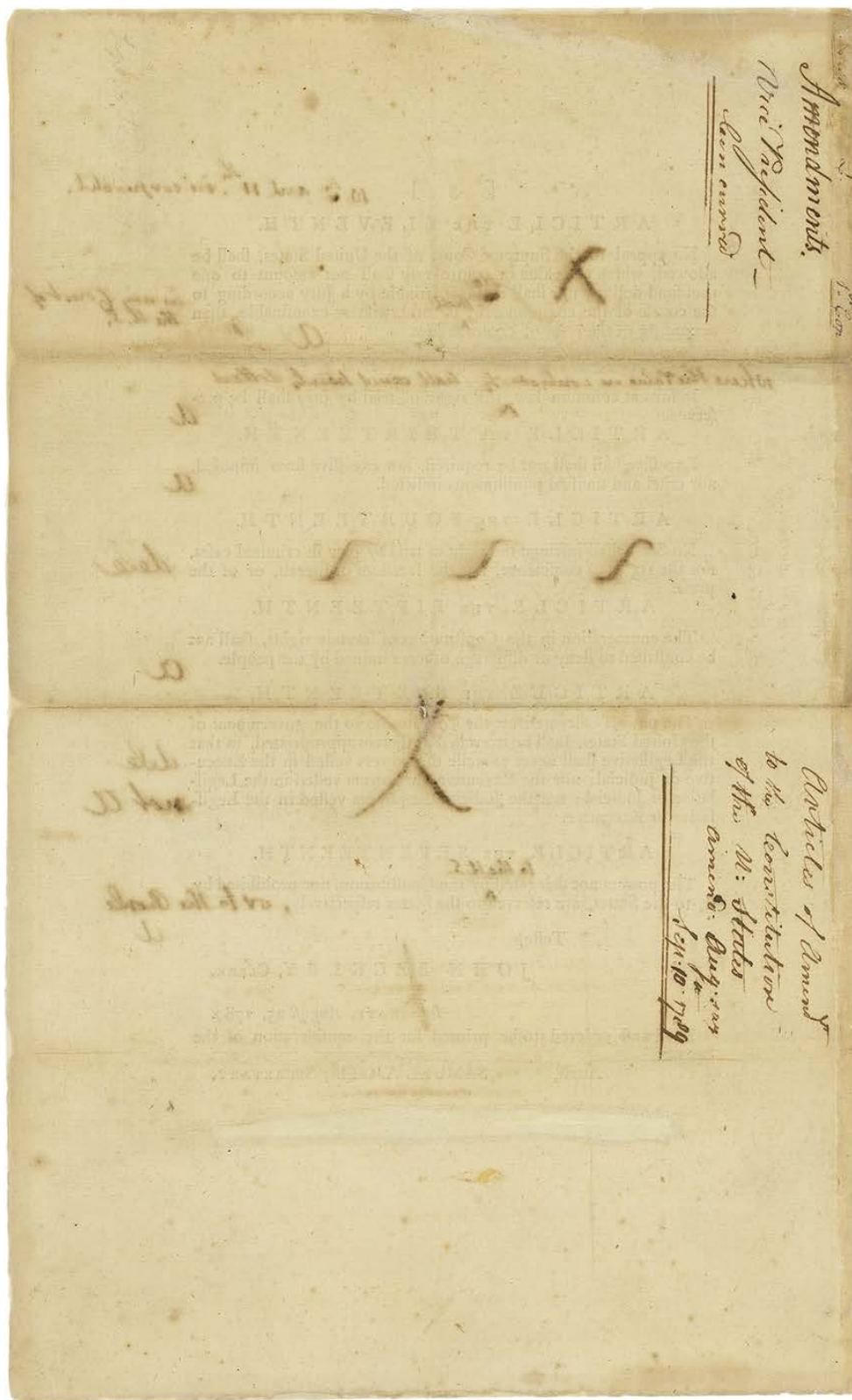
The Senate Markup, page 3



Senate Revisions to the House Proposed Amendments to the U.S. Constitution, 1789.

Go Inside the First Congress

The Senate Markup, page 4



Senate Revisions to the House Proposed Amendments to the U.S. Constitution, 1789.



Go Inside the First Congress

Close-up on Compromise

The First Amendment of the Bill of Rights changed dramatically as it moved through the House and the Senate in 1789. The First Amendment rights as we know them today were originally defined in two separate House amendments: Article Three on protecting religious rights, and Article Four on the rights of speech, press, assembly, and petition.

Though Senate debates were not recorded, Senate action on the amendments between August 25 and September 9 can be seen in the handwritten notations made on the printed version of the proposed amendments passed by the House. The Senate spent a good deal of time and a quantity of ink on Articles Three and Four, revising the language considerably. The Senate decided to combine the two articles together, giving us a single amendment defining the fundamental freedoms cherished by Americans in our founding era.

When the set of twelve amendments was sent to the states, the first two, Articles One and Two, were not ratified. Article Three then rose to its preeminent place as the First Amendment in the Bill of Rights.

This is a digital and conjectural re-creation, based on descriptions in the Senate Legislative Journal and other sources, of step-by-step changes made to Articles Three and Four of the proposed amendments passed by the House.

Go Inside the First Congress

Close-up on Compromise

August 24, 1789

A R T I C L E T H E T H I R D .

Congress shall make no law establishing religion or prohibiting the free exercise thereof, nor shall the rights of Conscience be infringed.

A R T I C L E T H E F O U R T H .

The Freedom of Speech, and of the Press, and the right of the People peaceably to assemble, and consult for their common good, and to apply to the Government for a redress of grievances, shall not be infringed.

“Article the Third. Congress shall make no law establishing religion, or prohibiting the free exercise thereof, nor shall the rights of Conscience be infringed.

Article the Fourth. The Freedom of Speech, and of the Press, and the right of the People peaceably to assemble, and consult for their common good, and to apply to the Government for redress of grievances, shall not be infringed.”

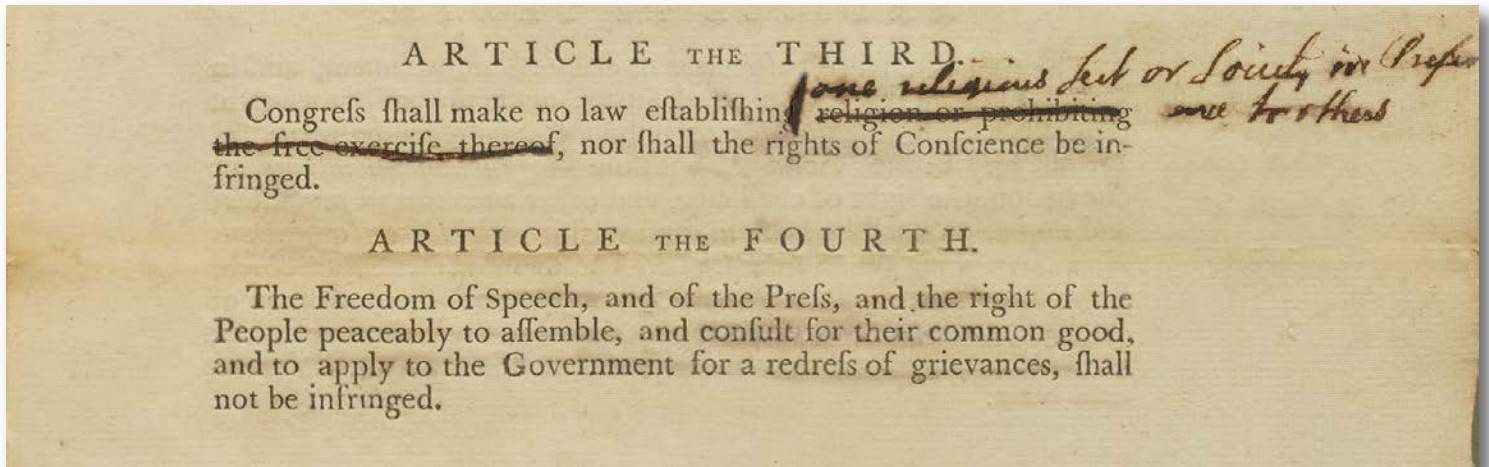
August 24, 1789

These articles were adopted by the House in this form.

Go Inside the First Congress

Close-up on Compromise

September 3, 1789



one religious Sect or Society in Preference to others

“Article the Third. Congress shall make no law establishing ~~religion, or prohibiting the free exercise thereof,~~ nor shall the rights of Conscience be infringed.

Article the Fourth. The Freedom of Speech, and of the Press, and the right of the People peaceably to assemble, and consult for their common good, and to apply to the Government for redress of grievances, shall not be infringed.”

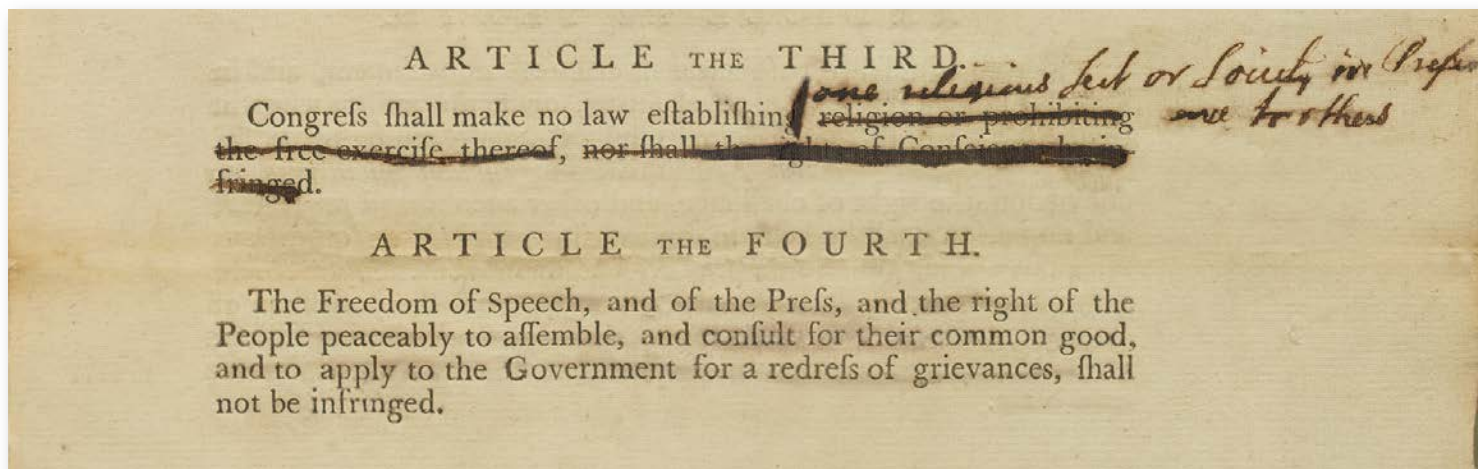
Senate Legislative Journal, September 3, 1789

The Senate’s first revision was to the wording on religious rights, changing a general ban on “making laws prohibiting the free exercise of religion” to a specific ban on “making laws establishing one religious sect or society in preference to others.”

Go Inside the First Congress

Close-up on Compromise

September 3, 1789



one religious Sect or Society in Preference to others

“Article the Third. Congress shall make no law establishing ~~religion, or prohibiting the free exercise thereof, nor shall the rights of Conscience be infringed.~~

Article the Fourth. The Freedom of Speech, and of the Press, and the right of the People peaceably to assemble, and consult for their common good, and to apply to the Government for redress of grievances, shall not be infringed.”

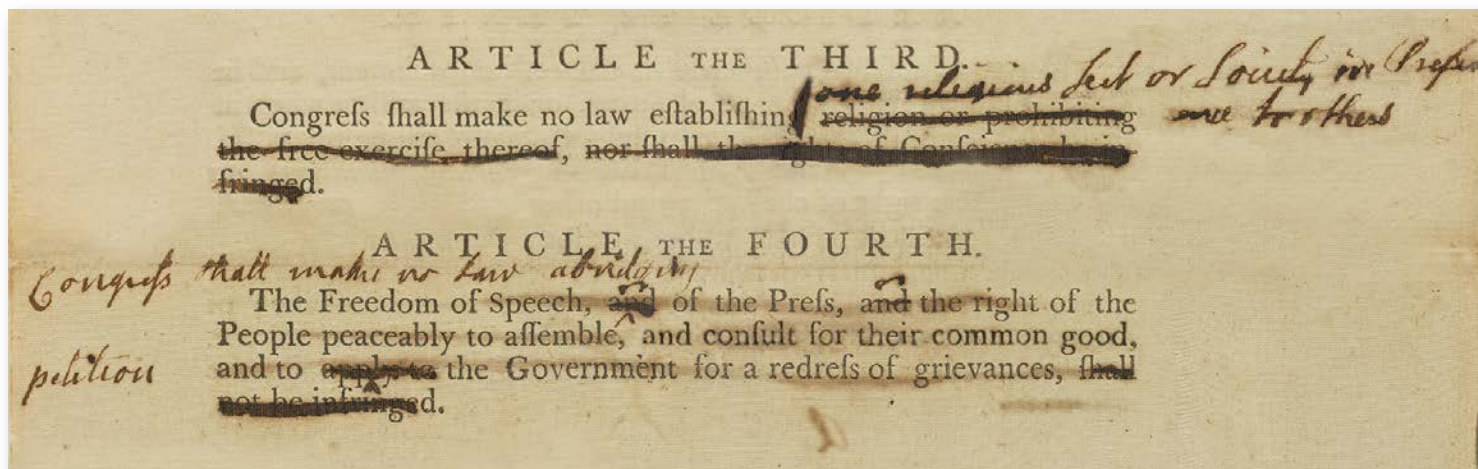
Senate Legislative Journal, September 3, 1789

The second motion approved by the Senate was to remove any reference to freedom of conscience at the end of Article the Third.

Go Inside the First Congress

Close-up on Compromise

September 4, 1789



one religious Sect or Society in Preference to others

“Article the Third. Congress shall make no law establishing ~~religion, or prohibiting the free exercise thereof, nor shall the rights of Conscience be infringed.~~

Congress shall make no law abridging

or

or

Article the Fourth. The Freedom of Speech, ~~and~~ of the Press, ~~and~~ the right of the People peaceably to assemble, and consult for their common good, and to ~~apply to~~ the Government for redress of grievances, ~~shall not be infringed.~~ ^{petition}”

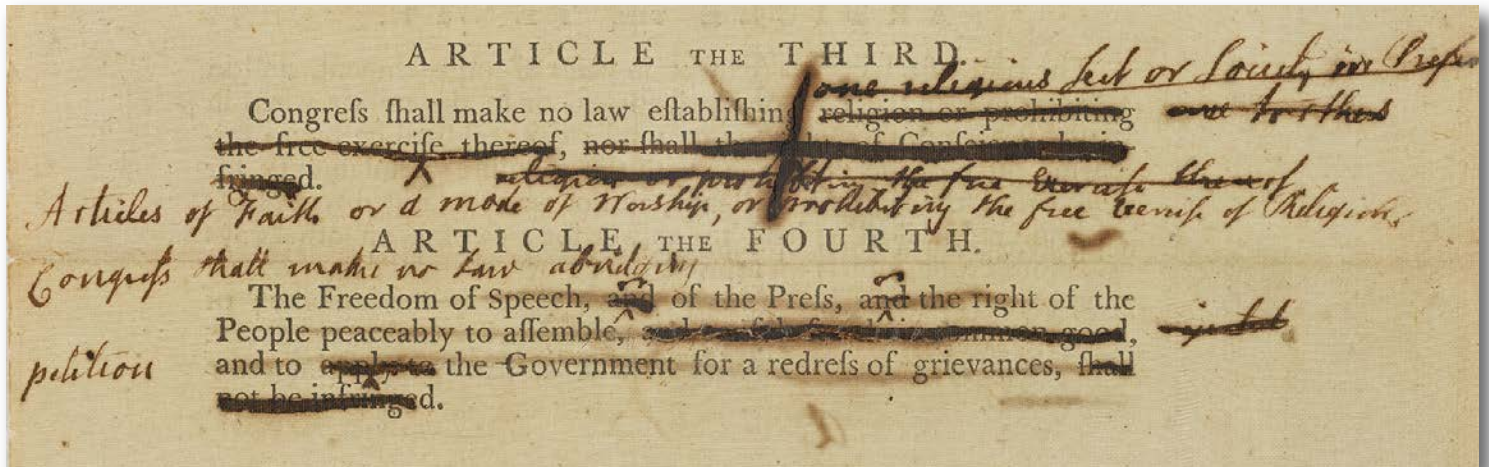
Senate Legislative Journal, September 4, 1789

The Senate applied the opening clause of Article the Third to the Fourth, adding the prohibition on Congress in place of a general statement about rights. The Senate also replaced the phrase “apply to” with the word “petition.”

Go Inside the First Congress

Close-up on Compromise

September 9, 1789



~~one religious Sect or Society in Preference to others~~

“Article the Third. Congress shall make no law establishing ~~religion, or prohibiting the free exercise thereof, nor shall the rights of Conscience be infringed.~~

Articles of Faith or a mode of Worship, or prohibiting the free exercise of Religion

Congress shall make no law abridging

or

or

Article the Fourth. The Freedom of Speech, ~~and~~ of the Press, ~~and~~ the right of the People peaceably to assemble, ~~and consult for their common good~~, and to ~~apply to~~ the Government for redress of grievances, ~~shall not be infringed.~~ petition

Senate Legislative Journal, September 9, 1789

The Senate voted to amend and combine the articles into one proposed amendment. The Senate added “articles of faith or a mode of worship, or prohibiting the free exercise of religion.” The Senate then struck out “one religious sect or society in preference to others” and dropped “consult for their common good.”

Go Inside the First Congress

Close-up on Compromise

September 14, 1789

A R T I C L E T H E T H I R D .

Congress shall make no law establishing articles of faith, or a mode of worship, or prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition to the government for a redress of grievances.

“Article the Third. Congress shall make no law establishing articles of faith, or a mode of worship, or prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition to the government for a redress of grievances.”

Senate Legislative Journal, September 14, 1789

Article the Third was approved by the Senate in this form by a two-thirds vote and was printed, along with the other amendments, on this date.

Go Inside the First Congress

Close-up on Compromise

September 24, 1789

A R T I C L E T H E T H I R D .

~~Congress shall make no law establishing articles of faith, or a mode of worship, or prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition to the government for a redress of grievances.~~

~~“Article the Third. Congress shall make no law establishing articles of faith, or a mode of worship, or prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition to the government for a redress of grievances.”~~

Conference Committee Report, September 24, 1789

The Conference Committee changed the wording of this amendment from “establishing articles of faith, or a mode of worship,” to “respecting an establishment of Religion,” restoring it closer to the original House version. The final language appeared when the amendment was sent out for ratification.

Go Inside the First Congress

Close-up on Compromise

October 2, 1789

ART. 3. ‘ 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 petition the government for a redress of grievances.’

“Art. 3. 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 petition the Government for a redress of grievances.”

October 2, 1789

The amendment was sent to the states for ratification in this form.

